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| Institution: | Inter-American Court of Human Rights |
| Title/Style of Cause: | "Las Dos Erres" Massacre v. Guatemala |
| Doc. Type: | Judgement (Preliminary Objection, Merits, Reparations, and Costs) |
| Decided by: | President: Cecilia Medina Quiroga;<br>Vice President: Diego Garcia-Sayan;<br>Judges: Sergio Garcia Ramirez; Manuel E. Ventura Robles; Margarette May Macaulay; Rhadys Abreu Blondet; Ramon Cadena Ramila<br><br>Due to reasons of force majeure, Judge Leonardo A. Franco did not participate in the deliberation and signing of the instant Judgment. |
| Dated: | 24 November 2009 |
| Citation: | "Las Dos Erres" Massacre v. Guatemala, Judgement (IACtHR, 24 Nov. 2009) |
| Represented by: | APPLICANTS: CEJIL and the Association of Relatives of the Detained-Disappeared of Guatemala |



In the Case of the "Las Dos Erres" Massacre*,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 30, 32, 38, 59, 60, and 61 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure")**, delivers the present Judgment.

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** According to the provisions of Article 72(2) of the Rules of Procedure of the Inter-American Court effective as of March 24, 2009, "[c]ases pending resolution shall be processed according to the provisions of these Rules of Procedure, except for those cases in which a hearing has already been convened upon the entry into force of these Rules of Procedure; such cases shall be governed by the provisions of the previous Rules of Procedure." Hence, the Court's Rules of Procedure referred to in the instant Judgment correspond to those approved by the Court during its XLIX Ordinary Period of Sessions held from November 16 to 25, 2000 and partially amended by the Court during its LXXXII Ordinary Period of Sessions, held from January 19 to 31, 2009.

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## I. INTRODUCTION OF THE CASE AND MATTER OF THE DISPUTE

1. On July 30, 2008, in accordance with Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted an application to the Court against the Republic of

Guatemala (hereinafter "the State" or "Guatemala"). The initial petition was submitted to the Commission by the Office of Human Rights of the Archdiocese of Guatemala (ODHAG) and the Center for Justice and International Law (hereinafter "CEJIL") [FN1] on September 13, 1996. [FN2] On April 1, 2000, the State and the representatives of the alleged victims (hereinafter "the representatives") reached an agreement within the framework of a friendly settlement, [FN3] whereby the State recognized its international responsibility and committed to make reparations to the alleged victims. However, on February 20, 2006 the representatives expressed their desire to discontinue the friendly settlement process; therefore the proceeding before the Commission was continued. [FN4] On March 14, 2008 the Commission approved the Report on Admissibility and Merits No. 22/08, pursuant to Article 50 of the Convention. [FN5] The report recommended that the State perform, among other, a special, rigorous, impartial, and effective investigation that would prosecute and punish those responsible, as well as remove all factual and legal obstacles that kept the case in impunity. This report was notified to the State on April 30, 2008. After considering that Guatemala had not adopted its recommendations, the Commission decided to submit the instant case to the jurisdiction of the Court. The Commission appointed Víctor Abramovich, Commissioner and Santiago A. Canton, Executive Secretary, as Delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Juan Pablo Albán Alencastro and Isabel Madariaga as legal advisors.

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[FN1] On March 26, 1999 the Association of Relatives of the Detained-Disappeared of Guatemala joined the procedure before the Commission as a co-applicant.

[FN2] The representatives denounced alleged violations to the Human Rights contained in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to Fair Trial), 19 (Rights of the Child), and 25 (Right to Judicial Protection) of the Convention. Subsequently, on August 26, 1997 the petitioners submitted a brief whereby they requested that the Commission declare the State responsible for the violations to the Human Rights contained in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Fair Trial), 11 (Right to Privacy), 17 (Rights of the Family), 19 (Rights of the Child), 21 (Right to Property), 22 (Freedom of Movement and Residence), 25 (Right to Judicial Protection), and 29 (Restrictions Regarding Interpretation) of the Convention, in conformity with Article 1(1) (Obligation to Respect Rights) of that instrument.

[FN3] In the agreement signed on April 1, 2000 within the framework of a friendly settlement between the State and the representatives, the State expressed its recognition of international responsibility in the following terms: "The Government of Guatemala recognizes the institutional responsibility of the State for the events that occurred from December 6 to 8, 1982 in the Community of "Las Dos Erres", village of Las Cruces, situated in the municipality of La Libertad, Department [of] Petén […], in which members of the Guatemalan Army massacred approximately 300 persons, residents of that community, men, children, elderly, and women. The Government of Guatemala also recognizes the institutional responsibility of the State of Guatemala for the delay in justice in terms of investigating the facts related to the massacre, identifying the perpetrators and masterminds, and applying the corresponding punishment […] Guatemala accepts its responsibility for the human rights violations denounced by the petitioners in the communication sent to the Commission on September 13, 1996, namely, violation of the right to the recognition of juridical personality, right to life, right to humane treatment, right to

personal liberty, rights of the family, rights of the child, right to property, right to fair trial, right to judicial protection, and violation of the duty to investigate, punish, and redress."
[FN4] The friendly settlement procedure was not completed with a report, as required by Article 49 of the Convention.
[FN5] In the report on Admissibility and Merits No. 22/08 the Commission concluded that the State violated the rights enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8(1) (Right to Fair Trial), 17 (Rights of the Family), 19 (Rights of the Child), 21 (Right to Property), and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said instrument, for the events occurred in the community of "Las Dos Erres", on December 6, 7, 8, and 9, 1982, and the subsequent denial of justice.

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2. The application is related to the alleged lack of due diligence in the investigation, prosecution, and punishment of those responsible for the massacre of 251 inhabitants of the community (parcelamiento) of Las Dos Erres, la Libertad, Department of Petén, which occurred between December 6 and 8, 1982. This massacre was performed by the specialized group within the armed forces of Guatemala named kaibiles [FN6]. The community's inhabitants included children, women, and men. The individuals executed had previously suffered blows and mistreatment, and a lot of women had been raped and beaten to the point of abortions. Additionally, in the context of the massacre one of the participating kaibiles abducted a child survivor, took him to his home, and registered him with his last names. The investigations on this massacre began until 1994, during which some exhumation measures were performed. However, the alleged indiscriminate and permissive use of judicial resources, the unjustified delay by the judicial authorities, and the lack of an exhaustive investigation, prosecution, and punishment of those responsible is still pending as of today.

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[FN6] According to the Report by the Commission for Historical Clarification, Guatemala: Memory of Silence (hereinafter "CEH, Guatemala: Memory of Silence"), Guatemala: United Nations Office for Project Services, 1999; "the kaibiles were a special counterinsurgency force of the Guatemalan Army, who in different operations put into practice the extreme cruelty of their training methods." (Appendixes to the brief of pleadings and motions, appendix 30, f. 10936)

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3. The Commission requested that the Court declare the State responsible for the violation of Articles 25 (Right to Judicial Protection) and 8 (Right to a Fair Trial) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of that instrument, against two survivors of the massacre [FN7] and 153 next of kin [FN8] of the deceased in the massacre. Additionally, the Commission requested that the Court order the State to adopt several non-pecuniary measures of reparation, and to pay the costs and expenses of the present case which have already or will originate before the Inter-American Court.

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[FN7] Salomé Armando Gómez Hernández and Ramiro Antonio Osorio Cristales. The latter was forced to use the name Ramiro Fernando López García, and is referred to as such in the application. However, in 2002 he recovered his biological name, which will be used by this Court in this Judgment.

[FN8] Namely: 1) Baldomero Pineda Batres; 2) Catalina Arana Pineda de Ruano; 3) Francisca Morales Contreras; 4) Tomasa Galicia González; 5) Inocencio González; 6) Santos Nicolás Montepeque Galicia; 7) Pedro Antonio Montepeque; 8) Enriqueta González G. de Martínez; 9) Inés Otilio Jiménez Pernillo; 10) Mayron Jiménez Castillo; 11) Eugenia Jiménez Pineda; 12) Concepción de María Pernillo J.; 13) Encarnación Pérez Agustín; 14) María Ester Contreras; 15) Marcelina Cardona Juárez; 16) Victoria Hércules Rivas; 17) Margarito Corrales Grijalva; 18) Laura García Godoy; 19) Luis Armando Romero Gracia; 20) Edgar Geovani Romero García; 21) Edwin Saúl Romero García; 22) Aura Anabella Romero García; 23) Elvia Luz Granados Rodríguez; 24) Catalino González; 25) María Esperanza Arreaga; 26) Felipa de Jesús Medrano Pérez; 27) Felipe Medrana García; 28) Juan José Arévalo Valle; 29) Noé Arévalo Valle; 30) Cora María Arévalo Valle; 31) Lea Arévalo Valle; 32) Luis Saúl Arevalo Valle; 33) Gladis Esperanza Arevalo Valle; 34) Felicita Lima Ayala; 35) Cristina Alfaro Mejia; 36) Dionisio Campos Rodríguez; 37) Elena López; 38) Petronila López Méndez; 39) Timotea Alicia Pérez López; 40) Vitalina López Pérez; 41) Sara Pérez López; 42) María Luisa Pérez López; 43) David Pérez López; 44) Manuela Hernández; 45) Blanca Dina Elisabeth Mayen Ramírez; 46) Rafael Barrientos Mazariegos; 47) Toribia Ruano Castillo; 48) Eleuterio López Méndez; 49) Marcelino Deras Tejada; 50) Amalia Elena Girón; 51) Aura Leticia Juárez Hernández; 52) Israel Portillo Pérez; 53) María Otilia González Aguilar; 54) Sonia Elisabeth Salazar Gonzáles; 55) Glendi Marleni Salazar Gonzáles; 56) Brenda Azucena Salazar González; 57) Susana Gonzáles Menéndez; 58) Benigno de Jesús Ramírez González; 59) María Dolores Romero Ramírez; 60) Encarnación García Castillo; 61) Baudilia Hernández García; 62) Susana Linarez; 63) Andrés Rivas; 64) Darío Ruano Linares; 65) Edgar Ruano Linares; 66) Otilia Ruano Linares; 67) Yolanda Ruano Linares; 68) Arturo Ruano Linares; 69) Saturnino García Pineda; 70) Juan de Dios Cabrera Ruano; 71) Luciana Cabrera Galeano; 72) Hilaria Castillo García; 73) Amílcar Salazar Castillo; 74) Marco Tulio Salazar Castillo; 75) Gloria Marina Salazar Castillo; 76) María Vicenta Moran Solís;77) María Luisa Corado; 78) Hilario López Jiménez; 79) Guillermina Ruano Barahona; 80) Rosalina Castañeda Lima; 81) Teodoro Jiménez Pernillo; 82) Luz Flores; 83) Ladislao Jiménez Pernillo; 84) Catalina Jiménez Castillo; 85) Enma Carmelina Jiménez Castillo; 86) Álvaro Hugo Jiménez Castillo; 87) Rigoberto Vidal Jiménez Castillo; 88) Albertina Pineda Cermeño; 89) Etelvina Cermeño Castillo; 90) Sofía Cermeño Castillo; 91) Marta Lidia Jiménez Castillo; 92) Valeria García; 93) Cipriano Morales Pérez; 94) Antonio Morales Miguel; 95) Nicolasa Pérez Méndez; 96) Jorge Granados Cardona; 97) Santos Osorio Ligue; 98) Gengli Marisol Martínez Villatoro; 99) Amner Rivai Martínez Villatoro; 100) Celso Martínez Villatoro; 101) Rudy Leonel Martínez Villatoro; 102) Sandra Patricia Martínez Villatoro; 103) Yuli Judith Martínez Villatoro de López; 104) María Luisa Villatoro Izara; 105) Olegario Rodriguez Tepec; 106) Teresa Juárez; 107) Lucrecia Ramos Yanes de Guevara; 108) Eliseo Guevara Yanes; 109) Amparo Pineda Linares de Arreaga; 110) María Sabrina Alonzo P. de Arreaga;111) Francisco Arreaga Alonzo; 112) Eladio Arreaga Alonzo; 113) María Menegilda Marroquín Miranda; 114) Oscar Adelso Antonio Jiménez; 115) Ever Ismael Antonio Coto; 116) Héctor Coto; 117) Rogelia Natalia Ortega Ruano; 118) Ángel Cermeño Pineda; 119) Felicita Herenia Romero Ramírez; 120) Esperanza Cermeño Arana; 121) Abelina Flores; 122) Albina Jiménez Flores; 123) Mercedez Jiménez Flores; 124) Transito Jiménez Flores; 125) Celedonia Jiménez Flores; 126)

Venancio Jiménez Flores; 127) José Luís Cristales Escobar; 128) Reyna Montepeque; 129) Miguel Angel Cristales; 130) Felipa de Jesús Díaz de Hernández; 131) Rosa Erminda Hernández Díaz; 132) Vilma Hernández Díaz de Osorio; 133) Félix Hernández Díaz; 134) Desiderio Aquino Ruano; 135) Leonarda Saso Hernández; 136) Paula Antonia Falla Saso; 137) Dominga Falla Saso; 138) Agustina Falla Saso; 139) María Juliana Hernández Moran; 140) 140) Raul de Jesús Gómez Hernández; 141) María Ofelia Gómez Hernández; 142) Sandra Ofelia Gómez Hernández; 143) José Ramiro Gómez Hernández; 144) Bernardina Gómez Linarez; 145) Telma Guadalupe Aldana Canan; 146) Mirna Elizabeth Aldana Canan; 147) Rosa Elvira Mayen Ramírez; 148) Augusto Mayen Ramírez; 149) Rodrigo Mayen Ramírez; 150) Onivia García Castillo; 151) Saturnino Romero Ramírez; 152) Ana Margarita Rosales Rodas, and 153) Berta Alicia Cermeño Arana.

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4. On November 12, 2008 the representatives, CEJIL, and the Association of Relatives of the Detained-Disappeared of Guatemala (hereinafter "FAMDEGUA"), submitted their written brief containing pleadings, motions, and evidence (hereinafter "brief of pleadings and motions"). In addition to the Commission's statement, the representatives claimed, inter alia, that the State is responsible for the infringement of the rights recognized in:

a) Articles 8 and 25 (Right to a Fair Trial and Right to Judicial Protection) of the Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of that treaty, against the victims of the massacre [FN9] and their next of kin, due to i) alleged unjustified delay in the investigation of the facts, and ii) alleged lack of impartiality of the court that resolved one of the appeals for legal protection;
b) Articles 8 and 25 (Right to a Fair Trial and Right to Judicial Protection) of the Convention, in relation to non-compliance with Article 1(1) (Obligation to Respect Rights) of that treaty and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "IACPPT" or "Inter-American Convention against Torture"), with regard to the victims of the massacre and their next of kin, and Article 7.b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (hereinafter "Convention of Belem Do Pará"), against the female victims, for alleged lack of a serious and thorough investigation of all of the facts and of those responsible for the massacre;
c) Articles 8 and 25 (Right to a Fair Trial and Right to Judicial Protection) of the Convention, in relation to non-compliance with Article 1(1) (Obligation to Respect Rights) of this treaty, against the victims of the massacre and their next of kin, for: i) hindering the investigations, and ii) not executing the arrest warrants issued against some of the alleged participants in the facts,
d) Articles 8, 25, and 13 (Right to a Fair Trial, Right to Judicial Protection, Freedom of Thought and Expression) of the Convention, in conformity with Article 1(1) (Obligation to Respect Rights) of that treaty, with regard to the next of kin, who as of today do not know the truth on what happened to their loved ones and the identity of those responsible;
e) Article 4 (Right to Life) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of that treaty, against the victims of the massacre, regarding the alleged inadequate investigation of their execution;
f) Article 5 (Right to Humane Treatment) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of that instrument, against the victims of the massacre, regarding

the alleged lack of investigation of the acts of torture and cruel, inhumane, and degrading treatment to which they were allegedly subjected to;

g) Article 5 (Right to Humane Treatment) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of that instrument, against the next of kin of the victims of the massacre for the suffering caused due to the alleged impunity of the facts, and

h) Article 19 (Rights of the Child) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of that treaty, against the two survivors of the Massacre, as well as the infringement of Articles 17 (Rights of the Family) and 18 (Right to a Name) of the Convention, in relation to Article 1(1). (Obligation to Respect Rights) of that instrument, with regard to one of the survivors.

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[FN9] From that indicated by the representatives it is inferred that this refers to those individuals who passed away during the facts of the massacre.

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5. Finally, the representatives requested the Court to order the State to adopt several pecuniary and non-pecuniary measures of reparation, as well as to pay the costs and expenses of the instant case incurred both domestically and internationally as of April 2000. They clarified that CEJIL and FAMDEGUA represent 59 alleged victims, including one of the survivors, hence the Commission represents 96 alleged victims. [FN10]

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[FN10] The 96 alleged victims who did not grant powers of representation to CEJIL or FAMDEGUA are: 1) Tomasa Galicia González, 2) Inés Otilio Jiménez Pernillo, 3) Encarnación Pérez Agustín, 4) Edwin Saúl Romero García, 5) Elvia Luz Granados Rodríguez, 6) Juan José Arévalo Valle, 7) Noe Arévalo Valle, 8) Cora María Arévalo Valle, 9) Lea Arévalo Valle, 10) Luis Saúl Arévalo Valle, 11) Gladis Esperanza Arévalo Valle, 12) Felicita Lima Ayala, 13) Dionisio Campos Rodríguez, 14) Elena López, 15) Sara Pérez López, 16) David Pérez López, 17) Manuela Hernández, 18) Blanca Dina Elizabeth Mayen Ramírez, 19) Rafael Barrientos Mazariegos, 20) Toribia Ruano Castillo, 21) Eleuterio López Méndez, 22) Marcelino Deras Tejadas, 23) Amalia Elena Girón, 24) Aura Leticia Juárez Hernández, 25) Israel Portillo Pérez, 26) Glendi Marlini Salazar González, 27) Brenda Azucena Salazar González, 28) Susana González Menéndez, 29) Benigno de Jesús Ramírez González, 30) María Dolores Romero Ramírez, 31) Encarnación García Castillo, 32) Baudilia Hernández García, 33) Susana Linarez, 34) Andrés Rivas, 35) Edgar Ruano Linarez, 36) Arturo Ruano Linares, 37) Saturnino García Pineda, 38) Juan de Dios Cabrera Ruano, 39) Luciana Cabrera Galeano, 40) Hilaria Castillo García, 41) Marco Tulio Salazar Castillo, 42) Gloria Marina Salazar Castillo, 43) María Vicente Moran Solís, 44) María Luisa Corado, 45) Rosalina Castañeda Lima, 46) Teodoro Jiménez Pernillo, 47) Ladislao Jiménez Pernillo, 48) Catalina Jiménez Castillo, 49 Enma Carmelina Jiménez Castillo, 50) Álvaro Hugo Jiménez Castillo, 51) Rigoberto Vidal Jiménez Castillo, 52) Etelvina Cermeño Castillo, 53) Sofía Cermeño Castillo, 54) Marta Lidia Jiménez Castillo, 55) Valeria García, 56) Cipriano Morales Pérez, 57) Antonio Morales Miguel, 58) Nicolasa Pérez Méndez, 59) Jorge Granados Cardona, 60) Santos Osorio Ligue, 61) Rudy Leonel Martínez Villatoro, 62) Olegario Rodríguez Tepec, 63) Teresa Juárez, 64) Lucrecia Ramos Yanes de Guevara, 65) Eliseo Guevara Yanes, 66) María Menegilda Marroquín Miranda, 67) Oscar

Adelso Antonio Jiménez, 68) Ever Ismael Antonio Coto, 69) Héctor Coto, 70) Rogelia Natalia Ortega Ruano, 71) Ángel Cermeño Pineda, 72) Esperanza Cermeño Arana, 73) Abelina Flores, 74) Mercedes Jiménez Flores, 75) Tránsito Jiménez Flores, 76) Felipa de Jesús Díaz de Hernández, 77) Rosa Ermida Hernández Díaz, 78) Vilma Hernández Díaz de Osorio, 79) Félix Hernández Díaz, 80) Desiderio Aquino Ruano, 81) Leonarda Saso Hernández, 82) Paula Antonia Falla Saso, 83) Dominga Falla Saso, 84) Agustina Falla Saso, 85) María Guyana Hernández Morán, 86) Sandra Ofelia Gómez Hernández, 87) José Ramiro Gómez Hernández, 88) Bernardina Gómez Linarez, 89) Mirna Elizabeth Aldana Canan, 90) Rosa Elvira Mayen Ramírez, 91) Augusto Mayen Ramírez, 92) Onivia García Castillo, 93) Saturnino Romero Ramírez, 94) Ana Margarita Rosales Rodas, 95) Berta Alicia Cermeño Arana, and 96) the survivor Salomé Armando Gómez Hernández.

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6. On January 20, 2009 the State submitted its brief of preliminary objections, answer to the application, and observations to the brief of pleadings and motions (hereinafter "answer to the application"). The State indicated that it "express[ed] its partial acceptance of the facts denounced by the […] Commission [and the] alleged [violation] of Articles 8 and 25 of the [Convention,] in relation to the obligation enshrined in Article 1(1) [thereof]." However, it filed a preliminary objection related to the alleged incompetence ratione temporis of the Court, in which it claimed that "the facts which constitute the denounced infringements of the rights contained in Articles 4, 5, 17, 18, and 19 of the Convention […] occurred between December 6 and 8, 1982, and the acceptance of the Court's contentious jurisdiction […] occurred afterward." On October 2, 2008 the State appointed Delia Marina Dávila Salazar as Agent, and Carol Angélica Quirós Ortiz as Deputy Agent for the instant case. On May 29, 2009 the State substituted the Deputy Agent for María Elena de Jesús Rodríguez López.

7. On March 4, 2009 the Commission and the representatives submitted their arguments on the recognition of responsibility and preliminary objection filed by the State, in conformity with Article 38.4 of the Rules of Procedure.

## II. PROCEEDING BEFORE THE COURT

8. The application was notified to the State [FN11] and to the representatives on September 11, 2008. During the proceedings before this Court, apart from the presentation of the main briefs submitted by the parties (supra para. 1, 4, and 6) the President of the Court (hereinafter "the President"), through the Order of May 18, 2009, [FN12] ordered the submission of the sworn declarations (affidavits) [FN13] of two alleged victims and two expert opinions, proposed by the parties. [FN14] Additionally, in the same Order the parties were convened to a public hearing in order to hear the statements of two alleged victims, one witness, and two expert witnesses proposed by the Commission and the representatives, as well as the final oral arguments on the preliminary objection and possible merits, reparations, and costs [FN15]. Finally, the President established the term for the parties to submit their corresponding briefs on final arguments until August 18, 2009.

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[FN11] When the State was notified of the application it was informed of its right to appoint a Judge ad hoc for the consideration of the case. On October 2, 2008 the State appointed Ramón Cadena Rámila.
[FN12] Cf. Case of the"Las Dos Erres" Massacre v. Guatemala. Order of the President of the Court of May 18, 2009.
[FN13] On June 9, 2009, the representatives decided to not proceed with the statement by Amílcar Salazar Castillo, alleged victim of the case.
[FN14] On May 14, 2009 the State submitted its observations on the final list of witnesses and expert witnesses offered by the representatives, and objected to the statement by Marco Antonio Garavito Fernández.
[FN15] Cf. Case of the"Las Dos Erres" Massacre v. Guatemala. Order of the Court of July 6, 2009.
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9. On June 30 and July 7, 2009 the representatives submitted to the Court supervening evidence, based on Article 46.3 of the Rules of Procedure, including new records of the domestic proceedings, journalistic notes, and a list of attorneys "who owe money […] due to use of the appeal for legal protection in a notoriously inadmissible manner," which were forwarded to the Commission and the State, so that they could submit their observations.

10. The public hearing was held on July 14, 2009 during the XL Extraordinary Period of Sessions of the Court, [FN16] held in the city of La Paz, Bolivia.

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[FN16] The following appeared at this hearing: a) for the Inter-American Commission: Isabel Madariaga, Juan Pablo Albán Alecastro and Angelita Baeyens, attorneys; b) for the representatives: Viviana Krsticevic, Marcela Martino, Marcia Aguiluz, Carlos Pelayo and Aura Elena Farfán and c) for the State: Dora Ruth del Valle Cóbar, President of the Presidential Human Rights Commission (COPREDEH), Delia Marina Dávila Salazar, Agent, María Elena de Jesús Rodríguez López, Deputy Agent, and Sara Elizabeth Romero, advisor.
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11. On July 28, 2009, Daniel Rothenberg and Daniel Thoman, representing the International Human Rights Law Institute of the University of DePaul, College of Law, submitted a brief as amicus curiae, on the doctrine of "superior responsibility" established in international law.

12. On August 18, 2009 the State, the Commission, and the representatives submitted their written briefs on final arguments on the preliminary objection and possible merits, reparations, and costs. The State and the representatives added some appendixes to their arguments. On September 28, October 5 and 6, 2009, the representatives, the State, and the Commission submitted, respectively, their observations on the appendixes to the written briefs on final arguments.

13. On September 3, 2009, the Secretariat, following the President's instructions, and in accordance with Article 45 of the Court's Rules of Procedure, required the Inter-American Commission and the representatives to provide certain information or documentation as evidence

to facilitate adjudication of the case. The representatives and the Commission submitted the requested information on September 11 and 14, 2009, respectively. On October 2, 2009 the State submitted its observations on the information presented by the representatives and the Commission as evidence to facilitate adjudication of the case.

## III. DETERMINATION OF THE ALLEGED VICTIMS

14. The Court deems it appropriate to determine who must be considered alleged victims in the present case.

15. The Court notes that in paragraph seven of the application, the Commission specified its purpose and identified 155 alleged victims of the case. Likewise, these alleged victims were indicated in the Report on Admissibility and Merits No. 22/08. In this regard, the Commission requested that the Court find and declare the State's international responsibility for the infringement of the rights enshrined in Articles 8 and 25 of the American Convention, in relation to Article 1(1). of that instrument, to the detriment of the two survivors of the massacre and 153 next of kin of the deceased in the massacre. Likewise, in the brief of pleadings and motions the representatives submitted their own list of victims. On the other hand, in said brief the representatives claimed additional alleged violations against those deceased during the massacre (supra para. 3, subsections a), b), c), e), and f)), for which they annexed the names of the deceased and the relationship to their next of kin. In this regard, in the section on background and context on the case, in paragraph 96 of the application, the Commission included a list with the names of the people who died in the massacre.

16. The Court verified that there were certain inconsistencies or differences with regard to the names and characteristics of the persons included in the list of alleged victims submitted by the Commission and that of the representatives; therefore on several occasions they were requested to present information, clarifications, and documentation. Once the information was received it was forwarded to the State, which submitted its observations. With the information and supporting evidence submitted by the parties, the different inconsistencies were clarified or corrected. However, the Court considers it appropriate to refer to the situation regarding Bernabé Cristales Montepeque and María Rebeca García Gómez, as well as the situation of those deceased in the massacre.

17. The Court notes that in paragraph 365 of the application the Commission indicated that "[…] Mr. Bernabé Cristales Montepeque [and] Ms. María Rebeca García Gómez […] have authorized the organizations […] 'CEJIL' and [...] 'FAMDEGUA', to represent them in the judicial stage of the proceeding before the system;" however, these individuals were not mentioned in the list of alleged victims contained in aforementioned paragraph seven of the application, nor in Article 50 of the Convention. Through the communications of the Secretariat of September 11, 2008 and September 3, 2009, the Commission was informed of this situation, and in the last communication it was requested to make the necessary clarifications.

18. In the communication of September 14, 2009 the Commission indicated that it had transferred the powers of representation of both individuals based on the "requirements contained in the Court's Rules of Procedure[, however, it added that this] does not constitute a

determination of the capacity of these individuals as victims, which the representatives and the Court must declare." On the other hand, the representatives indicated, in the communication of September 11, 2009, that these individuals "must be considered [alleged] victims of the case and beneficiaries of the reparations[, given that] they were not included in prior communications due to a material error." Lastly, the State expressed in the communication of October 2, 2009, that "the fact that documentation has been submitted to the Court that certifies them as their representatives in the instant case, does not grant them the capacity of [alleged] victims." The State added that these individuals were not identified as next of kin or beneficiaries during the proceedings before the Commission, and have not been recognized by the State, additionally, it is inadmissible to "include them as surviving victims, as this has not been verified and they do not appear in the application submitted by the [Commission], which constitute the subject of this dispute (litis)."

19. In the instant case, the Court notes that the Commission claimed violations in a clear and specific manner against 155 alleged victims, over which there is no controversy between the parties as to their identification in that capacity. Additionally, the Court confirms that Mr. Bernabé Cristales Montepeque and Ms. María Rebeca García Gómez were not included in the list of alleged victims presented in paragraph seven of the application, nor in the report on Article 50 of the Convention, therefore the Court requested information or clarifications in that regard, as evidence to facilitate adjudication of the case. Additionally, the Court observes that the individuals who died in the massacre were not included either in the aforementioned report or application in the capacity of alleged victims.

20. In its jurisprudence the Court has already established that the alleged victims must be listed in the application and in the report by the Inter-American Commission, pursuant to Article 50 of the Convention. In addition, in conformity with Article 34(1) of the Rules of Procedure, it corresponds to the Commission and not to this Court to identify with precision and at the due procedural time the alleged victims in a case before this Court. [FN17] Legal certainty demands, as a general rule, that all alleged victims must be duly identified in both briefs, and that it is not possible to add new alleged victims to the application. Consequently, since they were not mentioned at the due procedural time, the Court may not consider Mr. Bernabé Cristales Montepeque, Ms. María Rebeca García Gómez, or those deceased during the massacre, as alleged victims in the instant case. It is therefore inappropriate to adjudge on the alleged violations claimed against them.

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[FN17] Cf. Case of the Ituango Massacres v. Colombia. Preliminary objections, Merits, Reparations, and Costs. Judgment of July 1, 2006. Series C No. 148, para. 98; Case of Kimel v. Argentina. Merits, Reparations, and Costs. Judgment of May 2, 2008. Series C No. 117, para. 102, and Case of Tiu Tojín v. Guatemala. Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 58.

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21. Consequently, the Court considers that the alleged victims in the present case are those which the Commission identified in paragraph seven of the application, namely: a) two survivors

of the massacre (supra note 7), and b) 153 next of kin of the deceased in the massacre (supra note 8).

## IV. PARTIAL RECOGNITION OF THE STATE'S INTERNATIONAL RESPONSIBILITY

22. In its answer to the application the State expressed "its partial recognition of the facts denounced by the […] Commission [which] must be understood in terms of the alleged [violation] of Articles 8 and 25 of the [Convention,] in relation to the obligation enshrined in Article 1(1)" thereof. The State considered that it "cannot excuse itself from the responsibility related to the acts or omissions of its judicial authorities, as such attitude would result contrary to what is provided" in said Articles of the Convention. However, it stated that "in the present case there is a friendly settlement which the State has complied and continues to comply with[, therefore] the controversy with regards to the facts that originated the case has ceased." It added that "the subject of the application filed by the [Commission] is to analyze the status of compliance with the friendly settlement agreement concluded by the parties, specifically in relation to the measures adopted to redress the infringement [to the aforementioned Articles,] and not to condemn the State for the facts and claims which already figure in the friendly settlement process." The State concluded that the scope of the Commission's application must extend only and exclusively to the measures of the agreement that were allegedly not complied with in relation to the agreement, therefore the representatives' request to broaden the subject of the application should be dismissed." In its final pleadings the State "reiterate[d] its position […] with regard to the acknowledgment of the claims […] of violation […] of Articles 8 and 25 of the Convention," without further referring to claims aiming to limit the competence of the Court in that regard, and reiterated that Guatemala has expressed "its recognition of institutional responsibility" on three occasions.

23. With regard to the reparations, the State indicated that it "committed to make several reparations to the [alleged] surviving victims and the next of kin of those deceased in the Massacre," and added that the measures pending compliance were related to performing a serious and effective investigation, as well as providing medical and psychological treatment to the surviving victims and next of kin of those deceased in the massacre.

24. The Commission expressed that it took note of the partial recognition of responsibility expressed by Guatemala, and that it valued it as a measure that may contribute to a better resolution of the case. However, it observed that "this acceptance of partial responsibility differs from the one previously expressed in the framework of the process before the [Commission], and derives from an interpretation of the facts different from the one presented in the application," based on which it invoked the application of the estoppel principle. Likewise, the Commission pointed out that what the State expressed "does not change the conclusion based on the facts of the case and in the interpretation of the law, that Articles 8 and 25 of the Convention were breached[,] and that the general obligation of Article 1(1) of the same instrument was not complied with[, which] still hold true." In the public hearing, the Commission expressed that during the proceedings before it the State acknowledged its responsibility for the facts occurred in the community of Las Dos Erres, and that such recognition was not subject of controversy, therefore it requested the Court to consider the facts as proven and to include them in the judgment on the merits.

25. With regards to the reparations, the Commission reiterated its request to the Court to order the State to "effectively complete the investigations[, as well as] to adopt rehabilitation measures for the victims[, and] a policy of permanent training in human rights and international humanitarian law for the personnel of the Armed Forces."

26. The representatives argued that the terms of the State's recognition of responsibility in the answer to the application "[were] extremely confusing, as there is a series of contradictions", given that the State recognizes that it cannot excuse itself from the responsibility related to acts or omissions of its judicial authorities, however it submits certain pleadings which aim to disprove its responsibility for the delay in justice. The representatives concluded that the contradictions "inhibit the determination of the real extent of the acknowledgement of responsibility[,] and do not contribute to the reparations to the [alleged] victims, nor to the acknowledgement of the Guatemalan society of that occurred to the [alleged] victims of the Las Dos Erres Massacre." They added that such recognition "does not allow the Court to truly examine which obligations have been complied with and the rights breached by the State."

27. With regards to the reparations, the representatives indicated that it is necessary for the Court to order the State "to comply with its international obligations and to compensate not only for the damage caused, but to take a series of non-pecuniary measures and guarantees of non-repetition so that this type of violation never occurs again", and submitted to the Court their position in relation to the measures through which the State claims to have compensated the rights of the alleged victims.

28. Pursuant to Articles 56(2) and 58 of the Rules of Procedure, in the exercise of its powers of international judicial protection of human rights, the Court may determine whether a recognition of international responsibility by a respondent State offers a sufficient basis, under the terms of the American Convention, to continue to hear the merits and determine the eventual reparations and costs. To this purpose, the Court analyzes the situation set forth in each concrete case. [FN18]

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[FN18] Cf. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, para. 105; Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of November 22, 2007. Series C No. 171, para. 14, and Case of Tiu Tojín v. Guatemala, supra note 17, para. 24.

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29. Additionally, the Court notes that the evolution of the system for the protection of human rights currently allows the alleged victims or their next of kin to autonomously present a brief of pleadings, motions, and evidence, and to wield claims which may coincide or not with those of the Commission. When there is an acknowledgement, it must clearly express whether the State also accepts the claims presented by the alleged victims and their families. [FN19]

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[FN19] Cf. Case of Myrna Mack Chang, supra note 18, para. 107; Case of the Mapiripán Massacre v. Colombia. Preliminary Objections. Judgment of March 7, 2005. Series C No. 122, para. 28, and Case of Goiburú et al. v. Paraguay. Merits, Reparations, and Costs. Judgment of September 22, 2006. Series C No. 153, para. 47.
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30. With regard to what was indicated by the Commission and the representatives regarding the scope of the State's recognition of responsibility (supra para. 24 to 27), the Court notes that in the answer to the application the State partially recognized its international responsibility for the violation of Articles 8 and 25 of the Convention, and presented some considerations on the steps performed to comply with the investigation. Nevertheless, in the public hearing and in its brief of final arguments the State reiterated the position stated in the answer to the application "in the sense of acknowledging the claims of the Commission and the representatives, with regard to declaring breached only the rights established in Articles 8 and 25 of the [American Convention], on the grounds of the claim presented by FAMDEGUA."

31. In view of the foregoing, the Court concludes that in the proceedings before the Court the State limits its recognition of responsibility to the claims of the Commission and the representatives regarding the alleged violation to Articles 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) of the Convention, in relation to Article 1(1) of that instrument, and it accepts the claims of the parties with regards to those rights.

32. With regard to the facts of the application concerning the alleged violation of Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof, the Court understands that although the State did not specifically acknowledge the facts mentioned in the application, it did acknowledge the facts that occurred as of March 9, 1987 related to the denial of justice, contained in paragraphs 137 to 282 of the application, since these constitute the facts on which this proceeding is based, and they were not denied by the State in its acknowledgement.

33. In the answer to the application, the State opposed the broadening of the subject of the application regarding its international responsibility for the alleged violation of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 17 (Rights of the Family), 18 (Right to a Name) and 19 (Rights of the Child) of the Convention, claimed by the representatives, as it considered that the facts and claims had already been subjected to a friendly settlement agreement, and that they fall outside of the competence of the Court. The State bases this position on the recognition of international responsibility performed on April 1, 2000 regarding the facts of the massacre occurred between December 6 and 8, 1982 in the community of Las Dos Erres and the violation of several Articles of the Convention.

34. On the other hand, regarding the facts related to the alleged violation of Articles 4, 5, 17, 18, and 19 of the Convention, the Court notes that the State neither admitted nor expressly disproved the facts contained in the application which underlie the alleged violations so that the Court would not to analyze the aforementioned facts, therefore it filed a preliminary objection in that regard. Consequently, the Court will address this issue when it decides on the preliminary objection filed (infra para. 51).

35. With regards to the legal claims, although the State acknowledged the alleged violation of Articles 8(1) and 25(1) of the Convention, as previously indicated the State filed a preliminary objection ratione temporis on the alleged violation of Articles 4, 5, 17, 18 and 19 of the Convention claimed by the representatives. The Court considers that in order to determine the existence of controversy over those claims, the ruling on the aforementioned preliminary objection must be taken into consideration (infra para. 51).

36. In view of the foregoing, and considering the State's recognition of responsibility performed during the proceedings before the Court, the Court concludes that although the State accepted the facts related to the denial of justice of the application and recognized the alleged violation of Articles 8(1) and 25(1) of the Convention, taking into consideration the gravity of the facts and of the violations recognized by the State, it is necessary to make some specifications on the determination of the facts occurred, as well as on the lack of investigation and continued impunity of the case (infra chapter VIII). These specifications will contribute to the development of jurisprudence on this matter and to the corresponding protection of human rights of the alleged victims in the instant case. Likewise, the representatives claimed other violations related to Articles 2 and 13 of the Convention, which will be examined by the Court in the merits of the present Judgment (infra chapter VIII).

37. Lastly, with regard to the reparations, the Court notes that on April 1, 2000 the representatives and the State, during the proceedings before the Commission, signed an agreement in which the State undertook to perform several reparation measures. Additionally, after the friendly settlement agreement [FN20], the State and the representatives signed an Agreement on Economic Reparation ("Acuerdo Sobre Reparación Económica") and an Agreement on the Dissemination of the Video ("Acuerdo Sobre la Divulgación del Video"). In this sense, the Court confirms that the State has performed a series of actions and/or measures in order to implement the commitments made in those agreements, although the representatives have mentioned discrepancies regarding the manner in which the State has implemented them. In this regard, within the framework of the case submitted before the Court, and having seen the arguments filed by the parties regarding the determination of possible reparations, the Court considers that the controversy persists, therefore it will determine, in the corresponding chapter, the appropriate reparations for the instant case, bearing in mind the requests of the representatives and the Commission, and standards of the Inter-American System for the protection of human rights on this matter.

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[FN20] Cf. Friendly Settlement Agreement, supra note 3.

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38. The Court considers that the attitude of the State is a valuable contribution to the development of this proceeding, to the fulfillment of the judicial functions of the Inter-American System for the protection of human rights, to the effectiveness of the principles underlying the American Convention, and to the conduct to which States are bound in this regard, [FN21] as a result of the commitments undertaken as parties to the international instruments on human rights.

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[FN21] Cf. Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations, and Costs. Judgment of November 22, 2004. Series C No. 117, para. 84; Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 46, and Case of Kawas Fernández v. Honduras. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, para. 32.

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## V. PRELIMINARY OBJECTION RATIONE TEMPORIS

39. The State filed the objection ratione temporis on the grounds that although the claims presented by the Commission in the application are susceptible to be heard by the Court, the alleged violations of the rights contained in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 17 (Rights of the Family), 18 (Right to a Name), and 19 (Rights of the Child) of the Convention claimed by the representatives in their brief of pleadings and motions, occurred between December 6 and 8, 1982, therefore they should not be heard by the Court, on the grounds that Guatemala recognized the Court's contentious jurisdiction on March 9, 1987. On different occasions the State has reiterated its request to declare the Court's lack of jurisdiction regarding the alleged violations due to the preliminary objection filed.

40. The Commission considered that "given the nature and scope of the arguments of fact and law contained in the application, it may not make observations on the preliminary objection filed by the […] State." During the public hearing the Commission added that the facts set forth in its application for hearing by the Court are those which refer to the investigation as of June 14, 1994, and it clarified that those facts cannot be omitted, as their seriousness allows the determination the extent of the obligation to investigate in the instant case.

41. The representatives argued, in relation to the alleged violations of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 17 (Rights of the Family), 18 (Right to a Name) and 19 (Rights of the Child) of the Convention, that "the Court has jurisdiction to rule on the facts which constitute the violations, even if they began occurring before [the State recognized the Court's contentious jurisdiction,] as they extended beyond that date [or] occurred after that date." During the public hearing and in its brief of final arguments, the representatives clarified that they were not requesting for the Court to extend its jurisdiction to 1982, but to take into account those facts in order to determine the State's obligations regarding those rights, after March 9, 1987.

42. With regard to the alleged violation of Articles 4 (Right to Life) and 5 (Right to Humane Treatment) of the Convention, the representatives argued that the State is responsible for the lack of investigation and the consequent violation of the duty to guarantee the right to life and humane treatment of the individuals who were tortured and executed during the massacre, and the right to humane treatment of the survivors.

43. Additionally, in relation to the two children who survived the massacre, Ramiro Antonio Osorio Cristales (hereinafter "Ramiro Osorio Cristales") and Salomé Armando Gómez Hernández (hereinafter "Salomé Gómez Hernández"), the representatives argued that the Court has jurisdiction to hear on the alleged violation of Article 19 (Rights of the Child), due to the State's non-compliance with the obligation to provide special protection measures given their

condition as children; and in the case of Ramiro Osorio Cristales also for the alleged violation of Articles 17 (Rights of the Family) and 18 (Right to a Name) for having been separated from his family and with a name different from that given to him by his parents.

44. The Court, like every organ with contentious functions, has the inherent power to determine the scope of its own jurisdiction (compétence de la compétence). The instruments for recognition of the optional clause of the compulsory jurisdiction (Article 62.1 of the Convention) presuppose the acceptance, of the States who present it, of the Court's right to resolve any controversy related to its jurisdiction. In order to determine the scope of its own jurisdiction, the principle of non-retroactivity of the treaties established in international law and enshrined in Article 28 [FN22] of the Vienna Convention of the Law on Treaties of 1969 [FN23] must be taken into consideration.

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[FN22] This Article establishes that: [t]he provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party, unless a different intention derives from the treaty or is otherwise proven.
[FN23] Cf. Case of Cantos v. Argentina. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85, para. 35 to 37; Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 23, and Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 19.

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45. Guatemala recognized the contentious jurisdiction of the Court on March 9, 1987, and in its declaration it indicated that the Court would have jurisdiction on "cases occurred after" that recognition. [FN24] Based on the foregoing and on the principle of non-retroactivity, the Court may not exercise its contentious jurisdiction to apply the Convention and declare a violation of its standards on facts occurred or state conduct which may imply its international responsibility when these are prior to the recognition of the Court's competence. [FN25] In this regard, the Court has considered that "it is competent to adjudge and declare on facts which constitute violations that occurred after the date on which the State recognized the competence of the Court, or which had not ceased to exist as of that date." [FN26]

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[FN24] Guatemala's recognition of contentious jurisdiction of March 9, 1987 indicates that "[t]he acceptance of the jurisdiction of the Inter-American Court of Human Rights is for an indefinite term, of a general character, under conditions of reciprocity, and with the reservation that the cases in which the jurisdiction is recognized are exclusively those occurred after the date on which this declaration is presented to the Secretary of the Organization of American States."
[FN25] Cf. Case of Cantos v. Argentina, supra note 23, para. 35 to 37; Case of Heliodoro Portugal v. Panama, supra note 23, para. 24, and Case of Garibaldi v. Brazil, supra note 23, para. 20.
[FN26] Cf. Case of Heliodoro Portugal v. Panama, supra note 23, para. 24..

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46. Having established this, it is the Court's responsibility to determine whether it can hear the facts that constitute the violations of the Convention, claimed by the representatives in the instant case, namely: a) the lack of investigation of the death of the victims of the massacre after March 9, 1987, facts which would constitute a violation of Articles 4 and 5 of the Convention in its procedural aspect, and b) in the case of Ramiro Osorio Cristales, being separated from his family, and with a different name than his, after March 9, 1987, which would constitute a violation of Articles 17 and 18 of the American Convention, as well as non-compliance with the protection measures for Ramiro Osorio Cristales and Salomé Armando Gómez Hernández, after March 9, 1987, which would constitute a violation of Article 19 of the Convention.

47. The Court notes that during the proceeding before it the State argued for the limitation of the Court's jurisdiction, recognizing only the violations claimed by the Commission, considering that the violations claimed by the representatives are based on facts which occurred prior to the recognition of the Court's adjudicatory jurisdiction. In that regard, the Court believes that the State is correct when it points out that the Court cannot hear the facts of the massacre themselves, given that they effectively are beyond the Court's competence. However, the Court notes that the violations claimed by the representatives are not based on the facts of the massacre themselves, but in those which allegedly took place after March 9, 1987, date on which the State recognized the Court's contentious jurisdiction. Based on the foregoing, the Court will only adjudge on those facts which allegedly took place after the recognition of the Court's contentious jurisdiction, or had not ceased to exist as of that date.

48. The Court has competence to analyze the facts which refer to the alleged denial of justice in light of the procedural obligation derived from the duty to guarantee rights arising from Articles 4 and 5 of the Convention, in relation to Article 1(1) thereof, given that the representatives base the alleged violations on facts that fall within the Court's temporary jurisdiction.

49. The Court considers that the State's obligation to investigate arises in favor of those entitled to the right enshrined in Article 4 (Right to Life), considered along with Article 1(1) of the Convention, which is applicable to Article 5 (Right to Humane Treatment) of the Convention, in this case the deadly victims of the massacre, who were not determined alleged victims (supra para. 21) in the instant case. Therefore, the Court will not rule on the alleged violation of those Articles, with regard to the obligation to guarantee those rights. However, the Court will examine the alleged violation of Article 5 (Right to Humane Treatment) of the Convention for the suffering caused by the alleged impunity, to the detriment of the 155 alleged victims who are next of kin of the individuals killed, as well as in relation to the additional suffering of the two surviving children.

50. With regard to the Court's jurisdiction on the alleged violation of Articles 17 (Rights of the Family), 18 (Right to a Name) and 19 (Rights of the Child) of the Convention, the Court observes that the facts on which the representatives base those violations refer to the situation presumably suffered by the two survivors of the massacre, for not obtaining special protection measures, and in the case of Ramiro Osorio Cristales, for having been separated from his family and with another name. This situation remained until both children reached legal age, and

Ramiro Osorio Cristales reunited with his biological family in 1999 and recovered his name on May 15, 2002. Therefore, the Court considers that it has jurisdiction ratione temporis to hear this situation as of March 9, 1987, date on which the State recognized the Court's jurisdiction.

51. The Court considers that the controversy in this case remains, and that it has competence to hear the facts and alleged violations of Articles 5, 17, 18, and 19 of the Convention. Therefore, it partially rejects the preliminary objection filed by the State, under the terms indicated in paragraphs 44 to 50 of this Judgment. Consequently, the Court will examine and determine the alleged violation of said rights in chapters IX and X of the instant Judgment.

## VI. COMPETENCE

52. Guatemala is a State Party to the American Convention since May 25, 1978, and it recognized the contentious jurisdiction of the Court on March 9, 1987.

53. The State ratified the Inter-American Convention to Prevent and Punish Torture on January 29, 1987, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women on April 4, 1995.

54. In its final arguments, the State questioned the Court's competence to hear on the alleged violation of Articles 1, 6, and 8 of the CIPST and Article 7.b) of the Convention of Belem do Pará. The Court considers, as it has declared in other occasions, [FN27] that it is competent to adjudge on the obligations pending upon ratification of those instruments, such as the omissions derived from a lack of investigation.

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[FN27] Cf. Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Series C No. 114, para. 62, 159 and 162; Case of Baldeón García v. Peru. Merits, Reparations, and Costs. Judgment of April 6, 2006. Series C No. 147, para. 162, and Case of the Miguel Castro Castro Prison. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 266 and 378.

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## VII. EVIDENCE

55. Based on the provisions of Articles 46 and 47 of the Rules of Procedure, as well as on the Court's jurisprudence with regard to evidence and its appreciation [FN28], the Court will examine and assess the documentary elements of evidence submitted by the parties on different procedural opportunities, as well as the statements presented by means of affidavits and received at the public hearing. To this end the Court will abide by the principles of competent analysis, within the corresponding regulatory framework. [FN29]

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[FN28] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 50; Case of Anzualdo Castro v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series

C No. 202, para. 21, and Case of Dacosta Cadogan v. Barbados. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 24, 2009. Series C No. 203, para. 32.
[FN29] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para 76; Case of Kawas Fernández v. Honduras, supra note 21, para. 36, and Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 26.
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1. Testimonial and expert evidence

56. The following statements were offered before a notary public (affidavit) by the following individuals and expert witnesses:

a) Amílcar Salazar Castillo. Alleged victim. Proposed by the representatives. Testified on the investigation of the facts of the massacre and the response of the authorities, the consequences of the alleged lack of justice for himself and other relatives of victims of the massacre, and the measures which the State should adopt to redress the alleged violations to his rights;
b) Francisco Arreaga Alonzo. Alleged victim. Proposed by the representatives. Testified on the investigations of the facts of the massacres and the response of the authorities, the consequences of the alleged lack of justice for himself and other relatives of victims of the massacre, and the measures which the State should adopt to redress the alleged violations to his rights;
c) Marco Antonio Garavito Fernández. Director of the "Liga Guatemalteca de Higiene Mental" (Guatemalan League for Mental Hygiene). Expert witness proposed by the representatives. Testified on the effects the separation from their families and altering of their identities had on "disappeared" children, and the measures which the State should adopt to address this phenomenon, and
d) Nieves Gómez Dupuis. Coordinator of a psychosocial intervention program for victims of torture in the Community Studies and Psychosocial Action Team. Expert witness proposed by the representatives. Testified on the effects that the lack of justice and truth over the years had on the alleged surviving victims of the "Las Dos Erres" Massacre and on the next of kin of those killed in the massacre, and the characteristics of an adequate program for psychological attention.

57. With regard to the evidence presented in the public hearing, the Court heard statements from the following individuals:

a) Ramiro Antonio Osorio Cristales. Alleged victim. Proposed by the representatives. Testified on the conditions he lived as a consequence of his alleged abduction by the kaibil Santos Lopez; the circumstances under which he reunited with this biological family; the investigations on the facts of the massacre and the response of the authorities; the consequence of the alleged lack of justice, and the measures which the State should adopt to redress the alleged violations of his rights;
b) Felicita Herenia Romero Ramírez. Alleged victim. Proposed by the representatives. Testified on the investigation of the facts of the massacre and the response of the authorities, the

consequences of the alleged lack of justice for herself and other relatives of victims of the massacre, and the measures which the State should adopt to redress the alleged violations of her rights;

c) Edgar Fernando Pérez Archila. Attorney of the representatives since the year 2000. Witness proposed by the representatives. Testified on the alleged obstacles encountered in obtaining justice in the case of the Las Dos Erres Massacre and its causes, and the alleged obstacles found in similar cases in which he acted as attorney;

d) Carlos Manuel Garrido. Full Professor of Criminal Law at the Universidad Nacional de la Plata, Prosecutor of Administrative Investigations and Expert of the United Nations Mission in Guatemala. Expert witness proposed by the Commission. Testified on the impunity of the human rights violations perpetrated during the internal armed conflict in Guatemala from 1962 to 1996; the structural deficiencies of the Guatemalan justice administration, and the use of the appeal for legal protection as a strategy to delay judicial processes, and

e) Claudia Paz y Paz Bailey. Attorney and Notary, Former Director of the Guatemalan Institute for Comparative Studies in Criminal Science. Expert witness proposed by the representatives. Testified on the context of impunity of the grave human rights violations committed during the armed conflict in Guatemala, its causes, and the measures which the State of Guatemala should adopt to address this situation.

2. Evidence assessment

58. In this case, as in others, [FN30] the Court admits and recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural stage which were neither disputed nor challenged, and their authenticity was not questioned. In relation to the documents submitted as evidence to facilitate adjudication of the case (supra para. 13) requested by this Court, the Court includes them in the body of evidence, in application of the provisions of Article 47(2) of the Rules of Procedure. Additionally, the Court notes that in its arguments the Commission referred to the Fifth Report on the Situation of Human Rights in Guatemala by the IACHR, OAS/Ser.L/V/II.111, approved on April 6, 2001, however it was not submitted as evidence. In this regard, the Court considers pertinent for the adjudication of the instant case to incorporate it into the body of evidence, in conformity with Article 47(1) of the Rules of Procedure. Likewise, the Court observes that both the Commission and the representatives referred in their arguments to the Report by the Commission for Historical Clarification, Guatemala: Memory of Silence (hereinafter "CEH, Guatemala: Memory of Silence"); however, only the representatives submitted as evidence several volumes or sections of this report, as well as the direct electronic link to the documents. Likewise, the representatives referred to the report Justice and Social Inclusion: The Challenges to Democracy in Guatemala by the IACHR, OAS/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003, and indicated the direct electronic link. The Court has established that if one party provides at least the direct electronic link to the document cited as evidence, and it is possible to access it, the legal certainty and procedural equity are not affected, given that it can be immediately located by the Court and by the other parties [FN31]. In this case, the Court confirms that the representatives indicated the direct links to the aforementioned documents in their brief of pleadings and motions, and that there was no opposition or observations by the other parties regarding their content and authenticity.

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[FN30] Cf. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1998. Series C No. 4, para. 140; Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary Objections, Merits, Reparations, and Costa. Judgment of July 1, 2009. Series C No. 198, para. 26, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 39.
[FN31] Cf. Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 165, para. 26, Case of Perozo et al. v. Venezuela. Preliminary objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 108, and Case of Reverón Trujillo v. Venezuela, supra note 29, para. 46.

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59. On June 30 and July 7, 2009 the representatives submitted as supervening evidence [FN32] new measures taken in the internal proceeding (supra para. 9), as well as two journalistic notes and a list of the names of the attorneys who owe money to the Constitutional Court for procedural costs and penalties derived from the filing of "frivolous or notoriously inadmissible appeals for guarantee of rights," as well as several actions issued in the internal proceedings after the brief of pleadings and motions. The representatives indicated that the copies of the documents presented are more legible and complete than those which they had, and requested the Court, in case it deemed it pertinent, to require the State for better quality copies of those records. On July 10 and 22, 2009 the Commission expressed to the Court that "it does not have observations" regarding that evidence. The State considered that "since the supervening evidence submitted by the applicant party is illegible, it should not be assessed," and on July 22, 2009 the State reiterated the latter.

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[FN32] Supervening evidence submitted on June 30, 2009: "Attorneys owe Q6.4 million to the CC" published in the Guatemalan newspaper "Prensa Libre" on May 21, 2009; request by CEJIL to the Constitutional Court on June 10, 2009; list of the attorneys who owe the Constitutional Court procedural costs and penalties derived from the filing of appeals for the guarantee of rights which were frivolous or notoriously inadmissible; an appeal for reversal filed by the Public Prosecutor's Office on January 27, 2009 against the order of December 8, 2008, issued by the Fourth Chamber of the Court on Narcotic Activity and Crimes against the Environment of Guatemala; Order of February 23, 2009 granting the aforementioned appeal for reversal filed on January 27, 2009; appeal for legal protection filed by the accused Reyes Colin Gualip on March 13, 2009 against the order of February 23, 2009, and the order of February 23, 2009 of the Fourth Chamber of appeals of the Criminal Branch, which settled the constitutional motion filed by the accused Roberto Aníbal Rivera Martínez and the process of his appeal. Supervening evidence presented on July 7, 2009: certification of Mr. Benedicto Tenas as Fiscal Agent of the Human Rights section of the Prosecutor's Office; note of the Attorney President of the Criminal Chamber of May 25, 2009, request of the Public Prosecutor's Office to the Criminal Court of First Instance for Criminal Matters, Drug-Trafficking, and Environmental Crimes of San Benito, Petén, on June 22, 2009; Order of the Criminal Court of First Instance for Criminal Matters, Drug-Trafficking, and Environmental Crimes of San Benito, Petén of June 23, 2009, news "Bitácora militar queda en reserva" published by the Guatemalan newspaper "Prensa Libre" on July 6, 2007.

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60. The Court considers that the aforementioned supervening evidence comply with the formal requirements for admissibility stipulated in Article 46(3) of the Rules of Procedure. However, it observes that numerous documents are incomplete or illegible. With regard to the documents presented on June 30 and July 7, 2009 by the representatives, except for the incomplete or illegible documents indicated in the appendix to the Secretariat's communication of July 3, 2009, the Court accepts them as evidence to facilitate adjudication of the case, and will assess them applying the rules of competent analysis and within the factual background of the study.

61. The Court admits the documents provided by expert witnesses Carlos Manuel Garrido and Claudia Paz y Paz Bailey, as well as the photographs submitted by the representatives during the public hearing, to the extent they are related to the object of the instant case, which it deems useful, and there were no objections with regards to their authenticity or veracity.

62. With regard to the documents submitted by the representatives and the State along with their written briefs on final arguments, as well as those documents that respond to the requirements of the Court during the public hearing held in the instant case, the Court advises that neither the representatives nor the Commission submitted objections to the incorporation of such evidence; however, the State made several observations on the documents submitted by the representatives along with their final arguments, and objected to certain expense receipts presented by them, considering, among other, that they do not correspond to the proceedings before the Court. In this regard the Court takes into consideration the State's objections, which it will value upon determination of the costs and expenses in the instant case. Consequently, the Court incorporates the evidence submitted along with the final arguments as it considers it useful, in conformity with Article 47(2) of the Rules of Procedure.

63. In relation to the sworn declarations (affidavits) of the alleged victims Amílcar Salazar Castillo (supra para. 56.a) and Francisco Arreaga Alonzo (supra para. 56.b), regarding the latter the State requested that it be dismissed on the grounds that it did not fulfill that "established by Article 145 of Decree 107, Civil Procedural Code of Guatemala" in relation to how an interrogation should be directed, hence it did not "meet the requirements of a testimony." In this regard, the Court deems it appropriate to call to mind that the procedures before it are not subject to the same formalities as internal judicial proceedings. [FN33] In this regard, on other occasions the Court has admitted statements which do not meet internal regulations for their issue, [FN34] always safeguarding legal certainty and procedural equity between the parties. [FN35] The Court deems it pertinent to admit both statements strictly to the extent to which they adapt to the object defined by the President in the Order which requested their submission (supra para. 8), and taking into account the pertinent observations presented by the State regarding Francisco Arreaga Alonzo. Lastly, it is worth noting that the Court believes that the statements given by alleged victims may not be examined separately, given that they have a direct interest in the case, hence they will be assessed within the group of evidence of the proceeding [FN36].

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[FN33] Cf. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C No. 72, para. 71; Case of Perozo et al. v. Venezuela, supra note 31,

para. 95, and Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costa. Judgment of July 6, 2009. Series C No. 200, para. 59.
[FN34] Cf. Case of the Ituango Massacres v. Colombia, supra note 17, para. 114; Case of the Rochela Massacre v. Colombia. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No 153, para. 62, and Case of Escher et al., supra note 33, para. 74.
[FN35] Cf. Case of the Mapiripán Massacre v. Colombia, supra note 19, para. 58; Case of the Rochela Massacre v. Colombia, supra note 34, para. 62, and Case of Escher et al. v. Brazil, supra note 33, para. 74.
[FN36] Cf. Case of the Serrano-Cruz Sisters v. El Salvador. Merits, Reparations, and Costs. Judgment of March 1, 2005. Series C No. 120, para. 39; Case of the Rochela Massacre v. Colombia, supra note 34, para. 62, and Case of Escher et al. v. Brazil, supra note 33, para. 74.
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64. In relation to the sworn declarations (affidavits) of the expert opinions provided by Marco Antonio Garavito Fernández (supra para. 56.c) and Nieves Gómez Dupuis (supra para. 56.d), in its observations of June 17, 2009 the State indicated that those statements were not taken before a notary, as established in the President's Order of May 18, 2009, but in a private document with a legalized signature, and that additionally they don't meet the requirements of Article 227 of the Criminal Procedural Code, Decree No. 51-92, which establishes that "expert witnesses will accept the role under oath." In that regard, the Court reiterates that indicated in the previous paragraph, in the sense that the procedures before it do not follow the same formalities as internal judicial proceedings. On other occasions the Court has admitted affidavits which were not given before a notary public, when it did not affect the legal certainty and procedural equity between the parties. In the instant case, the Court has not found any grounds to consider that the admittance of the affidavits under consideration, meaning those with a signature certified by a notary public, affected the legal certainty or procedural equity of the parties. In any case, the individual giving the statement does not reject or disavow the content of the declaration attributed to him, but ensures through his signature certified before a notary public that he is the author of that testimony, assuming the legal consequences of that act. In view of the foregoing, the Court accepts as evidence the expert opinions with the expert witness's signature duly certified by a notary, and will assess them along with the body of evidence, applying the rules of competent analysis and taking into consideration the parties' objections. [FN37]

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[FN37] Cf. Case of the Serrano-Cruz Sisters v. El Salvador., supra note 36, para. 40, Case of the Rochela Massacre v. Colombia, supra note 34, para. 62, and Case of Escher et al. v. Brazil, supra note 33, para. 74.
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65. In relation to the statements given by Ramiro Osorio Cristales (supra para. 57.a) and Felicita Herenia Romero Ramírez (supra para. 57.b), the Court deems them pertinent to the extent to which they adjust to the object defined by the President in the Order which requested their submission (supra para. 8). The Court reiterates that previously mentioned with regard to the assessment of declarations given by the alleged victims (supra para. 63).

66. With regard to the expert opinions provided by Edgar Fernando Pérez Archila (supra para. 57.c), Carlos Manuel Garrido (supra para. 57.d) and Claudia Paz y Paz Bailey (supra para. 57.e), the Court admits them into evidence taking into account the objective established for them in the President's Order of May 18, 2009 (supra para. 8), and will assess them with the body of evidence of the instant case and rules of competent analysis.

67. With regard to the press documents submitted by the parties, the Court considers that they may be appraised when they gather public and notorious facts or declarations by State employees, or when they verify aspects related to the case. [FN38]

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[FN38] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 30, para. 146; Case of Escher et al. v. Brazil, supra note 33, para. 76, and Case of Anzualdo Castro v. Peru, supra note 28, para. 25.

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68. Having assessed the evidence in the file, the Court will now analyze the alleged violations.

VIII. VIOLATION OF ARTICLES 8(1) [FN39] AND 25(1) [FN40] (RIGHT TO A FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION) IN RELATION TO ARTICLES 1(1) [FN41] AND 2 [FN42] OF THE AMERICAN CONVENTION AND ARTICLES 1 [FN43], 6 [FN44] AND 8 [FN45] OF THE CIPST AND 7.B [FN46] OF THE CONVENTION OF BELÉM DO PARÁ

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[FN39] In this regard, Article 8 indicates that: "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

[FN40] In this regard, Article 25(1) indicates that: "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

[FN41] In this regard, Article 1(1) indicates that: "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

[FN42] Article 2 establishes that "[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

[FN43] Article 1 establishes that "[t]he State Parties undertake to prevent and punish torture in accordance with the terms of this Convention."
[FN44] Article 6 establishes that "[i]n In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction."
[FN45] Article 8 establishes that "[t]he The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal proceeding. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State."
[FN46] Article 7 establishes that "[t]he States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish, and eradicate such violence and undertake to […] b. apply due diligence to prevent, investigate, and impose penalties for violence against women."
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69. In light of the State's recognition of international responsibility and acknowledgement, and based on the evidence related to the file, as well as the different facts previously credited by this Court in different cases where the responsibility of the State of Guatemala has been demonstrated, the Court will now refer to as background to the context of the case and the specific facts in the criminal proceeding, already recognized by the State, and in some of them it will refer to other documents or information. Additionally, it will refer to the judicial proceedings regarding the instant case, which have prevented the victims' access to justice, to subsequently analyze the content of the rights violated.

1. Context of the case, background of the Massacre, and Internal Proceeding

A) Context of the Case

70. Between 1962 and 1996 there was an internal armed conflict in Guatemala, which resulted in great human, material, institutional, and moral costs. The CEH estimated that "the number of dead and disappeared in the internal armed conflict reached over two hundred thousand people." [FN47]

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[FN47] Cf. CEH, Guatemala: Memory of Silence, Chapter II: Volume 2, supra note 6, para. 86.
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71. During the internal armed conflict the State applied the "National Security Doctrine" [FN48]. Within the framework of this doctrine, military intervention increased to address subversion, a concept which included any person or organization who represented any type of opposition to the State, which was equated to the idea of the "internal enemy." The CEH concluded that, in the application of the National Security Doctrine, 91% of the violations recorded occurred between 1978-1983, during the dictatorships of generals Romero Lucas García (1978-1982) and Efraín Ríos Montt (1982-1983).

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[FN48] Cf. CEH, Guatemala: Memory of Silence, supra note 6, Chapter I, "Immediate Background," para. 120.

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72. On March 23, 1982, as a result of a coup d'etat, a Military Junta was installed, presided over by José Efraín Ríos Montt, and comprised of Horacio Egberto Maldonado Schaad and Francisco Luís Gordillo Martínez. On June 8, 1982, José Efraín Ríos Montt assumed the positions of President of the Republic and General Commander of the Armed Forces, and continued to be President until August 31, 1983. In April 1982 the military junta dictated the "National Security and Development Plan," which established national goals in military, administrative, legal, social, economic, and political terms. This plan identified the main areas of the conflict.

73. These military acts, performed "with the knowledge of or by order of the highest authorities of the State," consisted mainly of killings of defenseless population, known as massacres and "scorched earth operations." According to the CEH Report, approximately 626 massacres were committed through "acts of cruelty" aimed at eliminating persons or groups of persons "defined as the enemy" and intended to "provoke terror among the population." [FN49]

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[FN49] Cf. CEH, Guatemala: Memory of Silence, supra note 6, Conclusions, para. 86, 105 and 114 (Appendix to the brief of pleadings and motions, Appendix 33, fs. 10945, 10949 and 10951).

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74. Among the actions committed by State agents is the massacre of the "Las Dos Erres" community, which occurred between December 6 and 8, 1982. The "Las Dos Erres" community, in La Libertad, Petén, was founded in 1978 during a heavy migration of peasants looking for land, and as an effect of the colonization promoted by the government agency "Fomento y Desarrollo de Petén" (FYDEP). The founders of the community were Federico Aquino Ruano and Marco Reyes, who called it "Las Dos Erres" ("the two 'R's") for the initials of their last names. Between 1979 and 1980 people came to Las Dos Erres from eastern and southern Guatemala. In December 1982 there were approximately 300 to 350 inhabitants.

75. According to the CEH report, [FN50] during 1982 the presence of the "Fuerzas Armadas Rebeldes" or Rebellious Armed Forces (hereinafter "FAR") increased in the areas neighboring Las Dos Erres, such as in the village of Las Cruces. In September of that same year there was a confrontation between the members of the FAR and State agents in Las Cruces. Consequently,

the military commissioner organized a Civil Defense Patrol ("PAC") in Las Dos Erres, with the goal of patrolling the area of Las Cruces along with the PAC of that area. The inhabitants of Las Dos Erres indicated that they would only accept to be part of a PAC which would patrol their own community, and not in Las Cruces. As a result of this negative response, the inhabitants of Las Dos Erres were accused of being members of the guerrilla.

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[FN50] CEH, Guatemala: Memory of Silence, supra note 6, Appendix I, Volume I, Illustrative Case No. 31.

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76. According to the information gathered by the CEH [FN51], the commissioner of Las Cruces spread the rumor that the inhabitants of Las Dos Erres were part of the guerrilla, and the evidence presented to the army included a sack for collecting crops of one of the founders of the community, Federico Aquino Ruano, which had the initials FAR. These initials corresponded to his name, and matched those of the "Fuerzas Armadas Rebeldes." When the rumor was already circulating in the area that the army would soon bomb the Las Dos Erres community, a military convoy was ambushed by the FAR only a few kilometers from Las Cruces, and the FAR took 19 army rifles [FN52]. In response, military zone 23 of Poptún requested the deployment of a special squad of kaibiles in order to recover the rifles. On December 4, 1982 a squad of 17 kaibiles arrived by airplane to the airbase in Santa Elena, Petén, from Retalhuleu. They joined up with a group of 40 kaibiles posted in military zone 23 of Poptún. At the Santa Elena military base they were assigned a guide who knew the area to take them to the Las Dos Erres community.

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[FN51] CEH, Guatemala: Memory of Silence, supra note 6.
[FN52] From the CEH report, Guatemala: Memory of Silence, and the statement given by César Franco Ibáñez, it derives that the FAR took 19 rifles (Appendixes to the application, appendix 30, f. 4020). However, in the application the Commission refers to the testimony of Favio Pinzón, which indicates that it was 21 rifles (Appendixes to the application, appendix 30, f. 3940).

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77. On December 6, 1982 a military action was prepared for the specialized Armed Forces group, during which the superiors of the squad met with the kaibiles and told them to dress as guerrilla to confuse the population and destroy the community, anything seen moving had to be killed. At around 9 p.m. they left the military base of Santa Elena toward Las Dos Erres, aboard civil trucks. At around midnight they made them get off the trucks and walk for approximately two hours, until they reached the community at 2 a.m. the morning of December 7, 1982.

78. On December 7, 1982, at dawn, the Guatemalan soldiers part of the special group named kaibiles arrived at Las Dos Erres and began removing people from their homes. The men were locked up in the community's school, and the women and children in the evangelical church. While confined they were beaten, and some died from the blows.

79. At around 4:30 p.m. the kaibiles took the men out of the school, blindfolded and hand-tied, and led them to an unfinished well were they were shot. Afterward, the women and children were taken to the same place. Along the way a lot of girls were raped by the kaibiles, mainly by sub-instructors. Upon reaching the well, the kaibiles made the victims kneel and asked them whether they were part of the guerrilla, and at that point they struck them on the head with an iron mallet or shot them, throwing the corpses inside the well. During the facts of the massacre at least 216 people died. [FN53]

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[FN53] From the comparative analysis of the lists submitted by the Commission and the representatives, as well as the State's observations, it is inferred that during the massacre at least the following people died: 1) Gerónimo Muñoz Batres, 2) José Domingo Batres, 3) Elvida Cano Aguilar, 4) Margarita Cortes, 5) Abel Muñoz Cano, 6) Bernabe Muñoz Cano, 7) Vilma Muñoz Cano, 8) Oralia Muñoz Cano, 9) Isabel Muñoz Cano, 10) Elizabeth Muñoz Cano, 11) Geronimo Muñoz Cano, 12) Recién nacida, 13) Cayetano Ruano Castillo, 14) Irma Aracely Ruano Arana, 15) Nery Ruano Arana, 16) Isabel Ruano Arana, 17) Paulina Ruano Arana, 18) Tito Ruano Arana, 19) Mártir Alfonso Ruano Arana, 20) Esperanza Consuelo Ruano Arana, 21) Obdulio Ruano Arana, 22) Mirian Ruano Arana, 23) Edgar Leonel Ruano Arana, 24) Juan Mejía Echeverría, 25) Jose Antonio Mejía Morales, 26) Estanislao González, 27) Josefina Arreaga de Galicia, 28) Miguel Ángel Galicia, 29) Maribel Galicia Arreaga, 30) Samuel Galicia Arreaga, 31) Raquel Galicia Arreaga, 32) Noé Galicia Arreaga, 33) Celso Martínez Gómez, 34) Cristina Castillo Alfaro, 35) Santos Pernillo Jiménez, 36) Hilario Pernillo Jiménez, 37) Graciela Pernillo Jiménez, 38) Agustín Loaiza Contreras, 39) Benedicto Granados, 40) Marcelino Granados Juárez, 41) Raúl Antonio Corrales Hércules, 42) Tomas de Jesús Romero Ramírez, 43) Abel Granados Sandoval, 44) Adelso Granados Rodríguez, 45) Mirian Granados Rodríguez, 46) Leticia Granados Rodríguez, 47) Irma Granados Rodríguez, 48) Carlos Enrique Granados Rodríguez, 49) Elida Esperanza González Arreaga, 50) Ana Alcira González Arreaga, 51) Rubilio Armando Barahona Medrano, 52) Catarino Medrano Pérez, 53) Juan Pablo Arévalo, 54) Marta de Jesús Valle de Arévalo, 55) Josué Arévalo Valle, 56) Dina Elizabeth Arévalo Valle, 57) Joel Arévalo Valle, 58) Abel Antonio Arévalo Valle, 59) Dora Patricia López Arévalo, 60) Elda Rubí Hernández Lima, 61) Justiniano Hernández Lima, 62) Bertila Hernández Lima, 63) Angelina Hernández Lima, 64) Fernando García, 65) Francisca Leticia Megía, 66) Germayin Mayen Alfaro, 67) Audias Mayen Alfaro, 68) Marta Maleny Mayen, 69) Victor Manuel Campos López, 70) Salvador Campos López, 71) José Rubén Campos López, 72) Canuto Pérez Morales, 73) Cecilio Gustavo Pérez López, 74) Abel Pérez López, 75) Gladis Judith Aldana Canan, 76) Edi Rolando Aldana Canan, 77) Ana Maritza Aldana Canan, 78) Franciso Mayen Ramírez, 79) Rolando Barrientos Corado, 80) Dionicio Ruano Castillo, 81) Juan López Méndez, 82) Francisco Deras Tejada, 83) Francisco González Palma, 84) Rigoberto Ruano Aquino, 85) Lencho Portillo Pérez, 86) Arturo Salazar Castillo, 87) José Esteban Romero, 88) Natividad de Jesús Ramirez, 89) María Ines Romero Ramírez, 90) Paula Romero Ramírez, 91) Maximiliano Peralta Chinchilla, 92) Gilberta Hernández García, 93) Geovani Ruano Hernández, 94) Jaime Ruano Hernández, 95) María Linares Pernillo, 96) Rosa García Linares, 97) Silvia García Linares, 98) Santos Cermeño Arana, 99) Niño recién nacido de 6 días no identificado, 100) Isidro Alonzo Rivas, 101) Marcelino Ruano Castillo, 102) Manuel Ruano Pernillo, 103) Jorge Ruano Pernillo, 104) Marcelino Ruano Pernillo, 105) Anabela Adela Ruano Pernillo, 106) Consuelo Esperanza Ruano Pernillo, 107) Niña de 1 año no identificada, 108) Patrocinio García Barahona, 109)

Franciso Javier Cabrera Galeano, 110) Solero Salazar Cano, 111) Eren Rene Salazar Castillo, 112) Elsa Oralia Salazar Castillo, 113) Irma Consuelo Salazar Castillo, 114) Edgar Rolando Salazar Castillo, 115) Leonarda Lima Moran, 116) Fredy de Jesús Cabrera Lima, 117) Lorenzo Corado Castillo, 118) Toribio López Ruano, 119) Santos López Ruano, 120) Alicia López Ruano, 121) Mariano López Ruano, 122) Clorinda Recinos, 123) Eleluina Catañeda Recinos, 124) Antonio Castañeda Recinos, 125) Cesar Castañeda Recinos, 126) Alfredo Castañeda Recinos, 127) Esther Castañeda Recinos, 128) Enma Castañeda Recinos, 129) Maribel Castañeda Recinos, 130) Israel Medrano Flores, 131) Rene Jiménez Flores, 132) Victoriano Jiménez Pernillo, 133) Lucita Jiménez Castillo, 134) Lilian Jiménez Castillo, 135) Mayra Jiménez Castillo, 136) Adan Jiménez Castillo, 137) Baldomero Jiménez Castillo, 138) Lucita Castillo Pineda, 139) Odilia Pernillo Pineda, 140) Rudy Cermeño Pernillo, 141) Amparo Cermeño Pernillo, 142) Wendy Yesenia Cermeño Pernillo, 143) Santos Oliverio Cermeño, 144) Jeremías Jiménez, 145) Serapio García García, 146) Timoteo Morales Pérez, 147) Everildo Granados Sandoval, 148) Euralio Granados Sandoval, 149) Angelina Escobar Osorio de Granados, 150) Celso Martínez Gómez, 151) Ilda Rodríguez Cardona de Granados, 152) Francisco de Jesús Guevara, 153) Noé Guevara Yanes, 154) Roberto Pineda García, 155) Juana Linares Pernillo, 156) Leonel Pineda Linares, 157) Dora Alicia Pineda Linares, 158) Adán Pineda Linares, 159) Sonia Pineda Linares, 160) Felipe Arreaga, 161) Luis Alberto Arreaga Alonzo, 162) María Carmela Arreaga Alonso, 163) Juan Humberto Arreaga Alonzo, 164) Rosa Lorena Arreaga Alonzo, 165) Juana Maura Arrega Alonzo, 166) María Decidora Marroquín Miranda, 167) Vilma Pastora Coto Rivas, 168) Leonarda Antonio Coto, 169) Juan Antonio Cermeño Ortega, 170) Sotero Cermeño Arana, 171) Julia Arana Pineda, 172) Horacio Cermeño Arana, 173) Olivia Cermeño Arana, 174) Catalino Cermeño Arana, 175) Ramiro Cermeño Arana, 176) María del Rosario Cermeño Arana, 177) Rosa María Cermeño Arana, 178) Julio Cesar Cermeño Arana, 179) Ricardo Cermeño Arana, 180) Julián Jiménez Jerónimo, 181) Petrona Cristales Motepeque, 182) Víctor Manuel Corado Osorio, 183) Víctor Hugo Corado Cirstales, 184) Rony Corado Cristales, 185) Adelso Corado Cristales, 186) Félix Hernández Moran, 187) Dora Alicia Hernández, 188) María Antonia Hernández, 189) Dorca Hernández, 190) Blanca Hernández, 191) Federico Ruano Aquino, 192) Cristóbal Aquino Gudiel, 193) Juana Aquino Gudiel, 194) Juan de Dios Falla Mejía, 195) Ramiro Gómez, 196) Ramiro Aldana, 197) Albina Canan Aldana, 198) Delia Aracely Aldana Canan, 199) Sandra Nohemi Aldana Canan, 200) Rosa Albina Aldana Canan, 201) Mario Amilcar Mayen Ramírez, 202) Juan Carlos Mayen Ramírez, 203) Maynor Mayen Aquino, 204) Edelmira Mayen Aquino, 205) Marco Antonio Mayen Aquino, 206) niña de 5 meses NN, 207) Sonia Ruano García, 208) Raquel Silvestre Ruano García, 209) Olivero Ruano García, 210) Héctor Corado Cristales, 211) Albino Israel González Carias, 212) Sotero Cermeño Barahona, 213) María Magdalena Granados Rodríguez, y 214) Amanda Granados Rodríguez. Additionally, during the proceeding before the Court Susana González Menéndez and Benigno de Jesús Ramírez González were indicated as victims in the instant case (supra note 8). Therefore, the representatives subsequently clarified that their next of kin who died in the massacre were Próspero Ramírez Peralta and Guadalupe Nelia Ramírez González, who were not incldued in the application nor in the brief of pleadings and motions (Brief of the representatives of September 11, 2009, file on preliminary objections, merits, and possible reparations and costs, Volume VI, f. 1159). Consequently, these two people are included among those who died during the massacre. On the other hand, the representatives also indicated that a “girl of unidentified age” died, granddaughter of Encarnación García Castillo, alleged

victim of this case (Brief of the victims' representatives of September 11, 2009, file on preliminary objections, merits, and possible reparations and costs, Volume VI, f. 1159).
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80. At around 6:00 p.m. two girls arrived at the community, and they were raped by two military instructors. On the following day, when the kaibiles left they took the two girls and raped them again, and subsequently slit their throats. Before they left six other families arrived at the community, and they were also shot.

81. On December 9, 1982, residents of the village of Las Cruces approached Las Dos Erres and found household utensils all over the place, animals on the loose, and saw blood, umbilical cords, and placentas on the ground, given that the cruelty displayed by the soldiers reached the point where they caused abortions to pregnant women by beating them or even jumping on their abdomen until the fetus came out miscarried. According to witnesses in the internal proceeding, Lieutenant Carías, leader of the military post of Las Cruces, informed the population that what had occurred in Las Dos Erres was that the guerrilla had taken the people to Mexico, and he then ordered his soldiers to take all they could from the community, utensils, animals, grains, and other, and to burn down the houses of Las Dos Erres.

82. It is in this context that the Las Dos Erres Massacre took place, within a State policy and pattern of grave human rights violations. According to the CEH "[i]n general, from the human rights violations and infringements of International Humanitarian Law committed derives an unavoidable responsibility of the State of Guatemala." [FN54]

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[FN54] CEH, Guatemala: Memory of Silence, supra note 6, Conclusions, para. 126.
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83. Subsequently, a peace process was initiated in Guatemala in 1990, which ended in 1996. During this period twelve agreements were signed, including the establishment of the Historical Clarification Commission, which began working in 1997. As inferred from the Law on National Reconciliation (hereinafter "LRN"), it is a product of the peace agreements.

B) Criminal proceeding

84. In the period between March 9, 1987, when the State recognized the Court's obligatory jurisdiction, and June 13, 1994, it is not known for a fact that the State adopted measures to clarify, investigate, judge, and eventually sanction the parties allegedly responsible for the events of the Las Dos Erres Massacre.

85. On June 14, 1994, FAMDEGUA filed a criminal complaint before the Criminal Court of First Instance for Criminal Matters, Drug-Trafficking, and Environmental Crimes of the department of Petén (hereinafter "Criminal Court of First Instance of Petén"), for the crime of murder against various individuals that were found buried in the community of Las Dos Erres. The judge was asked for the exhumation of the bodies found at this location. [FN55]

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[FN55] Cf. Brief presented by Aura Elena Farfán before the Criminal Court of First Instance of Petén on July 14, 1994. (Appendixes to the application, judicial file, pieces 1 to 5, appendix 17, f. 2888).

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86. The exhumations began on July 4, 1994. After being suspended, they continued between May 8 and July 15, 1995. On July 29, 1995, there was a judicial proceeding [FN56] in which 162 skeletons were exposed, and the deaths were registered in the Civil Registry of the Municipality of La Libertad, Petén, on April 14, 2000 [FN57]. However, on May 19, 2000, the Special Prosecutor for the Las Dos Erres Massacre (hereinafter "the Prosecutor") requested the registration of the deaths of another 71 individuals identified who died in the massacre [FN58], but the Criminal Court of First Instance of Petén decided to dismiss the request. [FN59]

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[FN56] Cf. Brief presented by the Special Prosecutor of the Public Prosecutor's Office before the Criminal Court of First Instance of Petén on May 15, 2000. (Appendixes to the application, judicial file, pieces XV to XVII, appendix 31, fs. 4172 a 4185).
[FN57] Cf. Brief presented by the Special Prosecutor of the Public Prosecutor's Office before the Criminal Court of First Instance of Petén on May 17, 2000. (Appendixes to the application, judicial file, pieces XV to XVII, appendix 31, fs. 4186 a 4324).
[FN58] Cf. Brief presented by the Special Prosecutor of the Public Prosecutor's Office, supra note 56.
[FN59] Cf. Record of the Criminal Court of First Instance of Petén of May 22, 2000 (Appendixes to the application, judicial file, pieces XV to XVII, appendix 31, fs. 4326 a 4327).

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87. On the other hand, on June 26, 1996, the Public Prosecutor's Office requested information from the Department of Defense [FN60]. On July 19, 1996, the representatives of FAMDEGUA expressed their concern over the lack of a response [FN61]. On October 7, 1996, the Secretary of Defense expressed that "as a consequence of the incineration of the documents from that time, there is no information available on this matter." [FN62] Likewise, on January 21, 1997, the aforementioned Secretary informed that the names of the members of the parties in charge of the military post of the village of Las Cruces could not be provided, on the grounds that there was no permanent military post, thus he only submitted a list of the arms used at that time [FN63]. Subsequently, on February 27, 1997, the Secretary of Defense informed that the military institution did not have any salary payroll sheets for the months of November and December 1982 corresponding to the officers posted in Petén [FN64]. On June 12, 1997, the Secretary of Defense indicated that with regards to the request for the name, surname, title, military base or post where officer (Carlos, Manuel, Carlos Manuel) Carías was, there were several officers whose surname was Carías. He also informed that the individuals who held the position of Secretary of National Defense in 1982 and 1983 were Division Generals Luis René Mendoza Paloma and Oscar Humberto Mejía Vitores, [FN65] respectively. Finally, on August 29, 1997, the Secretary of Defense provided the last home address reported for some of the suspects and the positions occupied by certain members of the military that were connected to the events of the massacre. [FN66]

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[FN60] The information requested was the following: "A) Names and last names of the Commander of the Military Base in Petén during the months of November and December, 1982, B) Names and last names of the current Commander of the Military Base of Petén, C) Names and last names of the Officers of the different posts located in said Department during the months of November and December, 1982, D) Names and last names of the current Officers in the different postings located in the Department of Petén to date, E) Names and last names of the Officer in charge of the posting of the village of "Las Cruces", Municipality of La Libertad, Department of Petén during the months of November and December, 1982, F) Names and last names of the current Officer in charge of the posting of the village of "Las Cruces", Municipality of La Libertad, Department of Petén, G) Names and last names, current position, and military base or posting where officer CARLOS MANUEL CARIAS, CARLOS CARIAS, or MANUEL CARIAS is located, and whether this Officer was on duty in Petén during the months of November and December, 1982, H) What knowledge and/or information did the High Command of the National Army have of the tragic events occurred in the village of "Las Cruces", Municipality of La Libertad, Department of Petén, on December 7 and 8, 1982, I) What type of actions or investigations did the National Army perform, institutionally, to determine that occurred between December 7 and 8, 1982, in the village of "Las Cruces", Municipality of La Libertad, Department of Petén." Cf. Brief of the Public Prosecutor's Office of June 26, 1996 (Appendixes to the application, judicial file, pieces VI to XIII, appendix 27, fs. 3720 a 3721).

[FN61] Cf. Brief presented by FAMDEGUA to the Attorney General of the Republic on July 18, 1996 (Appendixes to the application, judicial file, piece VI to XIII, appendix 28, f. 3727).

[FN62] Cf. Communication of the Department of Defense (Ministerio de la Defensa Nacional) of September 24, 1996. (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, fs. 3784 a 3785).

[FN63] Cf. Communication of the Department of Defense to the Fiscal Agent of the Public Prosecutor's Office of January 21, 1997 (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, f. 3789).

[FN64] Cf. Communication of the Department of Defense to the Fiscal Agent of the Public Prosecutor's Office of February 27, 1997 (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, f. 3794).

[FN65] Cf. Communication of the Department of Defense to the Special Agent of the Cases Mack and Las Dos Erres of June 12, 1997 (Appendixes to the application, judicial file, piece VI to XIII, appendix 30, f. 4056).

[FN66] Cf. Communication of the Department of Defense to the Special Prosecutor of the Cases Mack and Las Dos Erres of August 29, 1997 (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, fs. 3847 a 3851).

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88. Between the months of August 1996 and July 1999, [FN67] the Prosecutor received statements from some relatives of the deceased in the events of the massacre and from witnesses, such as Ms. Lidia Garcia Perez, who narrated that her son "Fernando Ramiro López Garcia" was "adopted," and that her husband, Santos López Alonso told her that he had taken him out of Las Dos Erres. [FN68] Additionally, one survivor [FN69] and two members of the kaibiles [FN70]

patrol gave statements as evidence produced before trial, on February 11, 1999 and March 17, 2000, respectively.

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[FN67] Cf. Minutes of the declarations rendered:on August 28, 1996 by Alejandro Gómez Rodríguez, Inocencio González, Baldomero Pineda Batres, Jerónimo Baten Ixcoy, Demetrio Baten Ixcoy, Orlando Amilcar Aguilar Marroquín and Domingo Estrada Chitoc (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, fs. 3761 a 3772); on September 12, 1996 by Desiderio Aquino Ruano (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, f. 3778); on May 27, 1997 by César Franco Ibáñez (Appendixes to the application, judicial file, piece XIV, appendix 30, fs. 3955 a 4006), Favio Pinzón (Appendixes to the application, judicial file, piece XIV, appendix 30, fs. 3923 a 3954) and Inocencio González (Appendixes to the application, judicial file, piece XIV, appendix 30, fs. 4051 a 4054); on February 23, 1999 by Miguel Ángel Cristales (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, fs. 3862 a 3863) and Reina Montepeque (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, fs. 3864 a 3866), and transcript of the testimonial statement of Lidia García Pérez given on July 16, 1999 before the Public Prosecutor's Office (Appendixes to the application, judicial file, piece VI to XIII, appendix 29, f. 3867 a 3870).
[FN68] Cf. Transcript of the testimonial statement of Lidia García Pérez, supra note 67.
[FN69] Cf. Order of the Criminal Court of First Instance of Petén of February 10, 1999 (Appendixes to the application, judicial file, piece XIII, f. 3819).
[FN70] Cf. Order of the Criminal Court of First Instance of Petén of March 8, 2000 (Appendixes to the application, judicial file, piece XIII, f. 3889), and record of the statement given by César Franco Ibáñez on March 17, 2000 before the Criminal Court of First Instance of Petén (Appendixes to the application, judicial file, pieces VI to XIII, appendix 29, fs. 3895 to 3911).
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C) Judicial remedies and records of the judicial authorities

89. On October 7, 1999 [FN71] and April 4, 2000 [FN72] the Criminal Court of First Instance of Petén ordered the arrest of one of the kaibiles and 16 perpetrators, respectively, for the crime of murder committed against the inhabitants of Las Dos Erres Community.

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[FN71] Cf. Order of the Criminal Court of First Instance of Petén of October 7, 1999 (Appendixes to the application, judicial file, pieces VI to XIII, appendix 29, f. 3871).
[FN72] Cf. Order of the Criminal Court of First Instance of Petén of April 4, 2000 (Appendixes to the application, judicial file, piece XIV, appendix 30, fs. 4110 to 4113).
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90. Three appeals for legal protection were filed against these arrest warrants, for nine of the accused [FN73], on the grounds that "[the] Law on National Reconciliation, in Article 11, paragraph three, establishes that when any of the crimes referred to in Articles 4 and 5 of this Law become known, the matter will be immediately transferred to the Chamber of the Court of Appeals, for the purposes of determining […] whether or not the extinction of criminal liability referred to by said Law applies." [FN74] The Constitutional Court granted the appeals [FN75]

for legal protection provisionally, hence the Criminal Court of First Instance of Petén decided to annul the arrest orders. [FN76] Likewise, one of the accused was released after being arrested. [FN77] Finally, on April 3 and 4, 2001, the Constitutional Court suspended the arrest warrants and considered that the criminal file should be forwarded directly to the Court of Appeals to decide on the application of the LRN, as it referred to facts that occurred during the armed conflict [FN78].

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[FN73] Cf. Judgments of the Constitutional Court of April 3, 2000, regarding the appeal for legal protection filed by Carlos Antonio Carías López, Roberto Aníbal Rivera Martínez, César Adán Rosales Batres, Carlos Humberto Oliva Martínez and Reyes Collin Gualip on April 11, 2000 (Appendixes to the application, appendix 37, fs. 5441 to 5454) and April 4, 2001 on the appeal for legal protection filed by Manuel Pop Sun on April 26, 2000 (Appendixes to the application, appendix 35, fs. 5211 to 5225), and the appeal for legal protection filed by Manuel Cupertino Montenegro Hernández, Daniel Martínez Méndez and Cirilo Benjamín Caal Ac on June 2, 2002 (Appendixes to the application, appendix 36, fs. 5292 to 5305).
[FN74] Cf. Judgments of the Constitutional Court of April 3 and 4, 2001, supra note 73.
[FN75] Cf. Judgments of the Constitutional Court of April 24, 2000 (Appendixes to the application, judicial file, piece XIV, appendix 30, f. 4148); May 8, 2000 (Appendixes to the application, judicial file, piece XIV, appendix 30, f. 4159), and June 20, 2000 (Appendixes to the application, judicial file, piece XVI, f. 4403).
[FN76] Cf. Orders of the Criminal Court of First Instance of Petén of May 3, 2000 (Appendixes to the application, judicial file, piece XIV, appendix 30, fs. 4153 to 4155); May 19, 2000 (Appendixes to the application, judicial file, piece XIV, appendix 30, fs. 4164 to 4166), and July 17, 2000 (Appendixes to the application, judicial file, pieces XV to XVII, appendix 32, fs. 4407 to 4409).
[FN77] Cf. Communication of the Criminal Court of First Instance of Petén of April 6, 2000, from which it is inferred that the accused Manuel Pop Sun was Specialist Major Sergeant, director of group four "conductor de comitiva 4" (Appendixes to the application, appendix 30, f. 4140), and official communication issued by the Chief of Police, Section chief "Oficial Primero de Policía, Jefe de Sección," on April 25, 2000 (Appendixes to the application, judicial file, piece XIV, appendix 30, f. 4139).
[FN78] Cf. Judgment of the Constitutional Court of April 3 and 4, 2001, supra note 73.
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91. On the other hand, as a result of the orders that admitted the production of evidence before trial [FN79] (supra para. 88), from August 4 to October 13, 2000 the accused filed 15 individual appeals for legal protection [FN80], 16 claims for remedy [FN81], and 15 appeals for reversal [FN82]. In light of the denial of some of these remedies, eight more appeals for legal protection were filed on October 26, 2000 [FN83], which the Constitutional Court declared inadmissible, and ordered the Criminal Court of First Instance of Petén to disqualify itself from hearing this criminal proceeding and to remit the records to the Chamber with jurisdiction, to adjudicate (or not) the application of the LRN [FN84].

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[FN79] Cf. Order of the Criminal Court of First Instance of Petén of February 10, 1999 and March 8, 2000, supra notes 69 and 70.
[FN80] From the review of the file it is inferred that: on September 29, 2000, the accused Manuel Pop Sun filed two appeals for legal protection before the Third Chamber of the Court of Appeals (Cf. Judgments of the Constitutional Court of February 19, 2002 and July 11, 2002, appendixes to the application, appendix 38, f. 5785 and appendix 39, f. 5894); on October 12, 2000 an appeal for legal protection was filed by Reyes Collin Gualip before the Third Chamber of the Court of Appeals (Appendixes to the application, appendix 50, f. 7339); on October 13, 2000, 10 appeals for legal protection were filed by: César Adán Rosales Batres before the Tenth Chamber of the Court of Appeals (Judgment of the Constitutional Court of August 16, 2002, appendixes to the application, appendix 55, f. 7946); Carlos Antonio Carías López before the Fourth Chamber of the Court of Appeals (Judgment of the Constitutional Court of August 19, 2002, , appendixes to the application, appendix 46, f. 6798); Cirilo Benjamín Caal Ac before the First Chamber of the Court of Appeals (Judgment of the Constitutional Court of September 27, 2002, Appendixes to the application, appendix 43, f. 6463); Carlos Humberto Oliva Ramírez before the Second Chamber of the Court of Appeals (Judgment of the Constitutional Court of July 11, 2002, Appendixes to the application, appendix 44, f. 6608); Roberto Aníbal Rivera Martínez (Judgment of the Constitutional Court of July 11, 2002, Appendixes to the application, appendix 54, f. 7853); Carlos Antonio Carías López (Judgment of the Constitutional Court of August 14, 2002, Appendixes to the application, appendix 45, f. 6704); Carlos Humberto Oliva Ramírez (Judgment of the Constitutional Court of October 1, 2003, Appendixes to the application, appendix 57, f. 8130); Manuel Cupertino Montenegro Hernández (Judgment of the Constitutional Court of April 26, 2004, Appendixes to the application, appendix 60, f. 8386); César Adán Rosales Batres (Judgment of the Constitutional Court of May 9, 2002, Appendixes to the application, appendix 48, f. 7041); Roberto Aníbal Rivera Martínez (Judgment of the Constitutional Court of February 19, 2002, appendixes to the application, appendix 40, f. 5979). Additionally, on October 12 and 13, 2000 two appeals for legal protection were filed by Manuel Cupertino Montenegro Hernández and Cirilo Benjamín Caal Ac, respectively, which were mentioned in the application incorrectly (f.56). Consequently they were unable to locate them, which was confirmed by the representatives, who indicated that the decisions are not available (representatives' brief on final arguments, appendix 1, f. 19791).
[FN81] Cf. Briefs submitted by Reyes Collin Gualip on August 4, 2000 (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4433 to 4446); by Manuel Pop Sun (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4508 to 4510); Cirilo Benjamín Caal Ac (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4513 to 4518); César Adán Rosales Batres (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4520 a 4525); Carlos Humberto Oliva Ramírez (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4527 to 4532); Carlos Antonio Carías López (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4534 to 4539); Manuel Cupertino Montenegro Hernández (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4541 to 4546), and Roberto Aníbal Rivera Martínez (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4548 to 4553), all received on September 7, 2000; by Roberto Aníbal Rivera Martínez (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4764 to 4769); Carlos Humberto Oliva Ramírez (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4771 to 4776); Manuel Cupertino Montenegro Hernández (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4778 to 4783); Cirilo Benjamín Caal Ac (Appendixes to the application, judicial file,

pieces XV to XVII, fs. 4785 to 4790); Manuel Pop Sun (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4792 to 4797); César Adán Rosales Batres (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4799 to 4804); Carlos Antonio Carías López (Appendixes to the application, judicial file, pieces XV to VII, fs. 4806 to 4811), and Reyes Collin Gualip (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4813 to 4819), all received on September 19, 2000.

[FN82] Cf. Brief submitted by Reyes Collin Gualip on August 4, 2000, (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4491 to 4504); and 14 briefs received on September 7, 2000, from which it is inferred that each of the following accused filed two appeals: Cirilo Benjamín Caal Ac (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4558 to 4565 and 4569 to 4580); Manuel Cupertino Montenegro Hernández (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4584 to 4594 and 4598 to 4609); Carlos Humberto Oliva Ramírez (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4613 to 4623 and 4724 to 4733); César Adán Rosales Batres (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4627 to 4641 and 4645 to 4655); Carlos Antonio Carías López (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4659 to 4669 and 4683 to 4694); Roberto Aníbal Rivera Martínez (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4673 to 4682 and 4698 to 4708), and Manuel Pop Sun (Appendixes to the application, judicial file, pieces XV to XVII, fs. 4712 to 4720 and 4737 to 4747).

[FN83] Cf. Judgments of the Constitutional Court of July 11, 2002 on the appeals filed by César Adán Rosales Batres before the Tenth Chamber of the Court of Appeals (Appendixes to the application, appendix 53, f. 7734); Cirilo Benjamín Caal Ac before the Fourth Chamber of the Court of Appeals, (Appendixes to the application, appendix 51, f. 7458); Reyes Collin Gualip before the Fourth Chamber of the Court of Appeals, (Appendixes to the application, appendix 49, f. 7150); Carlos Humberto Oliva Ramírez before the Third Chamber of the Court of Appeals (Appendixes to the application, appendix 42, f. 6297), and by Carlos Antonio Carías López before the Fourth Chamber of the Court of Appeals; this appeal was mentioned incorrectly in the application (fs. 58 y 63), therefore it was not found, which the representatives confirmed by indicating that the decision is not available (representatives' brief on closing arguments, appendix 1, f. 19795); Judgment of the Constitutional Court of October 18, 2002 on the appeal filed by Manuel Cupertino Montenegro Hernández before the Fourth Chamber of the Court of Appeals (Appendixes to the application, appendix 52, f. 7646); Judgment of the Constitutional Court of April 24, 2002 regarding the appeal filed by Manuel Pop Sun before the Fourth Chamber of the Court of Appeals (Appendixes to the application, appendix 47, f. 6976), and Judgment of the Constitutional Court of November 12, 2002 regarding the appeal filed by Roberto Aníbal Rivera Martínez before the First Chamber of the Court of Appeals (Appendixes to the application, appendix 41, f. 6158).

[FN84] Cf. Judgments of the Constitutional Court of July 11, October 18, and November 12, 2002, supra note 83.

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92. On March 7, 2002 the aforementioned Judge reiterated the effective arrest warrants against seven accused [FN85]. Additionally, on June 21, 2002, the Judge decided to send the file for proceeding No.1316-94 to the Twelfth Chamber of the Court of Appeals, in order to obtain a resolution regarding the applicability of the Law on National Reconciliation. [FN86]

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[FN85] Cf. Ruling issued by the Criminal Court of First Instance of Petén on March 7, 2002, (Appendixes to the application, judicial file, piece XVIII, f. 5001).
[FN86] Cf. Ruling issued by the Criminal Court of First Instance of Petén on June 21, 2002 (Appendixes to the application, pieces 1 a 3, appendix 66, f. 8673).

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93. On July 3, 2002 a judicial proceeding was carried out through which the statements of the biological grandparents of survivor Ramiro Osorio Cristales [FN87] and their blood samples were taken, as well as that of Lidia Garcia Perez, the "adoptive mother" of Ramiro Osorio Cristales, for DNA testing.

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[FN87] Cf. Ruling issued by the Criminal Court of First Instance of Petén on June 4, 2002 (Appendixes to the application, judicial file, piece XVIII, f. 5040).

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D) Procedure of the Law on National Reconciliation

94. As previously mentioned, the Criminal Court of First Instance of Petén decided to send the file to the Chamber with jurisdiction of the Court of Appeals on June 21, 2002 (supra para. 92).

95. The procedure whereby the applicability of the LRN would be decided began on June 25, 2002, date on which the Judges of the Twelfth Chamber of the Court of Appeals received the records of criminal proceeding No. 1316-94. However, these judges disqualified themselves from the matter because they had previously heard the appeals for legal protection placed by the accused [FN88]. The issue later moved on to the Tenth Chamber of the Court of Appeals, whose judges also disqualified themselves from hearing the case [FN89]. Even though the disqualification of the judges of the Tenth Chamber was turned down, the matter was heard by the Fourth Chamber of the Court of Appeals [FN90] because of vacations. On January 2, 2002, this Chamber ordered the parties to voice their opinion on the applicability of the LRN [FN81]. On January 20, 2003 one of the accused filed an appeal for reversal, so that a transfer would not be granted to one of the parties, which was denied the same day. [FN92]

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[FN88] Cf. Minutes of excuse issued by the Titular Judges of the Twelfth Chamber of the Court of Appeals of June 25, 2002 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 64, f. 8629).
[FN89] Cf. Minutes of excuse issued by the Titular Judges of the Tenth Chamber of the Court of Appeals of August 13, 2002 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, f. 8702).
[FN90] Cf. Order of the Presidency of the Judicial Organism of December 26, 2002 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 67, f. 8955).
[FN91] Cf. Order of the Fourth Chamber of the Court of Appeals of January 2, 2003 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 67, f. 8958), and brief

presented by César Adán Rosales Batres (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, f. 8842).
[FN92] Cf. Order of the Fourth Chamber of the Court of Appeals of January 20, 2003 regarding the claim for remedy filed by César Adán Rosales Batres (Appendixes to the application, judicial file, pieces 1 to 3, appendix 67, f. 8979).
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96. Between July 2002 and January 2003, three appeals for legal protection [FN93], two motions for amendment [FN94] –one of which was reiterated twice- [FN95], and two claims for remedy of the procedure [FN96], were filed with the purpose of annulling all actions as of December 28, 1996. On the other hand, on February 11 and 12, 2003, three of the accused filed individual appeals for reversal, which were granted by the Tenth Chamber of the Court of Appeals. [FN97]

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[FN93] Cf. Judgments of the Constitutional Court of April 7, 2003 regarding the appeal filed by Carlos Humberto Oliva Ramírez before the Third Chamber of the Court of appeals on July 11, 2002 (Appendixes to the application, appendix 56, f. 8035), and April 5, 2004 on the appeal filed by César Adán Rosales Batres before the Tenth Chamber of the Court of Appeals of July 12, 2002 (Appendixes to the application, appendix 58, f. 8220). Additionally, Reyes Collin Gualip filed an appeal before the Fourth Chamber of the Court of appeals, which is incorrectly cited in the application (f. 64). It was therefore not found, which the representatives confirmed by indicating that they do not have the corresponding file (representatives' brief on closing arguments, appendix 1, f. 19797). On the other hand, the representatives also claimed that on those dates two additional appeals were filed, on July 11, 2002 by Carlos Antonio Carías López before the Tenth Chamber of the Court of Appeals, and on August 5, 2002 by Roberto Aníbal Rivera Martínez before the First Chamber of the Court of Appeals. These appeals are not in the application either, and the representatives indicated that they do not have the corresponding papers (representatives' brief on closing arguments, appendix 1, f. 19796 to 19797). Consequently the Court is not counting them as appeals filed.
[FN94] Cf. Briefs presented by Reyes Collin Gualip before the Twelfth Chamber of the Court of Appeals on July 2, 2002 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, fs. 8674 to 8675) and César Adán Rosales Batres before the Twelfth Chamber of the Court of Appeals on July 2, 2002 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, fs. 8677 to 8680).
[FN95] Cf. Briefs submitted by Reyes Collin Gualip before the Fourth Chamber of the Court of Appeals on October 15, 2002, (Appendixes to the application, judicial file, pieces 1 to 3, appendix 66, fs. 8903 to 8904), and the Fourth Chamber of the Court of Appeals on January 15, 2003 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 67, fs. 8972 to 8973).
[FN96] Cf. Briefs presented by Roberto Aníbal Rivera Martínez before the Twelfth Chamber of the Court of Appeals on July 2, 2002 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 66, fs. 8682 to 8689) and Roberto Aníbal Rivera Martínez before the Fourth Chamber of the Court of Appeals on January 17, 2003 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 67, fs. 8980 to 8685).
[FN97] Cf. Judgment of the Tenth Chamber of the Court of Appeals of February 14, 2003, regarding the appeals for reversal filed by César Adán Rosales Batres, Reyes Collin Gualip and

Roberto Anibal Rivera Martínez (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, fs. 8852 to 8857).

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97. On February 5, 2003, [FN98] the Prosecutor presented his argument about the application of the LRN before the Tenth Chamber of the Court of Appeals. He expressed that the referred Law is applicable exclusively to criminal acts product of the internal armed confrontation, by people involved in this confrontation and for the purpose of "preventing, impeding, prosecuting or suppressing the offenses recognized in Articles 2 and 4 of this law as political crimes and other commonly related," and stated: "how did the accused expect to prevent, impede, prosecute or suppress the crimes referred to in Articles 2 and 4 of the [LRN], with the raping of girls and women or with the murder of newborns or young children and elderly, or with the torture and murder of an entire unarmed and defenseless civil population? Within this context it is evident that the events that occurred […] in the community of 'Las Dos Erres' were not committed by the army of Guatemala for the purposes indicated in Article 5 of the referred Law." In conclusion, the Prosecutor requested the cause of action for the application of the LRN to be disallowed, and for the criminal proceeding be continued [FN99].

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[FN98] The referred document is dated February 6, 2003, however, the received stamp by the Court of Appeals indicates February 5, 2003.

[FN99] Cf. Brief submitted by the Special Prosecutor of the Public Prosecutor's Office before the Tenth Chamber of the Court of Appeals, received on February 5, 2003 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, fs. 8793 to 8807).

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98. On the other hand, between January 7 and February 6, 2003, several of the accused requested the appointment of Francisco José Palomo Tejada as defense counsel, which was turned down [FN100]. Prior to this negative answer, between January 31, February 14 and 18, 2003, one of the accused filed a motion for reversal [FN101] and an appeal for legal protection [FN102], which were rejected, as well as a constitutional motion. The referred motion suspended the process from February 17, 2003 until February 23, 2009, when it was rejected by the Court of Appeals [FN103]. The accused appealed the judgment, and it is currently pending resolution [FN104].

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[FN100] Cf. Judgments of the Fourth Chamber of the Court of Appeals of January 24, 2003, regarding the request by Roberto Aníbal Rivera Martínez (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, fs. 8771 to 8774), and of the Twelfth Chamber of the Court of Appeals of February 6, 2003, regarding the request by Carlos Antonio Carías Lopez (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, f. 8811).

[FN101] Cf. Judgment of the Fourth Chamber of the Court of Appeals of February 3, 2003 on the appeal for reversal filed by Roberto Aníbal Rivera Martínez on January 31, 2003 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 65, fs. 8789 to 8790).

[FN102] Cf. Judgment of the Constitutional Court of September 23, 2004, regarding the appeal filed by Roberto Aníbal Rivera Martínez on February 18, 2003 (Appendixes to the application, judicial file, pieces 1 to 3, appendix 61, fs. 8462 to 8471).
[FN103] Cf. Judgment of the Fourth Chamber of the Court of Appeals of February 23, 2009, regarding the constitutional appeal filed by Roberto Aníbal Rivera Martínez on February 14, 2003 (Supervening evidence presented by the representatives, appendix 7, fs. 19767 to 19770).
[FN104] Cf. Brief presented by Roberto Aníbal Rivera Martínez before the Fourth Chamber of the Court of Appeals, on March 6, 2009 (Supervening evidence submitted by the representatives, appendix 7, fs. 19771 to 19774).
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99. Between March 2003 and 2009 three appeals for legal protection were filed; one was granted, ruling the annulment of all actions as of December 28, 1996 [FN105], another one was rejected [FN106], and one is pending resolution [FN107].

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[FN105] Cf. Judgment of the Constitutional Court of December 8, 2004 on the appeal filed by Reyes Collin Gualip on March 7, 2003 (Appendixes to the application, appendix 62, f. 8550 to 8557).
[FN106] Cf. Judgment of the Constitutional Court of August 7, 2007 on the appeal filed by Roberto Aníbal Rivera Martínez on March 12, 2003 (Appendixes to the brief of pleadings and motions, appendix 10, fs. 9381 to 9387).
[FN107] Cf. Brief presented by Reyes Collin Gualip on March 13, 2009 (Supervening evidence submitted by the representatives, appendix 6, fs. 19659 to 19675).
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100. Finally, due to the processing of the criminal proceeding, between April 2000 and March 2003 the accused filed: at least 33 appeals for legal protection, 19 appeals for reversal, 19 claims for remedy, 2 motions for amendment, and one constitutional motion.

2. Articles 8 and 25 of the American Convention, in relation to Articles 1 and 2 thereof; Articles 1, 6 and 8 of the Inter-American Convention against Torture, and Article 7(b) of the Convention of de Belem do Pará.

101. Notwithstanding the partial recognition of responsibility performed by the State regarding the facts of denial of justice, as well as its acknowledgement of the violations of Articles 8 and 25 of the Convention (supra para. 36), the Court, based on the framework of its jurisdiction, and assessing the gravity of the facts generated by the referred violations, deems it necessary to conduct certain specific considerations to establish those violations that have generated the State's international responsibility.

102. In light of the gravity of the facts and of the claim filed by FAMDEGUA on June 14, 1994 before the Criminal Court of First Instance of Petén, a proceeding has been initiated in the ordinary criminal jurisdiction, which is still in its initial phase. In this regard, the Commission indicated that "according to that expressly recognized by the State, the events of the Las Dos Erres Massacre have not been duly investigated, nor have those responsible been prosecuted and

punished […] which constitutes a violation to Articles 8 and 25 in relation to Article 1(1) of the Convention." On the other hand, the representatives expressed that twenty-six years have passed and none the responsible parties have been punished, therefore the State has not complied with its obligation to investigate, prosecute and punish those responsible. Additionally, the representatives indicated that "the impunity and lack of complete and true information on that occurred in the massacre has caused the States' violation of the right to the truth, thus breaching Articles 8, 25, and 13 of the Convention." On the other hand, the State acknowledged the claims of the Commission and the representatives regarding the violation of the rights established in Articles 8(1) and 25(1) of the Convention, according to Article 1(1) thereof, based on the petition filed by FAMDEGUA. In addition to the above, the State expressed that it had taken several steps to obtain justice, and reiterated its commitment to conduct a serious and effective investigation and a criminal trial to identify the alleged responsible parties.

103. In light of the parties' indication of the various irregularities that have impeded the victims' effective access to justice, the Court will address this issue in the following three sections: A) Application of the "Law on the Appeal for Legal Protection, Habeas Corpus, and Constitutionality" in Guatemala (hereinafter "Law on the Appeal for Legal Protection"); B) Delay and inapplicability of the "Law on National Reconciliation" (hereinafter "LRN"), and C) Lack of a complete and thorough investigation of the facts of the massacre, as well as other omissions.

104. It is worth noting that this Court has expressed that, according to the American Convention, the States Parties are obligated to provide effective judicial remedies to the victims of the human rights violations (Article 25), remedies which should be substantiated in conformity with the rules of due process (Article 8(1)), all of this within the general obligation of the same States, to guarantee the free and full exercise of the rights recognized by the Convention for any person under its jurisdiction (Article 1(1)). [FN108]

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[FN108] Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 91; Case of Bayarri v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 30, 2008. Series C No. 187, para. 103, and Case of Kawas Fernández v. Honduras, supra note 21, para. 110.

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105. Likewise, it has indicated that the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin, to have everything necessary done to uncover the truth of the events and to punish those responsible. [FN109]

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[FN109] Cf. Case of Bulacio v. Argentina. Merits, Reparations, and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 115, and Case of Kawas Fernández v. Honduras, supra note 21, para. 112.

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A) Application of the "Law on the Appeal for Legal Protection"

106. As derived from the facts of the case, the appeal for legal protection has been used as a practice to delay the criminal proceeding (supra para. 90, 91, 96, 98 to 100). Even the State, in its brief on the answer to the application, when recognizing its responsibility, indicated that "[…] in practice, the constant and frivolous use of the appeal for legal protection has merited that different Bodies of the State discuss the implementation of measures that allow attacking the inadequate use of this constitutional action." This Court, in the Case of Mack Chang against the State of Guatemala already ruled on the defects of the appeal for legal protection and its use as a delaying strategy. [FN110] In light of the above, the Court will analyze this problem in the instant case.

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[FN110] Cf. Case of Mack Chang v. Guatemala, supra note 18, para. 204, 206, 207, 209, 210 and 211.

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107. The Court has established that the appeal for legal protection, because of its nature, is "the simple and brief judicial procedure whose goal is the protection of all of the rights recognized by the constitutions and laws of the States Parties and by the Convention." [FN111] Likewise, it has considered that this remedy enters the realm of Article 25 of the American Convention, therefore it has to meet certain requirements, including suitability and effectiveness [FN112]. It is important to analyze the appeal for legal protection in terms of adequacy and effectiveness [FN113], as well as the delaying practice that it has been given in the instant case.

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[FN111] The Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) of the American Convention on Human Rights) Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 32.
[FN112] Judicial Guarantees in States of Emergency (Arts. 27(2), 25(1) and 7(6) of the American Convention on Human Rights) Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24; Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 78, and Case of Escher et al. v. Brazil, supra note 33, para. 196.
[FN113] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 30, para. 64 and 66; Case of Escher et al v. Brazil, supra note 33, para. 28, and Case of Garibaldi v. Brazil, supra note 23, para. 46.

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108. The Court notes that the Law on the Appeal for Legal Protection in Guatemala establishes that the goal of this remedy is the development of "the guarantees and protections of the rights inherent to the individual, enshrined in the Constitution […], laws, and international conventions ratified by Guatemala." [FN114] Both the Political Constitution of the Republic of Guatemala, as well as the Law on the Appeal for Legal Protection indicate that the purpose of the appeal for legal protection is to protect people against threats of violations to their rights or to restore the rulings when violations did occur. There is no realm that is not susceptible to an

appeal for legal protection, and it will always be admissible when the acts, rulings, provisions or laws of the authorities imply a threat, restriction or violation of the rights guaranteed by the Constitution and the laws [FN115].

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[FN114] Article 1 of the Law on the Appeal for Legal Protection, Decree No. 1-86 of January 8, 1986 (Appendixes to teh application, appendix 70, f. 9121).
[FN115] Article 265 of Political Constitution of the Republic of Guatemala, and Article 8 of the La won Legal Protection, supra note 114.

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109. In this manner, the Law on the appeal for legal protection establishes certain requirements that are necessary to file this remedy. However, the judges are not obligated to previously analyze the admissibility requirements. On the contrary, once the remedy has been filed, its merits must be processed. [FN116] The petition for the remedy cannot be denied even when it is expressly inadmissible. The above has facilitated an indiscriminate filing of appeals for legal protection by the accused. In the instant case most of these appeals have been denied and declared inadmissible, since they did not fulfill the procedural prerequisites established in the law [FN117].

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[FN116] Cf. Articles 33 and 77 a) of the Law on the Appeal for Legal Protection, supra note 113.
[FN117] For example, the Constitutional Court turned down several appeals filed on October 26, 2000, as they were expressly inadmissible due to being time-barred, and because the act challenged had not caused injuries to constitutional rights. Cf. Judgment of the Constitutional Court of July 11, 2002 (Appendixes to the application, appendixes 42, 51 and 53, fs. 6303 to 6404; 7464 to 7465, and 7738 to 7739).

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110. In the case of Mack Chang v. Guatemala the Court ruled on the institution of the appeal for legal protection in Guatemala, expressing that:

[…] as derived from the text of the "Law on the Appeal for Legal Protection, Habeas corpus, and Constitutionality", and according to the expert opinion of Henry El Khoury, the law itself places the courts of appeal under the obligation to process and rule on all appeals for legal protection filed against any judicial authority for any procedural act. Therefore, the law itself places said courts under the obligation to process any appeal for legal protection, even if it is "expressly inadmissible," as the various remedies filed in this case were found to be. [FN118]

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[FN118] Case of Myrna Mack Chang v. Guatemala, supra note 18, para. 206.

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111. It is worth noting that in the instant case the counsel of the accused in the massacre have filed at least 33 appeals for legal protection, of which 24 were denied [FN119] and some took up to four years to be resolved. Additionally, these decisions were later appealed before different

instances, which implied that the processing of the appeal for legal protection would be extended (infra para. 114). There has been an evident delay in the processing and adjudication of those remedies, which is not compatible with Article 25(1) of the American Convention. Although the Court considers that the appeal for legal protection is an ideal remedy to protect human rights in Guatemala, its scope and lack of admissibility requirements has resulted in that in some of these cases the delay is excessive and paralyzes justice.

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[FN119] From the review of the file before the Court it is inferred that four appeals for legal protection were granted, 24 were turned down, and one is pending resolution before the Constitutional Court. The documents related to the rest of the appeals for legal protection were not provided in the appendixes by the parties to the instant case.

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112. In the instant case the appeals for legal protection submitted in the internal proceeding exceeded their processing within the terms established by the law. Hence, the representatives and the Commission argued that only five of the appeals were resolved in less than one year, 19 were resolved in one to two years, four took over three years to be resolved, and one took four years and five months.

113. In this regard, witness Edgar Fernando Pérez Archila declared before this Court on the excessive length of the processing of the appeals for legal protection in the case of the Las Dos Erres massacre, in comparison to other cases of a similar nature heard at the same time, and indicated that "the average for the first instance was approximately six months[, and] the average for the second instance was approximately 320 days" [FN120]. Likewise, in her expert opinion, Ms. Claudia Paz y Paz Bailey expressed that "the average processing of the appeals for legal protection in the case of Las Dos Erres largely exceeds the [problem] of the general average processing time of appeals for legal protection" [FN121]. This situation has also been asserted by international bodies [FN122].

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[FN120] In this regard, said expert indicated that "[i]n 2003 a study was performed, as well as verification by the Ombudsman Office of Guatemala, which assessed the 31 appeals submitted to that date. The average for the first instance was approximately six months, and for the second instance 320 days. This is a much longer term than the judicial custom, and in my experience as a litigation attorney in Guatemala, than the processing of appeals for legal protection in common cases." Statement of witness Edgar Fernando Pérez Archila, rendered in the public hearing held before the Court in La Paz, Bolivia, on July 14, 2009.

[FN121] Cf. Expert Opinion of Claudia Paz y Paz Bailey rendered before the public hearing held before the Inter-American Court in La Paz, Bolivia, on July 14, 2009.

[FN122] See, inter alia, the Report of the UN High Commissioner of Human Rights on the activities of the office in Guatemala, A/HRC/4/49/Add.1 of February 12, 2007, para 30, which indicates that "[t]he filing of delaying appeals for legal protection continues affecting cases of transitional justice. In this regard, Bill No. 3319 on amendments to the appeal for legal protection is still pending before Congress." Likewise, the High Commissioner "urge[d] Congress to

approve […] the amendments to the Law on the Appeal for Legal Protection, Habeas corpus, and Constitutionality."

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114. On the other hand, the accused in the criminal proceeding filed their appeals for legal protection before seven different chambers of the Court of Appeals, which recognized their jurisdiction to hear them, although the Supreme Court of Justice had established jurisdiction solely to the Twelfth Chamber of the Court of Appeals to hear matters from Petén [FN123]. Consequently, the First, Second, Third, Fourth, Tenth, and Thirteenth Chambers examined the appeals even though they did not have jurisdiction to process criminal matters, which, according to the representatives, "prevented the Twelfth Chamber from counteracting the delaying tactic [of the accused] by accumulating appeals for legal protection of the same nature."

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[FN123] Agreement No. 17-91 of the Supreme Court of Justice whereby the Twelfth Chamber of the Court of Appeals, with its seat in Guatemala, published in the journal "Diario de Centro América" on September 24, 1991 (Appendixes to the brief of pleadings and motions, appendix 3, , f. 9263).

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115. Furthermore, in those cases in which appeals for legal protection were filed with the same facts and before the same chamber, the judges did not admit the accumulation of these appeals [FN124], breaching Articles 54 and 55 of the Criminal Procedural Code of Guatemala, which establishes that for reasons of judicial economy, proceedings for related crimes that are publicly actionable are heard by a single court.

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[FN124] As inferred from the analysis of the judgments of the Constitutional Court, specifically the resolution of appeals for legal protection filed between September and October 2000 (representatives' brief on final arguments, appendix 1, table of appeals filed, fs. 19789 to 19795).

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116. In light of this scenario, the Court takes cognizance of the indication by the Supreme Court of Justice, which in the statement of its motives for the bill to reform the Law on the appeal for legal protection (Bill No. 3319 [FN125]), still pending approval, claimed that:

[t]he scope with which the appeal for legal protection process is currently regulated has caused serious inconveniences which materialized into obstacles to a prompt, fulfilled and effective administration of justice. Such inconveniences stand out in the abusive use of the appeal for legal protection in judicial matters, which causes a deliberate delay in ordinary processes, noncompliance with the processing time, fully inconsistent with the principle of judicial economy [FN126].

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[FN125] Bill No. 3319 of August 17, 2005, which proposes amendments to the Law on the Appeal for Legal Protection (Appendixes to the brief of pleadings and motions, appendix 5, fs. 9271 to 9284).
[FN126] Statement of the motives for Bill No. 3319, supra note 125, f. 9273.
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117. Likewise, the Court takes cognizance of the Joint Opinion, issued by the Commissions for the Amendment of the Justice Sector and Legislation and Constitutional Points on the amendment to the Law on the Appeal for Legal Protection in Guatemala, whereby they confirm the importance of reviewing this law considered permissive, whose interpretation has led to abuses, deliberate delays and obstacles to a prompt and fulfilled justice. Additionally, it establishes that "it is necessary to clarify, expand or explain norms which have currently given way to various interpretations and applications that cause unnecessary delays in the processing of appeals for legal protection and processes that distort its object and purpose. [FN127]"

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[FN127] Joint favorable opinion on Bill No. 3319 of the Commissions for Reform of the Justice Sector, Legislation, and Constitutional Points (Appendixes to the brief on pleadings and motions, appendix 6, fs. 9286 to 9287).
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118. The International Commission Against Impunity in Guatemala (hereinafter "CICIG") has also ruled on the need to modify the Law on the Appeal for Legal Protection, and has indicated that "Bill No. 3319 submitted to Congress […] presents general modifications that would allow for the reduction of abusive use of the appeal for legal protection."

119. From the elements indicated, it is inferred that the appeal for legal protection in Guatemala has been used as a delaying instrument. Expert Claudia Paz and Paz Bailey indicated that:

the jurisprudence of the Constitutional Court has exceedingly expanded the possibility of filing remedies in the processing of judicial proceedings. This has caused, on the one hand, the saturation of the constitutional system, in 2007 the Constitutional Court received almost 4000 (four thousand) files, 4000 cases, but it also allowed for the appeal for legal protection to be used to delay, suspend and impede processes. Also, it is used maliciously, but with the justice system as an accomplice. The structure of the appeal for legal protection is also very difficult and with excessive processes. [FN128]

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[FN128] Cf. Expert opinion of Claudia Paz y Paz Bailey, supra note 121.
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120. In this case the Court notes that the provisions that regulate the appeal for legal protection, the lack of due diligence and tolerance by the courts when processing them, as well as the lack of effective judicial protection, have allowed the abusive use of the appeal as a delaying practice in the proceeding. Likewise, after over 15 years since the criminal proceeding began,

and 27 years since the occurrence of the events, this proceeding is still in its initial stage, to the detriment of the victims' rights to know the truth, and in the identification and punishment of all those responsible and obtaining the corresponding reparations.

121. In light of the above, the Court believes that the appeal for legal protection is an adequate remedy to protect individuals' human rights, since it is suitable to protect the juridical situation infringed, as it is applicable to acts of authority that imply a threat, restriction or violation of the protected rights. However, in the instant case the current structure of the appeal for legal protection in Guatemala and its inadequate use have impeded its true efficiency, as it is not capable of producing the result for which it was conceived.

122. It is important to mention that the general duty of the State to adapt its internal law to the provisions of the American Convention so as to guarantee the rights embodied therein, as established in Article 2, implies the adoption of measures in two regards. On one hand, this includes the suppression of laws and practices of any nature that imply a violation to the guarantees set forth in the Convention. On the other hand, it implies the promulgation of laws and the development of practices that are conducive to an efficient observance of these guarantees, [FN129] which has not been materialized in the case of the appeal for legal protection. The Court notes that the parties have coincided in considering the abusive use of the appeal for legal protection as a delaying tactic in the instant case.

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[FN129] Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations, and Costs. Judgment of May 30, 1999. Series C No. 52, para. 207; Case of Heliodoro Portugal v. Panama, supra note 23, para. 180, and Case of Reverón Trujillo v. Venezuela, supra note 29, para. 60.

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123. The State expressed that it is discussing the Bill to amend the Law on the appeal for legal protection, Decree No. 1-86 of the National Constituent Assembly, which was presented to the Congress of the Republic of Guatemala by the Judges of the Supreme Court of Justice, with the "goal of converting the process of the appeal for legal protection into an extraordinary, brief and efficient system, in conformity with the protection of the fundamental rights of individuals, and minimizing the inconveniences that have occurred in the administration of justice." Nevertheless, the Court notes that at the time of issuing of the instant Judgment the obstacles for the appeal for legal protection to comply with the objectives for which it was created had not been removed.

124. Based on the foregoing, the Court considers that, within the framework of the current Guatemalan legislation, in the instant case the appeal for legal protection has been transformed into a means to delay and hinder the judicial process, and into a factor for impunity. Consequently, this Court believes that in the instant case the State violated the rights to a fair trial and right to judicial protection, which constitute the victims' access to justice, recognized in Articles 8(1) and 25(1) of the Convention, and also failed to comply with the provisions contained in Articles 1(1) and 2 thereof.

B) Delay and Inapplicability of the Law of National Reconciliation

125. The Commission and the representatives concur in indicating that the possible application of the LRN to the instant case would imply perpetrating impunity. They also criticized the excessive delay in the process to decide on the applicability of this Law. The State did not comment on this matter in its answer to the application. However, in its brief on final arguments, it provided additional information on the realm of the application of the LRN, Decree No. 145-96 of the Congress of the Republic. In this section the State concluded that "until now there is no resolution that has granted applied amnesty to accused military for events committed during the armed conflict, on the contrary when the granting of amnesty was requested based [on] the Law of National Reconciliation, all requests have been declared inadmissible."

126. As previously mentioned (supra para. 95), the procedure to decide on the applicability of the LRN began on June 25, 2002. This law grants a term of ten days, extendable by another ten days if a hearing is held, to rule on the applicability of the extinction of criminal liability. If an appeal is requested before the Supreme Court of Justice, the latter shall have a term of five days to resolve this remedy, and the decision is non-appealable [FN130]. This proceeding was suspended since February 17, 2003, awaiting a decision on the constitutional motion filed by one of the accused. Consequently, the excessive delay by the judicial authorities in resolving the applicability of the LRN is evident, which has also delayed the criminal proceeding that has already extended beyond eight years.

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[FN130] Cf. Article 11 of the LRN.

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127. On the other hand, the excessive time that the State has used to decide on the applicability of the extinction of criminal liability has created a situation of juridical uncertainty for the case, as well as for the victims. Although the State assured in a public hearing and in its final arguments that, to date, no amnesty has been granted in an unlawful manner in any case processed in Guatemala, it is clear that the formal object of the process established in the LRN is precisely deciding on the possible application of this figure [FN131].

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[FN131] However, the representatives indicated that in December 2007, when hearing the appeal for legal protection filed by one of the accused in the case for violations perpetrated in the Embassy of Spain in 1980 against Guatemalan and Spanish citizens, the Constitutional Court decided to grant the appeal, turning down by the request for extradition made by Spain, and annulling the provisional arrest warrants that had been handed down. Cf. Constitutional Court of Guatemala, Judgment of December 12, 2007, File 3380-2007 (Appendixes to the brief of pleadings and motions, appendix 43, fs. 11785 to 11847).

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128. It is worth noting that although the Las Dos Erres Massacre occurred within the context of the internal armed conflict in Guatemala, in the internal jurisdiction it has been catalogued by the Public Prosecutor's Office as a murder. Additionally, on April 4, 2001, the Constitutional Court ordered the case to be forwarded to the Court of Appeals to determine the application of the LRN and eventual amnesty of the accused, as it referred to events that occurred during the

armed conflict, in violation of Article 11 of the LRN [FN132]. However, it seems that the nature and gravity of the events were not considered in this decision.

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[FN132] Article 11 of the LRN establishes that "crimes outside the realm of this Law, or that are non-extinguishable, or that do not admit extinguishment of criminal liability according to the domestic law or international treaties approved or ratified by Guatemala will be processed according to the procedure established in the Criminal Procedural Code."

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129. In light of this situation, the Court reiterates its constant jurisprudence on the incompatibility of figures such as extinguishment and amnesty in cases of serious human rights violations, on which it has clearly established that:

The State must guarantee that the domestic proceedings aimed at investigating and [eventually] punishing those responsible for the facts of this case have the adequate effects, and, in particular, it should refrain recurring to legal devices such as amnesty, prescription, and the establishment of measures designed to eliminate liability. In this regard, the Court has already indicated that […] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary executions and forced disappearance, all prohibited because they violate nonrevocable rights recognized by international human rights law." [FN133]

[…] no domestic law or provision can prevent a State from complying with the obligation to investigate and punish those responsible for serious human rights violations[…] [FN134]. In particular, when dealing with serious human rights violations the State shall not argue prescription of or any similar measure designed to eliminate responsibility, to excuse itself from its duty [FN135].

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[FN133] Case of the Caracazo v. Venezuela. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, para. 119. Cf. Case of Barrios Altos v Peru. Merits. Judgment of March 14, 2001. Series C, No. 75, para 41, and Case of Anzualdo Castro v. Peru, supra note 28, para. 182.

[FN134] Case of Blanco Romero et al. v. Venezuela. Merits, Reparations, and Costs. Judgment of November 28, 2005. Series C No. 138, para. 98. Cf. Case of Barrios Altos v Peru. Merits, supra note 133, para. 41, and Case of Anzualdo Castro v. Peru, supra note 28, para. 182.

[FN135] Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Serise C No. 191, para. 147; Case of Barrios Altos v. Peru. Merits, supra note 133, para. 41, and Case of Anzualdo Castro v. Peru, supra note 28, para. 182.

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130. The Court notes that the events of the Las Dos Erres Massacre, recognized by the State, constitute grave human rights violations. The context of these facts has been recognized by this Court as "a pattern of selective extrajudicial executions promoted by the State, which was

directed to those individuals considered 'internal enemies'" [FN136]. Additionally, since the date when the facts occurred until today, there have been no effective judicial mechanisms to investigate the human rights violations or to punish all those responsible.

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[FN136] Case of Myrna Mack Chang v. Guatemala, supra note 18, para. 139.

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131. Based on the above, the Court determines that the eventual application of the amnesty provisions of the LRN in this case would violate the obligations derived from the American Convention. Thus the State has the duty to continue the criminal proceeding without major delays, and include the multiple crimes generated in the events of the massacre for their proper investigation, prosecution and eventual punishment of those responsible for those acts.

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132. Regarding the promptness of the general process, the Court has indicated that the "reasonable term" referred to in Article 8(1) of the Convention, must be appreciated in terms of the total duration of the proceeding until the final judgment is pronounced [FN137]. The right of access to justice implies that the solution of the controversy should occur within a reasonable term [FN138], since a prolonged delay could constitute in itself a violation of the right to a fair trial [FN139]. In this sense, the lack of a response by the State is a determining element in assessing if Articles 8(1) and 25(1) of the American Convention have been breached [FN140].

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[FN137] Cf. Case of Suárez Rosero v. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, para. 71; Case of Ticona Estrada et al. v. Bolivia, supra note 135, para. 78, and Case of Valle Jaramillo et al. v. Colombia, supra note 21, para. 154.

[FN138] Cf. Case of Suárez Rosero v. Ecuador. Merits, supra note 137, para. 71 to 73; Case of Ticona Estrada et al. v. Bolivia, supra note 135, para. 79, and Case of Valle Jaramillo et al. v. Colombia, supra note 21, para. 154.

[FN139] Cf. Case of Hilaire, Constantine and Benjamín et al. v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 145; Case of Valle Jaramillo et al. v. Colombia, supra note 21, para. 154, and Case of Anzualdo Castro v. Peru, supra note 28, para. 124.

[FN140] Cf. Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 115; Case of Ticona Estrada et al. v. Bolivia, supra note 135, para. 95, and Case of Escher et al. v. Brazil, supra note 33, para. 206.

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133. In the instant case the Court observes that, 15 years after the application was filed by FAMDEGUA, the criminal proceeding is still in its initial stage, which contributes to the excessive delay in the administration of justice. Additionally, the Court notes that the State did not justify this situation, but recognized having incurred in the delay.

134. It is worth noting that in other cases related to human rights violations in Guatemala, the Court has proven the unduly delay in the Guatemalan judicial system [FN141], as well as the violations of the rights to a due process [FN142]. In this sense, the Court indicated that the Judgments on the cases of Myrna Mack Chang, Maritza Urrutia, Plan de Sanchez Massacre, Molina Theissen and Tiu Tojin, all on human rights violations during the armed conflict in Guatemala, after 13, 11, 22, 22 and 17 years after the events, respectively, the State's obligations of investigating and ending the impunity remained unfulfilled [FN143], which evidences a pattern of judicial delay in Guatemala in investigations of grave human rights violations.

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[FN141] "The Guatemalan system for justice administration was inefficient in guaranteeing compliance with the law and the protection of the rights of the victims and their next of kin in almost all of the human rights violations committed at that time." Case of Tiu Tojín v. Guatemala, supra note 17, para. 51.

[FN142] "[U]ntil today, the courts of justice of Guatemala have proven incapable of effectively investigating, processing, prosecuting, and punishing those responsible for the human rights violations" and that "[i]n numerous occasions the courts of justice have acted subordinated to the Executive Power or military influence, 'applying rules or legal provisions contrary to due process or omitting applying the corresponding ones'". Case of Bámaca Velásquez. Monitoring Compliance with Judgment. Order of the Court of January 27, 2009, para. 22. Cf. Case of Myrna Mack Chang v. Guatemala, supra note 18, para. 134(1)3).

[FN143] Cf. Case of Myrna Mack Chang v. Guatemala, supra note 18, para. 272; Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, para. 176; Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and Costs. Judgment of November 19, 2003. Series C No. 116, para. 95; Case of Molina Theissen v. Guatemala. Reparations and Costs. Judgment July 3, 2004. Series C No. 108, para. 79, and Case of Tiu Tojín v. Guatemala, supra note 17, para. 72. Cited in the Case of Bámaca Velásquez v. Guatemala. Monitoring compliance with Judgment, supra note 142, para. 23.

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135. In this concrete case the Court has verified that the unjustified delay of over 15 years in the criminal proceeding is attributable not only to the indiscriminate use of remedies by the accused, but also to the lack of will and interest of the State's judicial authorities who have heard them, since they have inadequately processed the many remedies, as well as subjected the case to the procedure established in the LRN (supra para. 126 and 127), which have been used to paralyze the criminal proceeding. This situation has constituted an excessive violation of the reasonable term and is attributable to the State.

C) Lack of a complete and thorough investigation of the alleged facts of the massacre and those responsible, and other omissions

C.1 Lack of investigation of all of the facts of the massacre

136. The Court observes that the investigation carried out in the internal jurisdiction has not been complete and thorough, given that it only refers to infringements to life, and not to those related to the facts of the alleged torture against members of the community and other alleged

acts of violence against the children and female population. In this regard, the Commission indicated that "the provisions of the […] Convention of Belém do Pará […] should be taken into consideration, as they impose the obligation of acting with due diligence when investigating and punishing acts of violence against women." On the other hand, the representatives requested of the Court to declare the State responsible for not complying with the rights contained in Articles 1, 6, and 8 of the CIPST and 7(b) of the Convention of Belém do Pará. Finally, the State did not accept the violation of these Conventions "on the grounds [that] neither of them was effective for the State at the time when the facts occurred, and both procedurally and substantively it is not possible to claim a violation of a law or treaty which does not exist in the juridical life of a State."

137. The Court notes that in conformity with the American Convention, effective at the time of the facts, the State had the obligation to investigate all of the facts with due diligence, which was still pending at the time of recognition of the Court's contentious jurisdiction on March 9, 1987. This obligation was subsequently confirmed by the State in the ratification of the CIPST on January 29, 1987 and the Convention of Belém do Pará on April 4, 1995, therefore it had to guarantee compliance as of that time [FN144], even if they had not been adopted at the time of the massacre. The Court has thus established that "[the State] has the duty to guarantee the right of access to justice […] in conformity with the specific obligations set forth in the specialized Conventions […] with regards to the prevention and punishment of torture and violence against women. [T]hese provisions […] specify and complement the State's obligations regarding compliance with the rights enshrined in the American Convention," as well as the "international corpus juris on the matter of protection of personal integrity (humane treatment)" [FN145].

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[FN144] Cf. Case of the Miguel Castro Castro Prison v. Peru, supra note 27, para. 377.
[FN145] Cf. Case of the Miguel Castro Castro Prison v. Peru, supra note 27, para. 276, 377 and 379.

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138. Specifically, the Court notes that although the complaint filed by FAMDEGUA on June 14, 1994 was for the crime of murder to the detriment of those buried in the community of Las Dos Erres, the statements of the ex kaibiles in the criminal proceeding of May 27, 1997 indicated that "while they had them gathered […] they began to torture the men so they would tell them where the weapons were and who in the community were part of the guerrilla [and they] also raped some girls in front of their parents." Likewise, they indicated that "Instructor Manuel Pop Sun […] raped [one girl] drastically" and that "that's […] how they were massacring [and for women] it [was] not only […] raping them, [but] also killing them at that time[…] they were savagely raped." Also survivor Salomé Armando Gómez Hernández declared on December 1, 1995 that "[he had seen] that the men were beaten with the weapons and kicked to the ground […] and women were pulled [b]y their hair and kicked." Additionally, on the same date witness César Franco Ibáñez declared that "they also began […] raping girls[,] you could hear the screams and wails […] of the girls being raped." The Court verifies that in relation to the facts described, as well as the CEH report of 1999, the State had official knowledge of alleged acts of torture against the population and children of the community, as well as abortions and other types of sexual violence against girls and women, perpetrated during three days (supra para. 78

to 81). However, the State did not initiate an investigation to clarify what occurred or charge those responsible [FN146].

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[FN146] In conformity with the legislation effective in Guatemala at the time of the facts (Articles 27 and 69 of the Criminal Code of Guatemala of 1973) the State had the possibility of investigating and identifying the different crimes and those who committed them.

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139. The Court notes, as context, that as indicated by the CEH, during the armed conflict women were particularly chosen as victims of sexual violence. Likewise, in another case occurred within the same context as this massacre, the Court established as a proven fact that "[t]he rape of women was a State practice, executed in the context of massacres, directed to destroying the dignity of women at a cultural, social, family, and individual level. [FN147]" In the case of Las Dos Erres, pregnant women were subject to induced abortions and other barbaric acts (supra para. 79 to 81). Likewise, in the expert opinion of psychologist Nieves Gómez Dupuis, performed in August 2005, it was indicated that "exemplifying torture, rape, and acts of extreme cruelty caused the victims […] grave damages to their mental integrity. [FN148]"

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[FN147] Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and Costs, supra note 143, para. 49.19.

[FN148] Cf. Expert opinion of Nieves Gómez Dupuis of August 2005 "regarding the damages to the mental health of the victims due to the Massacre of the Las Dos Erres Community […] and the measures for psychosocial reparation" (appendixes to the application, appendix 8, f. 2811).

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140. In this regard, the Court deems that the lack of investigation of grave facts against humane treatment such as torture and sexual violence in armed conflicts and/or systematic patterns [FN149], constitutes a breach of the State's obligations in relation to grave human rights violations, which infringe non-revocable laws [FN150] (jus cogens) and generate obligations for the States [FN151] such as investigating and punishing those practices, in conformity with the American Convention and in this case in light of the CIPST and the Convention of Belém do Pará.

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[FN149] In this regard, it is worth noting that in international law different courts have ruled on this, such as the International Criminal Tribunal for the Former Yugoslavia, which has qualified sexual violence as comparable to torture and other cruel, inhumane, and degrading treatment, when it has been committed within a systematic practice against the civil population, or with the intention of obtaining information, punishing, intimidating, humiliating, or discriminating the victim or a third party. Cf. ICTY, Trial Ch II. Prosecutor v. Anto Furundzija. Judgment, Dec. 10, 1998. para. 267.i, 295; ICTY, Trial Ch II. Prosecutor v. Delalic et al (Celebici case). Judgment, Nov. 16, 1998. para. 941; ICTY, Appeals Ch. Prosecutor v. Delalic et al (Celebici case). Judgment, Feb. 20, 2001. para. 488, 501; and ICTY, Trial Ch II. Prosecutor v. Kunarac et al. Judgment, Feb. 22, 2001. para. 656, 670, 816. Similarly, the International Criminal Tribunal for

Rwanda has also compared rape to torture, indicating that the former can constitute torture if committed by or with the acknowledgements, consent, or instigation of a public officer. Cf. ICTR, Trial Ch I. Prosecutor v. Akayesu, Jean-Paul. Judgment, Sep. 2, 1998. para. 687, 688. On the other hand, the European Court of Human Rights has indicated that rape can constitute torture when it has been committed by state agents against people in their custody. Cf. ECHR. Case of Aydin v. Turkey. Judgment, Sep. 25, 1997. Para. 86, 87, and Case of Maslova and Nalbandov v. Russia. Judgment. Jul. 7, 2008. Para. 108.
[FN150] Cf. Case of Goiburú et al. v. Paraguay, supra note 19, para. 128; Case of the Rochela Massacre v. Colombia, supra note 34, para. 132, and Case of Anzualdo Castro v. Peru, supra note 28, para. 59.
[FN151] Cf. Case of Goiburú et al. v. Paraguay, supra note 19, para. 131.
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141. Based on the foregoing, the State should have initiated, ex officio and without delay, a serious, impartial and effective investigation of all of the facts of the massacre related to the violation of the right to life and other specific violations against humane treatment, such as the alleged torture and acts of violence against women, with a gender perspective and in conformity with Articles 8(1) and 25(1) of the Convention, and the specific obligations set forth in Articles 1, 6, and 8 of the Inter-American Convention against Torture and 7(b) of the Convention of Belem do Pará [FN152].

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[FN152] Cf. Case of the Miguel Castro Castro Prison v. Peru, supra note 27, para. 378.
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C.2 Lack of investigation of those responsible and other omissions

142. Regarding the lack of investigation, arrest, and punishment of those responsible, both the representatives and the Commission have indicated that during the course of the investigation there have been a series of acts or omissions by the state authorities which constitute a lack of due diligence and the denial of justice. They have indicated that: the state authorities have thwarted the investigation, which is reflected in that none of the masterminds are being investigated; the arrest warrants against the accused have not been made effective; some witnesses in the investigation have been threatened or intimidated and were forced to leave the country; and the exhumation and identification of the victims of the massacre has not been finished. In this regard, the State acknowledged to the claims of the Commission and the representatives with regards to the rights established in Articles 8(1) and 25(1) of the Convention.

143. The Court notes that according to the facts indicated in the background (supra para. 76 and 77), at least 60 soldiers participated in the execution of the massacre, without counting other perpetrators, masterminds, and general participants in the facts [FN153]. However, as derived from the current investigation in the domestic jurisdiction, only 20 people have been identified, hence the investigations have not covered all of the allegedly responsible individuals. Likewise, several judicial authorities have ordered and reiterated the arrest of at least 17 accused at different times [FN154]. Nevertheless, only one of them was arrested, but was subsequently

released (supra para. 90). Consequently, the Court notes that in general these orders have not been carried out, and the State itself has recognized this.

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[FN153] In the investigation by the Public Prosecutor's Office, the testimonies of different people were heard, "including: survivors, next of kin of the victims [the deceased…], Commander of the Post at Las Cruces, Commander of Military zone number 23, the Army High Commander of that time, the soldiers who comprised the High Command of Military Zone 23." In this regard, according to the information provided by the State, from this investigation it was established that the alleged fact was caused by a patrol comprised of "approximately […] 20 persons [with] the support [of] a squad of 40 soldiers from Military Zone 23" and that it was possible to "identify the kaibiles, but not the soldiers of the [aforementioned] Military Zone" (State's brief on the answer to the application, fs. 417 and 418). Subsequently, the investigation was initiated in relation to 16 accused, and the corresponding arrest warrants were issued, which have not been made effective to date (State's brief on final arguments, f. 1178).
[FN154] In April of 2000 the Court of First Instance of Petén reiterated twice the 17 arrest warrants issued on October 7, 1999 and April 4, 2000 (supra para. 89). Nine of these were suspended as a result of the Judgments of the Constitutional Court of April 3 and 4, 2001 (supra para. 90), and seven remained effective, which were reiterated on March 7, 2002 (supra para. 92). On December 8, 2004 the Constitutional Court ordered the judge on the case to annul all proceedings as of December 28, 1996 (supra para. 99).
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144. Additionally, the Court considers that state authorities are obligated to collaborate in gathering evidence to achieve the goals of an investigation, and must abstain from performing acts which constitute obstructions to the investigation process [FN155]. In the instant case the Secretary of Defense refused to provide certain documentation required by the courts, arguing that the documentation had been burned or does not exist (supra para. 87). The Court deems that for the current investigation this negative response has meant, among other, preventing the identification of those who participated in the planning and execution of the massacre, as well as the personal information of those already accused in the proceeding.

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[FN155] Case of García Prieto et al. v. El Salvador, supra note 140, para. 112.
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145. In relation to the above, the Court considers that the threats and intimidations suffered by the witnesses who gave their statements in the domestic proceeding [FN156] cannot be seen separately, but must be considered within the framework of obstacles to the investigation of the case. Consequently, such facts are other means of perpetuating impunity in the instant case and preventing clarification of the truth of what occurred.

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[FN156] The State has provided protection and economic aid to those individuals who were obliged to leave the country, through the Law on the Protection of Procedural Subjects and Individuals connected with the Administration of Criminal Justice.

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146. Lastly, in relation to the exhumations performed, the Court observes that although until 1995 the State initiated a series of acts to exhume and identify the individuals who were killed in the massacre, it did not continue performing actions to search and locate the rest of the people killed. Likewise, the State has not taken steps to identify the skeletons already located, so as to end the suffering and damages to the alleged victims of the case for these facts (supra para. 86 and infra para. 246 and 247) [FN157].

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[FN157] The exhumation work began on July 4, 1994, and 162 were found at the site known as the well of Las Dos Erres. Similarly, between May 8, 1995 and July 15, 1995 the exhumation of bodies continued in the sites of La Aguada and Los Salazares, as well as the identification of 71 other persons, regarding which the Judge of the case dismissed the request for registration (supra para. 86). From the parties' claims in their main briefs and the public hearing, it derives that the majority of the bodies found remain unidentified to date, and there are others which have not been located.

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147. In this regard, the Court calls to mind that within the duty to investigate exists the right of the victim's next of kin to know what happened to them, and, when applicable, to know where their remains lay [FN158]. It is the State's responsibility to satisfy these fair expectations using the means at its disposal.

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[FN158] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 30, para. 181; Case of Anzualdo Castro v. Peru, supra note 28, para. 113, and Case of Garibaldi v. Brazil, supra note 23, para. 116.

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148. The Court considers that the State has not fully assumed the investigation of the facts of the massacre as an obligation, and that the investigation, search, arrest, prosecution, and eventual punishment of all those responsible have not been managed effectively, to fully and thoroughly examine the multiple infringements caused on the population of Las Dos Erres community. Likewise, the investigation has not been directed toward the determination and delivery of the remains of those who died in the massacre. Finally the State has not performed with due diligence the acts necessary to execute the arrest warrants that are in force, nor provided the collaboration required by the courts so as to clarify the facts. All of this to the detriment of knowing the truth of what occurred.

149. The Court considers that in a democratic society the truth on grave human rights violations must be known. This is a fair expectation that the State must satisfy [FN159], on the one hand, through the obligation to investigate the human rights violations, and on the other hand, through the public disclosure of the results of the criminal and investigation processes [FN160]. This requires the State to procedurally determine the patterns of joint action and of all

of the people who in some manner participated in said violations, and their corresponding responsibility [FN161], as well as to redress the victims of the case.

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[FN159] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 30, para. 181; Case of Kawas Fernández v. Honduras, supra note 21, para. 190, and Case of Anzualdo Castro v. Peru, supra note 28, para. 119.
[FN160] Cf. Case of Las Palmeras v. Colombia. Reparations and Costs. Judgment of November 26, 2002. Series C No. 96, para. 67; Case of Kawas Fernández v. Honduras, supra note 21, para. 194, and Case of Anzualdo Castro v. Peru, supra note 28, para. 119.
[FN161] Cf. Case of the Rochela Massacre v. Colombia, supra note 34, para. 195; Case of Valle Jaramillo et al. v. Colombia, supra note 21, para. 102, and Case of Anzualdo Castro v. Peru, supra note 28, para. 119.

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150. The representatives claimed that the "impunity and lack of complete and true information of that occurred in the massacre" has caused the State's violation of the right to the truth of the victims in the instant case, contained in Articles 1(1), 8(1), 13 and 25 of the American Convention. The Commission and the State did not comment on this issue.

151. In this regard, the Court has considered that within the framework of Articles 1(1), 8 and 25 of the Convention, the victims or their next of kin have the right, and the States the obligation, to have the facts effectively investigated by the State authorities, and to know the results of the investigation. The Court calls to mind that the right to know the truth is included in the rights of the victim or their next of kin to obtain from the competent organs of the State an elucidation on the facts of the violation and corresponding responsibilities, through the investigation and prosecution enshrined in Articles 8 and 25 of the Convention [FN162]. Therefore, in this case the Court will not adjudge on the representatives' claim of the alleged violation of Article 13 of the American Convention.

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[FN162] Cf. Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No 136, para. 78; Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 148, and Case of the Rochela Massacre, supra note 34, para. 147.

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152. Based on the foregoing, the Court verifies that the Las Dos Erres Massacre was part of a systematic context of massive human rights violations in Guatemala, in which multiple massacres occurred. Given the magnitude of the massacre, as well as the generalized context of violence exerted by the State, it is evident that the State must seriously investigate all of the allegedly responsible parties, including the participation by high officials and State employees,

as well as locating and identifying those deceased. The actions of the State's judges and the authorities' lack of willingness and interest have prevented the victims' access to justice, converting the judicial apparatus into a system indifferent to impunity.

153. Specifically, the Court considers that the indiscriminate and permissive use of judicial remedies such as the appeal for legal protection, which has been used as a pillar of impunity, along with the unjustified and deliberate delay by the judicial authorities, as well as the lack of a complete and thorough investigation of all of the facts of the massacre, have prevented the investigation, prosecution, and eventual punishment of those allegedly responsible. Based on the previous considerations and on the State's partial recognition of responsibility, the Court finds the State responsible for the violation of Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof, and for the obligations established in Articles 1, 6, and 8 of the CIPST and 7(b) of the Convention of Belém do Pará, to the detriment of the 155 victims of the instant case, in their corresponding circumstances.

154. Likewise, the Court finds the State responsible for noncompliance with Articles 1(1) and 2 of the American Convention, due to the lack of adoption of both legal and practical measures to guarantee the effectiveness of the appeal for legal protection.

IX. ARTICLES 17 [FN163] (RIGHTS OF THE FAMILY), 18 [FN164] (RIGHT TO A NAME) AND 19 [FN165] (RIGHTS OF THE CHILD) OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) [FN166] THEREOF

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[FN163] In this regard, Article 17(1) indicates that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the state."
[FN164] Article 18 establishes that "[e]very person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary."
[FN165] Article 19 establishes that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."
[FN166] Cf. Article 1(1), supra note 41.

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155. In this chapter the Court will analyze the alleged violation of the rights of the family, right to a name, and rights of the child, recognized in Articles 17, 18, and 19 of the Convention, to the detriment of Ramiro Osorio Cristales.

156. First, the Court deems it necessary to refer to the situation of the other child survivor of the massacre, Salomé Gómez Hernández, for whom the representatives claimed the violation of the rights of the child recognized in Article 19 of the American Convention, inter alia, given that the State did not provide him with "the special protective measures given his condition as a minor […]" and for the "pain caused by witnessing the facts of the massacre [and having been] obligated to live in extreme poverty." However, the Court considers that the facts related to the arguments of an independent violation of Article 19 of the Convention in detriment of Salomé Gómez Hernández, fall within the right recognized in Article 5 of said instrument, in relation to

Articles 1(1) and 19 thereof, which will be analyzed in the following chapter. Consequently, the Court will not address that violation in this section of the Judgment.

157. Regarding Ramiro Osorio Cristales, the representatives claimed the violation of the rights of the family and the right to a name, enshrined in Articles 17 and 18 of the American Convention, given that "he was forced to live […] with a family that was not his own and with a name different from that given to him by his parents" and "a different name was imposed on him, thus affecting his identity". Additionally, they claimed the violation of Article 19 of the Convention, given that the State did not take into account the best interests of the then child Ramiro Osorio Cristales "by keeping him separated from his family, with a different name and identity and […] ignoring all measures to identify and locate his biological family in order to return him to his home."

158. The Commission did not plead the violation of the aforementioned rights in the application [FN167].

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[FN167] In this regard, it is worth noting that the Commission concluded, in the report on Merits 22/08 of the instant case, that "[t]he State of Guatemala [was] responsible for the violation of human rights […] to the protection of the family and of the child, […] in conformity with Articles […] 17 [and] 19 of the American Convention, in relation to Article 1(1) thereof" (supra note 5). Similarly, the Court takes cognizance that in the Friendly Settlement Agreement of April 1, 2000, the State recognized its international responsibility for the violation of several rights, including the rights of the family and rights of the child (supra note 3).

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159. The State did not make any specific arguments to disprove the representatives' claims with regard to the alleged violations, but limited itself to questioning the Court's jurisdiction on this matter (supra para. 32).

160. The Court observes that the alleged facts on which the representatives claimed the violation of Articles 17, 18, and 19 of the Convention with regard to Ramiro Osorio Cristales are based on the fact that, after March 9, 1987, the State kept him separated from his family who survived the Las Dos Erres massacre, with another name and identity, after having been abducted and illegally retained by one of the militaries who participated in said massacre.

161. On the other hand, taking into consideration that the Commission did not claim the violation of the aforementioned Articles of the Convention to the detriment of Ramiro Osorio Cristales, the Court reiterates its constant jurisprudence, in the sense that "the alleged victim, their next of kin, or the representatives may invoke rights different from those included in the Commission's application, based on the facts presented therein." [FN168] Consequently, the Court must determine whether the claims related to the alleged violation of those Articles are based on facts contained in the application.

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[FN168] Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations, and Costs. Judgment of February 28, 2003. Series C No. 98, para 155; Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru, supra note 30, para. 97, and Case of Escher et al. v. Brazil, supra note 33, para. 191.

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162. In this regard, the Commission indicated in the application that "only two minors survived from dying in the hands of the Guatemalan army: a child who was kidnapped by one of the kaibiles, and another child who managed to escape the soldiers when they were being taken to the well" and that it "[h]as been extensively documented that several children were saved from massacres in order to be [']adopted['] by army officers or taken to their homes as servants. [An example of this practice is] precisely the case of the child survivor of the Las Dos Erres massacre, Ramiro Fernando López García, [whose biological name is Ramiro Osorio Cristales,] who was adopted by one of the soldiers who participated in the facts."

163. Additionally, in the application the Commission included Ramiro Osorio Cristales' testimony of February 11, 1999 before the Judge of the First Criminal Court of Petén, on that occurred in the community of Las Dos Erres, in which he expressed that "the [kaibil Santos López Alonso] took him along with him through the mountain and shared his food with [him], and that's how he [ended] up in the School for Kaibiles[. He was] at the School for Kaibiles for approximately two months, from there [he] took him to his house, registered [him] in Santa Cruz Muluá-Retalhuleu, with his surnames." [FN169]

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[FN169] Statement of Ramiro Fernando López García as evidence produced before trial of February 11, 1999, rendered before the Judge of the First Departmental Instance (Appendixes to the Application, judicial file, pieces VI to XIII. Appendix 29, f. 3827 to 3828).

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164. Therefore, the Court considers that the claims related to the alleged violation of Articles 17, 18, and 19 of the Convention to the detriment of Ramiro Osorio Cristales, are based on the factual background of the application submitted by the Commission.

165. Regarding the alleged violation of Article 18 of the Convention, the Court notes that although this Article was not claimed by the representatives in the proceeding before the Commission, the Court has established in its constant jurisprudence that this does not necessarily constitute "an impairment or breach of the State's right to defend itself, which has the procedural opportunity to respond to the allegations of […] the representatives in all stages of the proceeding before the Court. Finally, it is the Court's responsibility to decide in each case on the admissibility of the claims of this nature so as to safeguard the procedural equity of the parties." [FN170]

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[FN170] Cf. Case of the " Mapiripán Massacre" v. Colombia, supra note 19, para. 58; Case of Perozo et al. v. Venezuela, supra note 31, para. 32, and Case of Reverón Trujillo v. Venezuela, supra note 29, para. 135.

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166. In the instant case, the Court observes that the alleged violation of Article 18 is based on the name change of child Ramiro, from Ramiro Osorio Cristales to Ramiro Fernando López, after his abduction and illegal retention by a kaibil who participated in the massacre. These facts were indicated by the Commission in its application, and the representatives referred to them (supra para. 162 and 163). Additionally, the Court verified that the State had the opportunity to refer to that claim on several procedural occasions. However, the State did not submit specific arguments on this alleged violation, limiting itself to questioning the Court's jurisdiction (supra para. 32), and in the hearing it only referred to the alleged activities performed in 1999 to locate Ramiro Osorio Cristales, along with FAMDEGUA.

167. Consequently, the Court considers that the lack of a claim on Article 18 in the proceeding before the Commission has not affected the procedural equity of the parties, or impaired the States' right to defend itself, as it has had the opportunity to submit its arguments and evidence throughout the proceeding before this Court.

168. Before analyzing the alleged violation of the rights of the family, right to a name, and rights of the child recognized in Articles 17, 18, and 19 of the American Convention, to the detriment of Ramiro Osorio Cristales, the Court deems it necessary to analyze the context of the violations claimed, and to review the facts so as to provide the context of the factual situation of the instant case.

1. Context and background

A) Existence of a systematic practice

169. The representatives claimed that "the concrete facts of the case were part of a systematic practice of violations committed against children during the internal armed conflict of Guatemala."

170. Consequently, the Court will analyze the existence of this systematic practice of violations against children, and its relevance in this concrete case. In this regard, several reports analyzing the internal conflict in Guatemala [FN171] indicate that apart from the existence of a context of violence in which children were particularly affected, there was also a pattern of separation of children from their families and abduction and illegal retention of these children. In many cases this practice included changing their name and denying them their identity, and in some cases these abductions and illegal retentions were perpetrated by the same soldiers who participated in the massacres. [FN172]

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[FN171] Cf. CEH, Guatemala: Memory of Silence, supra note 6, Volume V, Conclusions and Recommendation (Appendixes to the brief of pleadings and arguments, appendix 33, f. 10933) and Volume III, Book 3, "Violence against Children", pp. 71 and 72; Office of Human Rights of the Archdiocese of Guatemala (ODHAG), Guatemala Never Again, Report of the REMHI Project, published in 1998 (Appendixes to the brief of pleadings and motions, appendix 32,

Volume 1, fs. 10019 and 10020); ODHAG, "Hasta Encontrarte: Niñez Desaparecida por el Conflicto Armado Interno en Guatemala" (Until I find you: Children Disappeared in the Internal Armed Conflict in Guatemala), 2000 (Appendixes to the brief of pleadings and motions, appendix 36, fs. 10995 to 11156); CIDH, Fifth Report on the Human Rights Situation in Guatemala, OEA/Ser.L/V/II.111, Chapter XII, "Rights of the Child". Section C, approved on April 6, 2001, para. 27 and 28. Available at http://www.cidh.oas.org/countryrep/Guatemala01sp/indice.htm; CIDH, Justice and Social Inclusion: The Challenges to Democracy in Guatemala, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003, para. 377 and 378. Available at http://www.cidh.org/countryrep/Guatemala2003sp/indice.htm, and expert opinion of Marco Antonio Garavito Fernández rendered on June 8, 2009 before a public notery (file on preliminary objections, and possible merits, reparations, and costs, Volume IV, f. 604).
[FN172] Cf. Expert opinion of witness Marco Antonio Garavito Fernández, supra note 171, f. 604; ODHAG, REMHI, Guatemala Never Again, supra note 171, fs. 10019 and 10020; ODHAG, Hasta Encontrarte, supra note 171, f. 11063).

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171. In this regard, the report by the CEH, Guatemala: Memory of Silence indicated that:

[a]fter the massacres or scorched earth operations, many children who could already fend for themselves were taken by the soldiers, commissioned soldiers, or patrol members to subject them to a servile condition in their houses or those of other families. Some of these children were subjected to situations of exploitation and systematic abuse […] According to the testimonies received by the CEH, children had to perform domestic work or several tasks ordered to them in the houses where they were located. They suffered all types of physical and psychological mistreatment. These children suffered, along with the infringement of their right to individual liberty, the breach of all of their human rights, given that the conditions of servitude to which they were submitted to also affected their physical and psychological integrity, and kept them in a situation of economic exploitation, abuse, and permanent fear. Additionally, their right to an identity was breached, as well as their right to grow within their own family and community. In some cases their names were changed, and they were denied the origin of their families, or this origin was stigmatized [FN173].

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[FN173] CEH, Guatemala: Memory of Silence, supra note 6, Volume III, Violence against children, p. 71 and 72.

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172. The report Guatemala Never Again of the Project for the Recovery of the Historical Memory of the Office of Human Rights of the Archdiocese of Guatemala (hereinafter "REMHI, Guatemala Never Again") indicated that "[t]here are some cases of children who were separated from their families or communities, kidnapped and adopted in a fraudulent manner by those who victimized their families. This practice has condemned them to live with their families' assassins." [FN174]

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[FN174] REMHI, Guatemala Never Again, supra note 171, f. 10020.
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173. The same report cites declarations by General Héctor Gramajo [FN175] published in the Guatemalan newspaper "Prensa Libre" on April 6, 1989, according to which, when he was Secretary of Defense, this practice was frequent at some times, affecting a large number of children. According to General Gramajo "[a] lot of the families of army officers have grown with the [']adoption['] of children, victims of the violence, given that at certain points it became fashionable among army ranks to take care of 3 or 4 year old children […]." [FN176]

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[FN175] General Héctor Gramajo was Secretary of Defense during the Government of Vinicio Cerezo Arévalo from 1985 to 1990.
[FN176] REMHI, Guatemala Never Again, supra note 171, f. 10020.
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174. The report "Hasta Encontrarte, Niñez Desaparecida Por el Conflicto Armado Interno en Guatemala" (Until I find you, Missing Children of the internal armed conflict of Guatemala) of the Human Rights Office of the Archdiocese of Guatemala [FN177] (hereinafter "ODHAG, Hasta Encontrate"), highlights the problem of disappeared children as a consequence of said internal conflict, and indicates that "of the total cases of missing children documented in the investigation process, 69% were taken to different military units after their capture" and points out several "cases where a member of the Army took a boy/girl, […] after the Army massacred his/her community" [FN178]. The report establishes that at the time of the facts of the instant case there were "at least 444 cases of boys and girls who disappeared due to the internal armed conflict in Guatemala. [FN179]"

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[FN177] ODHAG, Hasta Encontrarte, supra note 171, fs. 10042 and 10995.
[FN178] ODHAG, Hasta Encontrarte, supra note 171, fs. 11042 and 11043.
[FN179] ODHAG, Hasta Encontrarte, supra note 171, f. 11051.
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175. Additionally, this report by the ODHAG, Hasta Encontrarte, indicates that the crime of illegal abduction and retention of minors was committed, given that:

[d]uring the armed conflict there were illegal adoptions. As previously indicated, the dynamics of the conflict, which facilitated impunity, allowed for boys and girls to be delivered by those who victimized them to military, civil, or religious entities or individuals, and it is believed that in a great number of cases they were [']adopted['] without observing the legal procedures. Procedural irregularities such as the forging of birth certificates, or changes in identity through new registrations, allowed for children to the adopted by foreigners, nationals, and even the families of those who victimized them. The factual adoptions or integration of the victims to substitute homes, in many cases were performed arbitrarily by those who victimized them, or by social, public, or private entities who ignored the family investigation phase, making more complex the phenomenon of forced disappearance of children [FN180].

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[FN180] ODHAG, Hasta Encontrarte, supra note 171, f. 11120.

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176. The same report by the ODHAG, Hasta Encontrarte, highlights that "in many known cases it has been possible to detect that the relocation of disappeared boys and girls meant a change of name and surnames, which not only occurred in the cases of ['adoption['] outside and within Guatemala, but also in those who stayed in the country living with other families" [FN181].

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[FN181] ODHAG, Hasta Encontrarte, supra note 171, f. 11063.

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177. Based on the foregoing and on the evidence submitted, the Court concludes that it has been established that at the time of the facts there existed in Guatemala a pattern of separation of children from their families after the massacres perpetrated by the armed forces, and of abduction and illegal retention of these children, in some cases by the soldiers themselves. Additionally, it has been established that this practice entailed, in many cases, changing their name and denying the children's identity. The State neither has denied, nor claimed ignorance of this situation.

178. For purposes of the instant case, the Court will take into account this practice of kidnapping and retaining children, and that the State was aware of it, and it will value this as a precedent for the alleged violations. Consequently, the Court must establish the extent to which the background of the instant case and the situation of Ramiro Osorio Cristales after March 9, 1987, fit into this framework of systematic practice of abductions and illegal retention of children, as claimed by the representatives. For purposes of this analysis, the facts of the instant case will be divided into two periods: the first corresponds to the facts which occurred prior to the State's recognition of the Court's obligatory jurisdiction on March 9, 1987, and the second to the facts which comprise the factual situation of Ramiro Osorio Cristales after that date.

B) Facts prior to March 9, 1987

179. The Court takes note that the State has recognized the facts occurred prior to March 9, 1987, therefore the Court will consider them precedents to the instant case. It has been established that:

a) at the time of the massacre of the Las Dos Erres community Ramiro Osorio Cristales was six years old and lived there with his family [FN182];
b) during the massacre Ramiro Osorio Cristales witnessed the execution of his mother and sister, and heard the cries of the rest of the members of the community when they were executed [FN183];

c) Ramiro Osorio Cristales was taken from the community of Las Dos Erres by the kaibil Santos López Alonso [FN184], along with the group of kaibiles who perpetrated the massacre. He was with them for several days during their march through the woods [FN185], was picked up along with this group of kaibiles by an army helicopter [FN186] and then remained in the school for kaibiles for two months [FN187]. During this time, his presence was known by the other kaibiles. At that same time, Mr. Santos López Alonso was at that school for kaibilies, were he worked as an instructor [FN188];
d) the kaibil Santos López Alonso took Ramiro Osorio Cristales to his home [FN189], and registered him under his last name and that of his wife, with the name Ramiro Fernando López García [FN190];
e) the kaibil Santos López Alonso was fined when registering Ramiro Osorio Cristales "for not having registered [the] birth within the term provided by law," [FN191] and
f) Ramiro Osorio Cristales lived with the family of kaibil Santos López Alonso, under the name Ramiro Fernando López García, since 1983. [FN192]

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[FN182] Statement by Ramiro Osorio Cristales rendered on July 14, 2009 at the public hearing held by the Court in La Paz, Bolivia, and statement by "Ramiro Fernando López García" as evidence produced before trial, supra note 169.
[FN183] Statement by Ramiro Osorio Cristales, supra note 182, and statement by "Ramiro Fernando López García" as evidence produced before trial, supra note 169.
[FN184] Testimony of Flavio Pinzón Jerez of March 17, 2000 before the Court of First Instance of Petén (Appendixes to the application, judicial file, pieces VI to XIII, appendixes 22 to 29, f. 3906).
[FN185] Two kaibiles who participated in the massacre declared that two surviving children were with the patrol during 8 days. According to Flavio Pinzón Jerez "of the two children left one had been taken by Lieutenant Ramírez Ramos and the other by Specialist Santos López Alonzo [afterward] the helicopter arrived [and] they put the children in the helicopter at the same time." Cf. Testimony of Flavio Pinzón Jerez, supra note 184, fs. 3906 and 3907, and testimony of César Franco Ibáñez provided on March 17, 2000 before the Court of First Instance of Petén (Appendixes to the application, judicial file, pieces VI to XIII, appendixes 22 to 29, f. 3903), and statement by Ramiro Osorio Cristales, supra note 182.
[FN186] Statement by Ramiro Osorio Cristales, supra note 182.
[FN187] Statement by "Ramiro Fernando López García" as evidence produced before trial, supra note 169, fs. 3827 to 3831, and statement by Ramiro Osorio Cristales, supra note 182.
[FN188] Ramiro Osorio Cristales expressed that "[after the massacre] they took us through the mountains and an elite troops helicopter went to pick us up, I remember the colors white and blue, it took us to the school in Kalure, supposedly to get information on whether the village had links to the guerrilla. We were at the school in Kalure between one and a half to two months. I was the last child left, because all of the officers had taken a child, there was an officer, Lieutenant Rivera, and I remember his last name, he told me that he was going to take me to his house. Mr. Santos López Alonso, who was sub-instructor of the kaibiles and planner of the kaibiles school, he then came to win me over, giving me bread, and told me that if I left with that lieutenant I was going to get killed. So on the day when that lieutenant was leaving on a license or vacation I hid, I climbed on an orange tree and waited until he left. The following weekend this other man was also leaving on a license. He then took me to his home, and that's how he

adopted me as his son. But it really wasn't like that. […] I lived with him for nineteen years […]. I thought of running away but really had no idea where to go" and that "[a]fter this man took [him] to his house, he registered [him] as his son Ramiro Fernández López García". Statement of Ramiro Osorio Cristales, supra note 182.
[FN189] Cf. Testimony of Flavio Pinzón Jerez, supra note 184, f. 3906.
[FN190] Birth certifícate of Ramiro López García of August 15, 1983 (Appendixes to the application, judicial file, pieces VI to XIII, appendix 29, f. 3846); statement by Ramiro Osorio Cristales, supra note 182; minutes of the testimony of Lidia García Pérez, supra note 67, and brief for the arrest warrant against Mr. Santos López Alonso of September 20, 1999 (Appendixes to the application, judicial file, pieces VI to XIII, appendix 29, fs. 3833 to 3835).
[FN191] Birth certifícate of Ramiro López García of August 15, 1983, supra note 190, f. 3846.
[FN192] In this regard, Ms. Lidia García Pérez, wife of kaibil Santos López Alonso, expressed that Ramiro Osorio Cristales was not her biological child "because my husband brought him when he was little […] When he brought him he told me that they had given the child to him at the Kaibiles school […] in May 1983." She also indicated that until Ramiro Osorio Cristales reached the legal age she found out about his true origins, when her husband told her that he "had been taken out of las Dos Erres." Minutes of the testimony of Lidia García Pérez, supra note 66, f. 3870. Cf. Statement by Ramiro Osorio Cristales, supra note 182.

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C) Facts after March 9, 1987

180. Additionally, having examined the statements of the alleged victim, the witnesses, expert opinions, and the arguments of the Commission, the representatives and the State during the instant proceeding, the Court considers the following facts established:

a) Ramiro Osorio Cristales remained in the situation described above (supra para. 180.d and 180.f) until 1999; [FN193]
b) in 1999 he was contacted by FAMDEGUA and the Public Prosecutor's Office, within the framework of the investigation of the massacre; [FN194]
c) in February 1999 he gave his testimony of that occurred within the framework of the investigation on this massacre, and was forced to leave Guatemala because his life was at risk; [FN195]
d) it was until then -1999- that he became aware that he had biological family who had not died in the massacre, wit whom he reunited with after 18 years; [FN196]
e) a DNA test in 1999 proved his kinship to his biological family, [FN197] and
f) on May 15, 2002 Ramiro Osorio Cristales changed his surnames in order to recover the name given to him by his parents. [FN198]

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[FN193] Statement by Ramiro Osorio Cristales, supra note 182.
[FN194] Statement by Ramiro Osorio Cristales, supra note 182.
[FN195] Statement by Ramiro Osorio Cristales, supra note 182, and request by the Public Prosecutor's Office to the Court of First Instance of Petén to receive the testimony by "Ramiro Fernando López García" as evidence produced before trial (Appendixes to the application, judicial file, pieces VI a XIII, appendixes 22 to 29, f. 3816).

[FN196] In this regard, Ramiro Osorio Cristales declared the following in the public hearing: "that is how I found out that I had family, […] I have grandparents, a brother, uncles, aunts. This was on the 20th […] I'm not sure whether February 21 or 22 [1999], because I left Guatemala on February 23 for Canada. Meeting my family was very nice, knowing that I was not alone. Because I though that I was alone in this world. They had killed my parents, my brothers, and destroyed everything. I thought that I had no more family, but thank God I do have family, and it was very nice yet sad at the same time because I had to leave them." Statement by Ramiro Osorio Cristales, supra note 182. Cf. Statement by Miguel Ángel Cristales, maternal grandfather, and Reina Montepeque, maternal grandmother of Ramiro Osorio Cristales provided on February 23, 1999 before the Public Prosecutor's Office, supra note 67, fs. 3862 to 3866).
[FN197] File of June 24, 1999 containing the results of the DNA affinity tests performed (Appendixes to the application, judicial file, pieces VI to XIII, appendix 29, f. 3854), and statement by Ramiro Osorio Cristales, supra note 182.
[FN198] Statement by Ramiro Osorio Cristales, supra note 182, and certifícate of the government of Manitoba, Canada, which certifies the name change of Ramiro Fernando López to Ramiro Osorio Cristales on May 15, 2002 (file on preliminary objections, possible merits, reparations, and costs, evidence to facilitate adjudication of the case submitted by the representatives on September 11, 2009, Volume VI, f. 1163).
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181. The Court notes, firstly, that the State has not claimed ignorance of these facts, and has not contested them. Additionally, the facts that generated the alleged violation, meaning the abduction and illegal retention of the child Ramiro Osorio Cristales were perpetrated by the Kaibil Santos López Alonso, a state agent. This kidnapping occurred within the framework of an official military operation, which was carried out by orders of the superior in command. [FN199] Everything indicates that it happened publicly, and with the knowledge of his peers and superiors. [FN200] Secondly, it has been proven that Ramiro Osorio Cristales walked with the kaibiles who perpetrated the massacre during several days through the mountains, [FN201] and was picked up with them in helicopters of the armed forces, which took them to the school for kaibiles. [FN202] Thirdly, Ramiro Osorio Cristales remained at that school for at least two months, with the knowledge of other kaibiles and superiors present, until the kaibil Santos López Alonso took him to his house. [FN203]

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[FN199] The former kaibil Flavio Pinzón Jerez, who participated in the massacre, indicated in his statement within the domestic proceeding that "[d]uring the first days of December all of the kaibiles patrol was gathered, and they told us what we had to do in "Las Dos Erres" […]. During the meeting they explained to us that they had orders to go to the community of "Las Dos Erres," which was a conflictive area, and that we had to destroy the village, anything seen moving had to be killed." Statement by Favio Pinzón Jerez provided on August 22, 1996 before a public notery (appendixes to the application, appendixes 1 to 16, f. 2873), and see also the testimony of César Franco Ibáñez, supra note 185, fs. 3895 to 3911.
[FN200] Testimony of Flavio Pinzón Jerez, supra note 184, fs. 3906 and 3907.
[FN201] Statement by Ramiro Osorio Cristales, supra note 182.
[FN202] Statement by Ramiro Osorio Cristales, supra note 182.

[FN203] Statement by Ramiro Osorio Cristales, supra note 182, and testimony of César Franco Ibáñez, supra note 185, f. 3903.

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182. Additionally, the fact that there was a domestic proceeding on the Las Dos Erres Massacre as of 1994, in which Ramiro Osorio Cristales was asked to provide his testimony in 1999 as evidence produced before trial, is another element that proves that the State had knowledge of the existence of Ramiro Osorio Cristales and of his situation. Likewise, the Court finds that the facts of this case clearly fall within a systematic pattern of abduction and illegal retention of minors, perpetrated and tolerated by state actors.

183. Having established the facts related to the alleged violation of the rights of the family and right to a name, recognized in Articles 17, 18, and 19 of the American Convention, to the detriment of Ramiro Osorio Cristales, the Court must examine whether these generate international responsibility for the State.

2. Rights of the family (Article 17), Right to a name (Article 18), and Rights of the Child (Article 19)

184. Regarding the rights of the child enshrined in the Convention, the Court has established that children have special rights which correspond to specific obligations of the family, society, and the State. Additionally, their condition demands special protection by the latter, which must be understood as an additional right and complementary to the other rights recognized to all persons under the Convention. [FN204] The prevalence of the best interests of the child must be understood as the need to satisfy all of the rights of the child, which binds the State and affects the interpretation of all other rights contained in the Convention when the case refers to minors. [FN205] Likewise, the State must pay special attention to the needs and the rights of children, considering their particularly vulnerable condition.

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[FN204] Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 27, para. 53, 54 and 60; Case of the Girls Yean and Bosico v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005, Series C No. 130, para. 133, and Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 113.
[FN205] Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 204, para. 56, 57 and 60, and Case of the Girls Yean and Bosico v. Dominican Republic, supra note 204, para. 134.

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185. Likewise, the Court has established on repeated occasions, through the analysis of the general rule enshrined in Article 1(1) of the American Convention, that the State is obliged to respect the rights and freedoms recognized therein, and to organize the public authorities so as to guarantee to all individuals subject to its jurisdiction the free and full exercise of human rights [FN206]. This obligation not only assumes that States will refrain from inferring inadequately the rights guaranteed in the Convention (negative obligation), but also, in light of their obligation

to guarantee the full and free exercise of human rights, requires that the States adopt all necessary measures to protect and preserve the rights (positive obligation) [FN207] of all those subject to its jurisdiction.

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[FN206] Cf. Case of Velásquez Rodríguez. Merits, supra note 30, para. 165 to 167; Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 97, and Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 142.

[FN207] Cf. Case of Velásquez Rodríguez. Merits, supra note 30, para. 164; Case of Zambrano Vélez et al. v. Ecuador, supra note 109, para. 80, and Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 75.

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186. In view of the foregoing, the Court notes that at the time when the State recognized the Court's obligatory jurisdiction, Ramiro Osorio Cristales was a child [FN208]. Consequently, the State owed him special, additional, and complementary measures of protection, so as to guarantee the enjoyment and exercise of his rights, including the right to a family and right to a name. Consequently, the Court will analyze the alleged violation of Article 19 of the Convention along with the other violations claimed.

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[FN208] The Court takes cognizance that at the time of the State's acceptance of the Court's jurisdiction in 1987, Ramiro and Armando were 11 and 16 years old, respectively, hence the Court will refer to the alleged victim as children. Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 supra note 203, para. 42.

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187. In relation to the rights of the family, the Court has established in its jurisprudence that the separation of children from their family constitutes, under certain conditions, a violation of his right to a family, enshrined in Article 17 of the American Convention [FN209].

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[FN209] Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 204, para. 71.

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188. Additionally, the Court has indicated that the "child has the right to live with this family, which is called upon to satisfy his material, emotional, and psychological needs. The right of all persons to receive protection against arbitrary or illegal interference with his family, is implicitly part of the right to the protection of the family and of the child, and is expressly recognized in Articles 12(1) of the Universal Declaration of Human Rights [FN210], V of the American Declaration of the Rights and Duties of Man [FN211], 17 of the International Pact on Civil and Political Rights [FN212], 11(2) of the American Convention on Human Rights [FN213], and 8 of

the European Convention on Human Rights [FN214]. These provisions have special relevance when analyzing the separation of a child from his family [FN215].

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[FN210] Article 12.1 establishes that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honor or reputation. Everyone has the right to the protection of the law against such interferences or attacks.”
[FN211] Article V establishes that "[e]very person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.”
[FN212] Article 17 establishes that “[n]o one shall be subjected to arbitrary or illegal interference with his privacy, address, or correspondence, or to illegal attacks upon his honor and reputation.”
[FN213] Article 11(2) establishes that “[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.” Article 11(3) establishes that “[e]veryone has the right to the protection of the laws against such interference or attacks.”
[FN214] In this regard, Article 8(1) of the European Convention on Human Rights and Fundamental Freedoms establishes that: “[e]veryone has the right to respect for his private and family life, his home and his correspondence.” Likewise, Article 8(2) establishes that “[t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
[FN215] Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 204, para. 71.
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189. Likewise, the jurisprudence of the European Court on Human Rights has indicated that the mutual enjoyment of the coexistence between parents and their children constitutes a fundamental element of family life, [FN216] and that Article 8 of the European Convention on Human Rights not only has the goal of protecting the individual against arbitrary interference by public authorities, but also presupposes positive obligations by the State to honor effective respect for family life. [FN217]

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[FN216] Eur. Court H.R., Case of Buchberger v. Austria, Judgment of 20 December 2001, para. 35, Eur. Court H.R., Case of T and K v. Finland, Judgment of 12 July 2001, para. 151, Eur. Court H.R., Case of Elsholz v. Germany, Judgment of 13 July 2000, para. 43, Eur. Court H.R., Case of Bronda v. Italy, Judgment of 9 June 1998, Reports 1998 a IV, para. 51, y Eur. Court H.R., Case of Johansen v. Norway, Judgment of 7 August 1996, Reports 1996 a IV, para. 52, and Juridical Condition and Human Rights of the Child, OC-17/02, supra note 204, para. 72.
[FN217] Eur. Court H.R., Case of Olsson v. Sweden, judgment of March 24, 1988, series A, n. 130, para. 81. In this case the European Court inferred from the positive obligation of the State the obligation to take all measures necessary to terminate the separation when it is not necessary, thus facilitating the family’s reunion. “The care decision should therefore have been regarded as

a temporary measure, to be discontinued as soon as circumstances permitted, and any measures of implementation should have been consistent with the ultimate aim of reuniting the Olsson family."

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190. The same can be inferred from the provisions contained in the Convention on the Rights of the Child, which establishes that the rights of children require not only that the State should abstain from improperly interfering in the private or family relationships of a child, but also to adopt positive measures to ensure full enjoyment of his/her rights. This requires the State, within its responsibility over the public welfare, to protect the family's superior role in protecting the child; and to offer assistance to the family by means of public authorities, through the adoption of measures that promote the family unit. [FN218]

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[FN218] Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 204, para. 88.

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191. Finally the Court notes that, within the context of an internal armed conflict, the State's obligations toward children are defined in Article 4(3) of the Geneva Conventions' Additional Protocol II. This Article establishes that: "the children will be provided with the care and help they need, and, particularly: […] b) the timely measures to facilitate the reunion of the temporarily separated families will be taken […]". According to the International Committee of the Red Cross, this obligation has been defined as follows: "the parties to the conflict should do everything possible to reestablish family ties, that is, not only allow the members of the dispersed families to search for their next of kin, but also facilitate this search." [FN219]

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[FN219] Commentary on additional Protocol II to the Geneva Conventions of 1949 regarding the protection of the victims of armed conflicto that are not of an international character. Section B. Reunion of Families, para. 4553, Available at http/www.icrc.org.

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192. In relation to the right to a name, the Court notes that it has established in its jurisprudence that the "right to a name, recognized in Article 18 of the American Convention, constitutes a basic and indispensable element of each person's identity." [FN220] In this regard, the Court has indicated that "the States should guarantee that a person is registered with the name chosen by that person or his/her parents, depending on the time of the registration, without any sort of restriction on the right nor interference with the decision to choose a name. Once the person is registered, their possibility to preserve and reestablish their name and surname should be guaranteed. The names and surnames are essential to formally establish a link between the various members of the family." [FN221]

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[FN220] Case of the Girls Yean and Bosico v. Dominican Republic, supra note 204, para. 182.
[FN221] Case of the Girls Yean and Bosico v. Dominican Republic, supra note 204, para. 184.
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193. The European Court also ruled on the matter of the right to a name that "is a means of personal identification and of relation or incorporation to the family, the name of a person affects the family […] life of this person." [FN222]

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[FN222] Eur. Court. H.R., Burghartz v. Switzerland, judgment of 22 February 1994, Series A no. 280 – 3, p. 28 para. 24 "[…] Article 8 (art. 8) of the Convention does not contain any explicit provisions on names. As a means of personal identification and of linking to a family, a person's name none the less concerns his or her private and family life".
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194. Based on the foregoing considerations, it is the Court's role to determine whether the State is responsible for the violations of the right to a name, rights of the family, and rights of the child, to the detriment of Ramiro Osorio Cristales. To this end, the Court reiterates that as of March 9, 1987, when Guatemala recognized the Court's jurisdiction, Ramiro Osorio Cristales was separated from his family, living under another name and identity, and with a family that was not his own. The separation from his family persisted until 1999, when Ramiro Osorio Cristales reunited with his biological family. Likewise, the name change, based on his abduction and illegal retention by the kaibil Santos Lopez Alonso, was maintained until 2002, when he recovered the name given to him by his parents.

195. The Court considers that the State had the obligation to adopt all positive measures necessary to guarantee that Ramiro Osorio Cristales could fully enjoy the right to live with his biological family, as well as his right to the name given to him by his parents. These rights, and the corresponding obligation by the State to guarantee that their enjoyment and exercise are permanent, exist for the State since May 25, 1978 when Guatemala ratified the American Convention. However, this Court will rule on a possible violation of these rights only after March 9, 1987, date when the State recognized this Court's jurisdiction, based on the factual situation existing after that date.

196. As the Court has already established, the State was aware of the existence of Ramiro Osorio Cristales and of the situation he was in (supra para. 181 and 182) However, until 1999 it omitted every measure to guarantee Ramiro Osorio Cristales his rights to a family and to a name.

197. The Court reiterates that, according to the rules on the international responsibility of the State applicable in International Law on Human Rights, the action or omission by any public authority constitutes an act attributable to the State that compromises its responsibility under the terms established in the American Convention [FN223]. In these provisions, in order to establish whether there has been a violation of the rights set forth in Convention, it is not necessary to determine, as in the domestic criminal law, the guilt of the perpetrators or their premeditation, and it is also not necessary to individually identify the agents to whom the violations are

attributable [FN224]. It is sufficient to have an obligation by the State which it has failed to comply with [FN225].

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[FN223] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 30, para. 164; Case of Perozo et al. v. Venezuela, supra note 31, para. 120, and Case of Anzualdo Castro v. Peru, supra note 28, para. 37.
[FN224] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 30, para. 173; Case of Perozo et al. v. Venezuela, supra note 31, para. 128, and Case of Kawas Fernández v. Honduras, supra note 21, para. 73.
[FN225] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 30, para. 134 and 172; Case of Zambrano Vélez et al v. Ecuador, supra note 109, para. 104, and Case of Kawas Fernández v. Honduras, supra note 21, para. 73.

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198. Although in 1999 the State approached Ramiro Osorio Cristales requesting his statement as evidence produced before trial on the events of the Las Dos Erres Massacre, [FN226] prior to that date it had not performed any activity meant to reunite him with his biological family or return his name and identity. This omission by the State delayed and even denied Ramiro Osorio Cristales the opportunity to reestablish ties with his family and to recover his name and last names. It thus failed to comply with the obligation to adopt positive measures to promote the family unit, to ensure the full enjoyment and exercise of the right to a family, and to guarantee Ramiro Osorio Cristales' right to the name, which, as a means of personal identification and relation to the person's biological family, particularly affects his private and family life. This failure to comply is particularly grave because it is part of a systematic pattern of tolerance and lack of interest by the State, which did not adopt the necessary positive measures for at least two decades.

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[FN226] The alleged activity by the State to locate Ramiro Osorio Cristales in 1999 was questioned by him in his statements during the private hearing. According to these statements, the initiative and mian activity that led to finding him 1999 was by FAMDEGUA, not by the State. In this regard, several reports indicated that the national authorities did not take measures to establish the identity and whereabouts of the "adopted" children, which remained separated from their biological family and registered with the names of their "adoptive" families, until their families, or FAMDEGUA in a lot of cases, were able to find them after years of searching for them.

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199. In this sense, and in light of Article 19 of the American Convention, the Court reiterates the special gravity of being able to attribute to a State Party to the Convention the charge of having applied or tolerated within its territory a systematic practice of abductions and illegal retention of minors [FN227] (supra para. 177).

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[FN227] Cf. Case of the "Street Children" (Villagrán Morales) v. Guatemala. Merits. Judgment of November 19, 1999. Series C. No. 63, para. 191, and Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 204, para. 24.

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200. Consequently, the Court finds that the absolute lack of state action after March 9, 1987 and until 1999, to reunite Ramiro Osorio Cristales with his biological family and to reestablish his name and surnames, constitutes a violation of his right to a family and right to a name, recognized in Articles 17 and 18 of the Convention, in relation to Articles 1(1) and 19 thereof.

X. ARTICLE 5(1) (RIGHT TO HUMANE TREATMENT) [FN228] OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT THE RIGHTS) [FN229] AND 19 (RIGHTS OF THE CHILD) [FN230] THEREOF

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[FN228] In this regard, Article 5(1) indicates that "[e]very person has the right to have his physical, mental, and moral integrity respected."
[FN229] Cf. Article 1(1), supra note 41.
[FN230] Cf. Article 19, supra note 165.

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201. The Inter-American Commission has not expressly claimed the violation of Article 5(1) of the Convention. However, it has expressed that "impunity constitutes a breach of the State's duty which harms the victim, its next of kin, and the society as a whole, and is conducive to the chronic repetition of the related human rights violations," and, in its opinion, would derive in the right to receive reparations.

202. The representatives, in their brief of pleadings and motions, as well as in their closing arguments, claimed the violation of Article 5 of the American Convention, in relation to Article 1(1) of that treaty, on the grounds, inter alia, that the State has recognized that it has not conducted a full and effective investigation leading to the determination and eventual punishment of those responsible, nor has it performed actions to prevent those allegedly responsible to continue to be linked to power, which has produced sentiments of impotence, indignation and pain in the alleged victims, and that the level of violence that characterized the massacre caused profound suffering among the next of kin, which has persisted over the years.

203. The State did not specifically challenge the representatives' claims regarding this Article, but only referred to claims regarding the Court's jurisdiction.

204. The Court observes that the Inter-American Commission, in its claims on reparations, indicated that the impunity that persists in the instant case contributes to the prolongation of the suffering caused to the relatives of the deceased due to the grave violations that occurred. However, despite the gravity and nature of the alleged human rights violations perpetrated in the instant case, that is, the denial of justice and impunity that persists 15 years after the judicial proceeding began, as the facts have not been clarified or prosecuted, or those responsible punished, it did not submit before this Court the alleged violation to humane treatment

recognized in Article 5(1) of the Convention, to the detriment of the 155 alleged victims of the case.

205. The Court has already indicated that the representatives of the alleged victims or their families can claim rights different from those pleaded by the Commission in its application, and it has created the exception that these should abide by the facts already contained therein (supra para. 161)

206. In its most recent jurisprudence in cases of massacres, the Court has reiterated that the relatives of the victims of certain human rights violations, such as massacres, may, in turn, become victims of violations to their personal integrity [FN231]. The Court established in the Case of the Ituango Massacres that "in a case such [as this one], the Court considers that evidence is not necessary to demonstrate the grave infringements to the mental integrity of the relatives of the executed victims [FN232]." In this type of cases the Court has considered the right to mental and moral integrity of the victims' next of kin to be violated, due to the additional suffering and pain that they have endured because of the subsequent acts or omissions of state authorities regarding the facts [FN233], and due to the lack of effective remedies [FN234]. The Court has considered that "performing an effective investigation is an essential and conditioning element to protect certain rights that are affected or nullified by these situations, [FN235]" as with the right to humane treatment in the instant case.

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[FN231] Cf. Case of the Mapiripán Massacre v. Colombia, supra note 19, para. 146; Case of the Rochela Massacre v. Colombia, supra note 34, para. 137, and Case of the Miguel Castro Castro Prison v. Peru, supra note 27, para. 335.
[FN232] Cf. Case of the Mapiripán Massacre v. Colombia, supra note 19, para. 146, and Case of the Ituango Massacres v. Colombia, supra note 17, para. 262.
[FN233] Cf. Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, para. 114 to 116; Case of Albán Cornejo et al v. Ecuador, supra note 18, para. 46, and Case of Heliodoro Portugal v. Panama, supra note 23, para. 163.
[FN234] Cf. Case of the Serrano Cruz Sisters v. El Salvador, supra note 36, para. 113 to 115; Case of La Cantuta v. Peru. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 125, and Case of Anzualdo Castro v. Peru, supra note 28, para. 133.
[FN235] Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 145; Case of La Cantuta v. Peru, supra note 234, para. 110, and Case of Heliodoro Portugal v. Panama, supra note 23, para. 115.

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207. Likewise, the Court considers that in the instant case it cannot fail to note the State's policy during the internal conflict, which was comprised of military acts, including massacres and "scorched earth" operations (supra para. 71 and 73), objective was to destroy the entire core family unit, which, by the nature of a massacre itself, affected the entire family in the broader sense. The Las Dos Erres Massacre falls within this context.

208. As established, the Court granted full juridical effects to State's partial recognition of international responsibility for the violation of Articles 8(1) and 25(1) of the American

Convention, to the detriment of the two alleged surviving victims and 153 alleged victims, next of kin of those deceased in the massacre (supra para. 36). The State itself recognized the alleged victims' difficulties in obtaining justice due to the indiscriminate use of judicial remedies such as the appeal for legal protection.

209. Regarding the circumstances surrounding the deaths of the deceased in the massacre, and since the search for justice continues, during the public hearing Ms. Felicita Herenia Romero Ramirez expressed that she was "angry but also sad because we have not obtained justice, and this is the main thing we ask for." She added that "the State protects [those] who committed this massacre, as some of them are still public officers, and this infuriates us." Likewise, Mr. Francisco Arriaga Alonzo, another alleged victim, in his statements before a notary public, indicated that they felt "disappointed to see that the State is weak in terms of justice," with "a lack of trust in the authorities" and "frustrated, without any sentiments of joy towards life."

210. Ramiro Osorio Cristales, alleged surviving victim of the massacre, expressed his suffering in his statement delivered during the public hearing [FN236]. He indicated that "I thought that justice would be made in this world, that one day all of this would be clarified, and that I wouldn't be suffering all the time." Additionally, he stated that he "would return to Guatemala, but I will never walk around with peace, I am afraid, primarily because the murderers are still free." Likewise, in his statement provided during the internal proceeding he expressed that he had wanted to give his statement in that proceeding "because I have kept this inside for a long time, it is a pain I have always carried in my heart." [FN237]

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[FN236] In this regard, in the public hearing of July 14, 2009 before this Court, Ramiro Osorio Cristales declared that "it was after that the Massacre began on the morning of the 8th. I did not see when they dilled my father or my brother. But you could hear the cries for mercy, asking to please not kill them. Then it was my mother's turn. When my mother was taken out, we clung to her and told them to please not kill her. There was a man at the door, a soldier grabbed and told me not to leave because they were going to kill me. So I went to see how, through the cracks of the walls of the church, I went to see how they killed my mother and my little sister who was between nine months to one year old. They grabbed my sister by the feet and smashed her against a tree and threw her in the well. They cut my mom's throat and threw her in the well. My brothers' throats were slit and they were thrown in the well. And from crying so much I fell asleep under one of the pews of the church, and when I woke up the Massacre had already ended."

[FN237] Cf. Statement of "Ramiro Fernando López García" as evidenced produced before trial, supra note 169, fs. 3827 to 3831.

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211. Expert witness Nieves Gomez Dupuis, in her affidavit presented before the Court, expressed that the lack of justice "favors that, since no parties have been declared guilty of the facts, the blame reverts to the victims, and these remain stigmatized," which in addition to the "fear, silence, sadness, constant memories of the massacre, situations of altered mourning, uncertainty over the children's whereabouts, the fear that the same could happen to their relatives, anger, and a deep impotence" generate psychological damages and effects, that not

only affect the victims, but also "[t]he second generation [that] has been affected […] by the effects of the impunity and absence of justice, expressing feelings of anger, sadness and pain in the face of the lack of an investigation and punishment of those guilty of the massacre."

212. Likewise, expert witness Marco Antonio Garavito Fernandez, in his affidavit presented before the Court, expressed that, with regard to the relatives, "there is an emotional damage resulting from the uncertainty of what really happened to their loved ones," which inhibits the "mourning process" from being completed. In addition to the above, there is a process of "re-victimiza[tion…] due to the absence of a State that is concerned with the reestablishment of the family ties lost."

213. The Court observes that from the statements and expert opinions rendered, it is evidenced that the impunity that persists in the instant case is experienced by the alleged victims as a new traumatic impact, which has been generated by feelings of anger, frustration and even fear of retaliation due to their search for justice.

214. On the other hand, considering that the two survivors of the massacre, Ramiro Osorio Cristales and Salomé Gómez Hernández, were children, the Court reiterates that they "have […] special rights derived from their condition, which correspond to specific obligations of the family, society and the State [FN238]", in conformity with Article 19 of the American Convention.

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[FN238] Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 204, para. 54.

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215. Based on all of the previous considerations, the Court values that the two then children Ramiro Osorio Cristales and Salomé Gómez Hernández, have suffered infringements to their physical and psychological health, particularly from the prolonged lack of justice and impunity in the instant case, and that said experiences have affected their social and work relations, altered their family dynamics, and continue causing suffering and fear that the aggressions could repeat themselves or that their lives could be threatened. The psychological damages and lasting suffering by Ramiro Osorio Cristales, who had to live away from his family, with another name and identity are also evident.

216. The Court deems that the State omitted adopting the appropriate positive measures to protect Ramiro Osorio Cristales and Salomé Gómez Hernández from the situation of lack of protection that they were in, as of 1987, when Guatemala recognized the contentious jurisdiction of the Court, to ensure and guarantee their rights as children [FN239]. The State therefore failed to comply with its obligation to protect, to the detriment of Ramiro Osorio Cristales and Salomé Gómez Hernández, since 1987 and until the years 1994 and 1989, respectively, when they reached their legal age.

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[FN239] Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 204, para. 91.

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217. In view of the foregoing, the Court deems that in the instant case, the gravity of the facts of the massacre and the lack of a judicial response to clarify them has affected the personal integrity of the 153 alleged victims, next of kin of those deceased in the massacre. The psychological damage and suffering that they have endured due to the impunity that still persists, 15 years after the investigation began, makes the State responsible for the violation of the right recognized in Article 5 of the Convention, in relation to Article 1(1) thereof, to the detriment of the aforementioned individuals. Also, based on the aforementioned reasons, and for the particular conditions indicated regarding the two survivors of the massacre, the Court deems that the State violated Article 5(1) of the American Convention, in relation to Articles 1(1) and 19 thereof, to the detriment of Ramiro Osorio Cristales and Salomé Gómez Hernández.

XI. ARTICLE 21 (RIGHT TO PROPERTY) [FN240] OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) [FN241] THEREOF

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[FN240] In this regard, Article 21 establishes that "[n]o one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law."

[FN241] Cf. Article 1(1), supra note 41.

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218. Regarding the right to property recognized in Article 21 of the Convention, neither the Commission in its application nor the representatives in their brief of pleadings and motions, claimed the violation of said right. The State also did not refer to said Article in its brief of answer to the application.

219. Nevertheless, during the public hearing held in the instant case, the alleged victim Felicita Herenia Romero Ramirez expressed that she requested "the recovery [of] our lands[,] because […] we were deprived of everything we had there […] We were dispossessed of everything." In this regard, during that hearing, the representatives expressed that "the entire community was distributed [and that] today […] it is private property." The State claimed that it had "no information that the land had gone to private hands," and added that the issue under consideration had not been expressed in "any of the facts on which the witnesses and expert witnesses were proposed, [therefore] it [did] not have any accurate information." Consequently, the Court deemed it suitable to request the State and the representatives to submit information, in their briefs on closing arguments, on the current status of the lands of the community Las Dos Erres, as well as the decision and actions pursued by the State to return the lands to the alleged victims.

220. On August 18, 2009, both the representatives and the State submitted the requested information to the Court. In this regard, the State indicated that there are "certain records showing the names of some of the victims of the massacre, who do not appear as grantees and/or owners of any plot; since […] there are only request records[,] but the records do not show that any payments were made for [the] lands." It added that the representatives did not resort to "the domestic jurisdiction in any process of vindication of the property [and that] they did not include it either […] in any point of the Friendly Settlement Agreement[, but that] it is recorded that in the economic reparations granted the material losses were include[d]." Lastly, it indicated that the ownership of the lands has not been an issue in the proceeding before the Court, since neither the Commission nor the representatives requested a declaration of the violation of the related Article of the Convention.

221. The representatives indicated that since the community was destroyed, the survivors and their families ran away for fear of new acts of violence and retaliations, and that according to what was expressed by expert witness Nieves Gomez, the majority of the survivors live outside of the Department of Petén. They added that in 1994 they tried to collect information on what had happened to the lands, and according to testimonies given by the relatives, many inhabitants had made contributions according to the agreement for the establishment of a basis (convenio de fijación de base), but the scarce documents that currently exist were held by the relatives or survivors that lived in the outskirts of the community. They indicated that "there are references that the lands where the Las Dos Erres community used to be are 'a farm of a sole owner' and that it belongs to one of the richest families [of] Petén." Finally, they indicated that the State has "not taken measures to investigate […] what happened to the lands" and even that "the State institutions have denied the existence of the community." The Commission did not make any considerations in this regard.

222. The Court observes that the facts indicated in the application, which constitute the factual background of the instant case, refer to the facts that affected real estate assets property of the inhabitants of the Las Dos Erres community. In this regard, the application, as well as the Report on Admissibility and Merits No. 22/08 of the Commission, only indicate that "[t]he soldiers in charge took everything they found: household items, animals, grains, among other. […] The next day the soldiers and patrollers burned down the houses of Las Dos Erres." In this regard, the Court indicates that although there were infringements to the right to property of the inhabitants of the Las Dos Erres Community in the context of the Massacre, the Court lacks jurisdiction to adjudge on the alleged violation, given that they occurred prior to the recognition of its jurisdiction, and do not constitute continued violations which would allow it to rule in that regard.

## XI. REPARATIONS (Application of Article 63(1) of the American Convention)

223. It is a principle of International Law that every violation of an international obligation which results in harm creates a duty to make adequate reparation. [FN242] This obligation to redress is regulated by International Law in all aspects. [FN243] In its decisions, the Court has based itself on Article 63(1) of the American Convention.

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[FN242] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of Garibaldi v. Brazil, supra note 23, para. 150, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 94.
[FN243] Cf. Case of Aloeboetoe et al v. Surinam. Merits. Judgment of December 4, 1991. Series C No. 11, para. 44; Case of Garibaldi v. Brazil, supra note 23, para. 150, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 94.
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224. Prior to examining the reparations claimed, the Court notes that during the friendly settlement process, the State and the representatives signed several agreements whereby the State undertook to make several reparations. [FN244] In this regard, in the instant case the State made specific claims regarding the reparations that it had complied with. The representatives requested certain reparation measures and referred to the steps, which the State had taken, in conformity with the aforementioned agreements. Lastly, although the Commission requested the Court to order the State several reparations, it did not expressly refer to what the representatives and the State indicated.

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[FN244] Friendly settlement agreement signed on April 1, 2000.The steps and/or measures include: a) to make public, through a press conference, the recognition of state's responsibility for the facts of the massacre, and the President of the Republic will apologize to the survivors and next of kin of the victims, and to the people of Guatemala; b) perform an investigation to identify and punish those responsible for the massacre, both direct perpetrators and masterminds, as well as those responsible for the delay in justice; and c) to make reparations in conformity with that agreed by the parties, taking into account the principles established by the Inter-American Court, to the surviving victims and next of kin of the victims, through collective reparations such as: restoring and completing the monument at the Municipal Cemetery of Las Cruces according to the design presented by FAMDEGUA, as well as the construction and installation of a three-meter cross with the corresponding plaque at the well of Las Dos Erres, and produce a documentary for television, testimonial and educational in nature, approved by the parties involved, containing a narration of the Las Dos Erres massacre, a description of the facts, mention of the victims, and recognition of the institutional responsibility of the State in the human rights violations committed. Additionally, the State committed to provide specialized or private medical care, for psychological treatment of the surviving victims and next-of-kin of the victims who need it; establish a Commission for Identifying and Locating the Victims and Next-of-Kin of the Las Dos Erres Massacre, and to make economic compensation to the surviving victims and the next-of-kin already identified. The compensation will be defined in agreement with the parties, and the definition of the economic compensation will be an integral part of the agreement.
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A) Injured party

225. The Court considers the "injured party," in conformity with Article 63(1) of the American Convention, those who have been declared victims of a violation of a right contained therein. Consequently, the Court considers an "injured party" the 155 victims indicated in the

Commission's application, as well as in the following table, who in their character as victims of the violations declared in chapters VIII, IX, and X will be beneficiaries of what the Court orders below:

| | | | |
|---|---|---|---|
| 1 | Ramiro Antonio Osorio Cristales | 78 | Gloria Marina Salazar Castillo |
| 2 | Salomé Armando Gómez Hernández | 79 | María Vicenta Moran Solís |
| 3 | Baldomero Pineda Batres | 80 | María Luisa Corado |
| 4 | Catalina Arana Pineda de Ruano | 81 | Hilario López Jiménez |
| 5 | Francisca Morales Contreras | 82 | Guillermina Ruano Barahona |
| 6 | Tomasa Galicia González | 83 | Rosalina Castañeda Lima |
| 7 | Inocencio González | 84 | Teodoro Jiménez Pernillo |
| 8 | Santos Nicolás Montepeque Galicia | 85 | Luz Flores |
| 9 | Pedro Antonio Montepeque | 86 | Ladislao Jiménez Pernillo |
| 10 | Enriqueta González G. de Martínez | 87 | Catalina Jiménez Castillo |
| 11 | Inés Otilio Jiménez Pernillo | 88 | Enma Carmelina Jiménez Castillo |
| 12 | Mayron Jiménez Castillo | 89 | Álvaro Hugo Jiménez Castillo |
| 13 | Eugenia Jiménez Pineda | 90 | Rigoberto Vidal Jiménez Castillo |
| 14 | Concepción de María Pernillo J. | 91 | Albertina Pineda Cermeño |
| 15 | Encarnación Pérez Agustín | 92 | Etelvina Cermeño Castillo |
| 16 | María Ester Contreras | 93 | Sofía Cermeño Castillo |
| 17 | Marcelina Cardona Juárez | 94 | Marta Lidia Jiménez Castillo |
| 18 | Victoria Hércules Rivas | 95 | Valeria García |
| 19 | Margarito Corrales Grijalva | 96 | Cipriano Morales Pérez |
| 20 | Laura García Godoy | 97 | Antonio Morales Miguel |
| 21 | Luis Armando Romero Gracia | 98 | Nicolasa Pérez Méndez |
| 22 | Edgar Geovani Romero García | 99 | Jorge Granados Cardona |
| 23 | Edwin Saúl Romero García | 100 | Santos Osorio Ligue |
| 24 | Aura Anabella Romero García | 101 | Gengli Marisol Martínez Villatoro |
| 25 | Elvia Luz Granados Rodríguez | 102 | Amner Rivai Martínez Villatoro |
| 26 | Catalino González | 103 | Celso Martínez Villatoro |
| 27 | María Esperanza Arreaga | 104 | Rudy Leonel Martínez Villatoro |
| 28 | Felipa de Jesús Medrano Pérez | 105 | Sandra Patricia Martínez Villatoro |
| 29 | Felipe Medrana García | 106 | Yuli Judith Martínez Villatoro de López |
| 30 | Juan José Arévalo Valle | 107 | María Luisa Villatoro Izara |
| 31 | Noé Arévalo Valle | 108 | Olegario Rodríguez Tepec |
| 32 | Cora María Arévalo Valle | 109 | Teresa Juárez |
| 33 | Lea Arévalo Valle | 110 | Lucrecia Ramos Yanes de Guevara |
| 34 | Luis Saúl Arevalo Valle | 111 | Eliseo Guevara Yanes |
| 35 | Gladis Esperanza Arevalo Valle | 112 | Amparo Pineda Linares de Arreaga |
| 36 | Felicita Lima Ayala | 113 | María Sabrina Alonzo P. de Arreaga |
| 37 | Cristina Alfaro Mejia | 114 | Francisco Arreaga Alonzo |
| 38 | Dionisio Campos Rodríguez | 115 | Eladio Arreaga Alonzo |
| 39 | Elena López | 116 | María Menegilda Marroquín Miranda |
| 40 | Petronila López Méndez | 117 | Oscar Adelso Antonio Jiménez |

| | | | |
|---|---|---|---|
| 41 | Timotea Alicia Pérez López | 118 | Ever Ismael Antonio Coto |
| 42 | Vitalina López Pérez | 119 | Héctor Coto |
| 43 | Sara Pérez López | 120 | Rogelia Natalia Ortega Ruano |
| 44 | María Luisa Pérez López | 121 | Ángel Cermeño Pineda |
| 45 | David Pérez López | 122 | Felicita Herenia Romero Ramírez |
| 46 | Manuela Hernández | 123 | Esperanza Cermeño Arana |
| 47 | Blanca Dina Elisabeth Mayen Ramírez | 124 | Abelina Flores |
| 48 | Rafael Barrientos Mazariegos | 125 | Albina Jiménez Flores |
| 49 | Toribia Ruano Castillo | 126 | Mercedez Jiménez Flores |
| 50 | Eleuterio López Méndez | 127 | Transito Jiménez Flores |
| 51 | Marcelino Deras Tejada | 128 | Celedonia Jiménez Flores |
| 52 | Amalia Elena Girón | 129 | Venancio Jiménez Flores, |
| 53 | Aura Leticia Juárez Hernández | 130 | José Luís Cristales Escobar |
| 54 | Israel Portillo Pérez | 131 | Reyna Montepeque |
| 55 | María Otilia González Aguilar | 132 | Miguel Angel Cristales |
| 56 | Sonia Elisabeth Salazar Gonzáles | 133 | Felipa de Jesús Díaz de Hernández |
| 57 | Glendi Marleni Salazar Gonzáles | 134 | Rosa Erminda Hernández Díaz |
| 58 | Brenda Azucena Salazar González | 135 | Vilma Hernández Díaz de Osorio |
| 59 | Susana Gonzáles Menéndez | 136 | Félix Hernández Díaz |
| 60 | Benigno de Jesús Ramírez González | 137 | Desiderio Aquino Ruano |
| 61 | María Dolores Romero Ramírez | 138 | Leonarda Saso Hernández |
| 62 | Encarnación García Castillo | 139 | Paula Antonia Falla Saso |
| 63 | Baudilia Hernández García | 140 | Dominga Falla Saso |
| 64 | Susana Linarez | 141 | Agustina Falla Saso |
| 65 | Andrés Rivas | 142 | María Juliana Hernández Moran |
| 66 | Darío Ruano Linares | 143 | Raul de Jesús Gómez Hernández |
| 67 | Edgar Ruano Linares | 144 | María Ofelia Gómez Hernández |
| 68 | Otilia Ruano Linares | 145 | Sandra Ofelia Gómez Hernández |
| 69 | Yolanda Ruano Linares | 146 | José Ramiro Gómez Hernández |
| 70 | Arturo Ruano Linares | 147 | Bernardina Gómez Linarez |
| 71 | Saturnino García Pineda | 148 | Telma Guadalupe Aldana Canan |
| 72 | Juan de Dios Cabrera Ruano | 149 | Mirna Elizabeth Aldana Canan |
| 73 | Luciana Cabrera Galeano | 150 | Rosa Elvira Mayen Ramírez |
| 74 | Hilaria Castillo García | 151 | Augusto Mayen Ramírez |
| 75 | Amílcar Salazar Castillo | 152 | Rodrigo Mayen Ramírez |
| 76 | Marco Tulio Salazar Castillo | 153 | Onivia García Castillo |
| 77 | Ana Margarita Rosales Rodas | 154 | Saturnino Romero Ramírez |
| | | 155 | Berta Alicia Cermeño Arana |

226. The Court deems that the denial of justice to the victims of grave human rights violations, as in the case of a massacre, results in a series of problems, both individually and collectively. [FN245] In this regard, it is evident that the victims of prolonged impunity suffer different infringements in their search for justice, not only materially, but also other suffering and damages of a psychological and physical nature and in their life projects, as well as other

potential alterations to their social relations and to the dynamics of their families and communities. [FN246] The Court has indicated that these damages are intensified by the lack of support of the state authorities in an effective search and identification of the remains, and by the impossibility of properly honoring their dear ones. [FN247] In view of this situation, the Court has considered the need to provide different types of reparation so as to fully redress the damages, therefore in addition to pecuniary measures, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance due to the gravity of the infringements and collective nature of the damage caused. [FN248]

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[FN245] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 235, para. 256, and Case of the Ituango Massacres v. Colombia, supra note 17, para. 396.
[FN246] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 235, para. 256, and Case of the Ituango Massacres v. Colombia, supra note 17, para. 385.
[FN247] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 235, para. 256, and Case of the Ituango Massacres v. Colombia, supra note 17, para. 385 and 387.
[FN248] Cf. Case of the Mapiripán Massacre v. Colombia, supra note 19, para. 294; Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 235, para. 256, and Case of the Ituango Massacres v. Colombia, supra note 17, para. 396.

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227. The Court has established that reparations must have a causal connection to the facts of the case, violations declared, proven damages, and to the measures requested for reparation of the corresponding damages. The Court must therefore observe these conditions in order to adjudge and declare adequately and according to law. [FN249]

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[FN249] Cf. Case of Ticona Estrada et al v. Bolivia, supra note 134, para. 110, and Case of Garibaldi v. Brazil, supra note 23, para. 186.

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228. In accordance with the considerations on the merits and the violations to the Convention declared in the preceding chapters, as well as in light of the criteria established in the Court's jurisprudence in connection with the nature and scope of the obligation to make reparations, [FN250] the Court shall now address the requests for reparations made by the Commission and the representatives, as well as the State's arguments in that regard, so as to establish the measures required to redress those violations.

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[FN250] Cf. Case of Velásquez Rodríguez, Reparations, supra note 242, para. 25 to 27; Case of Garibaldi v. Brazil, supra note 23, para. 151, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 95.

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

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

229. Both the Commission and the representatives requested the Court to order the State to perform a special, rigorous, impartial, and effective investigation on the truth of the facts of massacre, as well as to adopt the legal and administrative measures necessary to locate, prosecute, and punish the masterminds and perpetrators of the facts of the massacre, and requested the adoption of the measures necessary so that amnesty provisions contrary to the American Convention are not applied. On the other hand, the representatives considered necessary for those investigation measures to be applied with regards to: a) all participants in the facts of the massacre of the Las Dos Erres community; b) those responsible for the different acts of intimidation and harassment against the different individuals involved in the investigations, and c) those responsible for the irregularities committed in the judicial proceedings. Additionally, the representatives requested the State to conclude the proceeding established in the LRN and to continue the existing criminal proceeding.

230. In this regard, the State recognized the unjustified delay in justice. However, it requested the Court to value its efforts, such as the identification of 20 allegedly responsible individuals and the arrest warrants against 17 of them.

231. In this judgment the Court has established, in conformity with the State's recognition of international responsibility and the declaration of the violation of Articles 8(1) and 25(1) of the Convention, that the investigation carried out in the instant case has not constituted an effective remedy to guarantee the victims' true access to justice, within a reasonable term, and encompassing an elucidation of the facts, investigation, pursuit, arrest, prosecution, and eventual punishment of all those allegedly responsible for the massacre, so as to fully and thoroughly examine the multiple infringements caused on the inhabitants of the Las Dos Erres community because of the facts. This investigation has not been performed seriously or exhaustively, nor free of obstacles and irregularities (supra para. 152 and 153).

232. As in other cases, [FN251] the Court values the publication of a report by the CEH, Guatemala: Memory of Silence, which includes the case of the Las Dos Erres Massacre, as an effort which has contributed to the search for and determination of the truth on a historical period in Guatemala. Nevertheless, the Court deems it pertinent to note that the "historical truth" contained in this report does not complete or substitute the State's obligation to establish the truth and ensure the judicial determination of individual or State responsibilities through the judicial proceedings. [FN252]

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[FN251] Cf. Case of La Cantuta v. Peru, supra note 234, para. 223 and 224, and Case of Anzualdo Castro v. Peru, supra note 28, para. 180.

[FN252] Cf. Case of Almonacid Arellano et al v. Chile, supra note 161, para. 150; Case of Zambrano Vélez et al v. Ecuador, supra note 109, para. 128, and Case of Anzualdo Castro v. Peru, supra note 28, para. 180.

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233. Based on the foregoing, the State must use the necessary means, in conformity with its domestic legislation, to effectively direct the investigations so as to identify, prosecute, and punish those responsible for the crimes committed in Las Dos Erres, and remove all obstacles, de facto and de jure, which maintain the case in impunity. Specifically, the State must ensure that the investigation covers the following criteria:

a) considering the gravity of the facts, the State may not apply amnesty laws nor argue prescription, non-retroactivity of the criminal law, former adjudication, the non bis in idem principle (supra para. 129), or any other similar means of discharging from liability, to excuse itself from this obligation. [FN253] Consequently, the State must continue the criminal proceeding without delay;
b) effectively investigate all facts of the massacre, taking into account the systematic pattern of human rights violations existing at the time that the facts of the instant case took place, including, apart from the murder of the inhabitants of the community, other possible serious infringements to humane treatment, particularly, the alleged acts of torture, in light of the differentiated impacts of the alleged violence against girls and women. [FN254] The State must also eventually apply the punishments corresponding to those facts, and execute the pending arrest warrants;
c) determine all alleged perpetrators and masterminds of the massacre, therefore it must conclude the criminal proceeding initiated against them, and proceed to investigate the alleged perpetrators which have not been identified yet. Due diligence in the investigation implies that all state authorities are obligated to collaborate in gathering evidence, therefore they should provide all information required and abstain from acts that imply an obstruction to the investigation process (supra para. 144);
d) initiate disciplinary, administrative, or criminal actions, in conformity with the domestic legislation, against the State authorities who may have thwarted or prevented an adequate investigation of the facts, as well as those responsible for the different procedural irregularities and facts of harassment that have contributed to extending the impunity of the massacre (supra párr. 145);
e) adopt the measures necessary for the appeal for legal protection to be used effectively, in conformity with the principles of concentration, promptness, of the presence of both parties, motivation of a judgment, and right to defend oneself, so that it is not used as a mechanism to delay the process, and
f) ensure that the different organs in the judicial system involved in the case have the human and material resources necessary to perform the tasks adequately, independently, and impartially, and that the individuals who participate in the investigation, including victims, witnesses, and justice agents have appropriate security guarantees.

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[FN253] Cf. Case of Barrios Altos v. Peru. Merits, supra note 133, para. 41 to 44; Case of Ticona Estrada et al v. Bolivia, supra note 135, para. 147, and Case of Anzualdo Castro v. Peru, supra note 28, para. 182.
[FN254] The Committee on the Elimination of Discrimination Against Women, in its General Recommendation No. 19 “Violence against women,” has established that within the framework of armed conflicts States must adopt protective and punitive measures; additionally, it recommended for the States to ensure that the laws against attacks respect the integrity and

dignity of all women, and provide protection to the victims; as well as to perform an investigation of the causes and effects of violence and the effectiveness of the response measures; and that they enshrine efficient procedures for reparations, including compensation.
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234. The Court deems it necessary to reiterate what it has indicated on repeated occasions with regards to the obligation to guarantee rights enshrined in Article 1(1) of the American Convention, the State has the obligation to prevent and fight impunity, which the Court has defined as "the lack of investigation, pursuit, arrest, prosecution, and conviction of those responsible for human rights violations." To fulfill this obligation, the State has to fight impunity through all legal means available, given that it is "conducive to chronic repetition of the human rights violations and total defenselessness of the victims and their next of kin." [FN255] Likewise, the State has to "organize its governmental apparatus and, in general, all structures through which public power is exercised, so as to legally ensure the free and full exercise of human rights." [FN256]

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[FN255] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra note 29, para. 173; Case of Anzualdo Castro v. Peru, supra note 28, para. 179, and Case of Garibaldi v. Brasil, supra note 23, para. 141.
[FN256] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 30, para. 166; Case of Kawas Fernández v. Honduras, supra note 21, para. 190, and Case of Anzualdo Castro v. Peru, supra note 28, para. 62.
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235. The Court considers that for purposes of the instant case, to make the victims' access to justice effective, the judges must guide and lead the legal proceeding with the purpose of not sacrificing justice and due process for formality and impunity, as well as to process legal remedies so as to restrict disproportionate use of actions which may cause delays or hinder the proceeding.

236. Lastly, the State must publish the results of the investigation and of the criminal proceeding to all Guatemalan society.

B.2) Regulation of the Law on the appeal for legal protection

237. The Commission requested the necessary measures to be taken so that the appeal for legal protection is not used as a delaying mechanism. The representatives requested the Court to order the State to adapt the Law on the Appeal for legal protection to Inter-American standards, for which it must take into consideration the establishment of admissibility criteria for the appeal for legal protection; the determination of the specific jurisdiction of the different chambers to hear the appeal; expanding the possibilities of accumulating appeals; the obligation of the Supreme Court judges to refrain from hearing issues in which they have an interest, and the mechanisms for punishing abusive and delaying conduct by the attorneys.

238. The Court established that the State did not comply with the obligations established in Articles 1(1) and 2 of the Convention, given that in the instant case the authorities, within the current legal framework, have allowed and tolerated the abusive use of legal remedies, such as the appeal for legal protection. Likewise, the State has not adopted the precautions to make the appeal for legal protection a simple, quick, adequate, and effective remedy to protect human rights and to prevent it from becoming a means to delay and thwart the judicial process as a factor for impunity (supra para. 153).

239. In this regard, the State informed that it is processing a bill to amend the Law on the appeal for legal protection (Bill No. 3319), which largely complies with observations presented by the Inter-American Commission in its application. It added that the bill received a favorable ruling by the Extraordinary Commission on Reforms to the Justice Sector, but it is pending before the Constitutional Court, which must proceed to rule on that bill.

240. The Court calls to mind that the State must remove all obstacles to an adequate investigation of the facts and corresponding processes so as to avoid repetition of this type of facts. [FN257] Specifically, in conformity with Article 2 of the Convention, the State must adopt the measures necessary to make effective the exercise of the rights and freedoms recognized in the Convention.

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[FN257] Cf. Case of La Cantuta v. Peru, supra note 235, para. 226; Case of Kawas Fernández v. Honduras, supra note 21, para. 192, and Case of Anzualdo Castro v. Peru, supra note 28, para. 125 and 182.

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241. The Court takes cognizance that the parties to the proceeding have indicated that Bill No. 3319, submitted to the Congress of the Republic on August 25, 2005 by the Supreme Court of Justice, has modifications that will allow it to decrease the abusive use of the appeal for legal protection. The CICIG verified this information, and based on its mandate it proposed additional modifications so as to speed up the processes and guarantee the right to a due process. [FN258]

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[FN258] International Commission Against Impunity in Guatemala (CICIG), Recommendations on Legal Reforms by the CICIG, “First comprehensive packet of legislative reform proposals” (file on appendixes to the brief of pleadings and motions, appendix 7, fs. 9309 and 9310).

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242. The State must adopt, within a reasonable term, in conformity with Article 2 of the American Convention, the legal, administrative, and other measures necessary to regulate the Law on the appeal for legal protection, so as to adapt this remedy to its real goal and end, according to the Inter-American standards for the protection of human rights. While the aforementioned measures are adopted, the State must implement all actions that guarantee the effective use of the appeal for legal protection, in conformity with section A) of chapter VIII of this Judgment.

B.3) Identification and delivery of the remains of the individuals executed in the Las Dos Erres massacre to their next of kin

243. The representatives requested the Court to order the State to use all available means to identify the remains found in the exhumations, and to deliver them to their next of kin. Neither the Commission nor the State submitted pleadings regarding this reparation. However, the State referred to the creation, through government agreement No. 835-2000, of a "Special Commission to Search for and Identify the Next of Kin of the victims of the facts of December 7, 1982, in the Community of Las Dos Erres, village of Las Cruces, Municipality of La Libertad, department of Petén," which as of August 30, 2001 delivered the final list of the victims identified, comprised of 71 family groups.

244. The Court notes that although the victims in the instant case are not those deceased in the massacre, but their next of kin and two survivors, the exhumation, identification, and delivery of the remains is a right of the victims' families as a reparation measure.

245. The Court has established that the right of the victims' next of kin to know where are the remains of their loved ones, apart from constituting a demand of the right to the truth, it is also a reparation measure, thus resulting in a corresponding obligation by the State to satisfy those fair expectations. Receiving the bodies of the people who passed away in the massacre is extremely important to their next of kin, given that it allows them to bury them according to their beliefs, as well as to close the mourning process, which they have been living throughout all these years. The remains are evidence of that which occurred, and offer details of the treatment received, manner of execution, the modus operandi. The place where the remains are found may also provide valuable information as to the perpetrators or to which institution they belonged.

246. The Court values the steps taken by the State in 1994 and 1995 to recover the remains of those executed, who were buried in mass graves and in the well of the Las Dos Erres community, whereby they were able to find 162 remains (supra para. 86). Despite these efforts, the Court notes that no other steps have been taken since then to search and find the rest of the people who died in the massacre, or to identify the remains already located.

247. Consequently, the Court considers that the State, within a term of six months from the time of notification of this Judgment, must initiate in a systematic and rigorous manner, with the adequate human and technical resources, a follow up on the work already undertaken by the Commission to Search for and Identify the Next of Kin of the victims of the Las Dos Erres Massacre, and take any other steps necessary for the exhumation and identification of the rest of the individuals executed. For this purpose it must employ all technical and scientific means necessary, taking into account relevant national or international standards on that matter, [FN259] and must conclude the total exhumations within a term of two years from the time notification of this Judgment.

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[FN259] Such as those established in the United Nations Manual on Prevention and Effective Investigation of Extra-Legal, Arbitrary, and Summary Executions. Case of the Mapiripán Massacre v. Colombia, supra note 19, para. 305.

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248. In the event that remains are identified, they must be delivered to their next of kin, with prior genetic testing to establish kinship, as soon as possible and at no cost to the relatives. Additionally, the State must cover the costs for transport and burial, according to the family's beliefs [FN260]. If the remains are not claimed by any relative within two years of notification, the State shall bury them individually in the cemetery of Las Cruces. A specific area must be determined in this cemetery, reserved and identified for their burial, and indicate that it those are an unclaimed victims of the Las Dos Erres Massacre.

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[FN260] Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 81 and 82; Case of La Cantuta v. Peru, supra note 235, para. 232, and Case of Anzualdo Castro v. Peru, supra note 28, para. 185.

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249. To make the identification of the individuals exhumed effective and viable, the State must notify the victims' representatives, through a written communication, of the identification process and delivery of the remains of those deceased in the massacre, and request their collaboration for pertinent purposes. Copies of said communications must be submitted to the Court for consideration in the monitoring of compliance with this Judgment.

B.4) Training of justice agents

250. The Commission requested the Court to order the State to adopt a permanent policy to train the personnel of the armed forces in human rights and international humanitarian law, so as to prevent the occurrence of similar facts in the future, in conformity with the obligation to prevent and guarantee the fundamental rights recognized in the American Convention. The representatives requested the Court to order the State to adopt measures to strengthen the authorities responsible for directing judicial processes on grave human rights violations, and to guarantee access to the military files of the time of the conflict. The State reported on the human rights and international humanitarian law training provided to the personnel of the Guatemalan armed forces, through the army's different training and education centers.

251. The violations attributable to the State in the instant case were perpetrated by state employees. Additionally, the violations have been aggravated by the existence of a generalized context of impunity regarding grave human rights violations brought about by justice agents. Consequently, notwithstanding the existence of programs in Guatemala for training employees on human rights, the Court deems it necessary for the State to organize and initiate, independently or to strengthen those already existent, a permanent education program in human rights for the members of the armed forces, as well as judges and prosecutors. Special mention must be given within these programs to this Judgment and to other cases adjudicated by the Court against Guatemala, as well as to international instruments on human rights and international humanitarian law, [FN261] specifically that related to human rights violations and the components of the victims' access to justice. This program must be organized and executed within a term of six months from the date of notification of this Judgment.

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[FN261] Cf. Case of the Mapiripán Massacre v. Colombia, supra note 19, para. 317; Case of the Ituango Massacres v. Colombia, supra note 17, para. 409, and Case of the Rochela Massacre v. Colombia, supra note 34, para. 303.

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252. In this regard, the Court deems it pertinent to call to mind that the effectiveness and impact of the implementation of education programs in human rights at the heart of the security forces is crucial to generate guarantees of non-repetition of facts such as those of the instant case. These programs must reflect results of actions and prevention that confirm their efficiency, and their evaluation must be performed with the adequate indicators [FN262].

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[FN262] Cf. Case of Goiburú et al v. Paraguay. Order of the Court of November 19, 2009, para. 49.

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253. In relation to the above, the Court deems it necessary for the State to organize and initiate, independently or to strengthen those already existent, a specific program of training and strengthening for an integrated improvement of the Justice System in Guatemala, for the authorities in charge of directing the judicial processes on grave human rights violations, which must include a strategy to investigate patterns of massive and systematic human rights violations and effective judicial protection, so as to direct and lead this type of processes within reasonable terms and considering the investigation of all of the facts and those responsible, in order to guarantee access to justice to the victims of this type of violations, within a term of six months from the date of notification of this Judgment.

254. Finally, once the rules on the appeal for legal protection are approved, the State must organize and initiate within six months of the publication of the corresponding law, a training program for justice agents on the adequate use of this remedy and on effective judicial protection.

C) Measures of Satisfaction, Rehabilitation, and guarantees of non-repetition

255. The Court will determine other measures that seek to redress non-pecuniary damage and that are not of pecuniary nature, and will establish measures of a public scope or repercussion [FN263].

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[FN263] Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 84; Case of Garibaldi v. Brasil, supra note 23, para. 153, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 99.

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C.1) Satisfaction

a) Publication of the judgment

256. As it has ordered on repeated occasions, [FN264] the Court deems that as a measure of satisfaction the State must publish, only once, in the Gazette and in another newspaper of national circulation, chapters I, VIII; IX and X; and paragraphs 222 of Chapter XI, and paragraphs 225, 229 to 236, 238 to 242, 244 to 249, 251 to 254, 256, 259 to 264, 265, 268 to 270, 271 to 274 and 283 to 291 of Chapter XII, of this Judgment, including the names of each chapter and the corresponding section –without the corresponding footnotes- as well as the operative paragraphs. Additionally, as the Court has previously ruled, [FN265] this judgment must be published in full, at least for one year, in an official website created by the State, taking into consideration the characteristics ordered for the publication. A term of six and two months as of the date of notification of this Judgment is given for the publications in the newspapers and on the Internet to be performed, respectively, from the date of notification of this Judgment.

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[FN264] Cf. Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 235; Case of Anzualdo Castro v. Peru, supra note 28, para. 194, and Case of Garibaldi v. Brazil, supra note 23, para. 157.

[FN265] Cf. Case of the Serrano Cruz Sisters v. El Salvador, supra note 36, para. 195; Case of Escher et al. v. Brazil, supra note 33, para. 230, and Case of Garibaldi v. Brazil, supra note 23, para. 157.

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b) Public recognition of international responsibility and diffusion of the documentary video of the facts of the Massacre of the Las Dos Erres Community.

257. The representatives requested the State to hold an act to public recognize its international responsibility for the denial of justice, in which “high representatives of the Judicial Branch” must participate. Additionally, they requested coordination of the act with the representatives to define aspects of how it will be performed. Regarding the video which the State made on the facts occurred in the Las Dos Erres community, the representatives claimed that the victims were not informed of the dates on which the video would be shown, therefore they are not aware its content. The Commission did not comment on this.

258. On the other hand, the State indicated that it had already publicly recognized its international responsibility for the facts occurred in the Las Dos Erres community on several occasions. Additionally, it indicated that it performed a symbolic act of delivery of reparations to the victims, in which high-level employees of the State of Guatemala participated. Regarding the video, the State indicated that it was already created and broadcasted by the channel Guatevisión on December 17 and 21, 2007.

259. It is worth noting that expert witness Nieves Gómez Dupuis, in the expert opinion given before a notary public, expressed that the case reveals that “[t]he lack of justice and absence of diffusion of the story has caused that, since no individuals have been declared guilty of the facts, the blame is reverted on the victims, and they are stigmatized.” [FN266] She added that at “[a]

collective and social level, the existence of labeling and stigmatizing toward the victims and families, who live spread throughout the country's interior, has been recorded, and the existence of violent means for conflict resolution was detected through the impunity of the situation, community divisions regarding the execution of reparation measures in [L]as Cruces, and communication systems based on misinformation and rumors." [FN267] The effect of this type of measures thus contributes to the knowledge of the facts, vindication of the families, and preserving the memories of their loved ones.

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[FN266] Expert opinion of Nieves Gómez Dupuis rendered on June 8, 2009 before a notary public (affidavit) (file on preliminary objections, merits and possible reparations, Volume IV, f. 633) and expert opinion of Nieves Gómez Dupuis of August 2005, supra note 148, f. 2811.
[FN267] Expert opinion of Nieves Gómez Dupuis, supra note 266, f. 628.

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260. The Court values the fact that the State has made public its recognition of international responsibility of April 1, 2000 on several occasions, however this recognition does not comprise all of the facts of the instant case, which the Court has examined as of March 9, 1987, nor the juridical consequences derived from them.

261. In order for the States' partial recognition of responsibility performed before the Court to have its full effects, as a guarantee of non-repetition of the grave human rights violations declared, the Court considers appropriate for the State to perform a public act of recognition of international responsibility. In this act, reference must be made to: a) the facts of the massacre and b) the facts of the instant case and the human rights violations declared in the instant Judgment, against 155 victims, two of which are survivors of the massacre. [FN268]

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[FN268] Cf. Case of the Ituango Massacres v. Colombia, supra note 17, para. 406; Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 193, and Case of Kawas Fernández v. Honduras, supra note 21, para. 202.

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262. The performance and specifics of this public ceremony must be held, to the extent possible, with the victims' agreement and cooperation, if they so desire. Additionally, it must be guaranteed that the victims who have the possibility of going to the event do so, for which the State must cover their transport expenses. Likewise, due to the specific characteristics of the instant case, and with the goal of creating awareness of the consequences of the facts of the case, high representatives of the State and Judges of the Supreme Court of Justice and the Constitutional Court of the Republic of Guatemala must be present at this event.

263. Regarding the documentary video on the facts of the Massacre of the Las Dos Erres Community, which the State already created, the Court considers that it must be shown during the public ceremony. Additionally, the State must show the video at a public act in the capital of Petén and in a department of the western area in which grave human rights violations occurred

during the internal armed conflict. High representatives of the Department and Municipalities must be present at these events. These acts must be organized with the participation of the victims or their representatives. Additionally, the video must be distributed as widely as possible among the victims, the representatives, and the universities in the country, for its promotion and subsequent showing.

264. To perform these acts, the State has one year as of the date of notification of this Judgment.

c) Construction of a monument

265. The Court deems it pertinent to order the Court to build a monument in memory of those deceased during the massacre of Las Dos Erres community, at the place where the facts occurred. This monument must bear a plate which refers to the massacre and provides the name of those individuals, so as to preserve their memory and as a guarantee of non-repetition. This monument must be built within one year from the date of notification of this Judgment.

C.2) Rehabilitation

Medical and psychological attention of the victims

266. The Commission requested the Court to order the State to adopt measures for psychological and medical rehabilitation for the victims, and to implement an adequate psychosocial attention program for them. The representatives requested additional claims regarding this reparation, and referred to the alleged lack of compliance of the State's compromise established in the friendly settlement agreement, to provide specialized medical and psychosocial attention, and requested the Court to order the State to provide that attention to all victims of this case.

267. The State indicated that in compliance with the commitment derived from the friendly settlement agreement, it had "taken steps for the medical and psychological treatment of the [next of kin of the] victims of the [L]as Dos Erres Massacre, which [was] provided by the Department of Public Health and Social Assistance, through the Mental Health Area, South West Health Area of Petén," which continues to be implemented and will be consolidated through the signature of an agreement between the Department of Health and the Presidential Coordinating Commission on Human Rights Policy of the Executive Branch, (hereinafter "COPREDEH").

268. The Court takes cognizance that in the friendly settlement procedure the State committed to provide specialized and integrated medical attention to the surviving victims and next of kin of those deceased in the massacre who require it, and that the State has expressed its good will by performing some of the commitments established therein, therefore it values those steps.

269. Without detriment to the above, the Court deems, as it has in other cases, [FN269] that it is necessary to order a reparation measure that provides adequate attention to the psychological issues and moral damages suffered by the victims, as has already been established in conformity

with the violation of Article 5(1) of the Convention, as well as other infringements of this character derived from the violation of Articles 17, 18, and 19 thereof.

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[FN269] Cf. Case of Barrios Altos v. Peru. Reparations and Costs. Judgment of November 30, 2001. Series C No. 87, para. 45; Case of Kawas Fernández v. Honduras, supra note 21, para. 209, and Case of Anzualdo Castro v. Peru, supra note 28, para. 203.

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270. Therefore, in order to contribute to the reparation of these damages, the Court orders the obligation of the State to provide, for free and immediately, the medical and psychological treatment required by the 155 victims, with prior informed consent, and for the time necessary, including providing medications. The psychological and psychiatric treatment must be provided by personnel and institutions specialized in providing attention to the victims of facts of violence such as those that occurred in the instant case. [FN270] In the event that the State lacks them, it must recur to specialized private or civil society institutions. In providing this treatment, the circumstances and particular needs of each victim must also be taken into consideration, so as to provide them with collective, family, or individual treatment, according to what they agree with each of the victims, and then an individual assessment. [FN271] Finally, this treatment must be provided, to the extent possible, in the centers closest to their place of residence.

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[FN270] Cf. Case of Barrios Altos v. Peru. Reparations and Costs, supra note 269, para. 42 to 45; Case of Kawas Fernández v. Honduras, supra note 21, para. 209, and Case of Anzualdo Castro v. Peru, supra note 28, para. 203.

[FN271] Cf. Case of the 19 Tradesment v. Colombia. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 278; Case of Valle Jaramillo et al v. Colombia, supra note 21, para. 238, and Case of Kawas Fernández v. Honduras, supra note 21, para. 209.

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C.3) Guarantees of non-repetition

Creation of a webpage to search for children abducted and illegally retained

271. The Court deems necessary, as it has determined in previous cases, the creation of a webpage for the search of children abducted and illegally retained during the internal conflict, in which, through the implementation of a database, the list of the names and last names, possible physical characteristics, and all data available on these children will be published, with the prior informed consent of their relatives. [FN272] The goal of this webpage will be to provide guidance and support to institutions or national associations dedicated to the search for children who were abducted and illegally retained during the internal conflict, as well as to individuals who access it looking for these children or who suspect being a child abducted and illegally retained, and to facilitate reuniting them with their families.

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[FN272] Cf. Case of the Serrano Cruz Sisters v. El Salvador, supra note 36, para. 189.

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272. In this regard, the addresses and contact numbers for state institutions and civil society organizations such as FAMDEGUA must be provided in this webpage, so that the minors abducted and illegally retained during the internal conflict can locate their families, or the pertinent state or non-state institutions. [FN273] Likewise, the Court considers essential for the State to adopt the measures necessary to coordinate, from the webpage, as well as from the aforementioned national links, international links to web pages for other States, national associations and institutions, and international organizations dedicated to the search for children abducted and illegally retained during internal conflicts, so as to promote, participate, and collaborate in the creation and development of an international search network. [FN274]

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[FN273] Cf. Case of the Serrano Cruz Sisters v. El Salvador, supra note 36, para. 190; Case of Escher et al. v. Brazil, supra note 33, para. 239, and Case of Garibaldi v. Brazil, supra note 23, para. 157.

[FN274] In this regard, there are web pages aimed at looking for disappeared children that are already functioning, such as the one developed by the project coordinated and financed by "Save the Children" of Sweden within the framework of the Regional Program for Latin America and the Caribbean. The web page for this project is: www.latinoamericanosdesaparecidos.org.

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273. The Court deems it necessary for the State to adopt measures and allocate the human, economic, logistic, and other resources necessary for this webpage to function adequately and comply with the purpose described in the previous paragraph.

274. For the creation of this web page, and the measures and mechanisms to guarantee its adequate functioning according to that previously described, the State has a one-year term as of the notification of this Judgment.

D) Compensations

D.1) Pecuniary and non-pecuniary damages

275. The Court has developed the concept of pecuniary [FN275] and non-pecuniary [FN276] damage, and the situations in which they must be redressed.

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[FN275] The Court has established that pecuniary damage involves "the loss or detriment to the victims' income, the expenses incurred as a result of the facts, and the consequences of a monetary nature that have a causal connection to the facts of the case." Case of Bámaca Velásquez v. Guatemala. Reparations and Costs, supra note 260, para. 43; Case of Garibaldi v. Brazil, supra note 23, para. 182, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 111.

[FN276] The Court has established that non-pecuniary damage "may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that

are highly significant to them, as well as other sufferings, of a non-pecuniary nature, related to the conditions of existence of the victim or their family." Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs, supra note 263, para. 84; Case of Garibaldi v. Brasil, supra note 23, para. 189, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 111.

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276. The Commission did not request the Court for pecuniary measures, related to pecuniary or non-pecuniary damage. The representatives did not specifically request compensation for pecuniary damage, but they did request the Court to order the State to establish an equitable compensation to each of the victims for the "moral damage" caused by the suffering resulting from the violations committed after April 1, 2000. Additionally, they requested a specific sum for the reparation of damages caused to the surviving victim Ramiro Osorio Cristales. The State requested the Court to take into consideration the economic reparations already granted, and considered inadmissible the requirement of a new payment, as it considers the payment performed to the victims fair, adequate, and effective.

277. In this regard, the State indicated that it had complied with the commitment regarding the agreed economic compensation, which included the payment of quantities corresponding to loss of earnings, general damage, and "moral damage" to the list of victims identified on August 30, 2001 by the "Comisión Especial de Búsqueda" (Special Search Committee), corresponding to 71 family groups. Additionally, in 2006 it also compensated a group of people who approached COPREDEH in 2004 declaring that they were relatives of those deceased in the massacre, and claimed that they had not received any compensation. Consequently, the State considers the representatives' request inadmissible, as the compensation process was broad and ended in 2006, and during that time 40 more victims were redressed. Likewise, the State expressed that Ramiro Osorio Cristales has already received a compensation, for the alleged violations, for an amount agreed with the representatives.

a) Compensations granted by the State during the proceeding before the Commission, as part of the agreement between the parties

278. The Court notes that from the evidence submitted by the parties, it derives that pursuant to the "Agreement on Economic Reparation" signed by the State and the representatives during the proceeding before the Commission, the State was obligated to compensate the surviving victims of the massacre and next of kin of the deceased for Q.14.500.000 (fourteen million five hundred quetzales), which would be paid according to the "criteria approved by the parties." Likewise, in the answer to the application the State indicated that the reparation amounts were agreed as follows: for general damages each family group was awarded Q. 15.440 (fifteen thousand, four hundred and forty quetzales); for the loss of earnings Q. 50.000 (fifty thousand quetzales); for the moral damage to each victim, murdered or surviving, Q. 26.300 (twenty-six thousand three hundred quetzales), and for judicial costs and expenses Q. 820.754.72 (eight hundred and twenty thousand seven hundred and four quetzales with seventy-two cents). The Court notes that the payments [FN277] were effectively made to 125 beneficiaries [FN278].

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[FN277] The amounts ranged between US$3,354.92 (three thousand three hundred fifty-four dollars with ninety-two cents) and US$60,681(1)1 (sixty thousand six hundred eighty-one dollars and eleven cents). Likewise, the Court observes that some compensations were paid individually and others were delivered to the representative of a family group.
[FN278] Cf. Table of "checks paid and their status" of November 30, 2001 (file on appendixes to the answer to the application, appendix 10, fs. 12374 to 12379).
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279. Likewise, the Court observed that in 2006 compensation was paid to an additional list of 40 victims, of which 37 requested compensation for material losses, and 3 for human losses. The State indicated that the compensation agreed at that time was distributed as follows: for the victims of material losses Q. 41.740 (forty-one thousand seven hundred and forty quetzales), and for victims of human losses Q. 91.740 (ninety one thousand seven hundred and forty quetzales).

280. In this regard, the Court notes that only five people in the aforementioned list are victims in the instant case, namely: 1) Inocencio González, 2) Santos Nicolás Montepeque Galicia, 3) Pedro Antonio Montepeque García and 4) Albina Jiménez Flores, and 5) Venancio Jiménez Flores, and that each of them was paid US$ 5,499.34 (five thousand four hundred and ninety-nine US dollars with thirty-four cents) for material losses [FN279].

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[FN279] Cf. Proof of payments (file of appendixes to the answer to the application, appendix 11, Volume 2, fs. 12846, 12851, 12860, 12861 and 12881).
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281. In this regard, the Court notes that the State, in conformity with the friendly settlement agreement signed by the State and the representatives, in the proceeding before the Commission, paid the compensations awarded to the beneficiaries, as indicated by the State itself (supra para. 278 and 279). Consequently, the Court does not consider it necessary to establish additional compensations for material damages nor to order the deduction of the aforementioned compensation.

282. Lastly, the Court notes that the family groups compensated at that time include the victims in the instant case.

b) Determination of the compensation for non-pecuniary damage in the proceeding before the Court

283. Without detriment to the above, in chapter X of this Judgment, the Court concluded that in the instant case the denial of justice has affected the mental and moral integrity of the 155 victims, two of them survivors. Consequently, the Court must determine fair compensation for the non-pecuniary damage suffered.

284. The Court notes that from the expert opinions provided by Nieves Gómez Dupuis, [FN280] it can be inferred that "[t]he lack of justice leads to that […] the blame is revert[ed] to the victims, who are stigmatized [and that the] fear that the same will occur again […] makes

psychological reparation very difficult, [if not] impossible." [FN281] Additionally, it indicates that the victims expressed feelings of rage, fury, anger, sadness, insecurity, discouragement, vengeance, and impotence, which have also affected the second generation of surviving victims and next of kin. Additionally, the lack of justice caused a loss of opportunities for the surviving victims and next of kin, damaging their life projects. Likewise, it indicates that this situation has caused the dissociation of some individuals from the legal process due to the fear and re-traumatizing caused by speaking about the case.

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[FN280] Cf. Expert opinion of Nieves Gómez Dupuis rendered on June 8, 2009, supra note 266, fs. 618 to 636, and expert opinion of Nieves Gómez Dupuis of August 2005, supra note 148, fs. 2801 to 2824.

[FN281] Cf. Expert opinion of Nieves Gómez Dupuis rendered on June 8, 2009, supra note 266, fs. 633 and expert opinion of Nieves Gómez Dupuis of August 2005, supra note 148, fs. 2811.

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285. Likewise, in his statement presented by means of an affidavit, Mr. Francisco Arriaga Alonzo expressed that "we were afraid and lacked confidence," and added that "one feels disappointment." Similarly, the Court observes that in his statement in the public hearing before the Court, Ms. Felicita Herenia Romero Ramírez expressed that "we feel deceived, […] I repeat, also angry and sad."

286. Based on the foregoing, it is inferred that the victims in the instant case suffered non-pecuniary damages, evidenced through frustration and other psychological and emotional damage derived from the lack of justice and continued impunity of the instant case to date, 15 years after the investigation on the facts of the massacre began.

287. As previously indicated, the Court values the compensations performed by the State in the framework of the friendly settlement agreement before the Commission (supra para. 281. However, it considers that, as established in the instant Judgment, the victims have suffered non-pecuniary damages, through the infringement of their mental and moral integrity, derived from the lack of justice and impunity that persists in the instant case to this day (supra para. 213 and 217). The Court deems it necessary to grant the victims an additional compensation for the non-pecuniary damage suffered, as of April 1, 2000, and in conformity with the violations declared in the instant Judgment.

288. Regarding the then child survivors, expert witness Marco Antonio Garabito Fernández, in the expert opinion provided before a notary public, expressed that "[t]hey became strangers when the link, privacy, and feelings of belonging to a family and community were broken. In a lot of cases this feeling of abandonment was not compensated by the substitute families […] as in the case of Ramiro Osorio Cristales". Additionally, this expert witness indicated that "the construction of a healthy individuality presupposes having a group of points of reference which, in this case, are violently destroyed […], as there is a need to fight the dissonance caused by having to life in a new family, […] while denying the previous experiences with the family of origin, which is no longer present. This dissonant duality is a source of permanent conflict and re-traumatizing of the lost childhood."

289. Ramiro Antonio Osorio Cristales himself, in the statement provided in the public hearing before the Court, highlighted that "all day I said to myself that I had to endure because I survived for a purpose, and that purpose was to be the voice of those who are no longer here." Additionally, he indicated that he "would return to Guatemala, but I will never walk around with peace, I am afraid, primarily because the murderers are still free."

290. In this regard, the Court has already established in its constant jurisprudence that a judgment declaring a violation of human rights constitutes per se a means of reparation [FN282], which it reiterates in this case.

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[FN282] Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, para. 56; Case of Anzualdo Castro v. Peru, supra note 28, para. 219, and Dacosta Cadogan v. Barbados, supra note 28, para. 100.

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291. The Court observes that the State, as a consequence of its recognition of international responsibility during the procedure before the Commission, granted an amount for reparations and committed to combat the impunity of the case, which has not been fulfilled to date. This demonstrates that the denial of justice has deepened the suffering of the 155 victims in the instant case (supra para. 213 and 217), therefore, the Court determines that the configuration of a non-pecuniary damage susceptible to reparation, by means of substitution, through a compensation.

292. Consequently, the Court establishes on the grounds of equity, for the concept of non-pecuniary damages, the amount of US$20.000.00 (twenty thousand US dollars) for each of the 153 victims, as a consequence of the violation of Articles 5(1), 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof.

293. In the case of Ramiro Osorio Cristales, the Court deems it pertinent to establish, a compensation of US$40.000.00 (forty thousand US dollars), taking into account that: a) he was declared victim of the violation of Articles 5(1), 8(1) and 25(1) of the Convention for the denial of justice and the related suffering; b) he was declared victim of the violation of Articles 17, 18, and 19 of the Convention for being separated from his family and with another name, and for not being guaranteed special protective measures for his condition as a minor, and c) the psychological effects and damages to his family life project [FN283] and his exile.

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[FN283] In this regard, in the case of survivor Ramiro Osorio Cristales the suffering caused by the abduction and illegal retention by Kaibil Santos López and his separation from his family (supra para. 179 and 180) derived not only in psychological damages but also to his life project within a family environment, including his exile. Based on the lack of elements to order an adequate measure to recover or redirect his life project, an additional compensation for said damages is appropriate.

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294. Lastly, regarding Salomé Gómez Hernández, considering that he was declared victim of the violation of Articles 5(1), 19, 8(1) and 25(1) of the Convention, the Court deems it pertinent to establish, on the grounds of equity, a compensation of US$30.000 (thirty thousand US dollars) for this concept.

295. The State shall make the payment of this amount directly to each of the beneficiaries within one year from the notification of this Judgment.

D.2) Costs and expenses

296. As indicated by the Court on repeated occasions, the costs and expenses are included within the concept of reparation established in Article 63(1) of the American Convention. [FN284]

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[FN284] Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C. No. 39, para. 79; Case of Anzualdo Castro v. Peru, supra note 28, para. 223, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 115.

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297. The Inter-American Commission asked this Court to "order the State […] to pay the costs and expenses duly proven to be reasonable and necessary, which have resulted and will result from the processing of this case before the Inter American Court."

298. The representatives, in their brief of pleadings and motions, requested the State to pay US$96.92 (ninety-six US dollars and ninety-two cents) for costs and expenses in favor of Ramiro Osorio Cristales, based on "the personal expenses that he incurred to process the power-of-attorney [as well as to] send this power." They also requested a payment of US$9,885.38 (nine thousand eight hundred eighty-five US dollars and thirty-eight cents) for the expenses that CEJIL incurred as of April 2000, given that the State, "because of the agreement [in the] friendly settlement process[,…] reimbursed the costs and expenses incurred until that date. The representatives added that FAMDEGUA "has actively participated in encouraging the process and in the presentation of claims," but that "it does not keep proof of these expenses," thus they requested the Court to "set [the] sum on the grounds of equity." Lastly, in their brief of final arguments, the representatives added US$11,189.29 (eleven thousand one hundred eighty-nine US dollars with twenty-nine cents) to the costs and expenses in favor of FAMDEGUA, as well as US$20,455.95 (twenty thousand four hundred fifty-five US dollars with ninety-five cents) in favor of CEJIL, for the expenses incurred in the participation in the public hearing.

299. The State claimed that it "paid Q820,754.72 [(eight hundred twenty thousand, seven hundred fifty-four quetzals with seventy-two cents)] for costs and expenses […] for the processing before the Commission." Also, in relation to the expenses incurred by the representatives during the public hearing, the State objected some of them, considering "that they do not correspond to the proceeding before the Court." [FN285]

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[FN285] Namely: i) costs to mobilize the people who participated in the march to the Supreme Court of Justice, organized by FAMDEGUA; ii) purchase of a cell phone and charges to that phone in La Paz, Bolivia, acquired by CEJIL; iii) Medical Insurance of attorney Carlos Pelayo Moller; iv) excess weight at the airline;
v) transfers from the airport of Bolivia to the hotel, considering that "it is not equal to the real cost [of the] taxi service in that country; vi) expert opinon of April 7, 2009 by Nieves Gómez, given that "it was proposed by the representatives" and "considering that the cost is too high", and vii) unexpected expenses "not detailed [by] the representatives." The State added that "the plane tickets paid for the transfer of the representatives, witnesses, and expert witnesses in the case were present[ed] twice […]."

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300. As the Court has indicated, the costs and expenses are part of the reparation (supra para. 296), if and when the activity shown by the victims in order to obtain justice, both domestically and internationally, implies disbursements that must be compensated when the State's international responsibility is declared through a condemnatory judgment. Regarding the reimbursement, it is the Court's role to carefully assess its scope, which comprises the expenses generated before the authorities of the domestic jurisdiction, as well as those generated during the proceeding before this Court, considering the circumstances of the concrete case and the nature of the international jurisdiction of the protection of human rights. This assessment can be made based on the principle of equity and considering the expenses indicated by the parties, as long as their quantum is reasonable. [FN286]

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[FN286] Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs, supra note 284, para. 82; Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru, supra note 30, para. 145, and Case of Dacosta Cadogan v. Barbados, supra note 28, para. 119.

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301. In this regard, the Court, when assessing all of the vouchers submitted by the representatives, will consider the State's objections regarding certain expenses (supra para. 299). The Court also repeats that "the submission of evidentiary documents is not sufficient, the parties are required to argue the relationship of the evidence with the fact considered represented, and which, when related to claimed economic disbursements, the areas and justifications of the expenses should be established with clarity." [FN287]

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[FN287] Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 277, and Case of Reverón Trujillo v. Venezuela, supra note 29, para. 201.

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302. In the instant case, at the time of submitting their brief of pleadings and motions, the representatives did not submit the vouchers of the costs and expenses which FAMDEGUA had allegedly incurred at that time. The representatives only indicated that they did not keep receipts

of these expenses, and asked the Court to establish them on the grounds of equity. In this regard, the Court indicated that "the victims' or their representatives' claims in terms of the costs and expenses, and the receipts that support them, must be presented to the Court at the first procedural time granted to them, that is, in the brief of pleadings and motions, which does not preclude these claims from being updated at a later time, in conformity with the new costs and expenses incurred in the proceeding before this Court." [FN288] The Court notes that FAMDEGUA later submitted various receipts relating to the expenses incurred in the preparation and attendance to the public hearing of the case held in La Paz, Bolivia.

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[FN288] Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, supra note 287, para. 275; Case of Escher et al. v. Brasil, supra note 33, para. 259, and Case of Anzualdo Castro v. Peru, supra note 28, para. 228.

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303. Based on the foregoing considerations, as well as the body of evidence and the State's objections, the Court determines on grounds of equity that the State should provide the amount of US$9.500.00 (nine thousand five hundred US dollars) to FAMDEGUA and the amount of US$27.000.00 (twenty seven thousand US dollars) to CEJIL for the costs and expenses incurred before the Commission as of 2000, and before this Court. These amounts include future expenses which the victims may incur during the monitoring of the compliance with this Judgment. Given the particular characteristics and the number of victims of this case, the Court considers that it is appropriate for the State to provide each of the representations the corresponding amount within a term of one year from the notification of this Judgment.

304. Likewise, in terms of the expenses incurred by Ramiro Osorio Cristales, which were duly proven, the Court determines that the State must provide him with US$96.92 (ninety-six US dollars with ninety-two cents). This amount must be paid within one year from notification of this Judgment.

D.3) Methods of compliance with the payments ordered

305. The payment of the compensation for non-pecuniary damages and the reimbursement of costs and expenses established in this Judgment, will be made directly to the people indicated therein, within a term of one year from the notification of this Judgment, considering what is indicated in paragraphs 292 to 295 and 303 and 304 of this Judgment. In the event of the victims' death prior to the payment of the corresponding amounts, these shall be paid to their beneficiaries, in conformity with the applicable domestic law.

306. The State shall comply with the monetary obligations by means of payment in US dollars or the equivalent in the national currency, using the exchange rate in effect in the New York Stock Exchange, on the day prior to the payment.

307. If, for causes attributable to the beneficiaries of the compensation or to their successors, it was not possible to pay the amounts determined within the term indicated, the State will deposit this amount in their name in an account or certificate of deposit at a reliable Guatemalan

financial institution, in US dollars, and under the most favorable financial conditions allowed by law and banking practices. If after ten years the assigned amount has not been claimed, the amounts will be returned to the State along with the interest accrued.

308. The amounts assigned in the instant Judgment as non-pecuniary damages and reimbursement of costs and expenses shall be given to the victims in their entirety, in conformity with this Judgment, and cannot be affected or conditioned for current or future fiscal motives.

309. If the State were to be delayed, it shall pay interest on the amount owed corresponding to late interest rates for banks in Guatemala.

XIII. OPERATIVE PARAGRAPHS

310. Therefore:

THE COURT,

DECIDES:

unanimously,

1. To partially dismiss the preliminary objection of ratione temporis filed by the State, in accordance with paragraphs 44 to 51 of this Judgment.

AND DECLARES,

unanimously, that:

1. It accepts the partial acknowledgement of international responsibility made by the State, pursuant to the terms of paragraphs 28 to 38 of this Judgment.
2. The State violated the right to a fair trial and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, as well as the obligations established in Articles 1, 6 an 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, to the detriment of the 155 victims of the instant case, in their corresponding circumstances, according to the terms of paragraphs 69 to 154 of this Judgment.
3. The State violated the obligation to respect rights and the obligation to adopt domestic legal effects enshrined, respectively, in Articles 1(1) and 2 of the American Convention on Human Rights, pursuant to the terms of paragraphs 106 to 124 and 152 to 154 of this Judgment.
4. The State violated the rights of the family and right to a name enshrined in Articles 17 and 18 of the American Convention on Human Rights, in relation to Articles 1(1) and 19 thereof, to the detriment of Ramiro Antonio Osorio Cristales, according to the terms of paragraphs 169 to 200 of this Judgment.
5. The State violated the right to humane treatment recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of

the 153 victims, in accordance with the terms of paragraphs 204 to 217 of this Judgment. Furthermore, the State violated the right to humane treatment embodied in Article 5(1) of the American Convention on Human rights, in relation to Articles 1(1) and 19 thereof, to the detriment of Ramiro Antonio Osorio Cristales and Salomé Armando Gómez Hernández, pursuant to the terms of paragraphs 214 to 217 of this Judgment.

6. It does not correspond to the Court to issue a determination regarding the alleged violation of the right to property embodied in Article 21 of the Convention, pursuant to paragraph 222 of this Judgment.

AND DECIDES:

unanimously, that:

7. This Judgment constitutes, per se, a form of reparation.

8. The State shall investigate, without delay, in a serious and effective manner, the facts that originated that violations declared in this Judgment, in order to prosecute and eventually punish those responsible, in accordance with paragraphs 231 to 236 of this Judgment.

9. The State shall initiate the disciplinary, administrative or criminal actions necessary, according to its domestic legislation, against those state authorities that may have caused the facts and thwarted the investigation, according to the terms of paragraph 233(d) of his Judgment.

10. The State shall adopt the necessary measures to amend the Law on the Appeal for Legal Protection, Habeas Corpus, and Constitutionality in Guatemala, according to the terms of paragraphs 238 to 242 of this Judgment.

11. The State shall proceed with the exhumation, identification, and delivery of the mortal remains of the people who died in the Las Dos Erres Massacre to their next of kin, under the terms of paragraphs 244 to 249 of this Judgment.

12. The State shall implement training courses on human rights for different State authorities, under the terms of paragraphs 251 to 254 of this Judgment.

13. The State shall publish, once in the Official Gazette and in another newspaper with national circulation, Chapters I, VIII; IX and X; paragraph 222 of Chapter XI, and paragraphs 225, 229 to 236, 238 to 242, 244 to 249, 251 to 254, 256, 259 to 264, 265, 268 to 270, 271 to 274 and 283 to 291 of Chapter XII, of the instant Judgment, including the names of each chapter and the corresponding section -without the corresponding footnotes-, as well as the operative paragraphs. Additionally, this Judgment shall be published in full, at least for one year, in an official website created by the State, under the terms of paragraph 256 of this Judgment.

14. The State shall hold the public acts ordered, pursuant to the terms of paragraphs 259 to 264 of this Judgment.

15. The State shall create a monument, under the terms of paragraph 265 of this Judgment.

16. The State shall provide the medical and psychological treatment required by the 155 victims, under the terms of paragraphs 268 to 270 of this Judgment.

17. The State shall create a web page for the search of children abducted and retained illegally, pursuant to the terms of paragraphs 271 to 274 of the Judgment.

18. The State shall pay the amounts established in paragraphs 292 to 295 and 303 and 304 of this Judgment, for compensation for non-pecuniary damage and reimbursement of the costs and expenses, according to the terms of paragraphs 278 to 295, 300 to 304 and 305 of this Judgment.

19. The Court shall monitor full compliance with this Judgment, in exercise of its powers and in compliance with its obligations under the American Convention, and shall close the instant case once the State has fully complied with the provisions established herein. The State shall submit, within one year from the date of notification of this Judgment, a report on the measures adopted in compliance thereof.

Judge Cadena Rámila informed the Court of his Concurring Opinion, which is attached to the instant Judgment.

Done in English and Spanish, the Spanish text being authentic, in San Jose, Costa Rica, on November 24, 2009.

Cecilia Medina Quiroga
President

Diego García-Sayán
Sergio García Ramírez
Manuel E. Ventura Robles
Margarette May Macaulay
Rhadys Abreu Blondet

Ramón Cadena Rámila
Judge ad hoc

Emilia Segares Rodríguez
Deputy Secretary

So ordered,

Cecilia Medina Quiroga
President

Emilia Segares Rodríguez
Deputy Secretary

Concurring opinion of Ramón Cadena Rámila, Judge ad hoc

My vote is in favor, fully, of the instant judgment adopted by the Inter-American Court of Human Rights in the Case of the Las Dos Erres Massacre; this is another advance in the construction of the Inter-American Court's jurisprudence. The characteristics of the Las Dos Erres Massacre render it one of the gravest cases that the Inter-American Court has heard in its history, not only because of the cruelty of the facts and the extreme violence carried out by the Guatemalan Army against women and children, but also because of their impunity. The transcendental issues examined by the Court evoke certain thoughts which I feel obligated to assert in this Concurring Opinion.

1. International Humanitarian Law: The gravity of the facts of the Las Dos Erres case is evident. Since International Humanitarian Law is of a compulsory nature, its rules constitute absolute commitments that need to be fulfilled by all States without exceptions. There are no juridical arguments, much less political, that can oppose the Geneva Conventions to justify non-compliance. This branch of international law is no more than a reaffirmation of the oldest customary rules that were developed and completed when the corresponding codification was made.

We must then, in the first place, refer to the international principles and customs that represent the minimum humanity applicable at all times, in all places and circumstances, valid even for the States who are not party to the Conventions, since they express the customs of the towns and behavior that must be observed by the States for internal and international armed conflicts.

It is important to cite the famous clause by Frederic de Martens which can be read in the St Petersburg Declaration: “In the cases not foreseen in the Conventions, civilians and combatants continue to be under the protection and realm of the principles of international law, as they result from the established uses of the principles of humanity and of the demands of public conscience.”

This phrase has shown its profound sense since 1899, to the extent that it is reproduced in the Additional Protocols to the Geneva Conventions of 1977. It constitutes a universally accepted formula to solve cases not foreseen in international laws and conventions of a humanitarian type. As in all branches of law, humanitarian law has fundamental principles from which the other notions derive.

In the instant case, the Court accurately cites the Commission for Historical Clarification, since it is useful to base the responsibility of the State of Guatemala as follows: “It is within this context that the Las Dos Erres Massacre took place, within a State policy and a pattern of grave human rights violations.” According to the CEH, “in general, from the human rights violations and the violations of International Humanitarian Law, derives the unavoidable responsibility of the State of Guatemala.” (paragraph 82 of this judgment, emphasis added.)

Subsequently, it indicates that “within the context of an internal armed conflict, the State’s obligations regarding children are defined in Article 4(3) of the Additional Protocol II to the Geneva Conventions.” This Article establishes that: “children will be provided with the proper care and aid that they require, and, particularly: … b) timely measures will be taken to facilitate the reunion of families that were temporarily separated…” According to the International Committee of the Red Cross, this obligation has been defined as that “the parties to the conflict must do everything in their power to reestablish family ties, that is, not only allow the searches undertaken by the members of the families separated, but also facilitate them.” (paragraph 191 of the referred judgment.)

From the context described in the judgment, as well as from the considerations made in other sections, it is clear that during the hostilities of the internal armed conflict and specifically in the case of the Las Dos Erres Massacre, the State of Guatemala did not observe the different universally accepted principles and customs.

According to the principle of distinction, “the civil population and civilian persons will enjoy general protection against dangers from military operations.” This general protection enjoyed by the civil population derives from custom and from general principles; however, beginning with common Article 3 of the Geneva Conventions of 1949 and especially from Additional Protocol II to the Geneva Conventions, it is on record in the substantive law text. In other words, while the first (combatants) are, by excellence, the object of the war, the others should not be implicated in the hostilities. This rule of international custom emphatically recognizes that the parties to the conflict will, at all times, make the distinction between civilians and combatants.

On the other hand, according to the principle of proportionality, in every internal or international armed conflict, attacks should be strictly limited to the military objectives. Civil property should not be the object of attacks or retaliations. And, lastly, according to the principle of prohibition on causing superfluous or unnecessary suffering, any combatant and all parties to a conflict are prohibited from using arms and methods of war that could cause useless losses or unnecessary or excessive suffering. In this sense, indiscriminate attacks are prohibited.

All of these principles constitute humanitarian duties that all of the States must fulfill, since in International Humanitarian Law, the principles represent the minimum humanity applicable at all times, in all places and in all circumstances, even valid for States that are not part of the Conventions or Protocols, since they express the communities’ customs.

Regarding the Geneva Conventions, it is important to indicate that they were ratified by the State of Guatemala on May 14, 1952. As part of these agreements, common Article 3 constitutes a system for the protection of the victims of internal armed conflicts and the minimum protection that must be given to human beings at all times and places during armed conflicts that are not of an international nature. As expressed by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the judgment of February 20, 2001, “the entire world recognizes that the acts mentioned in common Article 3 are criminal and go against the conscience of any civilized group.” In conclusion, the State of Guatemala has the obligation to investigate the facts and determine if there were any violations of common Article 3 of the Geneva Conventions and identify those responsible.

It is worth noting that the consideration of the Inter-American Court of Human Rights in paragraph 131 of this judgment, when referring to an investigation without delay of the multiple crimes perpetrated during the events of the massacre, must be understood as including the investigation of those events considered crimes of war and other prohibitions by International Humanitarian Law, so as to prosecute and punish those responsible for these acts. It would have been desirable, however, for the judgment to concretely indicate that the State of Guatemala is obligated to investigate the events and identify those responsible, including a thorough and efficient investigation to determine if there were any violations to International Humanitarian Law, with the purpose of identifying those responsible.

There are three arguments that support this assertion.

a) The interpretation and application of the American Convention do not exclude those of general international law; on the contrary they require them. The preamble to the American Convention expressly refers to the principles reaffirmed and developed in international instruments, "both of a universal and regional nature" (para. 3). It also refers to obligations imposed by international law (Article 27), as well as to "the generally recognized principles of international law" (Article 46(1)(a)).
b) The fact that the Inter-American Court lacks jurisdiction to determine violations of specific conventions such as the Geneva Conventions of 1944 or the Convention against Genocide (1948), does not mean that the Court cannot consider acts that these conventions typify as grave violations or genocide, as aggravating circumstances (aspect developed by Judge Antonio Cancado Trindade in his concurring opinion in the Case of the Massacre of Plan de Sanchez.) This argument becomes stronger when these conventions relate to the violation of a right established in this Convention, such as when it deals with a violation to the Right to Life established in Article 4 of the American Convention.
In this sense, and, as argued by jurist Cancado Trindade "under the American Convention, the determination of the aggravated international responsibility of the State is perfectly possible…It wouldn't be the first time that the Inter-American Court identified an aggravated international responsibility (as occurred in the terms of paragraph 51 of the judgment on the case of the Plan de Sanchez Massacre or in its previous Judgment, from 25(1)1.2003, on the case Myrna Mack Chang versus Guatemala, in which the Court concluded that, of the facts proven, an "aggravated international responsibility by the respondent State" is inferred, para. 139.)" (Concurring opinion of Cancado Trindade Plan de Sanchez Massacre page 9)
c) At the time when the events of the instant case occurred, the prohibition established in common Article 3 to the Geneva Conventions was already part of the customary international law, and even of the jus cogens domain. Therefore, the State of Guatemala was already forced to comply with this prohibition.

2. Competence and application of the Convention of Belém do Pará: It is highly important that in this case the Convention of Belem do Para was applied. The reasons exposed in the referred judgment were: a) the State had the obligation to investigate all of the events with due diligence, which was pending at the time of recognition of the Court's contentious jurisdiction (March 9, 1987); b) this obligation was later reaffirmed by the State with the ratification of the Convention of Belém do Pará on April 4, 1995, thus the State had to ensure its compliance as of that moment, even when it had not been adopted by the State at the time the events of the case took place; and c) The Convention of Belém do Pará complements the international corpus iuris in terms of the protection of personal integrity.

The case of Las Dos Erres is not only paradigmatic in terms of impunity, but also in terms of the methods of war used by the State of Guatemala while carrying out hostilities in an internal armed conflict. The use of rape has been denounced repeatedly as a method of torture, as well as specific violence against women, within internal armed conflicts. This is precisely the case in Guatemala, in the case under analysis.

In this context it is important to note an aspect of the Rome Statute created by the International Criminal Court. It recognizes the practices that violate the human rights of women that have historically occurred in situations of armed conflict or disturbances (rape, sexual slavery, forced

prostitution, forced pregnancy, forced sterilization or other sexual abuses of comparable gravity) as part of the crimes of genocide, crimes against humanity, and of war. And this aspect occurs in the case of Las Dos Erres Massacre.

It is extremely important to apply the Convention of Belém do Pará in the case of Las Dos Erres Massacre, since the former defines violence against women; it recognizes women's rights to life without violence and establishes that violence against them is a violation of human rights, establishing this right both in the public and the private realm.

It may be asserted that the application of the gender perspective enriches the manner of looking at reality and acting on it, hence the need to mention it and apply it in the case of Las Dos Erres. In terms of human rights, it allows, among other things, to visualize the inequities construed artificially, socio-culturally, and to better detect the specificity in the protection needed by those who suffer inequality or discrimination. Thus, it offers large advantages and possibilities for the effective protection of individuals and, concretely, of women.

The preamble of the Convention of Belém do Pará recognizes that "violence against women is an offense to human dignity and a manifestation of the historically unequal power relations between women and men." The case of Las Dos Erres shows that this inequality indeed exists; therefore it is important to apply it. I am convinced that the Jurisprudence of the Inter-American Court of Human Rights should continue to set precedents in this direction. The importance of recognizing the specific violations of women's human rights within the framework of the Inter-American system lies in the development of specific standards to protect women (Declaration and Plan of Action of Vienna 1993 and IV World Conference on Women [Beijing, 1995 and others.])

This consideration should lead us to propose more concrete aspects in relation to reparation measures, and, concretely, of non-repetition, for example: a) the State of Guatemala must intensify and expand the existing actions to train officers, particularly those in the National Civil Police and the Public Prosecutor's Office, on the causes, nature and consequences of gender violence; b) the State of Guatemala must guarantee that the impact and consequences of acts of violence committed against women during the internal armed conflict are adequately contemplated in the National Compensation Plan ("Plan Nacional de Resarcimiento"); c) the State of Guatemala must implement training programs on women's rights and particularly on the right to a life free of violence, geared toward personnel in the public force, the army and public institutions; d) the State of Guatemala must implement all measures of protection and prevention to guarantee women a life free of violence and measures to avoid abuse and rape of women under federal, police, or military custody, as a form of torture.

3. Access to information and the State Secrets in cases of grave human rights violations: the judgment establishes in number 144 that "all authorities are forced to collaborate in the gathering of proof and should therefore provide the judge of the cause all information required and abstain from acts that imply obstruction in the investigation process." In this regard, it is important to refer specifically to the obligation of the Guatemalan Army to deliver documents relating to military campaign plans or containing strategies for military missions and hostilities in general, and to allow access to military files.

As mentioned by the Inter-American Commission on Human Rights in its initial claim of the case under consideration, on April 1982 "The Military Junta of the Government pronounced the 'National Plan for Security and Development' which established national objectives in military, administrative, legal, social, economic and political terms." In this plan, the main areas of conflict in the various departments of the country were identified. The Military Junta and the High Command also designed and ordered the implementation of a military campaign plan called "Victory 82," in which they used new strategic definitions within the framework of counterinsurgency and the objectives of the National Plan for Security and Development. The Military's refusal to deliver these and other documents is promoting more impunity in Guatemala.

In the case of Mack Chang vs. Guatemala, Judgment of November 25, 2003, paragraph 180, the Inter-American Court of Human Rights asserted that "in cases of human rights violations, State authorities cannot resort to mechanisms such as State Secrets or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding." The Inter-American Court of Human Rights has also referred to the "State Secrets" as an obstacle to access information, in particular information that sheds light on human rights violations.

Indeed, in the case of Myrna Mack Chang vs. Guatemala, the Court echoed the words of the Inter-American Commission and recognized that "[i]n the framework of a criminal proceeding, especially when it involves the investigation and prosecution of illegal actions attributable to the security forces of the State, there is a possible conflict of interests between the need to protect state secrets, on the one hand, and the obligations of the State to protect individuals from the illegal acts committed by their public agents and to investigate, prosecute, and punish those responsible for said acts, on the other hand." In this case, the Court was emphatic in asserting that "in cases of human rights violations, the State authorities cannot resort to mechanisms such as State secrets or confidentiality of the information, or reasons of public interest or national security, to avoid providing the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding."

In conclusion, the State of Guatemala and specifically the Guatemalan Army are obligated to deliver these and other documents that provide the information necessary to shed light not only on cases such as the Las Dos Erres Massacre, but also other cases of the same gravity, which remain in impunity. International Law recognizes the rights of individuals to receive information, especially relating to acts by the public administration. While the right to access of information is not absolute, all restrictions placed must be clearly established in the law and must respond to an exceptional situation.

The State of Guatemala has the duty to fight impunity and, consequently, to remove all obstacles that could unfairly impede or delay the effective investigation and punishment of those responsible for grave human rights violations and crimes under international law and specifically in the case of Las Dos Erres Massacre. Consequently, it cannot invoke "State secrets" to deny information relating to grave human rights violations and crimes under international law.

Likewise, the State of Guatemala cannot use “State secrets” as a justification to avoid judicial proceedings from moving forward against those allegedly responsible for grave human rights violations. By refusing to deliver the various documents of this nature, the State of Guatemala has compromised its international responsibility and must therefore immediately terminate this practice and deliver the corresponding documents.

Ramón Cadena Rámila
Judge ad hoc

Emilia Segares Rodríguez
Deputy Secretary