

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF COC MAX ET AL. (XAMÁN MASSACRE) V. GUATEMALA
JUDGMENT OF AUGUST 22, 2018
(Merits, Reparations and Costs)

In the case of *Coc Max et al. (Xamán Massacre) v. Guatemala*,

the Inter-American Court of Human Rights (hereinafter also “the Inter-American Court” or “the Court”), composed of the following Judges*:

Eduardo Ferrer Mac-Gregor Poisot, President
Humberto Antonio Sierra Porto
Elizabeth Odio Benito
Eugenio Raúl Zaffaroni and
L. Patricio Pazmiño Freire

also present,

Pablo Saavedra Alessandri, Registrar, and
Emilia Segares Rodríguez, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”) delivers this judgment, structured as follows:

*Judge Eduardo Vio Grossi, Vice President of the Court, did not take part in the deliberation and signing of this judgment for reasons of force majeure, accepted by the Judges of the Court.

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I

INTRODUCTION OF THE CASE AND THE CAUSE OF ACTION

1. *The case submitted to the Court.* On September 21, 2016, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of *Coc Max et al. (Xamán Massacre) against the Republic of Guatemala* (hereinafter also "the State" or "Guatemala"). According to the Commission, the case concerns the alleged "massacre" by members of the Armed Forces of Guatemala, on October 5, 1995, of 11 persons, including a young girl and two young boys, who were members of the q'eqchi', mam, q'anjob'al, ixil and k'iche indigenous peoples who lived on the Xamán finca (a communal farm in this case), after having been "refugees" in Mexico. The Commission stated that 29 persons were also injured in the attack, three of whom later died. Although 14 persons were tried and convicted, this case concerns the alleged lack of an independent and impartial investigation that, within a reasonable time, would have had the purpose of punishing all the persons responsible. Finally, the Commission determined that the incident also affected 59 family members of the deceased and the injured persons and claimed that it was a racially discriminatory act against the Mayan people during the internal armed conflict in Guatemala (hereinafter also "the conflict" or "the armed conflict"). The names of those persons may be found in Annex A of this judgment, which forms part of it.

2. *The following proceedings took place before the Commission:*

- a) *Petition.* On November 16, 1995, the Commission received the initial petition presented by Rigoberta Menchú Tum, Eduardo Antonio Salerno and María Lopez Funes, which was assigned Case No. 11,550. Subsequently, the Mutual Support Group (hereinafter also "the GAM" or "the representative") became the petitioner.
- b) *Report on Admissibility and on the Merits.* On December 18, 2002, the Commission notified the parties of its decision to defer examination of the petition's admissibility until it had decided on its merits, pursuant to Article 37(3) of the Rules then in force. After receiving several briefs and after a friendly settlement procedure that was not successful, on June 10, 2016 the Commission adopted its Report on Admissibility and the Merits No. 28/16 (hereinafter "Report on the Merits" or "Merits Report"), in which it reached a series of conclusions and made various recommendations to Guatemala.
 - i) *Conclusion.* The Commission concluded that Guatemala is internationally responsible for violating the rights to life, to personal integrity, to judicial guarantees, of the child, to equality before the law and to judicial protection recognized, respectively, in Articles 4(1), 5(1), 8(1), 19, 24 and 25(1) of the American Convention, read in conjunction with the obligations established in Article 1(1) thereof.
 - ii) *Recommendations.* The Commission, therefore, recommended that the State:
 - a) "Provide comprehensive reparation for the human rights violations declared in [the Merits Report] in the material, moral, and cultural dimensions, including (i) just compensation; (ii) measures of satisfaction to commemorate the victims and publicly acknowledge the State's responsibility for the events, and (iii) rehabilitation measures by implementing a program of culturally appropriate physical and mental and/or psychological health care for the survivors and next of kin of the victims" and

- b) "Adopt such measures as may be necessary to prevent a recurrence of such events. Those measures should include (i) implementation of permanent programs on human rights and international humanitarian law at military training colleges; (ii) strengthening of institutional capacities to investigate the gross human rights violations that occurred during the internal armed conflict and (iii) adoption of effective mechanisms to address intimidation and harassment of legal operators, victims, and witnesses in the framework of those investigations."
- c) *Notification to the State.* The Commission informed that the Merits Report was notified to the State on June 21, 2016, granting it two months to report on compliance of the recommendations. The Commission stated that it had been informed of a "rapprochement" between the State and the petitioner, but that the latter requested that the case be submitted to the Court and Guatemala did not request suspension of the period set out in Article 51 of the Convention.
3. *Submission to the Court.* On September 21, 2016, the Commission submitted to the Court "the totality of the facts and violations" described in the Merits Report.¹
4. *Requests of the Commission.* Based on the foregoing, the Commission requested that the Court conclude and declare the State's international responsibility for the violations contained in its Merits Report and that it order that the State, as measures of reparation, comply with the recommendations included in that Report.

II. PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representative.* The submission of the case was notified to the State and to the representative of the alleged victims² on January 24 and 30, 2017, respectively.
6. *Brief with pleadings, motions, and evidence.* On March 31, 2017, the representative presented, pursuant to Articles 25 and 40 of the Rules of the Court, its brief with pleadings, motions, and evidence (hereinafter "brief with pleadings and motions") that substantially coincided with the arguments of the Commission and that requested the Court to declare the State's international responsibility for violating the same articles of the Convention that the Commission indicated (*supra* para. 2). It also alleged the violation to private property. Finally, it requested that it order that the State adopt diverse measures of reparation and reimburse costs and expenses.
7. *Answering brief.* On July 3, 2017, the State presented its answering brief³ to the submission of the case by the Commission and its observations to the brief with pleadings and motions. It denied the alleged violations and responded to the requests for reparation.

¹ The Commission stated that it did so "in view of the absence of full reparation" and the "need to obtain justice."

² Through a series of communications between the Court's Secretariat and the persons and organizations connected to those who had acted as petitioners (*supra* para. 2), the representation of the alleged victims in the case was resolved. By communications of January 6, 2017, addressed to those persons and organizations, the Secretariat informed that "following instructions of the President of the Court [...] the sole representative of the alleged victims, for the pertinent effects related to the proceedings of the case before the Court [...], will be the Mutual Support Group (GAM)."

³ On February 13, 2017, the State appointed Víctor Hugo Godoy Morales and María José Ortiz Samayoa as its Agents. On September 26, 2017, Guatemala informed of the appointment of Jorge Luis Borraro Reyes as the new President of the Presidential Commission on the Coordination of Human Rights Policy for the Executive

8. *Public hearing.* On December 13, 2017, the President of the Court⁴ (hereinafter also “the President”) issued an order that called the State, the representative, and the Commission to a public hearing on the merits, reparations, and costs and to receive the final oral arguments of the parties and the final oral observations of the Commission.⁵ The order also called two alleged victims to the hearing. In addition, it ordered that the affidavits of an alleged victim and an expert be received. The public hearing was held at the Court’s seat on February 9, 2018, during its 121st regular session.⁶ At the hearing, the judges requested information and explanations of the parties and of the Commission.

9. *Final written arguments and observations.* On March 9, 2018, the representative and the State submitted their final written arguments, as well as certain annexes. Three days later, the Commission presented its final written observations. On April 2, 2018, the representative and the State presented their observations to the documentary annexes presented by the other party, while the Commission informed that it had no observations on that documentation.

10. *Provisional measures.* On February 8, 2018, the Court adopted provisional measures on behalf of the alleged victims Efraín Grave Morente, Natividad Sales Calmo and Tomás Grave Morente, as well as on behalf of Maynor Estuardo Alvarado Galeano and Karla Lorena Campos Flores, lawyers of the representative.⁷ The measures are still in force.

11. *Deliberation of the case.* The Court deliberated on this judgment on August 21 and 22, 2018.

III. JURISDICTION

12. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, as Guatemala has been a State Party to the American Convention since May 25, 1978 and recognized the contentious jurisdiction of the Court on March 9, 1987.

IV. PRIOR CONSIDERATION OF THE DETERMINATION OF ALLEGED VICTIMS

A. Arguments of the Commission and of the parties

(COPREDEH). On November 6, 2017, it informed of the appointment of Felipe Sánchez González as the new Executive Director of COPREDEH.

⁴ For reasons of force majeure, the order was issued by Eduardo Ferrer Mac-Gregor Poisot, the then Vice President of the Court, who assumed on that date the Acting Presidency with respect to this case, pursuant to Articles 4(2) and 5 of the Rules.

⁵ Cf. *Case of Coc Max et al. v. Guatemala. Call to a public hearing.* Order of the President of the Court of December 13, 2017. Available at: http://www.corteidh.or.cr/docs/asuntos/cocmax_13_12_17.pdf

⁶ Appearing at the hearing were: (a) for the Commission: Selene Soto Rodríguez, a staff lawyer; (b) for the representative of the alleged victims: Efraín Grave Morente, representative of the “Aurora 8 de octubre” Community; Maynor Estuardo Alvarado Galeano and Karla Lorena Campos Flores, lawyers, and (c) for the State: Ambassador Juan Carlos Orellana Juárez; Felipe Sánchez González, Executive Director of COPREDEH; Lourdes Woolfolk Contreras, Director of Follow-up of International Human Rights Cases of COPREDEH, and Blanca Mariola Castañeda López, Prosecutor of the Public Prosecution Service.

⁷ On February 1, 2018, the representative requested provisional measures on behalf of “all the members of the Community.” Later, when it was asked for “detailed information” on the request, it identified only those five persons (Cf. *Case of Coc Max et al. v. Guatemala. Adoption of Provisional Measures.* Order of the Inter-American Court of February 8, 2018, considering paragraph 7).

13. The **Commission** named 99 persons as victims in its Merits Report (*supra* para. 1). It stated that it had made their “most precise individualization possible,” but put “on the record” that the names of the persons may not be identical in the different communications or in the judicial record.⁸

14. The **representative** identified as a victim Eulalia Antonio, mother of Manuela Mateo Antonio, who was not included in the Report on the Merits.

15. The **State** claimed that the circumstances of the case of the mother do not fall within the jurisprudential criteria regarding the impossibility to determine alleged victims and, therefore, the exception should not be granted.

B. Considerations of the Court

16. Under Article 35(1) of the Rules of the Court, the Merits Report must contain the identification of the alleged victims. Article 35(2), however, provides an exception. The Court has held that the exception operates when there is “a material or practical impediment to identify the alleged victims in cases of massive or collective violations of human rights.”⁹ In order to determine whether the exception operates, the Court evaluates the specific characteristics of each case.¹⁰

17. The Court finds that the incident affected a substantial number of members of the “Aurora 8 de octubre” Community (hereinafter also “the Community”) and that the case concerns a collective violation of human rights. Therefore, given the characteristics of the case, the exception provided by Article 35(2) of the Rules of the Court is applicable. The Court, thus, holds that Mrs. Eulalia Antonio may be considered an alleged victim.

V.

EVIDENCE

A. Admissibility of the documentary evidence

18. The Court received documents attached to their main briefs, presented as evidence by the Commission and by the parties (*supra* paras. 3, 6 and 7). The Commission requested the incorporation of four expert opinions offered in other proceedings (*infra* para. 19 and footnote 12) The Court also received from the representative a document requested as useful evidence, pursuant to Article 58 of the Rules (*infra* para. 19), as well as documentation on a supervening event (*infra*, para. 22). It likewise received documents attached to the final written arguments (*supra* para. 9).

19. In this case, as previously, the Court admits those documents that are presented in a timely fashion by the parties and by the Commission or deemed helpful by the Court

⁸ The Commission pointed out that the events occurred more than 20 years ago and that, while many indigenous persons maintain their original names, upon being registered in the Civil Registry they were given names that are more common in the Spanish language. It indicated that, while persons should be identified in the best way possible, “certain standards of reasonability and flexibility” should be observed.

⁹ *Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 4, 2012. Series C No. 250, para. 48 and *Case of the Dismissed Workers of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344, para. 55.

¹⁰ *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, paras. 48 to 51 and *Case of the Dismissed Workers of Petroperú et al. v. Peru, supra*, paras. 61 and 62.

or its President, the admissibility of which was neither disputed nor objected to.¹¹ Also admitted were documents that the President, in the order of December 13, 2017, decided to incorporate into the body of evidence (*supra* para. 8).¹²

20. On February 16, 2018, pursuant to Article 58 of the Rules, the representative was asked for a copy of the proposed friendly settlement. The **representative** submitted it on the 21st, together with two other documents: a notarized statement made on the 19th by, according to the statement, the President of the Presidential Commission on the Coordination of Human Rights Policy for the Executive (hereinafter COPREDEH) and a copy of his appointment on March 17, 2016. It admitted that the statement "was made after the public hearing." The **State** claimed that these two documents were time-barred and asked that they not be considered since "they were not requested." The **Court** notes that the copy of the appointment of the President of COPREDEH was not requested. In addition, a reading of the statement, also not requested, shows that it was made to be presented to the Court and that it refers to events prior to the hearing. Therefore, in view of the request of the State, the Court does not admit these two documents, but it does admit the proposed friendly settlement, since it was requested.

21. Together with its final written arguments, the State presented five documentary annexes,¹³ and the representative seven.¹⁴ The **representative** requested that four of the five State annexes not be admitted as time-barred but noted that they were part of the evidence prior to their presentation by the State. It asked that the annex containing "documents of the National Reparations Program" (hereinafter also "the PNR") "be taken into account." The **State** argued that six of the seven annexes submitted by the representative should not be considered by the Court, for being time-barred. As to the others, referring to expenses of the representative, it stated that its presentation was not timely and that there was no documentation to support the claimed disbursements.

22. The **Court**, with respect to the documents submitted by the State: (a) admits the "documents of the National Reparations Program," acknowledging the consent of and the reasons given by the representative and (b) notes that, as the representative pointed out, the other documents were incorporated as evidence before the State submitted its final

¹¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140 and *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of April 25, 2018. Series C No. 35, para. 173.

¹² That order incorporated into the body of evidence, as documentary evidence, video recordings of the statements of 17 persons and of four expert opinions offered in other proceedings before the Court. The expert opinions were those of Alejandro Rodríguez and Cristian Correa, offered in the *Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala* case, as well as the expert opinions given by Michael Paul Hermann, Juan Méndez and Rosalina Tuyuc in the *Río Negro Massacres v. Guatemala* case. The video recordings included statements of the following persons: Atilina Hernández Maldonado, Efraín Grave Morente, Eliseo Hernández Morales, Florinda Sales Jacinto, José Coc Cajbón, María Medina, María Miguel, Mario Alberto Ramírez Hernández, Manuela Toma Gómez, Natividad Sales Calmo, Pedro Coc Chén, Petrona Miguel Méndez, Ramón Mateo, Rolando Hernández Maldonado, Ricardo Pop Caal, Santos Choc Coc and Tomás Grave Morente. The incorporation of the expert opinions was requested by the Commission and the statements were submitted by the representative. Cf. *Caso Coc Max et al. v. Guatemala. Call to a public hearing, supra*, considering paragraphs 12 to 20 and operating paragraphs 11 and 12.

¹³ Three are statements before the First Sentencing Court for Criminal Matters, Drug Trafficking and Environmental Crimes by (a) Efraín Grave Morente; (b) Natividad Sales Calmo, and (c) Tomás Grave Morente. The other two are "photographs of the place of the incident" and (d) "documents of the National Reparations Program."

¹⁴ They are the following: (a) Document containing the calculation of the sentences; (b) Property deeds of the land of the "Aurora 8 de octubre" Community; (c) Agreement signed by the Permanent Commissions of Representatives of Guatemalan Refugees in Mexico and the Government of Guatemala; (d) Communications sent to COPREDEH; (e) Documentation that supports expenses made by the representative; (f) Accord on resettlement of the population groups uprooted by the armed conflict, Oslo, June 17, 1994, and (g) Convention on the Status of Refugees.

written arguments and, thus, the documents may be used and the argument over its supposed untimely incorporation is no longer relevant. As to the documents furnished by the representative, the Court: (a) notes that the Convention on the Status of Refugees is an instrument of international law and does not need any proof and (b) admits the rest of the documents since: (i) the document on expenses contains information on events after March 31, 2017, when the brief with pleadings and motions was presented (*supra* para. 6), but will not be considered by the Court regarding expenses before that date, for being time-barred¹⁵ and (ii) the other documents are helpful and are directly related to questions of the judges during the public hearing and, therefore, despite having been provided after the presentation of the brief with pleadings and motions, they are admitted under Article 58(a) of the Rules.¹⁶ The Court also admits the birth and death certificates of Pedro Daniel Carrillo López, submitted by the representative on August 16, 2018, since they were presented with the purpose of accrediting an event, the date of his death, which occurred on July 27, 2018.¹⁷ Similarly, for being helpful, and since it concerns a published legal provision, the Court incorporates de officio, as documentary evidence, the text of the 1992 Code of Criminal Procedure of Guatemala (*infra* footnote 59). Under the authority granted it by Article 58(a) of its Rules, the Court also incorporates de officio information on the monetary exchange rate published on the Web site of the Bank of Guatemala (*infra* footnote 224).

23. The Commission presented documents, marked annexes 1 and 2 to the Merits Report, by means of Internet links that were not useful. However, both documents are incorporated under the authority of Article 58(a) of the Rules, since both are part of the same document and neither the State nor the representative objected to nor made observations regarding them.¹⁸

B. Admissibility of the testimonial and expert evidence

24. In the public hearing, the Court heard the statement of the alleged victims Tomás Grave Morente and Natividad Sales Calmo and received the affidavits of Efraín Grave Morente, an alleged victim, and of the expert Claudia Virginia Samayoa Pineda.¹⁹ The Court finds it appropriate to admit the statements of the alleged victims and the expert

¹⁵ Regarding the State's comments on the lack of vouchers in relation to that document, the Court considers that those comments refer to their evidentiary value and not to their admissibility.

¹⁶ The judges' questions referred to (a) the legal title to the land where the "Aurora 8 de octubre" Community was located and its relation to the documents marked as: (i) Property deeds of the land of the "Aurora 8 de octubre" Community; (ii) Accord signed between the Permanent Commissions of the Representatives of the Guatemalan refugees in Mexico and the Government of Guatemala and (iii) Accord on resettlement of the population groups uprooted by the armed conflict, Oslo, June 17, 1994, and (b) for the length of the sentences of deprivation of liberty with reference to the document that contains the computation of the sentences and (c) for the friendly settlement procedure with reference to the "communications sent to COPREDEH."

¹⁷ Cf. Birth and death certificates of Pedro Daniel Carrillo López, issued August 8 and 6, 2018, respectively, attached to the communication of the representative of August 16, 2018 (evidence file, fs. 899 and 900).

¹⁸ The Commission indicated: (a) as annex 1 to the Report on the Merits, the document identified as "CEH, Guatemala: Memory of Silence, Conclusions and Recommendations, paras. 85-88" and (b) as annex 2 to the Report on the Merits, the document identified as "CEH, Guatemala: Memory of Silence, Volume VI, Illustrative Cases, Annex 1, Illustrative Case No. 3: Xamán Massacre." Both documents are part of "Guatemala: Memory of Silence," of the Commission for Historical Clarification that the Court will consider since annexes 1 and 2 to the Report on the Merits are a part of that Report and in view of the comments of the State (*infra* para. 26). The document was taken from the Internet: <http://www.centrodememoriahistorica.gov.co/descargas/guatemala-memoria-silencio/guatemala-memoria-del-silencio.pdf> (hereinafter the document will be referred to as "CEH, Guatemala: Memory of Silence"). The Web sites mentioned in this judgment were last consulted when the judgment was delivered, which was August 22, 2018.

¹⁹ The objects of these statement can be found in the order of the President of December 13, 2017 (*cf. Case of Coc Max et al. v. Guatemala. Call to a public hearing, supra*).

opinion, offered in the public hearing and before a notary public, to the extent that they meet the object defined by the President in the order that authorized their reception.

25. It should, however, be noted that the representative requested that 34 persons testify in the context of a visit to the "Aurora 8 de octubre" Community. In the order of December 13, 2017 (*supra* para. 8), the President "considered it relevant to assess the outcome of the visit to gather evidence after the public hearing in this case."²⁰ On May 31, 2018, the parties and the Commission were informed that "bearing in mind the existing body of evidence, the Court denied the request."²¹

VI. FACTS

26. Having examined the evidence and having heard the arguments of the Commission and the parties, the Court considers the facts to be as follows. In doing so, the Court bears in mind that Guatemala indicated, in "commenting on the Merits Report" that sets out the factual framework on what the Court must resolve, that "it is not unaware of the incident that occurred." The Court also notes that soon after the incident took place, the then President of Guatemala recognized the "institutional responsibility" and, subsequently, the judicial authorities determined what had occurred and convicted those responsible (*infra* paras. 60, 64 and 65). At the public hearing, the State was asked to clarify whether it recognized the events. In its final written arguments, Guatemala did not respond either affirmatively or negatively, but rather averred that "the truth of the events as recorded by the Commission for Historical Clarification (hereinafter also "CEH") should come first." The Court considers that the State has accepted, in general, the facts contained in the Merits Report. The Court, in establishing the relevant facts, will consider that acceptance, as well as the assertions of the CEH.²²

A. Context

27. The Court, on previous opportunities, has noted that

The State of Guatemala was engaged in an internal armed conflict between the years 1962 and 1996 that produced enormous human, material, institutional and moral costs.²³ In 1990, a peace process was begun that culminated in December 1996 when the Government of the Republic of Guatemala and the Guatemalan National Revolutionary Unitary (URNG), with the participation of civil society, signed the Agreement on a Firm and Lasting Peace, with the purpose of ending the armed conflict. That Agreement validates the twelve agreements that were signed during prior negotiations, among them, "the establishment of the Commission for Historical Clarification of the human rights violations and the acts of violence that have caused the suffering of the Guatemalan people." That Commission began its work on July 31, 1997 and published its report "*Guatemala, Memory of Silence*" on February 25, 1999.²⁴

²⁰ Cf. *Case of Coc Max et al v. Guatemala. Call to a public hearing, supra*, considering paragraph 23.

²¹ The Court notes that, in its brief with pleadings and motions, the representative stated that it would also serve as a "precautionary measure for those whose lives were in danger." With respect to the alleged situation, reference is made to the provisional measures adopted (*supra* para. 10).

²² In this context, the Court will bear in mind the pertinent facts derived from the evidence provided to the Court as documentary evidence, including information presented by the parties in the proceedings before the Commission.

²³ Cf. *Case of the Plan de Sánchez Massacre v. Guatemala. Merits. Judgment of April 29, 2004. Series C No. 105, para. 42(1)*; *Case of García and family members v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012. Series C No. 258, para. 51* and *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 328, para. 76.*

²⁴ *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 76. Similarly, *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 134.9.*

Based on the foregoing, the Court will refer to specific aspects of the described context that are relevant in this case.

A.1 The internal armed conflict and the violence against the Mayan people

28. The CEH noted that during the armed conflict there were multiple "human rights violations and acts of violence attributable to actions of the State [...] with especial severity from 1978 to 1984, a period during which 91% of the violations were documented."²⁵

29. The Court has noted in previous cases that the State applied what it called the "Doctrine of National Security," employing the idea of an "internal enemy" that initially included the guerilla organizations but was broadened to include other groups and persons.²⁶ Based on that Doctrine, the Guatemalan Army placed the members of the Mayan indigenous populations in the category of "internal enemy" because it believed that they were or could be the support base of the guerillas.²⁷ The Court has noted that, according to the CEH, the Mayan populations were the ethnic group most affected by the human rights violations committed during the internal armed conflict, suffering forced displacement and the destruction of their communities, homes, cattle, harvests and other elements of survival.²⁸ The violence directed against the Mayan people was demonstrated by multiple acts, including massacres.²⁹

30. As indicated (*supra* para. 27), a peace process began in 1990 that culminated in December 1996 with the signing of the Agreement on a Firm and Lasting Peace. Among the documents signed was the "Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements."³⁰

A.2. Displacement and repatriation of the persons affected by the conflict

31. One of the consequences of the conflict was the displacement of communities and persons, including that outside the State territory. The CEH indicated that the massacres and devastation of villages that occurred between 1981 and 1983 led to the flight *en masse* of Mayan communities and a considerable number of Ladino families. Some 150,000 persons sought safety in Mexico. About a third settled in camps and received the status of refugee by the Office of the UN High Commissioner for Refugees (hereinafter "UNHCR").³¹

32. In 1991, the State created the National Commission for the Care of Refugees, Returnees and the Displaced (hereinafter "CEAR"), the object of which was to resolve the situation of the refugees, returnees and the displaced. In July of that year, the Permanent Commissions of the Representatives of Guatemalan Refugees in Mexico (hereinafter "CCPP") presented a series of conditions for the return to a secure and dignified life. On

²⁵ CEH, Guatemala: Memory of Silence, *supra*, Chapter II: The human rights violations and the acts of violence and those responsible, para. 82.

²⁶ *Cf. Case of Gudiel Álvarez et al. v. Guatemala. Merits, Reparations and Costs.* Judgment of November 20, 2012. Series C No. 253, para. 54 and *Case of García and family members v. Guatemala, supra*, para. 51.

²⁷ *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 58.

²⁸ *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, para. 58.

²⁹ *Cf. Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 132 and *Case of García and family members v. Guatemala, supra*, para. 54.

³⁰ "Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements" of December 29, 1996 (evidence file, annex 5 to the answering brief, fs. 5397 to 5429).

³¹ *Cf. CEH, Guatemala: Memory of Silence, Conclusions and Recommendations, supra*, para. 66.

December 13, 1991, the President of Guatemala and ACNUR signed a "Letter of Understanding" on the voluntary return of Guatemalan refugees.³²

33. On October 8, 1992, agreements were signed by Guatemala, represented by CEAR and the CCPP, that spelled out the conditions for the return of the refugees in Mexico.³³ "The CEH indicated that the agreements had frequently been interpreted 'broadly by the returnees as a commitment on the part of the Army not to enter or patrol near their communities.'"³⁴

34. In December 1992, the CCPP made public the decision to begin the repatriation on January 13, 1993. Around 8,000 refugees expressed their interest in immediate repatriation. The UNHCR, the CEAR and the Mexican Commission of Support for Refugees agreed to oversee the resettlement. Guatemala accepted the proposal of the UN expert for human rights in Guatemala to keep the soldiers of the military base away from the resettlement zone.³⁵

B. Regarding the "Aurora 8 de octubre" Community in the Xamán finca

35. With the return of those who had settled in Mexico, the "Aurora 8 de octubre" Community was created in 1994. It was located on the Xamán finca, in the Municipality of Chisec, Department of Alta Verapaz in Guatemala. In 1994, the Community was comprised of some 90 families that had been in Mexico and another 50 families that already lived there. The families of the Community were members of the indigenous Mayan people, both q'eqchi', mam and q'anjob'al and, to a lesser degree, ixil and k'iche'. Those who returned to live in the Community had survived the massacres that occurred in their native village in 1982.³⁶ The members of this Community had been victims of human rights violations prior to the events of 1995, including massacres and forced displacement. Therefore, the State was obligated, upon their return, to provide them with special protection and to prevent any situation of revictimization.

C. Regarding the events the occurred in October 1995 in the Xamán finca

36. As was noted by the State, an incident occurred on October 5, 1995, about one year after the creation of the Community, that cost the lives of several people and injuries

³² The events mentioned in this paragraph appear in paragraphs 42 to 44 of the Report on the Merits, under the heading "Proven Facts." The Commission gave as its source a Web site that had verified the "Letter of Understanding," as well as a document that it identified as "IACHR, Fourth report on the situation of human rights in Guatemala, of June 1, 1993."

³³ Cf. Agreement signed between the CCPP and the Government of Guatemala; Guatemala, October 8, 1992 (evidence file, annex 3 to the final written arguments of the representative, fs. 5575 to 5583). Tomás Grave Morente testified before the Inter-American Court, in the public hearing of February 9, 2018, that agreements to return from Mexico were negotiated to guarantee that the returnees would not be killed if they returned and, thus, the Government signed a guarantee that enabled a massive return. Similarly, Natividad Sales, in her testimony before the Court at the same public hearing, noted that the CCPP was created in an attempt to arrive at agreements with the Government that would guarantee the rights of the returnees.

³⁴ CEH, Guatemala: Memory of Silence, *supra*, Volume VI, Illustrative Cases, Annex 1, Illustrative Case 3: Xamán Massacre.

³⁵ The events mentioned in this paragraph appear in paragraph 47 of the Report on the Merits, under the heading "Proven Facts." The Commission gave as its source a Web site that had verified the "Letter of Understanding," as well as a document that it identified as "IACHR, Fourth report on the situation of human rights in Guatemala, June 1, 1993."

³⁶ Cf. CEH, Guatemala: Memory of Silence, *supra*, Volume VI, Illustrative Cases, Annex 1, Illustrative Case 3: Xamán Massacre and affidavits of Efraín Grave Morente (evidence file, fs. 601 to 611) and of Tomás Grave Morente before the Court, *supra*. They explained what had motivated their families to live in Mexico and what had motivated them to return to Guatemala. In addition, Natividad Sales Calmo, in the same public hearing of February 9, spoke on what motivated persons to leave Guatemala and seek refuge in Mexico.

to others that could be classified as a massacre.³⁷ These circumstances were included in the CEH Report.

37. There follow the main aspects of the events of October 3 and 5, as related by the CEH and as included in the Report on the Merits. Thus, the facts are compiled from different sources of evidence:

- a. On October 3, 1995, a military patrol comprised of at least 26 soldiers, including one minor, set out from the Rubelsanto military base.³⁸
- b. On the morning of October 5, some inhabitants of the Community noticed the presence of the soldiers when they passed by the Xamán finca. A group of neighbors, which included some women and authorities of the Community, approached the soldiers and asked to see the officer in charge.³⁹
- c. The group asked the soldiers to explain why they were there.⁴⁰ After this encounter, the soldiers entered the Community.⁴¹ The number of inhabitants that surrounded the soldiers gradually increased.⁴² At 1:30 pm, the Second Lieutenant in charge spoke with the Deputy Mayor.⁴³ While this was happening, the inhabitants more vehemently manifested their discontent with the military presence.⁴⁴ They asked the soldiers to put down their weapons and remain there until the UN Mission of Verification in Guatemala (hereinafter "MINUGUA") and the UNHCR could verify the alleged violation of the Accords of October 8, 1992.⁴⁵
- d. The members of the patrol tried to leave, pushing the people aside with their rifles. At a moment during this tense situation the soldiers fired at a woman, Juana

³⁷ It should be noted that the Guatemalan judicial authorities also classified the incident as a "massacre" (*cf.* Decision of the Sentencing Court for Criminal Matters, Drug Trafficking and Environmental Crimes of the Department of Alta Verpaz of July 8, 2004 (evidence file, annex 29 to the Merits Report, fs. 934 to 1424) (Hereinafter this decision will be referred to as "the decision of July 8, 2004.")

³⁸ CEH, Guatemala: Memory of Silence, *supra*, Volume VI, Illustrative Cases, Annex 1, Illustrative Case 3: Xamán Massacre. The CEH reported that the patrol was comprised of 26 soldiers, including one minor. However, the statement of AHM, which was provided to the Commission with the initial petition and offered to the Court as documentary evidence, refers to 27 soldiers, including one minor (*cf.* Evidence file, annex 3 to the Merits Report, fs. 10 to 15). This judgment uses initials to refer to certain persons who appear in documents regarding domestic actions and who were not involved in the international proceedings before the Commission or the Court.

³⁹ *Cf.* Statement of AHM, *supra*. According to the decision of July 8, 2004 (*infra* para. 64), the soldiers were first seen at 10 a.m., after which they left the main road passing by a wooded area near a school and were seen by children during their recess, who alerted the school authorities (*cf.* Decision of July 8, 2004, *supra*) and, similarly, the statement of A, in which he is identified as a member of the Community, which was provided to the Commission with the initial petition and offered to the Court as documentary evidence (evidence file, annex 3 to the Merits Report, fs. 5 to 8). Tomás Grave Morente, in his statement before the Court, *supra*, maintained that when the inhabitants heard that soldiers were present, they went to see what was happening.

⁴⁰ *Cf.* Decision of July 8, 2004, *supra*.

⁴¹ Efraín Grave Morente stated that the soldiers said that they were lost and then changed their story and indicated that they wished to participate in the activities commemorating the first anniversary of the creation of the Community (*cf.* Testimony of Efraín Grave Morente before the Guatemalan judiciary (evidence file, annex 1 to the final written arguments of the State, fs. 5511 to 5516); statement made by video recording incorporated as documentary evidence, attached to the brief with pleadings and motions and affidavit presented to the Court, *supra*). The decision of July 8, 2004 contains the version that the soldiers asked to participate in the festivities commemorating the first anniversary of the Community (*cf.* Decision of July 8, 2004, *supra*). It also indicated that the soldiers had to go to the center of the Community to explain their presence there (*cf.* CEH, Guatemala: Memory of Silence, *supra*, Volume VI, Illustrative Cases, Annex 1, Illustrative Case 3: Xamán Massacre).

⁴² *Cf.* Decision of July 8, 2004, *supra*.

⁴³ *Cf.* Statement of A, *supra*.

⁴⁴ *Cf.* Statement of PAR that was provided to the Commission with the initial petition and provided to the Court as documentary evidence (evidence file, annex 3 to the Merits Report, fs. 15 to 18).

⁴⁵ *Cf.* Judgment of July 8, 2004, *supra*. Distinct statements of survivors of the massacre noted that they asked the soldiers to call MINUGUA to ascertain whether they could enter. The testimony of Efraín Grave Meorente before the Guatemalan judiciary, *supra*, may be compared to his statement before the Court, *supra*.

Jacinto Felipe, killing her and then fired indiscriminately.⁴⁶ The people began to run,⁴⁷ and several persons fell because of the impact of the bullets while they were fleeing⁴⁸ and, according to the denunciation, three were shot when they were stretched out and dying on the ground.⁴⁹ Judicial authorities considered proven that, after those shots, when the soldiers were leaving they ran into the boy Santiago Coc, whom they fatally shot.⁵⁰

e. The CEH maintained that there is no evidence that the inhabitants were carrying firearms nor any testimony that shows physical aggression against the soldiers, who were mostly surrounded by women and children. Eight adults and two boys and a girl of the Community, who are the alleged victims in this case, were killed during this incident and another 29, also alleged victims, were wounded.⁵¹

f. The injured were given first aid by personnel of Doctors of the World, a non-governmental organization that had a presence in the Community and who also informed MINUGUA of the incident.⁵²

D. Regarding the actions taken

38. The day after the incident, the President of the Republic visited the Community and “publicly recognized institutional responsibility for the incident” and ordered the creation of a “High-Level Research Commission” and an exhaustive investigation.⁵³ He also relieved the Commander of Military Zone No. 21, with headquarters in Cobán, and accepted the resignation of the Minister of National Defense.⁵⁴ Moreover, criminal proceedings were initiated,⁵⁵ which can be described as follows.⁵⁶

⁴⁶ Statement of A, *supra*; Statement of Tomás Grave Morente before the Guatemalan judiciary, *supra*.

⁴⁷ Testimony of Efraín Grave Lorente before the Guatemalan judiciary, *supra*, in which he indicates that he tried to leave, but could not because everyone was running rapidly and that, when he was able to leave, he received a gunshot in the stomach. Tomás Grave Lorente said much the same in his statement before the Guatemalan judiciary (evidence file, annexes to the final written arguments of the State, fs. 5522 to 5528), as he did in his testimony before the Inter-American Court, *supra*.

⁴⁸ Statement of A, *supra*; Statement of Tomás Grave Lorente before the Guatemalan judiciary, *supra*.

⁴⁹ *Cf.* Statement of A, *supra*.

⁵⁰ *Cf.* Judgment of July 8, 2004, *supra*. Regarding the last name of the boy, it is listed as “Coc” in the annex to the Report on the Merits; as “Coc Pop” in paragraph 54 of the Merits Report; as “Coc Tut” in the brief with pleadings and motions; as “Pop Tut” in the communication of the State to the Commission of May 24, 1996 (*cf.* Evidence file, annex 13 to the Merits Report, fl. 209); as “Tut” in the autopsy report of the Forensic Medicine Department of Guatemala of October 10, 1995 (evidence file, proceedings before the Commission, fs. 1754 to 2877) and as “Pop Tut [...] or Tut” in the judgment of July 8, 2004. The Court shall refer to this person as “Santiago Coc” in the understanding that his last name could be different.

⁵¹ The deceased and wounded were identified, according to the Commission and the parties, and their names can be found in annexes B(2), B(3) and B(4) of this judgment, which form part of it.

⁵² *Cf.* Communication of the petitioners to the Commission of September 30, 1996 (evidence file, proceedings before the Commission, fs. 2212 to 2214). Efraín Grave Morente, in his statement before the Inter-American Court, *supra*, noted that after he was shot he was taken to a clinic of the Doctors of the World, an organization that was there at the time of the incident. Tomás Grave Morente, in his testimony before the Court, *supra*, stated that MINUGUA took some of the wounded to the Hospital San Juan de Dios in Guatemala City, while the other wounded, including the declarant, were cared for in the Community by Doctors of the World. Natividad Sales Calmo testified, in the public hearing of February 9, 2018, that her son was attended to by Doctors of the World, who were in the Community.

⁵³ Observations of the State to the initial petition, presented to the Commission on December 8, 1995 (evidence file, annex 8 to the Merits Report, fs. 86 to 91).

⁵⁴ *Cf.* Observations of the State to the initial petition presented to the Commission on December 8, 1995, *supra*.

⁵⁵ Note is made that, at its first presentation before the Commission, the State informed that the Office of the Prosecutor General of the Republic had named a Special Prosecutor for the case (*cf.* Observations of the State to the initial petition, presented to the Commission on December 8, 1995, *supra*).

⁵⁶ The civil actions will be referred to subsequently (*infra* footnote 223).

39. After the massacre, the military personnel were “immediately confined” and faced “criminal proceedings” in the “First Military Court of Jalapa.”⁵⁷ The soldiers were “detained [...] in the Remand Center of the Second Corps of the National Police in the Department of Jalapa.”⁵⁸

40. Rigoberta Menchú Tum presented herself as a joint complainant (“querellante adhesiva”)⁵⁹ in the proceedings and, on October 31, 1995, submitted a brief to the Military Judge of Jalapa, claiming that he lacked jurisdiction, independence and impartiality and that the case should be tried in the ordinary criminal courts and not before the military jurisdiction. She also claimed that there had been a “flawed treatment [...] in the manner that the investigation was being conducted” and acts in violation of due process.⁶⁰ On November 2, 1995, the military court of Jalapa denied the request of Ms. Menchú.⁶¹ She appealed that decision. On January 31, 1996, the Fifth Chamber of the Court of Appeals, located in Jalapa, held that the crimes committed were ordinary crimes and ordered the transfer of the case to the Second Court of Cobán, Alta Verapaz.⁶²

41. According to information presented to the Commission, before February 28, 1996 the Public Prosecution Service (hereinafter also “the PPS”) presented six statements requesting measures of evidence, which were ignored. On that same day, the defense again challenged the remittance to ordinary jurisdiction and requested that the case be returned to the military jurisdiction. This request was rejected by the Criminal Chamber of the Supreme Court of Justice” (hereinafter “Supreme Court”).⁶³

42. In May 1996, various evidentiary procedures were carried out: on the 14th, the trial judge inspected the locale of the incident; on the 15th, the body of Santiago Coc was exhumed and, on the 17th, a ballistic test was performed at the request of the Prosecutor of the PPS assigned to the case.⁶⁴

⁵⁷ Observations of the State to the initial petition, presented to the Commission on December 8, 1995, *supra*.

⁵⁸ Observations of the State to the initial petition, presented to the Commission on December 8, 1995, *supra*.

⁵⁹ The judicial authorities, in the domestic proceedings, used the expression “querellante adhesiva” (cf. Minutes of the session of November 25, 1998 (evidence file, annex 24 to the Merits Report, fs. 329 to 701)), as did the parties on different occasions (cf. Brief of the petitioners to the Commission of May 11, 2010 (evidence file, annex 6 to the Merits Report, fs. 63 to 84)) and communication of the State to the Commission of May 24, 1996, *supra*. Rigoberta Menchú Tum also used the same terminology in presentations to the judicial authorities (cf. Case No. JM-028.95. Brief of Ms. Menchú Tum of October 31, 1995 (evidence file, annex 9 to the Merits Report, fs. 93 to 136)). According to Article 116 of the Code of Criminal Procedure of Guatemala, “passed” by the “legislative body” on September 28, 1992, “[i]n criminal actions, the complainant with civil capacity or his or her representative or guardian in case of incapacity may initiate criminal prosecution or join one already initiated by the Public Prosecution Service. This same right may be exercised by any citizen or group of citizens against public officials or employees who might have directly violated human rights in the exercise of his or her functions or upon the occasion of it, or when it concerns crimes committed by public employees who abuse their position. State bodies, except for autonomous bodies with legal personality, must channel their complaints through the Public Prosecution Service.” (cf. http://www.cicad.oas.org/fortalecimiento_institucional/legislations/PDF/GT/decreto_congresional_51-92_codigo_procesal_penal.pdf)

⁶⁰ Case No. JM-028.95. Brief of Rigoberta Menchú Tum of October 31, 1995, *supra*.

⁶¹ This was noted in paragraph 68 of the Report on the Merits as one of the facts that the Commission held as “proven.” The Commission, as proof, provided the “Decision of November 2, 1995 of the Military Judge of the Department of Jalapa in Criminal Case 028-95,” a copy of which is attached to annex 10 of the Report on the Merits (evidence file, fs. 138 to 144). However, some of it is partially illegible.

⁶² Cf. CEH, Guatemala: Memory of Silence, *supra*, Volume VI, Illustrative Cases, Annex 1, Illustrative Case 3: Xamán Massacre, p. 41 and communication of the petitioners of September 10, 1996 to the Commission (evidence file, annex 11 to the Merits Report, fs. 146 to 165).

⁶³ Cf. Communication of the petitioners of September 10, 1996, addressed to the Commission, *supra*.

⁶⁴ Cf. Communication of the State to the Commission of May 24, 1996, *supra*.

43. By communication of May 29, 1996, the Prosecutor of the PPS presented an accusation before the Judge for Criminal Matters, Drug Trafficking and Environmental Crimes of Alta Verapaz (hereinafter, "Judge of Alta Verapaz").⁶⁵
44. On May 30 and 31, 1996, the Judge of Alta Verapaz lifted the order of preventive detention of eight members of the military patrol.⁶⁶
45. On October 14, 1996, the Twelfth Chamber of the Court of Appeals revoked the liberty [...] of seven members of the Army," who were again detained on November 7, 1996.⁶⁷
46. By communication of November 12, 1996, the "querellante adhesiva" joined, with modifications, "the accusation presented by the Public Prosecutor Service" and the "petition to open proceedings."⁶⁸
47. After dealing with different recourses,⁶⁹ on May 7, 1997 the Trial Court for Criminal Matters, Drug Trafficking and Environmental Crimes of the Department of Alta Verapaz (hereinafter "Trial Court") opened the trial, which was expanded one week later.⁷⁰
48. Between May 19 and November 20, 1997, various recourses were presented and and several decisions were taken.⁷¹
49. According to information that the Commission reported that it had received, at the end of 1997 the judicial record was misplaced for approximately two months, but was subsequently found.⁷²

⁶⁵ Cf. Accusation of the Prosecutor of the PPS of May 29, 1996 (evidence file, proceedings before the Commission, fs. 4175 to 4243). According to the CEH, the PPS presented the accusation on June 29, 1996 (cf. CEH, Guatemala: Memory of Silence, *supra*, Volume VI, Illustrative Cases, Annex 1, Illustrative Case 3: Xamán Massacre).

⁶⁶ This act was mentioned in paragraph 72 of the Merits Report as one that the Commission considered "proven," which was not disputed by the parties. The Commission, as proof of that act, remitted the documents that it marked as "Decisions of the Sentencing Court, of May 30 and 31, 1996," a copy of which was included as annex 14 to the Merits Report (evidence file, fs. 212 to 215). It is, however, illegible.

⁶⁷ Cf. Report of the Government of Guatemala to the Commission of May 24, 2004 (evidence file, annex 28 to the Merits Report, fs. 927 to 931).

⁶⁸ Accusation presented by the "querellante adhesiva" of November 12, 1992 (evidence file, proceedings before the Commission, fs. 4246 to 4289). The petitioners informed the Commission that the complainant and the PPS presented a complaint about the actions of the judge, who in September 1996 had been removed from the case by decision of the Supreme Court (cf. Communication of the petitioners of September 10, 1996, addressed to the Inter-American Court, *supra*).

⁶⁹ According to the information presented by the petitioners to the Commission, in August 1996 the defense presented an action of unconstitutionality, claiming, among others, the non-applicability of the figure of "extrajudicial execution." The judge recused himself from hearing the appeal and forwarded it to a higher court, which returned it to the judge, with an indication that he hear the matter. The judge forwarded the issue to the Supreme Court, raising doubts as to whether he had jurisdiction to hear it. The Supreme Court returned the matter to the judge, accepting what had been decided by the appeals court. The judge dismissed the arguments of the defense but suspended the proceedings until the appeal of the defense had been resolved. By March 1997, the defense had presented various appeals of amparo. (Cf. Communication of the petitioners to the Commission of March 7, 1997 (evidence file, proceedings before the Commission, fs. 2103 to 2109). The communication referred to the judge, without being more specific.)

⁷⁰ Cf. Documents annexed to the communication of the petitioners of February 26, 1998, addressed to the Commission (evidence file, proceedings before the Commission, fs. 2062 to 2071).

⁷¹ Cf. Documents annexed to the communication of the petitioners of February 26, 1998, addressed to the Commission, *supra*.

⁷² In paragraph 75 of the Merits Report, among the facts that the Commission deemed "proven," is that the petitioners informed on that fact.

50. On March 17, 1998, a lawyer from the Rigoberta Menchú Foundation (Ms. Menchú is the petitioner in this case) presented a brief to the Human Rights Prosecutor reporting that on the 6th of that month, while driving to his home accompanied by another lawyer of the Foundation, he was pursued and intercepted by a vehicle, but, after several diversionary tactics, he was able to lose it. He also indicated that, the following day, he noted that the brake linings of his automobile had been cut.⁷³ On March 23, 1998, the petitioners informed the Commission that the lawyers had been subjected to "acts of harassment" and "intimidation."⁷⁴

51. On April 6, 1998, the Trial Court rejected evidence offered by the parties.⁷⁵ It also set a date for the trial.⁷⁶ The Prosecutor, the "querellante adhesiva" and the defense team presented "appeals of revocation" that were resolved on April 16, 1998, by accepting and incorporating into the case additional evidence offered by the parties.⁷⁷

52. On April 20, 1998, a lawyer for Ms. Menchú "filed" an "appeal of amparo" against the decision of April 16, 1998.⁷⁸ That same day, the appeal was "not granted" by the Twelfth Chamber of the Court of Appeals, acting as a Court of Amparo,⁷⁹ a decision that was ratified by the Constitutional Court on April 22, 1998.⁸⁰

53. The public hearing before the Trial Court began on April 21, 1998,⁸¹ after a series of motions, procedures and presentations.⁸²

⁷³ Cf. Document annexed to the communication of the petitioners of March 23, 1998, addressed to the Commission (evidence file, proceedings before the Commission, fs. 2020 to 2023).

⁷⁴ Cf. Communication of the petitioners of March 23, 1998, addressed to the Commission (evidence file, proceedings before the Commission, fs. 2007 to 2011).

⁷⁵ By communication of February 13, 1998, the Special Prosecutor of the PPS offered evidence into the proceedings, as did the defense lawyers (cf. Communication of the Special Prosecutor of the PPS of February 13, 1998 (evidence file, proceedings before the Commission, fs. 4324 to 4370) and briefs of the defense lawyers of February 13, 1998 (evidence file, proceedings before the Commission, fs. 4372 to 4438; 4440 to 4446 and 4448 to 4472). In addition, the decision of the Sentencing Court refers to the evidence presented by the "querellante adhesiva" (cf. Decision of the Sentencing Court of April 6, 1998 (evidence file, proceedings before the Commission, fs. 4485 to 4566)).

⁷⁶ Cf. Decision of the Sentencing Court of April 6, 1998, *supra*.

⁷⁷ Cf. Decision of the Sentencing Court of April 16, 1998 (evidence file, annex 18 to the Merits Report, fs. 249 to 273).

⁷⁸ Cf. Appeal of amparo presented against the decision of April 16, 1998 of the Sentencing Court, received by the Twelfth Chamber of the Court of Appeals on April 20, 1998 (evidence file, annex 19 to the Merits Report, fs. 275 to 310). The brief notes that the lawyer indicated that she was "representing" Rigoberta Menchú Tum and "asking for her own protection as an attorney." Among the reasons for the appeal is the understanding that the denial of certain measures of evidence resulted in an infringement of "the right of the defense in the case."

⁷⁹ Cf. Twelfth Chamber of the Court of Appeals, acting as a Court of Amparo. Amparo 77-98. Decision of April 20, 1998 (evidence file, annex 20 to the Merits Report, fs. 312 and 313).

⁸⁰ Cf. Constitutional Court. File 225-98. Decision of April 22, 1998 (evidence file, annex 21 to the Merits Report, fs. 315 and 316).

⁸¹ Cf. Communication of the State of April 30, 1998, addressed to the Commission (evidence file, proceedings before the Commission, fs. 1968 to 1970).

⁸² In addition, information presented by the petitioners to the Commission indicated the following actions. On March 6, 1998, due to an agreement at a public hearing held at the Commission on February 26, representatives of COPREDEH, the Prosecutor of the case and the petitioners met because of the "need to present to the Supreme Court [...] a request for specific solutions." After negotiations, they were scheduled to be received by the President of the Criminal Chamber of the Supreme Court on March 17, 1998. They were, however, not received on that day and were informed that, in the morning of that same day, the President had met with the defense lawyers of the soldiers. On March 11, 1998, the "querellante adhesiva" presented a brief to the Sentencing Court, with petitions regarding the trial. That same day, the President of that Court called the parties to a meeting in which he spoke of the logistical problems concerning the holding of the trial. He alleged that there had been inquiries to the Supreme Court that required resolving issues of infrastructure and asked the parties whether they could defray certain transportation and lodging expenses of a witness, to

54. According to information presented to the Commission, on the sixth day of the trial, the “querellante adhesiva” alleged “manifest bias” and requested that the Trial Court recuse itself. The trial was suspended until the following day, after another claim raised by the PPS. The recusal was declared “out of order” and then a judge of the Trial Court recused herself from continuing to hear the case, for having her impartiality doubted. Her excuse was rejected by the President of that Court. On June 8, 1998, the “querellante adhesiva” presented a new request of recusal in the belief that, on the basis of the excuse, there was “manifest hostility.”⁸³ It is not reported how the second recusal was resolved,⁸⁴ but the proceedings and the renewal of the public trial continued, as will be explained (*infra* para. 57).

55. On September 7, 1998, the petitioners informed the Commission that it had learned that “a Magistrate of the Court [...] involved in the case known as the ‘Xamán case,’ was being extorted and threatened.” They also claimed that a “judge who was a member of the Court” had been transferred and an “alternate judge” had been named to replace her.⁸⁵

56. By communication of October 12, 1998, the Special Prosecutor assigned to the case presented his resignation, effective November 2. According to information sent to the Commission, he alleged actions that denoted a lack of “institutional support” to continue the case.⁸⁶ The CEH maintained that, in October 1998, the Special Prosecutor declared that staff of the PPS did not provide the support that was essential to conduct the necessary investigations and that, moreover, he had been subjected to threats and intimidations.⁸⁷ On October 27, 1998, a new “Special Prosecutor” was named.⁸⁸

57. On November 25, 1998, the public trial was resumed⁸⁹ and it continued until August of the following year (*infra* para. 59). During that lapse, different motions and recourses were presented and resolved.⁹⁰

58. On January 6, 1999, Rigoberta Menchú withdrew as “querellante adhesiva” because she believed that the proceedings did not meet the standards of due process.⁹¹

which the “querellante adhesiva” responded that that was an obligation of the State. (*Cf.* Communication of the petitioners of March 23, 1998, addressed to the Commission and the accompanying documentation, *supra*.)

⁸³ *Cf.* Communication of the petitioners of August 10, 1998, addressed to the Commission (evidence file, annex 22 to the Merits Report, fs. 318 to 323).

⁸⁴ The petitioners informed the Commission that, on July 23, 1998, they were notified that “the Tribunal would consist of judges of the Tribunal of Salama.” They also indicated that as of August 8, 1998 “the respective paperwork had not yet begun” regarding the recusal presented on June 8th of that year (*Cf.* Communication of the petitioners of August 10, 1998, addressed to the Commission, *supra*.)

⁸⁵ Communication of the petitioners of September 7, 1998, addressed to the Commission (evidence file, proceedings before the Commission, fs. 1960 to 1961).

⁸⁶ On October 14, 1998, the petitioners remitted to the Commission a copy of the letter of resignation signed by the Prosecutor, in which he alleged, among other considerations, problems with the payment of travel expenses, lack of response to a request to meet with the Prosecutor General and reduction of personnel. *Cf.* Communication of the petitioners to the Commission of October 14, 1998 and annex (evidence file, proceedings before the Commission, fs. 1943 to 1948). The State also informed the Commission of this fact (*cf.* Communication of the State of December 1, 1998 (evidence file, annex 23 to the Merits Report, fs. 325 and 326)). The State also claimed that the Prosecutor did receive “institutional support.”

⁸⁷ *Cf.* CEH, Guatemala: Memory of Silence, *supra*, Volume VI, Illustrative Cases, Annex 1, Illustrative Case 3: Xamán Massacre, p. 42.

⁸⁸ *Cf.* Communication of the State of December 1, 1998, addressed to the Commission, *supra*.

⁸⁹ *Cf.* Communication of the State of December 1, 1998, addressed to the Commission, *supra*.

⁹⁰ *Cf.* Verification of the debate of November 25, 1998, *supra*.

⁹¹ *Cf.* Communication of the petitioners of March 4, 1999, addressed to the Commission (evidence file, annex 25 to the Merits Report, fs. 703 to 767) and verification of the debate of November 25, 1998, *supra*. The

59. The public oral trial was closed on August 12, 1999.⁹² That same day, the Court delivered its decision,⁹³ in which it convicted the officer in charge of the patrol and 10 members of the patrol of the crime of "culpable homicide" and sentenced them to "five years of prison that could be commuted." It also convicted another 14 members of the patrol for the crime as "accessories" to "culpable homicide" and sentenced them to "four years of prison that could be commuted."⁹⁴

60. On August 23, 1999, the Special Prosecutor filed an appeal and on December 6 the Fourteenth Chamber of Appeals declared the appeal "in order."⁹⁵ It annulled the lower court decision and convicted ten soldiers for the crimes of "homicide" and "serious injuries," sentencing them to 12 years in prison.⁹⁶ Another 15 members of the patrol were found not guilty.⁹⁷

61. On April 12, 2000, after examining a "special appeal in cassation" presented by the Special Prosecutor, the "Criminal Chamber of the Supreme Court annulled the judgment" of the Fourteenth Chamber of Appeals and "ordered the holding of a new trial and the arrest of the 15 who had been absolved."⁹⁸

62. In May 2000, the file was transferred to the Trial Court of Cobán.⁹⁹

63. The trial began on June 3, 2003.¹⁰⁰

64. On July 8, 2004, the Trial Court convicted 14 soldiers as "perpetrators of the crime of the extrajudicial execution of 11 persons. They were also convicted of the "serious injuries" caused to 29 survivors and received a sentence of "40 years that could not be commuted."¹⁰¹

65. In July 2004, the convicted soldiers appealed the convictions,¹⁰² but were unsuccessful.¹⁰³ In January 2005, the defense lawyers filed appeals in cassation,¹⁰⁴ which

petitioners claimed that the Court did not allow Ms. Menchú to present observations and, therefore, Ms. Menchú stated that "in the name of justice in Guatemala and so as to not permit impunity in this country, we withdraw from this Court and we shall continue to seek justice. We shall not validate a Court that is biased."

⁹² Cf. Verification of the debate of November 25, 1998, *supra*.

⁹³ Cf. Verification of the debate of November 25, 1998, *supra*, and decision of the Sentencing Court of August 12, 1999 (evidence file, annex 26 to the Merits Report, fs. 769 to 913).

⁹⁴ Cf. Decision of the Sentencing Court of August 12, 1999, *supra*.

⁹⁵ Cf. Report of the State of May 24, 2004, addressed to the Commission, *supra*.

⁹⁶ Cf. Report of the State of May 24, 2004, addressed to the Commission, *supra*.

⁹⁷ Cf. Report of the State of May 24, 2004, addressed to the Commission, *supra*.

⁹⁸ Report of the State of May 24, 2004, addressed to the Commission, *supra*. Cf. Also the communication of the petitioners of July 26, 2002, addressed to the Commission (evidence file, annex 27 to the Merits Report, fs. 915 to 925).

⁹⁹ Cf. Communication of the petitioners of July 26, 2002, addressed to the Commission, *supra*.

¹⁰⁰ Cf. Report of the State of May 24, 2004, addressed to the Commission, *supra*.

¹⁰¹ Cf. Judgment of July 8, 2004, *supra*.

¹⁰² Cf. Special appeals of the judgment of July 8, 2004, presented by three defense lawyers, one on the 28th and two on July 30, 2004 and a brief of "correction" to the first and to one of the second appeals of October 17, 2004 and August 15, 2004, respectively (evidence file, proceedings before the Commission, fs. 3803 to 3997).

¹⁰³ Cf. Mixed Regional Chamber of the Court of Appeals of Cobán, Judgment of December 22, 2004 (evidence file, annex 31 to the Merits Report, fs. 1432 to 1445).

¹⁰⁴ Cf. Appeals in cassation filed by three defense lawyers, two on January 11 2005 and one on the following day, and briefs of "correction" on one of the first (undated) and on the brief of January 12, 2015 (of February 17, 2005), (evidence file, proceedings before the Commission, fs. 4013 to 4158).

were remitted to the Supreme Court on January 13.¹⁰⁵ On September 23, 2005, the Supreme Court “declared the appeals in cassation out of order” and confirmed the convictions.¹⁰⁶

66. As to the members of the patrol other than the 14 convicted soldiers, Guatemala informed that, as of March 9, 2018, 11 are “fugitives from justice”¹⁰⁷ and have not been tried. There is no information as to whether this situation has changed.

VII. MERITS

67. The Court must analyze whether Guatemala is responsible for violating different rights guaranteed in the Convention with respect to the events that occurred on October 5, 1995 at the Xamán finca and the subsequent actions. After a military patrol entered the “Aurora 8 de octubre” Community, 11 persons were fatally shot by the soldiers and another 29 were wounded. Investigations into the incident were opened and resulted in the conviction of 14 soldiers. Another 11 soldiers are fugitives from justice, with warrants for their arrest.

68. Before examining the merits of the case, the Court finds it necessary to underscore that, on the day following the incident, the then President of Guatemala recognized the “institutional responsibility” and that, subsequently, the domestic judicial authorities determined what had happened and handed down convictions.

69. The Court welcomes these aspects, but notes that the State, however, has not recognized its international responsibility. In addition, Guatemala, despite expressly admitting that the Court has jurisdiction to hear the case, maintained that the case has “been justly elucidated domestically” at the public hearing and, therefore, “the case should not be before the Court.” The Court notes that Guatemala informed that the judicial authorities had convicted 14 persons and that another 11 are fugitives from justice (*supra*, para. 66 and *infra* para. 76).

70. Under the principle of complementarity, the Court may assess “whether the State’s response was adequate to remedy the consequences of the alleged violation.”¹⁰⁸ The Court has indicated that “the States are not internationally responsible when they have recognized the commission of an unlawful international act, the violation has ceased and the consequences of the measure or of the situation has been repaired.”¹⁰⁹

¹⁰⁵ Cf. Report of the State of June 7, 2005, addressed to the Commission (evidence file, annex 30 to the Merits Report, fs. 1427 to 1430). According to what the State informed the Commission, all the recourses were admitted except one, for which there was an appeal of “revocation.” This resulted in a suspension of the “hearing” that had been set for April 28, 2005. On May 9, the Supreme Court rejected the appeal of revocation and on the 16th set a hearing for July 5.

¹⁰⁶ Cf. Supreme Court, Criminal Chamber. Judgment of September 23, 2005 (evidence file, annex 34 to the Merits Report, fs. 1447 to 1480).

¹⁰⁷ The Commission indicated, in paragraph 98 of the Merits Report, that on June 7, 2005 the State had presented to the Commission similar information, pointing out “that there are still 11 accused whose arrest and subsequent prosecution in public oral proceedings remain pending, for which reason the investigation is still open.”

¹⁰⁸ *Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations.* Judgment of November 30, 2012. Series C No. 259, para. 142 and *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of April 25, 2018. Series C No. 354, para. 100.

¹⁰⁹ *Case of Amrhein et al. v. Costa Rica, supra*, para. 99. Similarly, *Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations, supra*, para. 171; *Case of Tarazona Arrieta et al. v.*

71. However, it is appropriate here to examine the arguments on violations to the rights recognized in the Convention. In the first place, it should be noted that Guatemala has expressed that it "institutionally recognizes" what occurred, but it clarified that that does not imply a recognition of "international responsibility."¹¹⁰ Moreover, it is not apparent that there has been reparation and, although the State did convict 14 persons, the representative and the Commission have questioned whether those acts have been diligent and complete and they have denied that the alleged victims have obtained reparations. Nevertheless, Guatemala maintained that its diligent investigation exempts it from responsibility regarding the different rights that the representative and the Commission argued had been violated. In order to analyze the position of the parties, the Court must consider the arguments on the merits of the case.

72. In similar cases, the Court has examined the observance of the rights to judicial guarantees and to judicial protection after doing so with respect to the other rights allegedly infringed.¹¹¹ However, in this case, the Court notes that Guatemala, as has been indicated, has claimed that because of the actions of the judicial authorities the case should be considered already "elucidated" domestically and, furthermore, that it should not be considered by the Court. In addition to the State's arguments (which will be subsequently reviewed), Guatemala claims that the judicial activities that resulted in the conviction of 14 persons exempt the State not only of responsibility to investigate the facts of the case, but also of the alleged violations of the rights to life and to personal integrity.

73. Thus, the Court must assess the judicial activity of this case and then verify whether there are reasons that would allow it to find violations of rights recognized by the Convention. In view of the arguments of the State, there may be a close relationship between the manner in which the rights to judicial guarantees and to judicial protection have been observed and the determination that must be made regarding other rights. The Court will, thus, analyze the arguments in the following order: (1) rights to judicial guarantees and to judicial protection; (2) rights to life, to personal integrity and the rights of the child, in relation to the obligation to respect the rights without discrimination; (3) right to personal integrity of the next of kin of the deceased and injured persons; (4) right to private property, and (5) right to equality before the law.

Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 15, 2014. Series C No. 286, para. 140 and *Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs.* Judgment of December 1, 2016, Series C No. 330, para. 96.

¹¹⁰ The State explained that "institutional responsibility is the articulation and specification of all acts, mechanisms, norms and/or policies that have the purpose of avoiding harm to any human being, without any distinction, by institutions responsible for overseeing the common good and the full development of the individual," and that "international responsibility consists in the State not complying with an obligation established in an international norm for acts or omissions that impair the rights of the persons whom it should protect, a responsibility that is guaranteed in Articles 1 and 2 of the American Convention on Human Rights and other international instruments to which Guatemala has adhered."

¹¹¹ Cf. *Case of the Mapiripán Massacre" v. Colombia.* Judgment of September 15, 2005. Series C No. 134 and *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, supra.*

VII.1 RIGHTS TO JUDICIAL GUARANTEES¹¹² AND TO JUDICIAL PROTECTION¹¹³

A. Arguments of the Commission and of the parties

74. The **Commission** concluded that the State violated Articles 8(1) and 25(1) of the Convention to the detriment of the survivors and the next of kin of the deceased and injured persons because (a) the independence and impartiality of the investigation was negatively affected while it was in the military jurisdiction, given the intervention of the military jurisdiction; (b) the activities were not conducted within a reasonable time because the nine years that it took the domestic justice to punish those responsible is excessive,¹¹⁴ and (c) there were "flaws and irregularities" due to (i) the manner in which the evidence was handled; (ii) the "long periods of inactivity"; (iii) the failure to carry out "certain procedures"; (iv) the "acceptance, contrary to legal standards, of different recourses and evidence presented by the defense" and the "rejection, without explanation, of evidence and statements of the complainant," and (v) the failure to adopt measures regarding the threats and harassment against different participants in the proceedings, which in turn had a repercussion on the activities, especially dilatory actions.

75. The **representative** claimed that the rights to the judicial guarantees and to judicial protection of the alleged victims were violated since the national criminal investigations had "a series of flaws, shortcomings and omissions." It considered the proceedings to be "inconclusive." It stated that they should have included not only the intellectual authors but also the chain of command. It also emphasized that "some arrests remained pending" and that the search has been "abandoned" without information on those who have been "fugitives from justice" for "more than two decades." At the public hearing, it complained that "how can it be possible that the [convicted] persons are going to be [released] after completing a sentence and the Community has still not received appropriate reparations." In its final written arguments, presented on March 9, 2018, the representative indicated that some "persons are already free and others can soon "request their liberty."¹¹⁵ It also considered that the reasonability of the time was not respected

¹¹² The relevant part of Article 8 of the Convention reads: "Right to a Fair Trial 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

¹¹³ Article 25 of the Convention establishes: "Right to Judicial. Protection 1. Everyone has the right to a 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. 2. The States Parties undertake to (a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; (b) to develop the possibilities of judicial remedy and (c) to ensure that the competent authorities shall enforce such remedies when granted."

¹¹⁴ The Commission underscored that during the proceedings there were periods of inactivity: (a) the delay of almost two years from when the incident occurred until the proceedings were opened; (b) the misplacing of the file during a couple of months at the end of 1997, and (c) the delay of more than three years to initiate the new oral trial, as ordered by the Criminal Chamber of the Supreme Court in April 2000. In addition, it considered that the delay could not be justified due to the complexity of the matter since the members of the patrol had been identified and because there were eyewitnesses to the event.

¹¹⁵ In its brief with final arguments, the representative explained that a decision of the Supreme Court of July 8, 2015 reduced the sentence of 40 years in prison to 30 years. It pointed out "eight" persons were already released but in the same document, in providing details on which of the convicted soldiers were free, it mentioned three persons in that situation and pointed out that 12 "could request their freedom," four beginning on September 20, 2019 and the others during 2018. It indicated "good conduct" as the reason for the releases already granted or for those specified in the future. Regarding one convicted soldier, it mentioned that his release was set for April 5, 2018, but he was freed on October 27, 2015. In addition, although the

because of a delay of “ten years to conclude the criminal proceedings” and that there are still “arrest warrants pending for 11 persons, which translates into 22 years of impunity.”¹¹⁶

76. The **State** claimed that it had complied with Articles 8 and 25 of the Convention. It emphasized that “it guaranteed access to the courts [...] and to an effective remedy [...], which was shown by the convictions.” It considered that its “diligent action¹¹⁷ [...] concluded with the conviction of 14 members of the national security forces and with the arrest warrants that are still in force for 11 persons, since they are still fugitives from justice.” It added that “the alleged victims [...] had participated in the case since its beginning.” It pointed out that although the proceedings began in the military jurisdiction, they were transferred to the ordinary jurisdiction. It recalled that the Inter-American Court is “not a court of fourth instance” and cannot examine supposed errors of law or of fact of the domestic courts. Finally, it claimed that the length of the proceedings should be judged by taking into consideration that the case was “complex” and because different “incidents presented themselves.”

B. Considerations of the Court

77. Under the American Convention, State Parties are obligated to provide effective judicial remedies to victims of human rights violations (Article 25), which must be substantiated according to the rules of legal due process (Article 8(1), all within the general obligation on the part of those States to guarantee the free and full exercise of the rights recognized in the Convention to every person under their jurisdiction (Article 1(1)).¹¹⁸

78. Based on the foregoing, the Court will examine the elements of the investigation involving criminal justice.

B.1. General considerations

79. The importance of the obligation to conduct an investigation in order, where appropriate, to establish responsibilities and sanctions depends on the nature of the rights

representative made those statements on March 9, 2018, indicating that the date on which two of the 12 persons could request their release, it then indicated an earlier date, January 5, 2018.

¹¹⁶ At the public hearing, the representative was requested to specify the omissions and shortcomings that it alluded to. It responded in its final written arguments by, in addition to repeating considerations already reviewed, pointing out that the “facts that show the absence of interest on the part of the authorities:” (a) the Minister of Defense [...] faulted the Community for the massacre, claiming that the soldiers were tricked into entering the Community, and (b) a rumor started that there would be a coup d’état due to the generalized discontent of the Army after the destitution of the Commander of Military Base No. 21 and for having accepted the resignation of the Minister of Defense.

¹¹⁷ It underlined that “the principal guidelines of the UN Manual for the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions were not available at the time when the events of this case occurred. However, [...] the State [...] developed a number of actions and followed the logical line of investigation to comply with the purpose of the criminal proceedings.”

¹¹⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91 and *Case V.R.P., V.P.C. et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 350, para. 150. As to Article 1 of the Convention, the relevant parts establish: “Obligation to Respect Rights 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons within their jurisdiction the free and full exercise of their 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.”

infringed and the seriousness of the crimes committed.¹¹⁹ The Court has emphasized the State's duty to investigate attacks against personal integrity,¹²⁰ as well as against life,¹²¹ including extrajudicial executions or massacres.¹²² The duty to investigate violations of rights set out in the Convention may, in turn, arise from the norms of domestic law that the State has adopted. In this case, it comes from domestic judgments that under the criminal law of Guatemala actions were taken to "safeguard," as "legal rights," those of "life" and "personal integrity."¹²³ Therefore, there is no doubt that pursuant to the Convention and to the domestic law, the State is obligated to investigate the deaths and the harm to personal integrity stemming from the incident on October 5, 1995. The right to access to justice of the alleged victims or their next of kin must ensure that, within a reasonable time, everything is done to learn the truth of what occurred and to investigate, prosecute and, where appropriate, punish those eventually found responsible.¹²⁴

80. In order to assess whether the foregoing has been observed, the Court is empowered, under its supportive and ancillary jurisdiction, to examine the proceedings of a domestic investigation¹²⁵ in its various aspects, among them the jurisdiction of the intervening authorities and the procedures followed. The latter, because it might contain flaws that might have affected the investigation as a whole in a way that "as time passes, the possibility of collecting and presenting evidence in order to clarify the facts and determine the corresponding responsibilities is unduly limited."¹²⁶

81. Due diligence requires the investigatory body to conduct all the measures and investigations necessary to achieve the result that is sought.¹²⁷ In any event, it is not for the Court to determine the specific measures and investigations that are necessary. The Court has held that it is not its responsibility "to replace domestic jurisdiction by ordering concrete methods or forms for investigating and judging a specific case in order to obtain a better or more effective outcome; instead, its role is to find whether or not, in the steps actually taken domestically, the State's international obligations [...] have been violated."¹²⁸ Therefore, "the procedures [...] should be assessed overall"¹²⁹ in order to determine whether in the specific case the flaws and omissions had a decisive impact on

¹¹⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166; *Case of Vásquez Durand et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 15, 2017. Series C No. 332, para. 141.

¹²⁰ Cf. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195, para. 358 and *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 210.

¹²¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177 and *Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 25, 2017. Series C No. 334, para. 132.

¹²² Cf. *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 210 and *Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333, paras. 176 and 177.

¹²³ Cf. Mixed Regional Chamber of the Court of Appeals of Cobán, Judgment of December 22, 2004, *supra*.

¹²⁴ Cf. *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 114 and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 150.

¹²⁵ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222 and *Case of Carvajal Carvajal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of March 13, 2018. Series C No. 352., para. 117.

¹²⁶ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 172 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 117.

¹²⁷ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, para. 83 and *Case of Amrhein et al. v. Costa Rica, supra*, para. 461.

¹²⁸ Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 80 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 118.

¹²⁹ Cf. *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, para. 153 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 118.

clarifying the facts or had an impact on the final outcome of the processes followed.¹³⁰ Such an assessment must take into account criteria that are objective or reasonable in the particular circumstances of the case and the arguments of the parties and of the Commission, weighing elements such as the evidence, the guidelines found in the Court's case law or the decisions of the domestic authorities on the measures that, in the specific case, are considered necessary.¹³¹ It should not be assumed that flaws in specific aspects of the investigation had a negative impact on the overall process if, despite such flaws, the investigation had a result that was effective in elucidating the facts.¹³²

82. With respect to the latter point, it should be noted that, in this case, Guatemala took actions that determined what had occurred and that resulted in the conviction of 14 persons, which was made final on September 23, 2005 (*supra* para. 65). Neither the parties nor the Commission alleged that those determinations and the convictions were in any manner erroneous. Therefore, the Court considers that there is no purpose in evaluating the arguments on the shortcomings to the due diligence with respect to the acts or omissions involved in the conduct of the evidence or the effectiveness of the determination of what had occurred.¹³³

83. Otherwise, it would be necessary for the Commission to examine the arguments of the parties and of the Commission with regard to the following: (a) whether the intervention of the military jurisdiction early in the proceedings was, per se, a violation of rights recognized in the Convention; (b) whether there were omissions in the inquiry on the alleged intellectual authors and the "chain of command"; (c) the reduction in the sentences and the release of the convicted persons; (d) the failure to apprehend 11 persons who are fugitives from justice, and (e) the reasonability of the time that elapsed.

B.2. Military jurisdiction

84. The Court has repeatedly held that military justice "is not the proper jurisdiction to investigate [...] violations of human rights."¹³⁴ However, it also notes that in this case, due to the challenges to the military jurisdiction by the complainant, the proceedings were transferred to the ordinary courts. As it was a question of some four months,¹³⁵ it is not evident that the intervention of the military jurisdiction had an impact on the subsequent

¹³⁰ Cf. *Case of Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, para. 167 and *Case of Pacheco León et al. v. Honduras. Merits, Reparations and Costs*. Judgment of November 15, 2017. Series C No. 342, para. 75.

¹³¹ Cf. *Case of Castillo González et al. v. Venezuela, supra*, para. 153 and *Case of Pacheco León et al. v. Honduras, supra*, para. 76.

¹³² Cf. *Case of Luna López v. Honduras, supra*, para. 167 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 117.

¹³³ The Court did not receive arguments on the handling of the evidence, such as those brought to its attention by the Commission on the misplacing of the victims' clothes, the registry of the cartridges or the preservation of the scene of the crime. Nor will it consider the Commission's claim that the acceptance of different recourses and evidence of the indicted was "contrary to the legal framework" and that no reasons were given for the rejection of evidence and statements provided by the complainant (*supra* para. 76). Nor is it necessary to analyze the arguments on the failure to adopt procedures that, in addition, were raised generically, nor on the absence of measures regarding threats and harassment that were sketchily presented in relation to the effectiveness of the investigation. Likewise, there will be no examination of the mention of the representative on the alleged "lack of interest" of the authorities in the investigation, which was vague or imprecise in that it was not related to specific acts or omissions. As to the Commission's remarks on "long periods of inactivity," see the Court's examination of the reasonability of the time elapsed during the proceedings.

¹³⁴ Cf. *Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 142 and *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 15, 2018. Series C No. 353, para. 248.

¹³⁵ The Court recalls that the military justice system intervened in the case from almost its inception until January 31, 1996, when the case was transferred to the ordinary courts.

action of the ordinary jurisdiction, where the sentences were imposed. Therefore, given the particularities of the case, the Court does not consider that there was an infringement that was prejudicial to the alleged victims of the guarantee of the right to appear before a "judge or competent court," in the terms of Article 8(1) of the Convention.¹³⁶

B.3. Investigation of the intellectual authors and the "chain of command"

85. Regarding the investigation of the alleged intellectual authors and the chain of command, the Court recalls that the proceedings should have ensured that "there were no omissions in gathering evidence or in the development of logical lines of investigation."¹³⁷ This is logical when the circumstances of the case present "significant hypotheses" on the facts and on the responsible parties.¹³⁸ That does not occur in this case. The representative did not explain why there was a probability that the massacre had been planned or that the perpetrators (material or intellectual) were other than the members of the military patrol. It should be noted that 25 adults of this group, which included a minor, were prosecuted. Therefore, it is not appropriate to determine that Guatemala was responsible for failing to follow the logical lines of the investigation.

B.4. Reduction of the sentences and the release of the convicted

86. With respect to the sentences,¹³⁹ it should be noted that the Court has stated that sentences must be proportional to the seriousness of the violation of human rights involved in a crime and that its determination is not the task of the Court, but rather that of the domestic authorities.¹⁴⁰ The representative points out that, on July 8, 2015, the Supreme Court decided to reduce the sentences by 10 years, thereby limiting the deprivation of liberty to 30 years. However, the representative did not present arguments or information that would allow the Court to find harm regarding the proportionality of the sentence.

87. Moreover, the representative claims that at least two persons have been released for "good conduct" and that the others might be released during 2018 or 2019, invoking the same reason. The claims of the representative on the released or could be released persons are not precise and are confusing (*supra* footnote 115). In addition, it has not presented sufficient arguments to explain why those releases could result in a harm to rights set out in the Convention. Therefore, the Court does not have elements to examine this aspect of the case.

¹³⁶ It should be emphasized that the circumstances of this case are different than others heard by the Court in which the issue of jurisdiction was resolved in favor of the military jurisdiction where the proceedings had remained for various years. In the *Quispialaya Vilcapoma* case, the Court determined that "the decision of the Permanent Criminal Chamber of the Supreme Court to bar the ordinary courts from investigating and prosecuting the crimes of the [...] case, plus the prolonged time between 2002 and 2007 during which the case was in the military jurisdictions, infringing the right to an appropriate judge" (*Case of Quispialaya Vilcapoma v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2015. Series C No. 308, para. 152). Circumstances like those have an impact on the right to judicial guarantees, which was not verified in this case because of its particularities.

¹³⁷ Cf. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 158 and *Case of Pacheco León et al. v. Honduras, supra*, para. 89.

¹³⁸ Cf. *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 96 and *Case of Pacheco León et al. v. Honduras, supra*, para. 89.

¹³⁹ The facts show that, on July 8, 2004, 14 soldiers were sentenced to 40 years in prison for the deaths and the injuries caused and that, on September 23, 2005, the convictions were confirmed (*supra* para. 64).

¹⁴⁰ Cf. *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 108 and *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 20, 2016. Series C No. 318, para. 462.

B. 5. Regarding the fugitives from justice

88. The Court will now examine the issues relating to the fugitives from justice. The facts show that, on April 12, 2000, the acquittal of 15 persons was annulled; that they were detained and that the following month the case was transferred to the Trial Court (*supra* paras. 61 and 62). The State has indicated that 11 of those persons are fugitives from justice (*supra* paras. 66 and 76).

89. The Court has held that States, in investigating, must take all the actions necessary to achieve the result that is sought (*supra* para. 81). Likewise, it has observed circumstances that denote a failure to comply with the obligation to diligently investigate in view of the lack of sufficient action to locate the whereabouts of the persons for whom there is an arrest warrant.¹⁴¹

90. As part of the State's arguments to sustain that it is not responsible for the violation of Articles 8 and 25 of the Convention, it maintained that the arrest warrants are still in force (*supra* para. 76). However, Guatemala did not explain what actions it had adopted to put them into force. In other words, the Court does not possess information that would indicate the actions that the State has taken during that period of 18 years. It should be noted that due diligence in an investigation is not exhausted by decreeing measures that are thought necessary, but rather it requires acts directed to obtain the desired result. The Court notes that the failure to apprehend the persons in question have impeded their prosecution, undermining the right of the alleged victims to access to justice. Therefore, taking into consideration the time elapsed, the remarks of the State that the arrest warrants are still in force, without indicating specific actions, is not due diligence, but rather the contrary.¹⁴²

91. The Court clarifies that it is not ruling on the criminal responsibility of the fugitives, nor that they should be detained or preventively deprived of their liberty. It is the domestic bodies that have considered it necessary to apprehend those 11 persons in order to prosecute them and, if appropriate, determine the corresponding responsibilities.

92. The Court, thus, concludes that the actions of Guatemala in this aspect did not comply with due diligence. This failure to comply has endured since April 12, 2000 and prejudices the next of kin of the persons killed in the massacre, of the injured survivors and their family members, who are listed in Annex B(1) of this judgment, which forms part of it.¹⁴³ The Court understands the particular circumstances of this case, since the incident that took the lives and caused the injuries occurred in a communitarian environment to which not only the dead and injured persons belonged but also their family members. It is for this reasons that the Court considers that all those family members were affected.¹⁴⁴

¹⁴¹ Cf. *Case of Ortiz Hernández et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of August 22, 2017. Series C No. 338, paras. 172 to 174.

¹⁴² What the Court expressed on another opportunity is relevant in this case: "the failure to apprehend those responsible, besides perpetuating uncertainty in the victims as to the risks that they run, evidences that in this case the State has not adopted the adequate measures in order to enforce its own decisions." (*Case of Myrna Mack Chang v. Guatemala. Monitoring compliance of judgment*. Order of the Inter-American Court of November 16, 2009, considering paragraph 11).

¹⁴³ According to information received by the Court, none of those persons died before April 12, 2000. The determination of victims who are the next of kin of the deceased and injured persons, who are listed, where appropriate, in Annexes B(1) and B(5) of this judgment, which forms part of it, was made pursuant to indications of the Commission and the parties.

¹⁴⁴ On other occasions, depending on the circumstances, the Court has found violations of the right to judicial guarantees to the detriment of the next of kin of the persons whose right to personal integrity had been violated. This occurred, for example, in the *Quispilaya Vilcapoma* case, where the Court found a violation of

B.6. Length of the proceedings

93. The Court will now verify compliance with the judicial guarantee of a reasonable time. To do so, it must consider, in general terms, the entire length of the proceedings up to the delivery of the final judgment,¹⁴⁵ although in certain situations it may be necessary to specifically evaluate its distinct stages.¹⁴⁶

94. The Court finds it appropriate assess the length of the criminal judicial proceedings from the beginning of the process until September 23, 2005, when 14 soldiers were sentenced of 40 years of prison. With respect to how the proceedings developed, the Court considers it relevant to divide the period into two stages: (a) from when the military personnel were brought before the First Military Court of Jalapa, which occurred immediately after October 5, 1995, the date of the massacre, until April 12, 2000 when the Supreme Court annulled the judgment of December 6, 1999, which had convicted the ten soldiers and (b) from April 12, 2000 until September 23, 2005, when the Supreme Court confirmed the convictions handed down on July 8, 2004.

95. As to the first stage, the Court emphasizes that until the date of the convictions, the proceedings took about three and a half years, which a priori does not appear excessive. In addition, the Court did not find shortcomings to due diligence during that period, in which it did not note prolonged delays. The Court, therefore, considers that there was not an undue delay and that it is not necessary to examine each of the elements in its case law to determine the reasonability of the length of the proceedings.¹⁴⁷

96. As to the second stage (*supra* para. 94), the Court notes that after the decision of April 12, 2000, in May of that year the case was transferred to the Trial Court of Cobán for a new trial. There is no evidence on the proceedings after that date, but it is recorded that on July 3, 2003 an oral trial began and then sentences were imposed on July 8, 2004. The Court considers that it does not have sufficient elements nor arguments to

Article 8(1) of the Convention, read in conjunction with Article 1(1) thereof, to the detriment of Valdemir Quispialaya Vilcapoma, who was alive and who had suffered harm to his personal integrity, as did Victoria Vilcapoma Taquia, who had denounced the events (*cf. Case of Quispialaya Vilcapoma v. Peru, supra*, para. 188 and the *V.R.P., V.P.C. et al. v. Nicaragua* case, *supra*, para. 271). In this case, there is no record that the family members of the injured persons denounced the events. However, Rigoberta Menchú presented a complaint domestically as a “querellante adhesiva” (*supra* para. 40) and petitioned the Commission together with various alleged victims on the impairment of the rights of diverse persons, including family members of the injured persons (*cf. Communication of the petitioners received by the Commission on November 16, 1995 (evidence file, annex 4 to the Merits Report, fs. 28 to 48)*). In addition, domestic judicial proceedings were initiated de officio and are related to an incident that affected a wide group of persons. Given the specificities of the case, it is not necessary for the purposes of this examination to consider whether each of the family members of the injured persons presented a complaint or in some other way had a connection with the domestic proceedings. The Court considers that there are sufficient reasons to assume a relevant interest of the family members of the injured persons in the progress of the investigation into the incident, as well as the impairment to their right due to the State’s failure to comply with its obligations.

¹⁴⁵ *Cf. Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, paras. 105 and 106.

¹⁴⁶ *Cf. Case of the Afro-descendant Communities displaced from the Río Cacarica Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2013. Series C No. 270, para. 403 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 106.

¹⁴⁷ The case law of the Court has considered four elements in making a determination: a) the complexity of the matter; b) the procedural activities carried out by the interested party; c) the conduct of judicial authorities, and d) the impairment to the legal situation of the individual involved in the proceeding (*cf. Case of Anzaldo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 156 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 105).

determine whether there were excessive delays.¹⁴⁸ After July 8, 2004, appeals filed by the convicted were acted upon and there is no information on excessive delays imputable to the State up to September 23, 2005, when the sentences were made final.

97. Therefore, the Court does not find an infringement of a reasonable time in the proceedings.

B.7. Conclusion

98. In view of the above considerations, the Court holds that the State is responsible for violating Articles 8(1) and 25(1) of the Convention, to the detriment of the next of kin of the deceased persons, the injured persons and their next of kin. The name of those persons may be found in Annex B(1) of this judgment.

99. The Court will now examine the remaining alleged violations.

VII.2

RIGHTS TO LIFE,¹⁴⁹ TO PERSONAL INTEGRITY¹⁵⁰ AND OF THE CHILD,¹⁵¹ READ IN CONJUNCTION WITH THE OBLIGATION TO RESPECT THE RIGHTS WITHOUT DISCRIMINATION

A. Arguments of the Commission and of the parties

100. The **Commission** concluded that the use of force by the military was contrary to the principles of legitimate ends, necessity and proportionality. Therefore, it considered that the deaths of eight persons,¹⁵² which occurred at the Xamán finca were arbitrary deprivations of the right to life and the injuries to 26 persons,¹⁵³ were impairments to their right to personal integrity. It stated that three persons who were wounded and later died had both rights infringed.¹⁵⁴ It also determined that the deaths of the two boys and a girl¹⁵⁵ implied a violation of the right to life in relation to the rights of the child since the State failed to comply with its specific obligation to protect children against actions of the public security forces. The Commission, thus, alleged that Guatemala infringed, to the detriment of the persons directly affected by the use of force by military personnel, depending on each case, Articles 4(1) and/or 5(1) of the Convention, read in conjunction with Article 1(1) thereof, as well as Article 4(1), read in conjunction with Articles 19 and 1(1) thereof, to the detriment of the deceased children.

101. The Commission also concluded that the behavior of the troops at the Community on the day of the incident was related to the context of the internal armed conflict, which

¹⁴⁸ At this step it is not relevant to examine the four elements to assess the reasonability of that period (*supra* footnote 147).

¹⁴⁹ Article 4 of the Convention reads: "Every person has the right to have his life respected. This right shall be respected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

¹⁵⁰ Article 5(1) of the Convention states: "Every person has the right to have his physical, mental and moral integrity respected."

¹⁵¹ Article 19 of the Convention reads: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society and the state."

¹⁵² *Cf.* Annex B(2) of this judgment. The names found therein coincide with those to which the Commission referred.

¹⁵³ *Cf.* Annex B(3) of this judgment. The first 26 names found therein coincide with those to which the Commission referred.

¹⁵⁴ 1.-Santiago Maquín Quip; 2.-Gerardo Maldonado Sales and 3.-Rosendo Morales Ortiz

¹⁵⁵ 1.-Carlos Fernando Chop Chic; 2.-Santiago Coc, and 3.-Maurilia Coc Max.

implied violations of rights of persons belonging to the Mayan people.¹⁵⁶ It also alleged that, in this specific case, the State had a special obligation to guarantee the security of those persons who returned under the commitments assumed by Guatemala. It found, therefore, that the incident was an expression of “racial discrimination” and, thus, a violation of Article 24 of the Convention, read in conjunction with Article 1(1) thereof.

102. The **representative** alleged, in accord with the Commission,¹⁵⁷ the violation of the rights to life and to personal integrity, in addition to the violation of the rights of the child.¹⁵⁸ It also claimed that the right to equal protection before the law was infringed due to the failure to comply with the agreements signed regarding the return of refugees.

103. The **State** maintained that it was not responsible for violating the right to life nor the right to personal integrity. It considered that it was not responsible because it complied with the obligation to guarantee those rights by means of an investigation.¹⁵⁹ It also pointed out that it had not denied information nor “access to justice” to the persons involved. It also argued that those persons had the opportunity to file civil actions “but did not do so opportunely,” which cannot be attributable to the State. In addition, it considered that its actions were not discriminatory, neither in fact nor in law. It also argued that most of those soldiers were q'eqchís, in other words, they belonged to the same indigenous Mayan ethnic group that was prevalent in the Xamán finca Community.

B. Considerations of the Court

104. The Court will consider the alleged violations to life and to personal integrity jointly since they both originate in the same incident: the massacre perpetuated by members of the Armed Forces of Guatemala on October 5, 1995, to the detriment of the 11 persons who were killed and the 29 persons who were wounded.

105. Together with those rights, the Court will examine the alleged violations of the rights of the child, since one girl and two boys were among the 11 killed, as well as the claims of discrimination. With respect to the latter, no specific domestic norm, the application or

¹⁵⁶ The Commission pointed out in the public hearing of February 9, 2018 that “it was necessary to take into account the historical context of discrimination for ethnical reasons that the indigenous peoples of Guatemala have suffered, especially the context of the armed conflict during which ethnic discrimination was the basis of the State policy of identifying and exterminating the Mayan people. The Commission considered that the behavior of the troops in the Community on the day of the incident was an expression of the ethnic discrimination exercised against the Mayan people during the armed conflict in Guatemala.”

¹⁵⁷ In addition to the persons indicated by the Commission, the representative mentioned Eulalia Antonio, the mother of Manuela Mateo Antonio as a victim, who is considered an alleged victim in the case (*supra* para. 17). Unlike the Commission, the representative did not present arguments on behalf of Daniela Catarina Chic López, mother of Carlos Fernando Chop Chic, although it did provide documentation that accredited the link to the case (*cf.* Death certificate of Carlos Fernando Chop Chic (evidence file, annex 1 to the brief with pleadings and motions, fs. 5021 and 5022)). Finally, although the GAM referred to Santiago Coc in its brief with pleadings and motions, it indicated that it was not able to contact his family members and could not make requests on his behalf (*infra*, footnote 227). The State did not comment on the matter. Bearing this in mind, as well as the State's acceptance of the incident underlying the arguments on the violations of human rights in the case (*supra* para. 26), the collective nature of which has already been indicated (*supra* para. 17), the Court considers it proper to examine, with respect to those persons, the different alleged violations and the eventual measures of reparation, based on the Commission's comments.

¹⁵⁸ It underscored that the failure to observe the agreements of return signed by Guatemala (*supra* para. 33), regarding the non-intervention of military groups, infringed the rights of the indigenous populations and, therefore, resulted in the alleged violations. In addition, it emphasized that the survivors and the family members of the deceased persons feared those who, as soon as the involved soldiers are released, could attempt to avenge themselves.

¹⁵⁹ The State referred to what the Court had held in the *Perozo et al.* case concerning the obligation to guarantee: “the investigation of a certain substantive right can be the means of ensuring or protecting that right” (*Case of Perozo et al. v. Venezuela, supra*, para. 298).

impact of which could explain or relate to the military action, has been cited and the Court considers that the respective arguments cannot be examined under Article 24 of the Convention, as was suggested. The Court has held that with respect to whether an act should be analyzed under Article 24 of the Convention depends on whether the discrimination "refers to the unequal protection by domestic law."¹⁶⁰ Nevertheless, by applying the principle *iura novit curia*,¹⁶¹ the Court will examine whether it should find discrimination with respect to a conventional right in view of the terms of Article 1(1) of the Convention, a norm that is not complied with "if the State discriminates upon enforcement of a conventional right."¹⁶²

106. The Court will, after formulating general considerations on the rights alluded to, examine the alleged violation of the rights of the deceased and injured persons in the massacre.¹⁶³

B.1. General considerations

107. The right to life is fundamental under the Convention because it is the basis for the exercise of all the other rights.¹⁶⁴ The observance of Article 4, read in conjunction with Article 1(1) of the American Convention, not only presupposes that no one will be deprived of his or her life arbitrarily (a negative obligation), but that it also requires that the States adopt all the appropriate measures to protect and preserve the right to life (a positive obligation)¹⁶⁵ in accordance with its duty to guarantee the full and free exercise of the rights of all persons under its jurisdiction.¹⁶⁶ The active protection of the right to life involves every State institution, including those charged with its security, whether it be the Armed Forces or the police.¹⁶⁷ Any deprivation of life that is caused by the use of illegitimate, excessive or disproportional force is contrary to the Convention.¹⁶⁸

108. The American Convention expressly recognizes the right to personal integrity, physical and psychological, the infringement of which "is a category of violation with several gradations and [...] with varying degrees of physical and psychological effects

¹⁶⁰ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182, para. 209 and *Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of March 9, 2018. Series C No. 351, para. 272.

¹⁶¹ The Court recalls that it has held that "by virtue of the principle of law *iura novit curia* on which international jurisprudence has repeatedly relied and under which a court has the power and duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them" (cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 163 and *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 24, 2017. Series C No. 339, footnote 188).

¹⁶² Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 209 and *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 272.

¹⁶³ The Court notes that the events in this case occurred during the internal armed conflict in Guatemala (*supra* para. 27), which took place between 1962 and 1996. It, therefore, finds it relevant that neither the parties nor the Commission alleged that the norms of International Humanitarian Law were pertinent in this case. In view of this lack of arguments, the Court does not find reasons to consider those norms.

¹⁶⁴ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 144 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 162.

¹⁶⁵ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 139 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 162.

¹⁶⁶ Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs, supra*, para. 153 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 162.

¹⁶⁷ *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs, supra*, para. 153 and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 101.

¹⁶⁸ *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, para. 68 and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 103.

caused by endogenous and exogenous factors which must be proven in each specific situation."¹⁶⁹ The same obligations to respect and guarantee the right to life apply to the right to personal integrity.

109. The State has not denied that its agents caused the deaths and the injuries during the October 5, 1995 incident, but rather it has claimed that it is not responsible because it complied with the obligation to guarantee the respective rights by diligently investigating the facts and punishing 14 persons. The Court has already determined that the investigation conducted by the State, despite its progress and decisions, was violative of the rights to judicial guarantees and judicial protection. Therefore, it cannot be admitted that, as the State has maintained, the case has already been "elucidated domestically" nor that Guatemala has complied, by means of an investigation, with its obligation to guarantee the rights to life and to personal integrity. Therefore, it is appropriate that the Court examine the alleged infringement of those rights. Specifically, the Court can and must evaluate whether Guatemala, through its military personnel, complied with its obligation to respect the indicated rights.

B.2. Rights to life and to personal integrity

110. The State emphasized the convictions by its courts. Therefore, Guatemala does not question that determination, nor does the Commission or the representative. On July 8, 2004, the soldiers were convicted (*supra* para. 64), as "perpetrators" of the crime of "extrajudicial execution against the legally protected right [...] life" and "of the crime of serious injuries against personal integrity." That decision was confirmed, after which appeals in cassation were filed and the convictions were confirmed (*supra* para. 65).

111. No element has been presented to justify the use of lethal force by the soldiers, which was held to be a crime by the Guatemalan courts.¹⁷⁰ The proven facts show that various persons, already referred to (*supra* para. 37) and later clarified (*infra* Annexes B(2), B(3) and B(4) of this judgment), were killed or were injured because of the incident. Therefore, depending on each case, Guatemala violated to their detriment the rights to life and to personal integrity.

112. Regarding Santiago Maquín Quip, Gerardo Maldonado Sales and Rosendo Morales Ortiz, the violation of their right to life as well as their right to personal integrity was alleged since they were wounded and subsequently died. However, there is no reliable information that their deaths, which occurred no fewer than eight years after the incident, had a causal nexus with their injuries.¹⁷¹

¹⁶⁹ *Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 57 and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 102.

¹⁷⁰ While there have been different versions of the circumstances that led to the shootings by the soldiers, none of the versions justify their actions. The domestic judgment that convicted them states, as a proven fact, that when the soldiers attempted to leave the Community, they met with other members of the patrol and after "firing [...] point blank" and killing Juana Jacinto Felipe, they continued shooting "indiscriminately" (judgment of July 8, 2004, *supra*). It should be clarified that, in view of the conclusion, it is not necessary to examine the argument of the representative regarding the failure to observe the agreements on the return to Guatemala of the persons who were in Mexico (*supra* footnote 158).

¹⁷¹ The death certificates presented during the proceedings, issued by the National Registry of Persons, do not indicate that the causes of death are related, per se, to the incident of October 5, 1995 (nor is there a sufficient explanation by the Commission or by the representative): (1)- Santiago Maquin died at age 73 on November 18, 2003 of "meningitis," "respiratory insufficiency" and "cerebral edema." (2)- Gerardo Maldonado Sales died on January 12, 2004 of "sepsis," "periodontal abscess" and "medullary hypoplasia," and (3)- Rosendo Morales Ortiz died at age 71, on August 8, 2011, of "cardiorespiratory arrest," "respiratory insufficiency" and "arteriosclerosis -eufemia" (*cf.* Death certificates issued by the National Registry (evidence file, annex 1 to the brief with pleadings and motions, fs. 5176, 5181, 5182 and 5234).

B.3. Rights of the child

113. The Court must now examine the allegation regarding violations to the rights of the child. The Court has underscored that, within the general obligations to respect and guarantee rights, there are special obligations with respect to the rights of children, which are determined in function of the specific needs for their protection, whether due to their personal condition or to the specific situation in which they find themselves.¹⁷²

114. Before undertaking the part of the examination that applies to the victims in this case, the Court considers it relevant to note that a child was a member of the military battalion that entered the Xamán finca on October 5, 1995. The CEH states that “the recruitment of minors was evident during the Xamán massacre (October 1995), in which 26 members of the Army participated, among them a 16-year-old adolescent who was serving at the military detachment of Rubelsanto.”¹⁷³ That child is not one of the alleged victims in this case and the Court cannot examine his situation. Nonetheless, the Court repeats that the international law of human rights imposes restrictions on the recruitment of children into the Armed Forces.¹⁷⁴

115. With respect to the alleged victims in this case, the Court recalls that it has pointed out that “cases in which the victims of violations of human rights are children take on a special seriousness.”¹⁷⁵ The Court, in examining the circumstances in which there was an attack on a group of persons by military forces, has held that “the special vulnerability of boys and girls [...] becomes even more evident [...] since they are least prepared to adapt or respond to said situation and [...] it is they who suffer its abuse in a disproportionate manner.”¹⁷⁶ The Court considers that, given the characteristics of the October 5th incident, this consideration is significant.¹⁷⁷ Therefore, given the special seriousness of the direct aggression against children by State agents, the Court holds that Guatemala did not comply with its obligation to protect boys and girls and infringed the rights of the girl and the two boys who died as a result of the massacre.

B.4. Obligation to respect rights without discrimination

116. The Court must now examine whether the violations to the rights already declared are, in turn, a failure to comply with the obligations of non-discrimination governed by Article 1(1) of the Convention.

117. In the first place, the Court rejects the State’s argument that it could not have discriminated since some of its soldiers were of an indigenous background.¹⁷⁸ That circumstance does not exempt, per se, the possibility that State action in an incident,

¹⁷² Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra*, para. 111 and *Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 283, para. 141.

¹⁷³ CEH, Guatemala: Memory of Silence, *supra*, Volume III. Human rights violations and acts of violence, p. 79.

¹⁷⁴ Cf. *Case of Vargas Areco v. Paraguay*, *supra*, paras. 144 and 111 to 134.

¹⁷⁵ *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17 and *Case of the Hacienda Brasil Verde Workers v. Brazil*, *supra*, para. 407.

¹⁷⁶ *Case of the Mapiripán Massacre v. Colombia*, *supra*, para. 156 and *Case of the Afro-descendant Communities displaced from the Rio Cacarica Basin (Operation Genesis) v. Colombia*, *supra*, para. 327.

¹⁷⁷ This, notwithstanding what has been stated on the lack of arguments on international humanitarian law (*supra* footnote 163).

¹⁷⁸ In the public hearing of February 9, 2018, the State indicated that “most of the convicted soldiers were q’eqch’is, in other words, they belonged to the same Mayan indigenous ethnic that was prevalent in the Community.” This position was included in its final written arguments.

such as the massacre examined here, might be related to a context of violence and discrimination against indigenous peoples. The pertinence or relation of a certain person to an identifiable collective with certain characteristics, such as that of the indigenous origin of some soldiers, does not prevent that person from acting against persons of that group because of the relationship.

118. It should be recalled that the Court has noted that,

Under the "Doctrine of National Security" (1978-1983), the Army identified, among others, the members of the indigenous Mayan population as "internal enemy," considering that they were or could be the social base of the guerillas [...]. As has been pointed out, in its Final Report of June 1999, the CEH explained that the identification between the Mayan communities and the insurgency and the viciousness and indiscriminate by which the "military operations were conducted against hundreds of Mayan communities in the western and north-western of the country, especially between 1981 and 1983," were supported by traditional racist prejudices.¹⁷⁹

119. This case took place during an internal armed conflict in which there were attacks against persons belonging to an indigenous group. While there is no proof that the massacre was planned (*supra* para. 85), this does not prevent the Court from recognizing the link between the incident and the general situation in which it took place. It has already been stated that the Mayan people were the ethnic group most affected by the violation of human rights committed during the armed confrontation and that the violence directed against it was manifested by different types of acts, including massacres (*supra* para. 29). While the events of this case occurred during the latter part of the conflict, the Court notes that the CEH, in referring to this case, concluded that the conduct of the soldiers, in approaching the Community indicated "the persistence in the military thinking of identifying the returnees with the guerillas."¹⁸⁰ It should be recalled that, within the established context (*supra* paras. 27 to 34), the Army had claimed that indigenous persons could be the social base of the guerilla and, therefore, they were placed in the category of "domestic enemy." The expert Samayoa Pineda, referring to what occurred in this case, stated that what was evident was the "predisposition of the military patrol regarding the Community [...] that had the effect of violating the right to life and to personal integrity of a group of indigenous individuals and families whom they considered to be guerrillas."¹⁸¹ The Court, therefore, concludes that, in the circumstances of this case, the military action that violated the rights to life and to personal integrity were related to discriminatory conceptions of indigenous persons. Thus, the State did not comply with its obligation to respect without discrimination the rights to life and to personal integrity.

B.5. Conclusion

120. The Court, therefore, concludes that the State of Guatemala is responsible: (a) for violating Article 4(1) of the Convention, read in conjunction with its obligation to respect the rights without discrimination established in Article 1(1), to the detriment of eight persons who were killed at the time of the incident; (b) for violating Article 5(1) of the Convention, read in conjunction with the obligation to respect the rights without discrimination established in Article 1(1), to the detriment of 29 persons who were injured in the incident of October 5, 1995, and (c) for violating Article 4(1) of the Convention, read in conjunction with Article 19 and with the obligation to respect the rights without discrimination established in Article 1(1), to the detriment of the one girl

¹⁷⁹ *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*, *supra*, para. 251.

¹⁸⁰ CEH, Guatemala: Memory of Silence, *supra*, Illustrative Case No. 3, Xamán Massacre, p. 43. It should be mentioned that, as has been indicated, the State, in litigating this case, stated that it was in favor of considering the findings of the CEH (*supra* para. 26).

¹⁸¹ Affidavit of the expert Claudia Virginia Samayoa Pineda (evidence on the merits, fs. 661 to 679).

and the two boys, who died during the incident. The names of these victims are included, respectively, in Annexes B(2), B(3) and B(4) of this judgment, of which it forms part.

VII.3 RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN OF THE DECEASED AND INJURED PERSONS

A. Arguments of the Commission and of the parties

121. The **Commission** concluded that the loss of a loved one in a situation similar to this case, as well as the delay in the proceedings, created a harm to the psychic and moral integrity of the next of kin of the persons directly affected. It stated that the next of kin of the deceased and injured persons, for being part of the Xamán finca Community, witnessed the killings and injuries. It underscored that they had not received adequate medical nor psychological care. It concluded that the State violated Article 5(1) of the Convention, read in conjunction with Article 1(1) thereof, to the detriment of the next of kin of the deceased and injured persons.¹⁸² The **representative** agreed with the Commission's position.

122. The **State**, as has been pointed out (*supra* para. 103), indicated that it is not responsible for violating the right to personal integrity because of the domestic investigations.

B. Considerations of the Court

123. The Court has repeatedly held¹⁸³ that the next of kin of victims of certain human rights violations may also be considered as victims.¹⁸⁴ It has also stated that there may be a violation of the right to the personal integrity of the next of kin of victims of certain kinds of violations of human rights, applying the presumption *iuris tantum* with respect to next of kin, such as mothers and fathers, sons and daughters, husbands and wives and permanent companions, as long as it responds to the particular circumstances of the case.¹⁸⁵ Regarding those family members, the State is responsible for refuting such a

¹⁸² The Commission also referred to the following persons, other than Eulalia Antonio, named in Annex B(5) of this judgment: A) Next of kin of Santiago Maquín Quip (injured and subsequently deceased): 1.-Manuela Pop Choc (wife or companion (the representative informed that she died on June 15, 2016)); 2.-Francisco Quip Choc (son); 3.-Petrona Quip Pop (daughter); 4.-Margarita Quip Pop (daughter); 5.-Martín Maquín Quip Pop (son); 6.-Dominga Maquin Pop (daughter) and 7.-Santiago Quip Pop (son). B) Next of kin of Rosendo Morales Ortíz (injured and subsequently deceased): 8.-José Morales Ortíz (brother). C) Next of kin of Francisco Hernández (injured): 9.-Cruz Maldonado Silvestre (wife or companion); 10.-Martalia Hernández Maldonado (daughter); 11.-Andrés Hernández Maldonado (son); 12.-Florencia Hernández Maldonado (daughter) and 13.-Rolando Hernández Maldonado (son, also injured).

¹⁸³ Cf. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 156 and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, *supra*, para. 327.

¹⁸⁴ The above, according to the circumstances of the case, in view of the suffering as a result of the violations perpetrated against their loved ones and because of subsequent acts or omissions by State authorities regarding the incident (Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114 and *Case of Herzog et al. v. Brazil*, *supra*, para. 351).

¹⁸⁵ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 119; *Case of Ruano Torres et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of October 5, 2015. Series C No. 303, para. 177 and *Case of Herzog et al. v. Brazil*, *supra*, para. 351.

presumption,¹⁸⁶ applicable in cases of massacres and extrajudicial executions,¹⁸⁷ with respect to the family members of the deceased. In circumstances where the presumption is not in order, the Court must evaluate the existence of a link between the family member and the victim that would permit establishing a harm to that person's personal integrity and whether the evidence in the file of the case confirms a violation of the right to personal integrity.¹⁸⁸

124. In this case, it may be presumed that the right to personal integrity of the direct family members of the deceased persons of October 5, 1995 were affected. The Court does not have the elements to refute this presumption. In addition, it may be considered here that the harm to the personal integrity of those family members was aggravated because they lived through the incident¹⁸⁹ and, in some cases, were eyewitnesses to the death of a loved one.¹⁹⁰ In addition, there is no record that the State provided medical or psychological care in this situation.¹⁹¹ Therefore, Guatemala violated the right to personal integrity of the direct family members of the deceased victims.

125. As to the next of kin of the injured persons, the Commission and the representative only indicated as alleged victims the next of kin of Francisco Hernández. Nevertheless, the next of kin of Santiago Maquín Quip and Rosendo Morales Ortiz should also be considered in this same category since, with respect to both, the Court did not hold a violation of their right to life since it determined that it was not possible to establish a link between their deaths and the injuries suffered on October 5, 1995 (*supra* para. 112).¹⁹²

126. Regarding the case of the next of kin of Francisco Hernández, the information provided by the parties and the statements of his family members do not allow establishing an additional suffering as a result of the special circumstances that they lived through.¹⁹³ The Court, thus, considers that there was not, in relation to the injuries suffered by Francisco Hernández, an infringement to the personal integrity of Cruz

¹⁸⁶ That presumption would shift the burden of proof, since it would not be necessary to prove the violation of the right of such "direct family members," but it would be for the State to disprove it (*cf. Case of Valle Jaramillo et al. v. Colombia, supra*, para. 119 and *Case of Herzog et al. v. Brazil, supra*, para. 351).

¹⁸⁷ *Cf. Case of the Mapiripán Massacre v. Colombia, supra*, para. 146; *Case of La Cantuta v. Peru, supra*, para. 218 and *Case of Herzog et al. v. Brazil, supra*, para. 351.

¹⁸⁸ *Cf. Case of Valle Jaramillo et al. v. Colombia, supra*, para. 119 and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 328.

¹⁸⁹ The incident witnessed by the family members of the deceased victims was related by some of them. *Cf.* 1.- statements on video recordings of March 21, 2017 of Atilana Hernández Maldonado, Efraín Grave Morente, Florinda Sales Jacinto, José Coc Cajbón, María Medina, María Miguel, Mario Alberto Ramírez Hernández, Manuela Toma Gómez, Natividad Sales Calmo, Pedro Coc Chén, Petrona Miguel Méndez, Ramón Mateo and Tomás Grave Morente, incorporated as documentary evidence, presented together with the brief with pleadings and motions; 2.- Statements of Tomás Grave Morente and Natividad Sales Calmo before the Commission, *supra*; 3.- Statement of AMQ (evidence file, annex 3 to the Merits Report, fs. 5 to 8); 4.- Statement of Efraín Grave Morente before the Guatemalan judiciary, *supra*, and 5.- Statement of Efraín Grave Morente before the Court, *supra*.

¹⁹⁰ *Cf.* Statement of Tomás Grave Morente before the Court, *supra*, in which he related the final words of his mother, Hilaria Morente de la Cruz. Mr. Grave Morente said: "I went to her and I could see that she had received two wounds in the chest, she was bleeding, and then she said to me: 'my son, my son, take care of yourself, I can't stand it any longer' and began to say goodbye, already with signs of dying. What I did was, take off my shirt and put it over her face because she didn't look good."

¹⁹¹ Similarly, reference is made to the statement of Efraín Grave Morente before the Court, *supra*. Regarding the lack of psychological assistance, he indicated: "I did not receive psychological help from the State, totally abandoned, we had support but it was from an NGO, the Doctors of the World of Spain, but that does not have anything to do with the State of Guatemala, the State of Guatemala didn't even give us one pill to calm our nerves."

¹⁹² Neither did the Court find the violation of the right to life of Gerardo Maldonado Sales that had been alleged, but with respect to him there was no indication of next of kin.

¹⁹³ *Cf.* Statements of Atilana Hernández Maldonado and Rolando Hernández Maldonado by video recordings of March 23, 2017, incorporated as documentary evidence, presented with the brief with pleadings and motions.

Maldonado Silvestre, nor of Florencia, Andrés, Martalia, Atilana and Rolando, all of whom bear the family name of Hernández Maldonado.

127. With respect to the deaths of Santiago Maquín Quip and Rosendo Morales Ortíz, in view of the foregoing (*supra* para. 125) State responsibility cannot be presumed for harm to the personal integrity of their next of kin. There is neither evidence nor arguments that show any type of harm caused to their next of kin because of their injuries. Therefore, it is not proper, in relation to the injuries suffered by those two persons, to declare an infringement to the right to personal integrity to the detriment of Manuela Pop Choc, Francisco Quip Choc, Petrona Quip Pop, Margarita Quip Pop, Martín Maquín Quip Pop, Dominga Maquín Pop, Santiago Quip Pop and José Morales Ortíz.

128. There remain the arguments that connect the right to personal integrity of the next of kin of the deceased and injured persons to the juridical proceedings. Those proceedings made it possible to determine what occurred and to establish responsibilities and no elements exist that would permit the Court to conclude that the fact, in and of itself, that some persons are fugitives from justice might have caused harm to personal integrity. With regard to the alleged fear because of the release of the soldiers (*supra* footnote 158), the Court considers that responsibility cannot be attributed to the State for that situation and it refers to what was concluded with respect to the rights to judicial guarantees and judicial protection (*supra* paras. 86 and 87), also recalling what was concluded with respect to provisional measures (*supra* para. 10 and footnote 7).

129. The Court, thus, declares that Guatemala violated the right to personal integrity of the direct family members of the deceased victims of the massacre that occurred on October 5, 1955, infringing to their detriment Article 5(1) of the American Convention, read in conjunction with Article 1(1) thereof. The names of the victims of this violation are listed in Annex B(5) of this judgment, of which it forms part.

VII.4

ALLEGED VIOLATION OF THE RIGHT TO PRIVATE PROPERTY¹⁹⁴

A. Arguments of the parties

130. The **Commission** did not allege a violation of the right to private property.

131. The **representative** maintained that the right to private property was violated to the detriment of all persons indicated as victims, due to the entry of the Army without a judicial order.

132. The **State** claimed that there was no act of appropriation or usury regarding the goods of the members of the Community. It maintained that it was not responsible for violating Article 21 of the Convention.

¹⁹⁴ Article 21 of the Convention reads: "1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interests of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law."

B. Considerations of the Court

133. The alleged victims and their representative can invoke the violation of rights other than those included in the Report on the Merits as long as they are related to the facts contained in the Report.¹⁹⁵ Therefore, since they are found in the factual framework, the Court will examine the argument of the representative.

134. The case law of the Court has developed a broad concept of private property, encompassing the use and enjoyment of "goods," defined as those material objects that may be appropriated, and any right that may form part of a person's patrimony. This concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value.¹⁹⁶ The Court has also held that the destruction of homes may be a particularly grave violation of the right to property.¹⁹⁷

135. It should be mentioned in this case that, although the Army entered the "Aurora 8 de octubre" Community, the Xamán finca where the Community was settled was the property of a Cooperative¹⁹⁸ and not of one or some of the alleged victims individually. Therefore, the mere entry of the soldiers into the Community, which has been alleged by the representative, could not harm the private property of any of the persons indicated as victims. In addition, it is noted that there is no record that the soldiers entered the lands or houses of the victims nor that they damaged any goods. Thus, the Court holds that the State is not responsible for violating Article 21 of the Convention.

VII.5

ALLEGED VIOLATION OF THE RIGHT TO EQUALITY BEFORE THE LAW ¹⁹⁹

136. The Court has already examined the arguments that allege the violation of the right to equality before the law with respect to the military action of October 5, 1995 (*supra* para. 105). It will now consider the arguments on this right relating to the acts of the judicial authorities.

A. Arguments of the Commission and of the parties

137. The **Commission** claimed that the response of the authorities in conducting the investigation and the repeated delays reflect a "lack of prioritization" of cases of serious violations of human rights of those communities at the time. It found, therefore, that the acts were an expression of "racial discrimination" and, thus, a violation of Article 24 of the Convention, read in conjunction with Article 1(1) thereof.

¹⁹⁵ *Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs.* Judgment of February 28, 2003. Series C No. 98, para. 155 and *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 30, 2016. Series C No. 329, para. 48

¹⁹⁶ *Case of Ivcher Bronstein v. Peru. Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74, paras. 120 to 122 and *Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2017. Series C No. 341, para. 240.

¹⁹⁷ *Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148, para. 182 and *Case of Vereda La Esperanza v. Colombia, supra*, para. 241.

¹⁹⁸ The decision of July 8, 2004 (*supra*, para. 64) holds as proven that, on October 5, 1995, soldiers entered "the property of the Maya Cooperative Union, known as the Xamán Finca" (judgment of July 8, 2004, *supra*). The representative, questioned by the Court, clarified that the property belonged to the Mayan Integral Agricultural Cooperative Union, comprised of "some of the persons affected by the massacre," whom it did not identify, as well as other persons "who had returned."

¹⁹⁹ Article 24 of the Convention states: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

138. The **representative** claimed that the right to equal protection before the law was infringed beginning with the flaws and delays of the investigation. It considered that the condition of poverty and extreme poverty of many of the victims may also be deemed discriminator with respect to obtaining justice because of the high costs and the State's abandonment of infrastructure for the Mayan populations.

139. The **State** indicated that it conducted a diligent investigation that concluded with the punishment of the persons involved in the incident and its actions were not discriminatory in fact nor in law.

B. Considerations of the Court

140. In the first place, the Court notes that the Commission and the representative did not specify the persons whose right to equal protection before the law might have been violated. Nonetheless, the Court considers that the arguments refer to all the persons deemed alleged victims.

141. As to the judicial proceedings, the Court has "established violations of Article 24 of the Convention when there has been an infringement to access of justice based on discriminatory criteria."²⁰⁰ Nevertheless, the Court considers that a merely contextual situation is not sufficient to find such violation,²⁰¹ but rather it is necessary that there be "specific acts of discrimination during the investigations that constitute obstacles [to access to justice], due to the [nature on which the discrimination is based]."²⁰² The Court does not observe such specific acts in this case. In addition, it underscores that the judicial proceedings resulted in clarifying what occurred and in determining responsibilities. Thus, the "lack of prioritization" claimed by the Commission is not evident, nor has it been sufficiently proved nor has the supposed prejudicial impact been shown, as regards judicial actions, on the situation of poverty mentioned by the representative.

142. Therefore, the Court holds that Guatemala did not violate Article 24 of the American Convention.

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

143. On the basis of Article 63(1) of the Convention,²⁰³ the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make

²⁰⁰ Cf. *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 100 and *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 258.

²⁰¹ The Court notes that the expert opinion of Alejandro Rodríguez Barillas, incorporated as documentary evidence (evidence file, fs. 419 to 506), points out that "the State of Guatemala has maintained the conditions de facto, so that the indigenous peoples and, specifically, the achí Mayan people do not have access to justice."

²⁰² Cf. *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 258. In the case, the relevance of that nature to the Mayan people was alleged.

²⁰³ Article 63 of the Convention states that if the Court finds that "there has been a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment

adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law of State responsibility.²⁰⁴

144. Reparation for the damage caused by the infringement of an international obligation requires, to the extent possible, full restitution (*restitutio in integrum*), which consists in the restoration of the prior situation. If this is not possible, as occurs in most cases of human rights violations, the Court will determine the measures to guarantee the infringed rights and to repair the consequences of the violation.²⁰⁵ Reparations must have a causal link with the facts of the case, the violations declared, the proven harm, as well as the measures requested to repair the resulting harm.²⁰⁶

145. In view of the declared violations of the Convention and in light of the criteria established in the Court's case law with respect to the nature and scope of the obligation to repair,²⁰⁷ the Court will analyze the claims and arguments of the Commission and of the parties. Although the judgment, per se, is a form of reparation,²⁰⁸ the Court shall establish other measures in view of the harm caused to the victims.

146. Before entering into the pertinent details, the Court notes that the **State** reported that it has a National Program of Indemnification (hereinafter also "PNR"), created by Decree 258-2003. The State indicated that main objective of the PNR is to individually and/or collectively indemnify the victims of human rights violations resulting from the internal armed conflict. Guatemala, in its final written arguments, requested that the Court consider the benefits of the economic and housing compensation granted by the State to the Community, for which it attached a PNR document that provides a list of those persons who received some kind of benefit. The **representative** denied that the victims had received reparations from the PNR due to the massacre. The **Court** welcomes the actions undertaken by the PNR to repair the human rights violations caused by the internal armed conflict.²⁰⁹ Nevertheless, it notes that the State's request is untimely and cannot be considered²¹⁰ and reminds that the Court's role is to ensure that the consequences of the human rights violations declared in this judgment are repaired.²¹¹ It will, therefore, proceed to determine the appropriate reparations.

of his right or freedom that was violated. The Court shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

²⁰⁴ Cf. *Case of Velázquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25 and *Case of Amrhein et al. v. Costa Rica, supra*, para. 466.

²⁰⁵ Cf. *Case of Velázquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 and 26 and *Case of Amrhein et al. v. Costa Rica, supra*, para. 467. The Court, depending on the case, has deemed that measures of restitution, rehabilitation, satisfaction and guarantees of non-recurrence have a special relevance for the harm caused (cf. *Case of Cantoral Benavidez v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81 and *Case of Amrhein et al. v. Costa Rica, supra*, para. 467).

²⁰⁶ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110 and *Case of Amrhein et al. v. Costa Rica, supra*, para. 468.

²⁰⁷ Cf. *Case of Velázquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 to 27 and *Case of Amrhein et al. v. Costa Rica, supra*, para. 469.

²⁰⁸ Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 56 and *Case of Amrhein et al. v. Costa Rica, supra*, para. 474.

²⁰⁹ *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 279.

²¹⁰ The State's request that the benefits already given through the PNR be considered is untimely for having been included in the final written arguments. Moreover, it should be mentioned that the document presented as proof of the benefits received by the members of the Community does not provide sufficient information to consider them as reparations for the case.

²¹¹ *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, supra*, para. 281.

A. Injured Party

147. The Court considers an “injured party” to be, in the terms of Article 63(1) of the Convention, anyone who has been declared a victim of a violation of a right recognized in the Convention. Therefore, the Court considers as an “injured party” all those persons indicated in Annex B of this judgment, who will be considered beneficiaries of the reparations that the Court orders.

B. Obligation to investigate the facts of the case and, where appropriate, prosecute and punish those responsible

148. The **Commission** did not present any specific arguments on this measure.

149. The **representative**, in referring to its request to order, as a measure of reparations, the “strengthening” of the Human Rights Unit of the Public Prosecutor Service (*infra* para. 173), also asked that the “Xamán massacre” be investigated.

150. The **State** did not specifically refer to the request, but among its arguments on the declared violations of rights it maintained that it had observed the “proper behavior [since the investigation] concluded with the conviction of 14 members of the national security forces and with the arrest warrants still in force for 11 persons who are fugitives from justice.”

151. The **Court** notes that the representative did not autonomously request an investigation into the facts as a measure of reparation, but did so as part of another requested measure, the “strengthening” of the Human Rights Unit of the Public Prosecutor Service. However, the Court finds it appropriate to separate both aspects and to independently consider such an investigation. The Court recalls that, in relation to human rights violations such as those declared in this case, State authorities must conduct a serious, impartial and effective investigation, with all available legal means, that is directed toward discovering the truth and to the pursuit, arrest, prosecution, judgment and eventual punishment of the perpetrators, which is especially important when State agents are involved.²¹²

152. It has been shown that the State, through its courts, convicted 14 persons and decided with respect to the other 11 persons that it was necessary to take actions to determine their eventual criminal responsibility. Guatemala indicated that there are arrest warrants in force for those 11 persons, who are “fugitives from justice” (*supra* paras. 66 and 76). Given that, for more than 18 years, there is no record of concrete actions to make effective this means of apprehension by State officials, the Court declared the State’s responsibility (*supra* paras. 88 to 92 and 98). Therefore, the Court orders the State that, in accordance with its domestic law, it continue, within a reasonable time, the pertinent national and international measures to conclude the investigation into the events of October 5, 1995 at the Xamán finca regarding the 11 persons who Guatemala claims are fugitives from justice and for whom arrest warrants have been issued, as well, where appropriate, regarding other elements that might be pertinent.

²¹² Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 223 and, similarly, *Case of Herzog et al. v. Brazil*, *supra*, para. 243.

C. Measures of rehabilitation, satisfaction and guarantees of non-recurrence

C.1. Measures of rehabilitation

153. The **Commission** requested the implementation of a program of physical and mental or psychosocial care that is culturally adequate for the survivors and families of the victims. It also indicated that the State, in its answer, referred to health care in general terms, without establishing what had been the specific care for the victims in this case.

154. The **State** informed that it is already complying with the measure of making the medical care available. It indicated that it has 20` Health Units that offer basic health services in 20 villages and that it also has a Center of Permanent Care (CAP), located in the Barrio El Centro of the Municipality of Chisec, Department of Alta Verapaz. It affirmed that, in that Municipality, the care takes into consideration the Mayan cosmovision in the Q´eqchi language, respecting the different cultures, customs and traditions.

155. The **Court** welcomes the information presented by the State, but notes that it does not contain elements that would permit it to conclude that the general policies of health care offer an adequate mechanism for the specific needs of reparation for the violations of human rights declared in this case. Therefore, the Court considers it necessary that the State offer adequate care for the harm suffered by the victims. This measure applies to those persons, listed in Annexes B(3) and B(5) of this judgment, whose right to personal integrity was infringed. Therefore, as in other cases,²¹³ the Court orders the State to offer, free of charge, through its specialized institutions, adequate and effective psychological or psychiatric care to the victims, listed in Annexes B(3) and B(5) of this judgment, who seek it, with prior informed consent, including the medicine, without charge, that they may eventually require, taking into consideration the afflictions of each of the victims. This implies that the victims must receive a differentiated treatment with respect to the processes and procedures necessary to be cared for in public institutions. The particular circumstances and needs of each victim must be taken into account in providing psychological or psychiatric treatment in order that they are given collective, family or individual care, depending on what has been agreed with each one and following an individual evaluation. The respective psychiatric or psychological care must be offered for as long as necessary, at the closest centers to the residence of the victims as possible and, in any case, at a place that is accessible to those persons.

156. The victims who request some measure of rehabilitation must, within six months of notification of this judgment, inform the State, personally or through their representatives, of their intention to receive care. Once the State receives such notification, it must immediately begin to offer the treatment.

157. With respect to medical or health care other than psychological or psychiatric care, the Court does not consider it necessary to order a specific measure and, in relation thereto, it bears in mind the measure of establishing a health center in the Community, which will be dealt with subsequently (*infra* paras. 164 to 167).

C.2. Measures of satisfaction

²¹³Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 270 and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, *supra*, para. 352.

C.2.1. Publication of the judgment

158. The Court, as it has done in other cases,²¹⁴ orders the State to publish, within six months of notification of this judgment: (a) the Court's official summary of this judgment, once, in the Official Gazette and in another newspaper of national circulation, in a legible and adequate font and (b) the complete judgment, available for at least one year, on an official Web site of the State that is accessible to the public and on the initial page of the Web site. The State must immediately inform the Court when it has published each of the above, notwithstanding the period of one year to present its first report ordered in operative paragraph 15 of this judgment.

C.2.2. Public act of recognition of responsibility

159. The **Commission** considered that there should be "measures of satisfaction for the recovery of memory of the victims and for the public recognition of State responsibility for the events."

160. The **representative** requested that the President of the Republic ask the victims for forgiveness and that he recognize international responsibility for the commission of serious violations of human rights committed by the State.

161. The **State** indicated that it was willing to hold a public act of recognition of responsibility, but only for those acts for which the Court attributed its responsibility.

162. The **Court** welcomes that the State, through its highest-ranking authorities and immediately after the massacre took place, has manifested an "institutional recognition" of what had occurred and that it had begun judicial action with respect to the incident. Nevertheless, Guatemala has not recognized its international responsibility for the violations declared in this judgment.

163. Given the above, as well as the State's consent with respect to the requested measure, the Court, as it has done in other cases,²¹⁵ finds it necessary, in order to repair the harm caused to the victims, to order that the State, within one year of notification of this judgment, hold a public act of recognition of responsibility in which it refers to the events of this case and the State's responsibility in the terms of this judgment. The Spanish language should be used in the act. Should it be necessary for the understanding of some or various of the victims, the State must reach an agreement with the victims or their representatives for the act to also be held in other languages. The act is to be carried live on radio and/or television and in a public ceremony in the presence of high-ranking State officials and the victims. The time, place and other details of such ceremony are to be agreed with the victims and their representatives. The State must guarantee and pay the expenses of the necessary transportation so that the victims who are in Guatemala might attend the act.

C.2.3. Health Center

²¹⁴ Even in the absence of an express request, as occurred in this case. Cf. *Case of Cantoral Benavides v. Peru*, *supra*, para. 79 and *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 5, 2018. Series C No. 346, para. 198.

²¹⁵ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 84 and *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 306.

164. The **representative** requested that the Court order that the State build a health center in the Community, integrating the Mayan cosmovision, with the capacity, equipment and maintenance to cover all the needs of the members of the Community.

165. The **State** did not differentiate between the measure of rehabilitation requested by the Commission (*supra* para. 153) and the measure of satisfaction requested by the representative. The Court bears in mind the State's claim regarding health care already summarized (*supra* para. 154).

166. The **Court** considers that the group's social and economic vulnerability was a determining factor in its victimization and, therefore, as part of the reparation, it is not only appropriate but also necessary to order measures that, at the least, guarantee conditions of true citizenship with access to health and communication.

167. The Court, therefore, orders as a measure of satisfaction the construction, within two years, of a health center located in the "Aurora 8 de octubre" Community to which the victims and the members of the Community, in general, have access to the basic health services. The medical care offered must respect traditional practices and medicines. The measure must also take into consideration that, as indicated in another judgment regarding Guatemala, the health programs in indigenous and tribal populations must be based in the community and be complementary to the traditional curative practices and include them.²¹⁶

C.2.4. Widening and paving a road

168. The **representative** requested "the widening and paving of the road from the Franja Transversal del Norte highway to the center of the Community [...], which would mean [...] 5 kilometers of asphalt."

169. The **Commission** mentioned that the State recognized that such a measure had not been implemented and simply "took note of the request."

170. The **State** indicated that it took note of the request and would include it in the scheduling of projects of the Department of Roads.

171. The **Court** welcomes that the State has indicated that it will schedule the road project and, in view of the considerations already expressed on the vulnerability of the group of victimized persons (*supra* para. 166), as a measure of satisfaction orders that Guatemala, within two years, widen and pave the road from the Franja Transversal del Norte highway to the center of the "Aurora 8 de octubre" Community.

C.2.5. Visit of the Court

172. The Court notes that, with the consent of the State and the agreement of the parties and after the one year that the State has to present its first report (*infra* operative paragraph 15) it will consider visiting the State, including the Community, to evaluate the progress of the measures ordered as well as, where appropriate, the other measures ordered in this judgment.²¹⁷

²¹⁶Cf. *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*, *supra*, footnote 359.

²¹⁷ With respect to Guatemala, the Court has had the opportunity to appreciate the utility and importance of activities in the territory of a State to monitor compliance of its decisions concerning the reparations that merit

D. Other measures requested

173. The **Commission** requested the creation of permanent programs on human rights and on international humanitarian law in the Armed Forces schools, as a measure of non-recurrence. The **representative** joined that request. In addition, the **Commission** requested that the institutional capacity be strengthened to investigate the serious violations of human rights that occurred during the armed conflict. It also asked for the adoption of effective mechanisms to confront the threats and harassment to which justice operators, victims and witnesses have been subjected during these investigations. The **representative** asked that the Human Rights Unit of the PPS be strengthened by adding at least five staff members.

174. The **State** claimed that, through its Ministry of National Defense, it is complying with training programs that integrate materials on human rights, international humanitarian law, the use of force and firearms, for which it has had, since 2015, the support of the International Committee of the Red Cross to train military personnel in the use of force and humanitarian principles.²¹⁸ As to the strengthening of institutional capacity, the State informed that there is now a mechanism of coordination between the PPS and COPREDEH, without interfering with the competences and autonomy of each of them, which will allow special attention to be given to investigations on cases that have been heard by the Court. It also reported that the PPS has programmed the opening of an "Office of the Prosecutor" within the Unit of Special Cases of the Internal Armed Conflict.²¹⁹ It also claimed that there is a "Law for the protection of parties to the proceedings and persons involved in the administration of criminal justice," which had its own rules.²²⁰

it. It has emphasized "the necessity that [in the relevant cases] the States [collaborate so that a delegation of the Court might conduct procedures of monitoring in the territory of the State], with the greatest possible participation of the officials responsible for implementing the reparations and the greatest availability to assume commitments for their prompt compliance." The Court has previously stated that "this type of visit also permits a direct and immediate communication between the victims and high-ranking officials, so that, at the same time, the latter commit to adopting specific actions to advance compliance of the measures and that the victims be heard on the progress and shortcomings that they have identified (*Case of the Plan de Sánchez Massacre v. Guatemala. Monitoring compliance of judgment. Order of the Inter-American Court of May 25, 2017* and *Case of the Río Negro Massacres v. Guatemala. Monitoring compliance of judgment. Order of the Inter-American Court of May 25, 2017, considering paragraph 9*).

²¹⁸ It also claimed that, by means of Governmental Agreement 130-2016, the Internal Organic Rules of the Ministry of National Defense were issued and which has aspects that should be underscored, such as the creation of the Directorate of Human Rights and International Humanitarian Law of the Ministry of National Defense (evidence file, annex 9 to the answering brief, fs. 5463 to 5471). It also indicated that there are governmental and non-governmental institutions, national and international, for the development of these programs, such as: Office of the Prosecutor for Human Rights (PDH); Presidential Commission on the Coordination of Human Rights Policies for the Executive (COFREDEH); Presidential Commission on Discrimination and Racism against Indigenous Peoples of Guatemala (CODISRA); Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET); Presidential Secretariat for Women (SEPREM); National Office for Women (ONAM) and the Human Rights Office of the United States Southern Command. The State also informed that it had developed post-graduate and diploma and other courses, workshops and conferences on human rights and international humanitarian law as well as on the use of force and firearms with the object of strengthening the knowledge, respect and application of those topics in the military personnel of the Guatemalan Army." It also informed that on March 23, 2017, it inaugurated a Diploma Course on Human Rights in the Ministry of National Defense.

²¹⁹ Guatemala explained that this "Office of the Prosecutor" was designed to reorient the investigations, observing the general principles of "due diligence" for the investigation of serious violations of human rights and the standards for the investigations of extrajudicial executions, torture and other cruel, inhumane or degrading treatment and the forced disappearance of persons. It informed that this Office would be comprised of six deputy prosecutors and a chief prosecutor.

²²⁰ The State explained that this law created a protective service within the PPS with the main purpose of providing protection to officials and staff of the judiciary, the civilian security forces and the PPS, as well as the witnesses, experts, consultants, "querellantes adhesivos" and other persons who are exposed to risk for being involved in criminal proceedings and also for the journalists who require it for being at risk due to their

175. The **Court** observes that the State has provided information on the initiatives to train the members of the Armed Forces on human rights and on international humanitarian law.²²¹ Moreover, the Court has already ordered human rights training for military forces in another case.²²² Therefore, the Court considers that it is not necessary here to order the measure requested. The Court notes that in this case the domestic judicial bodies have determined what occurred and have convicted the persons responsible. Moreover, the Court has declared human rights violations for the failure to adopt actions to apprehend the persons that the State has reported as fugitives from justice. However, it notes that the measures requested by the Commission and the representative for institutional strengthening are in general terms, without any apparent link to the capability of the State to take action in relation to the implementation of arrest warrants. Therefore, it does not find that the violations of certain human rights are related to the requested measures. The Court, therefore, considers that it is not appropriate to order measures on institutional strengthening, as requested by the Commission and the representative.

E. Compensation²²³

176. The **Commission** claimed that the victims should be repaired “integrally,” including a “fair compensation.” The **representative** requested, in general terms, that the victims “be repaired integrally [...] through reparations for lost wages, consequential damages and pain and suffering,” for which it provided a documentary annex in which it presented a monetary calculation for those items.²²⁴ The **State** noted that pecuniary damages can only be compensated with the necessary proof, excluding simply eventual damages. The Court will now examine the pertinent requests and arguments.

E.1. Pecuniary damages

function to inform and offers different measures of protection according to the level of risk. The State also reported that the PPS, through the Internal Armed Conflict of the Office of the Prosecutor of the Section on Human Rights had adopted a series of measures that would meet the requested measure, such as the statements given by video conference or Gessel camera (in some cases withholding data of personal identification or covering the face to avoid direct contact with the accused and expose them physically to abuse) or to request the Department of Security of the PPS to assign security personnel and vehicles for the prosecutors at risk, among others (evidence file, annexes 10 and 11 to the answering brief, fs. 5472 to 5509).

²²¹ Cf. Pensum of Studies on Human Rights, International Humanitarian Law and the Use of Force and Firearms, in the Military Educational System of the Guatemalan Army (evidence file, annex 8 to the answering brief, fs. 5449 to 5461) and Governmental Agreement 130-2016. Internal Organic Rules of the Ministry of National Defense (evidence file, annex 9 to the answering brief, fs. 5463 to 5471).

²²² *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*, *supra*, para. 313.

²²³ It is relevant that the **Commission** pointed out that those who acted as petitioners before it informed that, on October 4, 1996, they filed a civil suit for damages, requesting that the “accused” and the State be ordered to pay an amount of money. The **representative** claimed that the civil suit was stalled. While the **Court** has some information on the status of the suit, it is incomplete and, especially, does not indicate how it concluded nor what has occurred since October 24, 2002 when the legal advisors of the victims “visited [the Constitutional Court] to ask whether the petition, related to ‘a matter of constitutionality’ had been resolved.” This, according to information provided to the Inter-American Commission by the petitioners (*cf.* Communication of the petitioners of October 29, 2002, addressed to the Commission (evidence file, proceedings before the Commission, fs. 2371 to 2385)). The information is not sufficient for the Court to examine the civil suit or take it into account in determining reparations.

²²⁴ Cf. Evidence file, annex 5 of the brief with pleadings and motions, fs. 5355 to 5367. The **representative**, in that brief, expressed the amounts in Guatemalan Quetzals. The **Court**, in calculating its equivalence in United States dollars, used the exchange rate on the Web site of the Bank of Guatemala: <http://www.banguat.gob.gt/cambio/>. It used the exchange rate of March 31, 2017 (1 USD = 7.47444 GTQ), when the brief with pleadings and motions was presented (*supra* para. 6).

177. The Court has developed in its case law the concept of pecuniary damages and has established that they presuppose “the loss of or the detriment to the income of the victims, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the *sub judice* case.”²²⁵

E.1.1. Consequential damages

178. The **representative** indicated that it estimated a compensation of GTQ 300,000.00, which is the equivalent of USD 40,136.78, for consequential damages for each person, without specifying the reasons.

179. The **Court** notes that the representative did not explain the basis on which it requested the amount mentioned as compensation for each victim. Therefore, the Court will not order compensation for consequential damages.

E.1.2. Lucro cesante (lost wages)

180. The **representative** expressed that it used as a criterion to calculate lost wages the guidelines established by the Court in the *Villagrán Morales et al. v. Guatemala* case.²²⁶ It manifested that it took as a reference the annual minimum salary in rural areas during the past six months as of the moment in which the massacre occurred for those who were adults and from the moment of reaching adulthood for those who were children in order to subsequently take into account vacations, extra month bonus at the end of the year, the “14” bonus (a month’s bonus on top of the extra month bonus) and annual compensation during the period. On that basis, the calculations were made by grouping the amounts according to the group of victims.

181. *Deceased persons.* Using that formula, the representative requested an amount for lost wages with respect to each of the 10 deceased victims,²²⁷ indicating that the sum of each amount totals GTQ 55,133,009.76, the equivalent of USD 7,376,206.07. It considers that to that total should be added GTQ 531,273.81,²²⁸ the equivalent of USD 71,078.74, for interest due to the delay in complying with the reparations. Therefore, it requested a total of USD 7,447,284.81.

182. *Injured persons.* The representative requested an amount for lost wages for each of the 26 injured persons²²⁹ and indicated a total corresponding to the sum of each of those

²²⁵ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*, *supra*, para. 43 and *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 487.

²²⁶ As the representative indicated, referring to that judgment, the calculation should be made taking into account the age of the victim at the date of death, the life expectancy, the victim’s job at the time of the events, the possible financial betterment and income and that real wages or, in their absence, the minimum wage for similar work in Guatemala should be employed (in the *Villagrán Morales* case, “non-agricultural” activities), using 12 monthly salaries for each year.

²²⁷ For “Maurilia” GTQ 7,672,792.92; for “Carlos” GTQ 7,707,511.44; for “Manuela” GTQ 7,290,889.20, for “Abel” GTQ 5,381,370.60; for “Pablo” GTQ 3,992,629.80; for “Juana” GTQ 3,124,666.80; for “Andrés” GTQ 2,256,703.80; for “Hilaria” GTQ 1,562,333.40; for “Pedro” GTQ 3,645,444.60, and for “Pedro” GTQ 4,687,000.20. (The representative, in making these requests, only indicated first names and not last names. It did refer to Santiago Coc in its brief with pleadings and motions but noted that he had no contact with his family, explaining that, for this reason, it could not make “requests for measures of reparation.”)

²²⁸ The representative requested for “Maurilia” GTQ 85,928.34; for “Carlos” GTQ 63,014.11; for “Manuela” GTQ 85,928.34; for “Abel” GTQ 63,014.11; for “Pablo” GTQ 46,349.22; for “Juana” GTQ 35,933.67; for “Andrés” GTQ 25,518.11; for “Hilaria” GTQ 17,185.67; for “Pedro” GTQ 42,183, and for “Pedro” GTQ 54,681.67. It explained that “it used the interest that the banks pay those who have long-term deposits.”

²²⁹ The names of those persons, as provided by the representative, are: “Pascual José Pascual”; “Santiago Maquín Quip”; “Rosendo Morales Ortiz”; “Victor Carrillo Morales”; “Ricardo Pop Caal”; “Juana Felipe

amounts of GTQ 4,513,407.60, the equivalent of USD 603,845.58.²³⁰ It claimed that interest should be included on behalf of each of the 26 persons, under the same principle used for the deceased victims. For this concept, it requested a total equivalent to USD 625,994.64.²³¹ Therefore, the total requested is USD 1,229,840.22.

183. The representative made a special request with respect to Gerardo Maldonado Sales, indicating that "at the time of the massacre he was two years old and died nine years later [...] when he was 11." Thus, using the same formula, it requested an amount in Quetzals equivalent to USD 295,419.80.²³²

184. The **State** argued that lost wages should be included only to the extent that they are proven and following the parameters established in the case law, such as: the life expectancy in the country at the time of the events, the circumstances of the case, the minimum salary and the loss of future advancement. It also manifested that "it is confronting serious financial and budgetary difficulties, which have been aggravated in past years, a situation that has lessened timely compliance with its financial commitments derived from several international instruments."

185. The **Court** notes that the representative calculated lost wages. However, it did not take into account all the elements required by the Court's case law to make the calculation. As the Court has previously held,²³³ it is necessary to deduct 25% from the lost wages to account for the personal expenses that the victim might have incurred during his lifetime after the events. This element was not considered by the representative in making its calculations. Moreover, no distinction was made about the survivors' work or personal details nor on the impact that the injuries might have on each individual's work and, thus, the amounts requested by the representative are not appropriate.

186. Therefore, taking into consideration the above and the particularities of each case and for the adequate full reparation of the victims, the Court orders, in equity: (a) for each of the 11 deceased persons whose right to life has been declared violated and who are named in Annexes B(2) and B(4) of this judgment, taking into account the differences in age at the time of their death, the payment of the following amounts: 1.-Abel Ramírez Pérez: USD 67,000.00 (sixty-seven thousand United States dollars); 2.-Andrés Miguel Mateo: USD 15,000.00 (fifteen thousand United States dollars); 3.-Hilaria Morente de la Cruz: USD 15,000.00 (fifteen thousand United States dollars); 4.-Juana Jacinto Felipe: USD 39,000.00 (thirty-nine thousand United States dollars); 5.-Manuela Mateo Antonio: USD 92,000.00 (ninety-two thousand United States dollars); 6.-Pablo Coc Coc: USD 24,000.00 (twenty-four thousand United States dollars); 7.-Pedro Diego Andrés: USD 42,000.00 (forty-two thousand United States dollars); 8.-Pedro Medina Sánchez: USD 22,000.00 (twenty-two thousand United States dollars); 9.-Carlos Fernando Chop Chic: USD 92,000.00 (ninety-two thousand United States dollars); 10.-Santiago Coc: USD 100,000.00 (one hundred thousand United States dollars) and 11.-Maurilia Coc Max: USD

Velásquez"; "Santos Choc Coc"; "Rosenda Sales Ortíz"; "Marcos Raymundo Jolomná Yat"; "Rolando Hernández Maldonado"; "Aurelio Hernández Morales"; "Josefa Mendoza Aguilar"; "Micaela Pascual Juan"; "Carmen Caal Saqui", "Juan Medina Toma"; "Mateo Pedro"; "Martín Quip Mucú"; "Francisco Hernández"; "Juana Andrés Maldonado"; "Tomás Grave Morente"; "Jacinta Matón Raymundo"; "Pedro Daniel Carrillo López"; "Natividad Sales Calmo"; "Efraín Grave Morente"; "Eliseo Hernández Morales", and "Santiago Cajbón Quip".

²³⁰ The representative asked GTQ 173,592.60 for each of the 26 persons. It explained that it used the same method of calculating the amount of lost wages on behalf of the deceased victims, but it clarified that "it was computed only for the first five years beginning in 1997."

²³¹ It asked GTQ 179,959.98 for each of those 26 persons, resulting in a total of GTQ 4,678,959.39.

²³² It claimed GTQ 2,083,111.2 for lost wages, which is the equivalent of USD 278,697.96, and GTQ 124,986.67 for interest, which is the equivalent of USD 16,721.84.

²³³ *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 81.

108,000.00 (one hundred eight thousand United States dollars) and (b) for each of the 29 injured persons whose right to personal integrity for the injuries suffered has been declared violated and who are named in Annex B(3) of this judgment, USD 7,000.00 (seven thousand United States dollars). The amounts ordered on behalf of the persons, who were deceased at the time of the delivery of this judgement, must be paid to their next of kin, within the period established in paragraph 196 of this judgment, according to the following criteria:

- (a) fifty percent (50%) of the compensation for each victim to be divided, in equal parts, among his or her children. If one or more of the children has already died, that part is to be added to that of the other children of the victim;
- (b) the other fifty percent (50%) of the compensation to be paid to the spouse or permanent companion of the victim at the time of the victim's death, as pertinent;
- (c) if the victim had neither children, nor spouse, nor permanent companion, what would have been due to the next of kin in that category shall be added to the part corresponding to the other category;
- (d) if the victim had neither children, nor spouse, nor permanent companion, the compensation for pecuniary damages shall be given to his parents or, if none, to his siblings in equal parts, and
- (e) if the victim had neither children, nor spouse, nor permanent companion, nor parents or siblings, the compensation shall be paid to the heirs in accordance with the domestic law.

E.2. Non-pecuniary damages

187. The **representative** requested that the Court grant a compensation for pain and suffering of GTQ 500,000.00, the equivalent of USD 66,894.64, for each person, without distinguishing between the deceased and injured victims and without explaining the reasons for the amount requested.

188. The **State** argued that if it were found internationally responsible, the Court must take into account the elements based on the evidence presented during the international process to determine whether it is appropriate to pay for pain and suffering on behalf of the victims in this case.

189. The **Court** has established that non-pecuniary damages may include the suffering and distress caused by the violation as well as the impairment of values that are highly significant to the victims, as well as non-monetary alterations in their living conditions.²³⁴ Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, the victims, to be integrally repaired, can only be compensated by a monetary payment or by the assignment of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity.²³⁵

190. The Court notes that the representative offered no arguments nor evidence on which to base the amounts. Nevertheless, in view of the criteria established in its case law, the circumstances of this case, the nature and seriousness of the violations, as well as the suffering caused to the victims,²³⁶ the Court considers it pertinent to set, in equity:

²³⁴ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*, supra, para. 84 and *Case of Amrhein et al. v. Costa Rica*, supra, para. 482.

²³⁵ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*, supra, para. 84 and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, supra, para. 424.

²³⁶ Cf. *Similarly, Case of Ticona Estrada et al. v. Bolivia*, supra, para. 109 and *Case of Carvajal Carvajal et al. v. Colombia*, supra, para. 228.

- (a) for each of the eight deceased victims, whose right to life was declared violated and who are listed in Annex B(2) of this judgment, USD 80,000.00 (eighty thousand United States dollars);
- (b) for each of the three deceased victims who were children, whose right to life was declared declared violated and who are listed in Annex B(4) of this judgement, USD 90,000.00 (ninety thousand United States dollars);
- (c) for each of the 29 injured victims, whose right to personal integrity was declared violated and who are listed in Annex B(3) of this judgment, USD 20,000.00 (twenty thousand United States dollars);
- (d) for each of the next of kin of the 10 deceased persons, who are indicated in (a) and (b) above and are listed in Annex B(5) of this judgment, USD 10,000.00 (ten thousand United States dollars)²³⁷ and
- (e) for each of the persons whose only rights to be declared violated were judicial guarantees and judicial protection, USD 5,000.00 (five thousand United States dollars). Those persons are: 1.-Manuela Pop Choc; 2.-Francisco Quip Choc; 3.-Petrona Quip Pop; 4.-Margarita Quip Pop; 5.-Martín Maquín Quip Pop; 6.-Dominga Maquín Pop; 7.-Santiago Quip Pop; 8.-José Morales Ortiz; 9.-Cruz Maldonado Silvestre; 10. Martalia Hernández Maldonado; 11.-Andrés Hernández Maldonado, 12.-Florencia Hernández Maldonado.

The amounts ordered for the persons who are deceased at the time of the delivery of this judgment should be paid to their next of kin in the period established in paragraph 196 of this judgment, in accordance with the criteria found in its paragraph 186.²³⁸

F. Costs and Expenses

191. The **representative** requested, in its brief with pleadings and motions, an amount of GTQ 1,500,000.00. Later, in its final written arguments, it requested an amount of USD 136,425.65 for expenses incurred “over the years” that “not all can be documented.”

192. The **State** requested that the Court, with respect to the reimbursement of costs and expenses, grant only those that have been duly proven before the Court.

193. The **Court** reiterates that, in accordance with its case law,²³⁹ costs and expenses form part of the concept of reparation as long as the activities deployed by the victims to obtain justice, at both the domestic and international levels, entail disbursements that must be compensated when the international responsibility of the State has been declared

²³⁷ Reference is made to the next of kin of 10 deceased victims, since there is no indication of the next of kin of the young boy Santiago Coc.

²³⁸ It should be clarified that what has been stated regarding payment to the next of kin of the deceased persons is applicable to any of the victims who are deceased when this judgment is delivered, even though the death is not indicated in the judgment. It is also clarified that the victims listed in Annexes B(3) and B(5) of this judgment should receive the declared compensation for non-pecuniary damages due to the injured victims and also the declared compensation for non-pecuniary damages due to the next of kin of the deceased persons.

²³⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, *supra*, para. 42 and *Case of Amrhein et al. v. Costa Rica*, *supra*, para.494.

in a judgment. Regarding reimbursement for costs and expenses, it is for the Court to prudently assess their scope, which includes the expenses arising before the authorities of the domestic jurisdiction and also those generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction of the protection of human rights. This assessment may be made based on the principle of equity and considering the expenses indicated by the parties, provided their *quantum* is reasonable.²⁴⁰

194. The Court has expressed that “the claims of the victims or their representatives with respect to costs and expenses, and the evidence that sustains them, must be presented to the Court at the first procedural moment, in other words, in the brief with pleadings and motions, unless such claims are made current at a subsequent time, in accordance with new costs and expenses that have been incurred in the proceedings before the Court.”²⁴¹ The Court also reiterates that it is not sufficient to remit evidentiary documents, rather the parties must provide the rationale that relates the evidence to the fact under consideration and, in the case of alleged financial disbursements, the items and their justification must be described clearly.²⁴²

195. The Court takes note that vouchers were not submitted for the expenses involved in the national and international quest for justice for the violations suffered by members of the Community, other than an affidavit²⁴³ that was not sufficient to prove the amounts requested since no vouchers of any nature were submitted and that, moreover, the statement refers to expenses that would have been made both before the presentation of the brief with pleadings and motions as well as subsequently. Nevertheless, the Court considers that it may be presumed that the GAM incurred expenses in the domestic quest for justice and internationally before the inter-American system. Therefore, the Court sets the payment of a total of USD 30.000,00 (thirty thousand United States dollars) for the concept of costs and expenses. This amount is to be delivered to the GAM. In the monitoring compliance phase of this judgment, the Court will order the reimbursement by the State to the victims or their representatives of the reasonable expenses duly proved for this procedural step.²⁴⁴

G. Method of compliance of the payments ordered

196. The State shall make the payment of compensation for the pecuniary and non-pecuniary damages and the reimbursement of costs and expenses ordered in this judgment directly to the persons indicated therein, within one year of notification of this judgment, although the State may make full payment at an earlier date, in the terms of the following paragraphs.

197. If the persons who were alive at the time of the delivery of this judgment die before the State makes the corresponding payment, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

²⁴⁰ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 82 and *Case of Herzog et al. v. Brazil, supra*, para. 401.

²⁴¹ *Case of Garrido and Baigorria v. Argentina, supra*, para. 82 and *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 424.

²⁴² Cf. *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 Amrhein et al. v. Costa Rica, supra*, para. 494.

²⁴³ Cf. Affidavit of March 8, 2018 of the Administrator of the GAM (evidence file, annex 5 to the final written arguments of the representative, fs. 5590 to 5595).

²⁴⁴ Cf. *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of August 24, 2010. Series C No. 214, para. 331 and *Case of Herzog et al. v. Brazil, supra*, para. 404.

198. The State shall comply with the monetary obligations by payment in United States dollars, or its equivalent in the national currency, using the exchange rate of the New York Stock Exchange of the United States, the day before the payment.

199. If, for causes that can be attributed to the beneficiaries of the compensations or to their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit said amount in their favor in a bank account or certificate of deposit in a solvent Guatemalan financial institution, in United States dollars, and in the most favorable conditions permitted by banking laws and practice. If the corresponding amount is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

200. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damages shall be delivered in full to the persons and organizations indicated, as established in this judgment, without any deductions arising from possible taxes or charges.

IX. OPERATING PARAGRAPHS

201. Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The State is responsible for violating the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25 (1) of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof, to the detriment of the persons indicated in Annex B(1) of this judgment, in the terms of its paragraphs 77 to 98.

2. The State is responsible for violating the right to life, contained in Article 4(1) of the American Convention on Human Rights, in relation to the obligation to respect the rights without discrimination established in Article 1(1) thereof, to the detriment of the persons indicated in Annex B(2) of this judgment, in the terms of its paragraphs 104 to 107, 109 to 111 and 116 to 120.

3. The State is responsible for violating the right to personal integrity, established in Article 5(1) of the American Convention on Human Rights, in relation to the obligation to respect the rights without discrimination established in Article 1(1) thereof, to the detriment of the persons indicated in Annex B(3) of this judgment, in the terms of its paragraphs 104 to 106, 108 to 112 and 116 to 120, and in relation to the obligation established in Article 1(1) of the Convention, to the detriment of the persons indicated in Annex B(5) of this judgment, in the terms of its paragraphs 123 to 129.

4. The State is responsible for violating the right to life, contained in Article 4(1) of the American Convention on Human Rights, in relation to Article 19 and with the obligation to respect the rights without discrimination established in Article 1(1) thereof, to the detriment of the girl and of the two boys indicated in Annex B(4) of this judgment, in the terms of its paragraphs 104 to 107, 109 to 111, 113 and 115 to 120.

5. The State is not responsible for violating the right to private property, established in Article 21 of the American Convention on Human Rights, in the terms of paragraphs 133 to 135 of this judgment.

6. The State is not responsible for violating the right to equality before the law, established in Article 24 of the American Convention on Human Rights, in the terms of paragraphs 105 and 140 of this judgment.

AND ESTABLISHES

unanimously, that:

7. This judgment is, per se, a form of reparation.

8. The State shall adopt the necessary measures to continue the investigation into the facts, in accordance with the terms of paragraph 152 of this judgment.

9. The State shall provide the psychiatric or psychological care to the victims listed in Annexes B(3) and B(5) of this judgment, should they so desire, in the terms of paragraphs 155 and 156 of this judgment.

10. The State shall issue the publications ordered in paragraph 158 of this judgment, in accordance with the terms of that paragraph.

11. The State shall hold a public act of recognition of international responsibility in relation to the events of this case, in the terms of paragraph 163 of this judgment.

12. The State shall establish a health center located in the "Aurora 8 de octubre" Community, in the terms of paragraph 167 of this judgment.

13. The State shall widen and pave the road from the Franja Transversal del Norte Highway to the center of the "Aurora 8 de octubre" Community, in the terms of paragraph 171 of this judgment.

14. The State shall pay the amounts fixed in paragraphs 186, 190 and 195 of this judgment for pecuniary and non-pecuniary damages and for the reimbursement of costs and expenses. Those payments shall be made in the terms of paragraphs 196 to 200 of this judgment.

15. The State shall, within one year of notification of this judgment, present a report to the Court on the measures adopted to comply with this judgment.

16. The Court will monitor the full compliance of this judgment, in the exercise of its attributions and in compliance with its duties under the American Convention on Human Rights and will close this case once the State has fully complied with this judgment.

Done in the Spanish language at San José, Costa Rica on August 22, 2018.

I/A Court H.R. *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs.* Judgment of August 22, 2018.

Eduardo Ferrer Mac-Gregor Poisot
President

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Registrar

ANNEX A

PERSONS INDICATED AS VICTIMS BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN ITS REPORT ON ADMISSIBILITY AND THE MERITS 28/16¹

1.-Abel Ramírez Pérez, 2.-Andrés Miguel Mateo, 3.-Hilaria Morente de la Cruz, 4.-Juana Jacinto Felipe, 5.-Manuela Mateo Antonio, 6.-Pablo Coc Coc, 7.-Pedro Diego Andrés, 8.-Pedro Medina Sánchez, 9.- Carlos Fernando Chop Chic, 10.-Santiago Coc, 11.-Maurilia Coc Max, 12.-Santiago Maquín Quip, 13.-Gerardo Maldonado Sales, 14.-Rosendo Morales Ortíz; 15.-Aurelio Hernández Morales, 16.-Carmen Caal Saqui, 17.-Eliseo Hernández Morales, 18.-Francisco Hernández, 19.-Jacinta Matón Raymundo, 20.-Josefa Mendoza Aguilar, 21.-Juana Andrés Maldonado, 22.-Juana Felipe Velásquez, 23.-Marcos Jolomná Yat, 24.-Martín Quip Mucú, 25.-Mateo Pedro, 26.-Natividad Sales Calmo, 27.-Pascual José Pascual, 28.-Pedro Daniel Carrillo López, 29.-Ricardo Pop Caal, 30.-Rosenda Sales Ortíz, 31.-Santiago Cajbón Quip, 32.-Santos Choc Coc, 33.-Víctor Carrillo Morales, 34.-Micaela Pascual Juan, 35.-José Hernández, 36.-Germán Cajbón Choc, 37.-Efraín Grave Morente, 38.-Juan Medina Toma, 39.-Rolando Hernández Maldonado, 40.-Tomás Grave Morente, 41.-José María Grave, 42.- Fermina Grave Morente, 43.-Marselo Grave Morente, 44.-Margarita Grave Morente, , 45.-Anastacio Chop García, 46.-Daniela Catarina Chic López, 47.-Manuela Toma Gómez, 48.-María Medina Toma, 49.-Antonio Medina Toma, 50.-Domingo Medina Toma, 51.-Diego Medina Toma, 52.-Pedro Medina Toma, 53.-Antonio Medina Toma, 54.-Teresa Medina Toma, 55.-Joel Medina Toma, 56.-Carlos Medina Toma, 57.-Atilana Hernández Maldonado, 58.-Mario Alberto Ramírez Hernández, 59.-Fabiana Ramírez Hernández, 60.-Juan Ramírez Hernández, 61.-José Eduardo Ramírez Hernández, 62.-Marcos Ramírez Hernández, 63.-María Alicia Ramírez Hernández, 64.- Roberto Rafael Ramírez Hernández, 65.-Ramón Mateo, 66.- Florinda Sales Jacinto, 67.-Adelina Sales Jacinto, 68.- Petrona Miguel Méndez, 69.-Angelina Diego Miguel, 70.-Andrés Diego Miguel, 71.-Lucía Diego Miguel, 72 .-Diego Diego Miguel, 73.-Pedro Coc Chén, 74.- Victoria Max Yat, 75.- Feliciana Cajbón Hu, 76.- María Coc Cajbón, 77.- José Coc Cajbón, 78.- Anastacia Coc Cajbón, 79.-Petrona Coc Cajbón, 80.- Irene Coc Cajbón, 81.- Salvador Coc Cajbón, 82.-Ana Coc Cajbón, 83.- Juana Juan, 84.- María Miguel Juan, 85.- Dolores Miguel Bartolo, 86.-Francisco Miguel Bartolo, 87.-Manuela Pop Choc, 88.-Francisco Quip Choc, 89.-Petrona Quip Pop, 90.-Margarita Quip Pop, 91.-Martín Maquín Quip Pop, 92.-Dominga Maquín Pop, 93.-Santiago Quip Pop, 94.-José Morales Ortíz, 95.-Cruz Maldonado Silvestre, 96. Martalia Hernández Maldonado, 97.- Andrés Hernández Maldonado, 98.-Florencia Hernández Maldonado, and 99.-Cristina Grave Morente.

¹ The names of the persons identified as victims by the Commission in its Report on the Merits have been written in accordance with the information provided to the Court on those names, even if there are differences in the manner in which they were listed in the Report on the Merits.

ANNEX B

PERSONS DETERMINED AS VICTIMS BY THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN ITS JUDGMENT²

B.1

VICTIMS OF THE VIOLATION OF THE RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION (ARTICLES 8(1) AND 25(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

1.-Santiago Maquín Quip; 2.-Gerardo Maldonado Sales; 3.-Rosendo Morales Ortíz; 4.-Aurelio Hernández Morales; 5.-Carmen Caal Saqui; 6.-Eliseo Hernández Morales; 7.-Francisco Hernández; 8.-Jacinta Matón Raymundo; 9.-Josefa Mendoza Aguilar; 10.-Juana Andrés Maldonado; 11.-Juana Felipe Velásquez; 12.-Marcos Raymundo Jolomná Yat; 13.-Martín Quip Mucú; 14.-Mateo Pedro; 15.-Natividad Sales Calmo; 16.-Pascual José Pascual; 17.-Pedro Daniel Carrillo López; 18.-Ricardo Pop Caal; 19.-Rosenda Sales Ortíz; 20.-Santiago Cajbón Quip; 21.-Santos Choc Coc; 22.-Víctor Carrillo Morales; 23.-Micaela Pascual Juan; 24.-José Hernández; 25.-Germán Cajbón Choc; 26.-Efraín Grave Morente; 27.-Juan Medina Toma; 28.-Rolando Hernández Maldonado; 29.-Tomás Grave Morente; 30.-José María Grave; 31.- Fermina Grave Morente; 32.-Marselo Grave Morente; 33.-Margarita Grave Morente; 34.-Anastacio Chop García; 35.-Daniela Catarina Chic López; 36.-Manuela Toma Gómez; 37.-María Medina Toma; 38.-Antonio Medina Toma; 39.-Domingo Medina Toma; 40.-Diego Medina Toma; 41.-Pedro Medina Toma; 42.-Antonio Medina Toma³; 43.-Teresa Medina Toma; 44.-Joel Medina Toma; 45.-Carlos Medina Toma; 46.-Atilana Hernández Maldonado; 47.-Mario Alberto Ramírez Hernández; 48.-Fabiana Ramírez Hernández; 49.-Juan Ramírez Hernández; 50.-José Eduardo Ramírez Hernández; 51.-Marcos Enrique Ramírez Hernández; 52.-María Alicia Ramírez Hernández; 53.- Roberto Rafael Ramírez Hernández; 54.-Ramón Mateo; 55.-Florinda Sales Jacinto; 56.-Adelina Sales Jacinto; 57.- Petrona Miguel Méndez; 58.-Angelina Diego Miguel; 59.-Andrés Diego Miguel; 60.-Lucía Diego Miguel; 61.-Diego Diego Miguel; 62.-Pedro Coc Chén; 63.- Victoria Max Yat; 64.- Feliciano Cajbón Hu; 65.-María Coc Cajbón; 66.- José Coc Cajbón; 67.- Anastacia Coc Cajbón; 68.-Petrona Coc Cajbón; 69.- Irene Coc Cajbón; 70.- Salvador Coc Cajbón; 71.-Ana Coc Cajbón; 72.-Juana Juan; 73.- María Miguel Juan; 74.- Dolores Miguel Bartolo; 75.-Francisco Miguel Bartolo; 76.-Manuela Pop Choc; 77.-Francisco Quip Choc; 78.-Petrona Quip Pop; 79.-Margarita Quip Pop; 80.-Martín Maquín Quip Pop; 81.-Dominga Maquín Pop; 82.-Santiago Quip Pop; 83.-José Morales Ortíz; 84.-Cruz Maldonado Silvestre; 85. Martalia

² The Court notes that inconsistencies and inaccuracies that may appear in the names of the victims, or in the manner of their written form, cannot be used as a reason not to comply with the measures of reparation established in this judgment. In accordance with the information that has been provided to the Court, in addition to the persons whose names are listed in Annexes B(2) and B(4), the following victims are deceased: Pedro Daniel Carrillo López; Gerardo Maldonado Sales; Santiago Maquín Quip; Francisco Hernández; Rosendo Morales Ortíz, and Manuela Pop Choc.

³ The Court clarifies, with respect to the repetition of the name "Antonio Medina Toma", that the Commission included, in the Report on the Merits, as victims, two persons with the same name. The Court was able to confirm from the documentation remitted by the representative that one victim is "Antonio Medina Toma," who was born on November 27, 1971, and another person is "Antonio Medina Toma," who was born on September 23, 1986 (cf. Birth certificates (evidence file, annex 1 to the brief with pleadings and motions, fs. 5036 and 5048)).

Hernández Maldonado; 86.-Andrés Hernández Maldonado; 87.-Florencia Hernández Maldonado; 88.-Cristina Grave Morente, and 89.- Eulalia Antonio

B.2

VICTIMS OF THE VIOLATION OF THE RIGHT TO LIFE, IN RELATION TO THE OBLIGATION TO RESPECT THE RIGHTS WITHOUT DISCRIMINATION (ARTICLES 4(1) AND 1(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

1.-Abel Ramírez Pérez, 2.-Andrés Miguel Mateo, 3.-Hilaria Morente de la Cruz, 4.-Juana Jacinto Felipe, 5.-Manuela Mateo Antonio, 6.-Pablo Coc Coc, 7.-Pedro Diego Andrés, AND 8.-Pedro Medina Sánchez.

B.3

VICTIMS OF THE VIOLATION OF THE RIGHT TO PERSONAL INTEGRITY FOR THE INJURIES SUFFERED, IN RELATION TO THE OBLIGATION TO RESPECT THE RIGHTS WITHOUT DISCRIMINATION (ARTICLES 5(1) AND 1(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

1.-Aurelio Hernández Morales, 2.-Carmen Caal Saqui, 3.-Eliseo Hernández Morales, 4.-Francisco Hernández, 5.-Jacinta Matón Raymundo, 6.-Josefa Mendoza Aguilar, 7.-Juana Andrés Maldonado, 8.-Juana Felipe Velásquez, 9.-Marcos Jolomná Yat, 10.-Martín Quip Mucú, 11.-Mateo Pedro, 12.-Natividad Sales Calmo, 13.-Pascual José Pascual, 14.-Pedro Daniel Carrillo López, 15.-Ricardo Pop Caal, 16.-Rosenda Sales Ortíz, 17.-Santiago Cajbón Quip, 18.-Santos Choc Coc, 19.-Víctor Carrillo, 20.-Micaela Pascual, 21.-José Hernández, 22.-Germán Cajbón Choc, 23.-Efraín Grave Morente, 24.-Juan Medina Toma, 25.-Rolando Hernández Maldonado, 26.-Tomas Grave Morente, 27.-Santiago Maquín Quip, 28.-Gerardo Maldonado Sales, and 29.-Rosendo Morales Ortiz.

B.4

VICTIMS OF THE VIOLATION OF THE RIGHT TO LIFE, IN RELATION TO THE RIGHTS OF THE CHILD AND WITH THE OBLIGATION TO RESPECT THE RIGHTS WITHOUT DISCRIMINATION (ARTICLES 4(1), 19 AND 1(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

1.-Carlos Fernando Chop Chic, 2.-Santiago Coc, and 3.-Maurilia Coc Max.

B.5
VICTIMS OF THE VIOLATION OF THE RIGHT TO PERSONAL INTEGRITY AS THE
NEXT OF KIN OF DECEASED PERSONS (ARTICLES 5 AND 1(1) OF THE
AMERICAN CONVENTION ON HUMAN RIGHTS)

(A) Next of kin of Hilaria Morente de la Cruz (deceased): 1.-José María Grave (husband or companion); 2.- Fermina Grave Morente (daughter); 3.-Marselo Grave Morente (son) 4.-Margarita Grave Morente (daughter), 5.-Cristina Grave Morente (daughter), 6.- Efraín Grave Morente (son), and 7.- Tomás Grave Morente (son).

(B) Next of kin of Carlos Fernando Chop Chic (deceased boy): 8.-Anastacio Chop García and 9.-Daniela Catarina Chic López (mother).

(C) Next of kin of Pedro Medina Sánchez (deceased): 10.-Manuela Toma Sánchez (wife or companion); 11.-María Medina Toma (daughter); 12.-Antonio Medina Toma (son); 13.-Domingo Medina Toma (son); 14.-Diego Medina Toma (son); 15.-Pedro Medina Toma (son); 16.-Antonio Medina Toma (son); 17.-Teresa Medina Toma (daughter); 18.-Joel Medina Toma (son); 19.-Carlos Medina Toma (son), and 20.- Juan Medina Toma (son).

(D) Next of kin of Abel Ramírez Pérez (deceased): 21.-Atilana Hernández (wife or companion); 22.-Mario Alberto Ramírez Hernández (son); 23.-Fabiana Ramírez Hernández (daughter); 24.-Juan Ramírez Hernández (son); 25.-José Ramírez Hernández (son); 26.-Marcos Ramírez Hernández (son); 27.-María Alicia Ramírez Hernández (daughter), and 28.- Roberto Rafael Ramírez Hernández (son).

(E) Next of kin of Manuela Mateo Antonio (deceased): 29.-Ramón Mateo (father), and 30.- Eulalia Antonio (mother).

(F) Next of kin of Juana Jacinto Felipe (deceased): 31.- Florinda Sales Jacinto (daughter) and 32.-Adelina Sales Jacinto (daughter).

(G) Next of kin of Pedro Diego Andrés (deceased): 33.- Petrona Miguel Mendez (wife or companion); 34.-Angelina Diego Miguel (daughter); 35.-Andrés Diego Miguel (son); 36.-Lucía Diego Miguel (daughter), and 37.-Diego Diego Miguel (son).

(H) Next of kin of Maurilia Coc Max (deceased girl): 38.-Pedro Coc Chén (father) and 39.- Victoria Max Yat (mother).

(I) Next of kin of Pablo Coc Coc (deceased): 40.- Feliciano Cajbón Hu (wife or companion); 41.- María Coc Cajbón (daughter); 42.- José Coc Cajbón (son); 43.- Anastacia Coc Cajbón (daughter); 44.-Petrona Coc Cajbón (daughter); 45.- Irene Coc Cajbón (daughter); 46.- Salvador Coc Cajbón (son) and 47.-Ana Coc Cajbón (daughter).

(J) Next of kin of Andrés Miguel Mateo (deceased): 48.- Juana Juan (wife or companion); 49.- María Miguel Juan (daughter); 50.- Dolores Miguel Bartolo (daughter), and 51.-Francisco Miguel Bartolo (son).