



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
The Las Dos Erres Massacre
(Case 11.681)
against The Republic Of Guatemala

DELEGATES:

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PURPOSE OF THE APPLICATION	2
III. REPRESENTATION	3
IV. JURISDICTION OF THE COURT	4
V. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION	5
VI. FRIENDLY SETTLEMENT AGREEMENT, RECOGNITION OF RESPONSIBILITY AND PARTIAL REPARATION OF THE HARM CAUSED BY THE HUMAN RIGHTS VIOLATIONS THAT OCCURRED IN THE <i>LAS DOS ERRES</i> MASSACRE	12
VII. BACKGROUND AND CONTEXT.....	14
A. The armed conflict in Guatemala. 1962-1996	14
1. The <i>kaibiles</i>	18
2. Violence against children:.....	19
3. Violence against women.....	20
4. The peace process.....	21
B. The massacre in the community of Las Dos Erres.....	21
1. Facts prior to the massacre.....	23
2. The events of December 7 and 8, 1982	25
C. Events subsequent to December 8, 1982	29
VIII. THE FACTS	30
The investigation into the Las Dos Erres Massacre.....	30
A. The exhumations.....	30
B. The criminal proceeding	32
C. The special procedure of the Law on National Reconciliation (Decree 145-96 of the Congress of the Republic of Guatemala)	46
IX. LEGAL ARGUMENTS	56
Violation of the rights to judicial guarantees and judicial protection (Articles 8 and 25 of the American Convention) in relation to the general obligation to ensure and ensure human rights (Article 1(1) of the American Convention).....	56
A. The indiscriminate use of judicial remedies and the unwarranted delay of the judicial authorities	58
B. Lack of cooperation by the authorities	60
C. Other breaches of due process	61
D. The Law on National Reconciliation	62

	Page
X. REPARATIONS AND COSTS	65
A. Obligation to make reparation	66
B. Measures of reparation	66
Measures of satisfaction, cessation, rehabilitation, and guarantees of non-repetition	68
C. The beneficiaries	70
D. Costs and expenses	70
XI. CONCLUSION	70
XII. RELIEF SOUGHT	71
XIII. SUPPORTING EVIDENCE	72
A. Documentary evidence	72
B. Expert evidence.....	77
XIV. INFORMATION ON THE ORIGINAL PETITIONERS AND THE VICTIMS	77

**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE REPUBLIC OF GUATEMALA**

**CASE 11,681
THE LAS DOS ERRES MASSACRE**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) refers to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) the application in case number 11,681, *the Las Dos Erres Massacre*, against the Republic of Guatemala (hereinafter “the State,” the “Guatemalan State,” or “Guatemala”), for its responsibility arising from the lack of due diligence in the investigation, prosecution, and punishment of those responsible for the massacre of 251 inhabitants of the community (*parcelamiento*) of Las Dos Erres (hereinafter “Las Dos Erres” or the “parcelamiento of Las Dos Erres” or “the community of Las Dos Erres”), municipality of La Libertad, department of Petén, carried out by members of the Guatemalan Army from December 6 to 8, 1982.

2. The Inter-American Commission asks that the Court establish the international responsibility of the Guatemalan State, which has breached its international obligations on violating Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to the general obligation to respect and ensure human rights set out at Article 1(1) of the same treaty, to the detriment of the survivors of the massacre and the family members of the persons killed.

3. The instant case has been processed in keeping with the provisions of the American Convention, and is submitted to the Court in keeping with Article 33 of its Rules of Procedure. Attached to this application, as an annex, is a copy of Report 22/08, prepared pursuant to Article 37(3) of the Commission’s Rules of Procedure and Article 50 of the Convention.¹

4. The Commission reiterates what is stated in its report on the merits in this case, noting the positive attitude of the Guatemalan State on recognizing the facts and its responsibility arising from them, as well as the efforts seeking to make reparation for the human rights violations suffered by the victims in this case, all of which has full effect in relation to the judicial proceeding now proposed.

5. Nonetheless, the Commission is of the view that the impunity in relation to the events around the Las Dos Erres massacre helps to prolong the suffering caused by the gross violations of fundamental rights that occurred; and that it is a duty of the Guatemalan State to fashion an adequate judicial response, establish the identity of the persons responsible, prosecute them, and impose the respective sanctions on them.

6. The Commission considers that the case reflects the shortcomings of the administration of justice in Guatemala, already analyzed both by the Commission and by the Court in the context of other cases against the same State; and in particular the lack of due diligence, appropriate means and resources for investigating gross and systematic human rights violations committed during the internal armed conflict that affected Guatemala from 1962 to 1996.

¹ IACHR, Report No. 22/08 (admissibility and merits), Case 11,681, *Las Dos Erres Massacre*, Guatemala, March 14, 2008; Appendix 1.

II. PURPOSE OF THE APPLICATION

7. The purpose of this application is to respectfully request of the Court that it find and declare that

The Republic of Guatemala is responsible for violating the rights to a fair trial and to judicial protection, established at Articles 8 and 25 of the American Convention, in relation to the general obligation to respect and ensure human rights enshrined in Article 1(1) of the same instrument, to the detriment of the survivors Ramiro Fernando López García and Salomé Armando Gómez Hernández, and of the following relatives of persons killed in the Las Dos Erres massacre: (1) Baldomero Pineda Batres; (2) Catalina Arana Pineda de Ruano; (3) Francisca Morales Contreras; (4) Tomasa Galicia González; (5) Inocencio González; (6) Santos Nicolás Montepeque Galicia; (7) Pedro Antonio Montepeque; (8) Enriqueta González G. de Martínez; (9) Inés Otilio Jiménez Pernillo; (10) Mayron Jiménez Castillo; (11) Eugenia Jiménez Pineda; (12) Concepción de María Pernillo J.; (13) Encarnación Pérez Agustín; (14) María Ester Contreras; (15) Marcelina Cardona Juárez; (16) Victoria Hércules Rivas; (17) Margarito Corrales Grijalva; (18) Laura García Godoy; (19) Luís Armando Romero Gracia; (20) Edgar Geovani Romero García; (21) Edwin Saúl Romero García; (22) Aura Anabella Romero García; (23) Elvia Luz Granados Rodríguez; (24) Catalino González; (25) María Esperanza Arreaga; (26) Felipa de Jesús Medrano Pérez; (27) Felipe Medrana García; (28) Juan José Arévalo Valle; (29) Noé Arévalo Valle; (30) Cora María Arévalo Valle; (31) Lea Arévalo Valle; (32) Luís Saúl Arevalo Valle; (33) Gladis Esperanza Arevalo Valle; (34) Felicita Lima Ayala; (35) Cristina Alfaro Mejia; (36) Dionisio Campos Rodríguez; (37) Elena López; (38) Petronila López Méndez; (39) Timotea Alicia Pérez López; (40) Vitalina López Pérez; (41) Sara Pérez López; (42) María Luisa Pérez López; (43) David Pérez López; (44) Manuela Hernández; (45) Blanca Dina Elisabeth Mayen Ramírez; (46) Rafael Barrientos Mazariegos; (47) Toribia Ruano Castillo; (48) Eleuterio López Méndez; (49) Marcelino Deras Tejada; (50) Amalia Elena Girón; (51) Aura Leticia Juárez Hernández; (52) Israel Portillo Pérez; (53) María Otilia González Aguilar; (54) Sonia Elisabeth Salazar Gonzáles; (55) Glendí Marleni Salazar Gonzáles; (56) Brenda Azucena Salazar González; (57) Susana Gonzáles Menéndez; (58) Benigno de Jesús Ramírez González; (59) María Dolores Romero Ramírez; (60) Encarnación García Castillo; (61) Baudilia Hernández García; (62) Susana Linarez; (63) Andrés Rivas; (64) Darío Ruano Linares; (65) Edgar Ruano Linares; (66) Otilia Ruano Linares; (67) Yolanda Ruano Linares; (68) Arturo Ruano Linares; (69) Saturnino García Pineda; (70) Juan de Dios Cabrera Ruano; (71) Luciana Cabrera Galeano; (72) Hilaria Castillo García; (73) Amílcar Salazar Castillo; (74) Marco Tulio Salazar Castillo; (75) Gloria Marina Salazar Castillo; (76) María Vicenta Moran Solís; (77) María Luisa Corado; (78) Hilario López Jiménez; (79) Guillermina Ruano Barahona; (80) Rosalina Castañeda Lima; (81) Teodoro Jiménez Pernillo; (82) Luz Flores; (83) Ladislao Jiménez Pernillo; (84) Catalina Jiménez Castillo; (85) Enma Carmelina Jiménez Castillo; (86) Álvaro Hugo Jiménez Castillo; (87) Rigoberto Vidal Jiménez Castillo; (88) Albertina Pineda Cermeño; (89) Etelvina Cermeño Castillo; (90) Sofía Cermeño Castillo; (91) Marta Lidia Jiménez Castillo; (92) Valeria García; (93) Cipriano Morales Pérez; (94) Antonio Morales Miguel; (95) Nicolasa Pérez Méndez; (96) Jorge Granados Cardona; (97) Santos Osorio Lique; (98) Gengli Marisol Martínez Villatoro; (99) Amner Rivai Martínez Villatoro; (100) Celso Martínez Villatoro; (101) Rudy Leonel Martínez Villatoro; (102) Sandra Patricia Martínez Villatoro; (103) Yuli Judith Martínez Villatoro de López; (104) María Luisa Villatoro Izara; (105) Olegario Rodríguez Tepec; (106) Teresa Juárez; (107) Lucrecia Ramos Yanes de Guevara; (108) Eliseo Guevara Yanes; (109) Amparo Pineda Linares

de Arreaga; (110) María Sabrina Alonzo P. de Arreaga; (111) Francisco Arreaga Alonzo; (112) Eladio Arreaga Alonzo; (113) María Menegilda Marroquín Miranda; (114) Oscar Adeldo Antonio Jiménez; (115) Ever Ismael Antonio Coto; (116) Héctor Coto; (117) Rogelia Natalia Ortega Ruano; (118) Ángel Cermeño Pineda; (119) Felicita Herenia Romero Ramírez; (120) Esperanza Cermeño Arana; (121) Abelina Flores; (122) Albina Jiménez Flores; (123) Mercedes Jiménez Flores; (124) Transito Jiménez Flores; (125) Celedonia Jiménez Flores; (126) Venancio Jiménez Flores; (127) José Luís Cristales Escobar; (128) Reyna Montepeque; (129) Miguel Angel Cristales; (130) Felipa de Jesús Díaz de Hernández; (131) Rosa Erminda Hernández Díaz; (132) Vilma Hernández Díaz de Osorio; (133) Félix Hernández Díaz; (134) Desiderio Aquino Ruano; (135) Leonarda Saso Hernández; (136) Paula Antonia Falla Saso; (137) Dominga Falla Saso; (138) Agustina Falla Saso; (139) María Juliana Hernández Moran; (140) Salomé Armando Gómez Hernández; (141) Raul de Jesús Gómez Hernández; (142) María Ofelia Gómez Hernández; (143) Sandra Ofelia Gómez Hernández; (144) Jose Ramiro Gómez Hernández; (145) Bernardina Gómez Linarez; (146) Telma Guadalupe Aldana Canan; (147) Mirna Elizabeth Aldana Canan; (148) Rosa Elvira Mayen Ramírez; (149) Augusto Mayen Ramírez; (150) Rodrigo Mayen Ramírez; (151) Onivia García Castillo; (152) Saturnino Romero Ramírez; (153) Ramiro Fernando López García; (154) Ana Margarita Rosales Rodas; and (155) Berta Alicia Cermeño Arana.²

8. As a result of the foregoing, the Inter-American Commission asks the Court to order the State:

- a) to undertake a special, rigorous, impartial, and effective investigation in order to prosecute and punish the direct perpetrators and masterminds of the Las Dos Erres massacre;
- b) to remove all obstacles of fact and of law that maintain impunity in the instant case. In particular, take the steps necessary to ensure that the *amparo* action not be used as a dilatory mechanism, and that amnesty provisions contrary to the American Convention not be applied;
- c) to implement an adequate program of psychosocial care for the survivors and family members of the persons killed in the Las Dos Erres massacre; and
- d) to adopt the measures necessary to ensure that similar incidents not occur in the future, in keeping with the duty to prevent violations of and guarantee respect for the fundamental rights recognized in the American Convention. In particular, implement permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces.

III. REPRESENTATION

9. As provided by Articles 22 and 33 of the Court's Rules of Procedure, the Commission has designated Commissioner Víctor Abramovich and Executive Secretary Santiago A. Canton as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed and attorneys Juan Pablo Albán Alencastro and Isabel Madariaga, specialists with the Commission's Executive Secretariat, have been designated to serve as legal advisers.

² The Commission wishes to note that after the adoption of the report on admissibility and the merits in the instant case, the petitioners, on responding to the notification put to them in keeping with Article 43(3) of the Commission's Rules of Procedure, identified other persons, in addition to those mentioned, as next-of-kin of persons killed in the Las Dos Erres massacre. Record of the processing of the case before the IACHR. Appendix 2.

IV. JURISDICTION OF THE COURT

10. In its Report on the Merits No. 22/08, the Commission concluded that the failure to carry out an effective and adequate investigation of the Las Dos Erres massacre and the failure to provide the victims an effective remedy that punishes those accused of committing such grave crimes, constituted violations of Articles 8(1) and 25 of the Convention.

11. According to Article 62(3) of the American Convention, the Inter-American Court has jurisdiction to take cognizance of any case relating to the interpretation and application of the provisions of the Convention submitted to it, so long as the states parties to the case recognize or have recognized the Court's jurisdiction.

12. The Court has jurisdiction to take cognizance of the instant case. The State ratified the American Convention on May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

13. The lack of any guarantee for the survivors and next-of-kin of the persons killed in the Las Dos Erres massacre that the persons responsible for such grave acts would be prosecuted and punished involves acts of denial of justice that began and were consummated after March 9, 1987.

14. The facts in this application, which are the basis for the Commission's legal claims and the consequent requests for measures of reparation, refer to acts and omissions that occurred as of June 14, 1994, the date on which, at the initiative of the complaint filed by Ms. Aura Elena Farfán, in her capacity as president of the organization Asociación Familiares de Detenidos-Desaparecidos de Guatemala FAMDEGUA (hereinafter "FAMDEGUA"), before the Criminal Court of First Instance for Drug Trafficking and Crimes against the Environment, of the department of Petén, the still-inconclusive investigation was opened to look into the facts of this case.

15. The division of a given situation into stages subject and not subject to the jurisdiction of an international court does not mean that one mustn't consider what happened before the stage over which the Court exercises jurisdiction. As the European Court has held, although it may have jurisdiction over only the facts subsequent to its acceptance, it "could have regard to the facts prior to ratification inasmuch as they ... might be relevant for the *understanding* of facts occurring after that date."³ Mindful of the international case-law on the question, the Commission will set forth, by way of background, the facts of the Las Dos Erres massacre and the context in which they occurred.

16. Subsequently, the Commission will refer to the facts on which it seeks a pronouncement by the Court, i.e. those related to the lack of due diligence in the investigation, prosecution, and punishment of those responsible for the massacre of 251 inhabitants of the community of Las Dos Erres.

³ In this respect, ECHR, *Case of Broniewski v. Poland*, June 22, 2004, para. 122 (emphasis added).

V. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION⁴

17. On December 22, 1994, the Commission received a complaint filed by the Office of Human Rights of the Archdiocese of Guatemala City regarding the massacre that occurred in the community of Las Dos Erres in 1982.

18. In keeping with its Regulations then in force, the IACHR opened case 11,420 on January 4, 1995, and forwarded the pertinent parts of the petition to the Guatemalan State, asking that it provide information within 90 days.

19. In a communication of January 18, 1995, received at the IACHR on January 23, 1995, the Office of Human Rights of the Archdiocese asked that the processing of the complaint be voided.⁵ On April 5, 1995, the IACHR informed the victims' representatives and the State of its decision to suspend the processing of the case until such time as new information was received.

20. On September 13, 1996, the Commission once again received a petition concerning the massacre that occurred in the community of Las Dos Erres in December 1982. The petition was submitted by the Office of Human Rights of the Archdiocese of Guatemala City and the Center for Justice and International Law (hereinafter "CEJIL"). On September 25, 1996, the IACHR received additional information from the victims' representatives.

21. On September 26, 1996, the IACHR registered the petition under number 11,681 and forwarded it to the State so that it might submit observations within 90 days, in keeping with the Regulations in force at that time.

22. On October 28, 1996, the IACHR received a note from the State dated October 22, 1996, in which it alleged duplication of procedures.⁶ On January 27, 1997, the State sent a communication in which it referred to the duplication of procedures within the IACHR, and the failure to exhaust domestic remedies. In communications of April 10⁷, May 23⁸, and May 29, 1997⁹, the victim's representatives requested additional information concerning the status of the matter.

23. On May 29, 1997, the IACHR answered the State on the alleged duplication of procedures and informed it of its decision to reactivate Case 11,420 and incorporate it into the file for Case 11,681.¹⁰ On that same date, the Commission forwarded the communication from the

⁴ The pleadings mentioned in this section may be found in the record of the case before the IACHR. Appendix 2.

⁵ In that communication, the Office of Human Rights of the Archdiocese of Guatemala City reported that the case of the Las Dos Erres massacre was presented to the Inter-American Commission as information about the human rights situation in Guatemala.

⁶ The State alleged that on processing petition 11,681 the Commission was creating a situation of duplication of procedure, considering that as it had archived case 11,420 on April 5, 1996, which addressed the same facts, this petition could not go forward.

⁷ Communication of April 10, 1997, submitted by CEJIL.

⁸ Communication of May 23, 1997, submitted by the Office of Human Rights of the Archdiocese of Guatemala City and CEJIL.

⁹ Communication of May 29, 1997, submitted by the Office of Human Rights of the Archdiocese of Guatemala City.

¹⁰ In this communication, the Commission reminds the State that the processing of case 11,420 was archived on a provisional basis, an action that was taken "without prejudice to the relevant observations that the claimants may file in due course." In addition, the IACHR states in its note that "the decision to archive a matter does not constitute a resolution

State of January 27, 1997, to the victims' representatives, and gave them 30 days to submit observations. On August 26, 1997, the victims' representatives submitted their observations to the State's response. On September 11, 1997, the IACHR received a note from the State dated September 9, 1997.¹¹

24. On September 23, 1997, the IACHR forwarded the victims' representatives' observations to the State, and gave it 30 days to respond. On October 3, 1997, the IACHR forwarded the State's communication of September 9, 1997 to the victims' representatives, and gave them 30 days to submit their observations.

25. On October 27, 1997, the State submitted its observations, and on November 14, 1997, the victims' representatives submitted theirs. The IACHR transmitted the State's observations to the victims' representatives on November 26, 1997, and gave them 30 days to submit their response. On December 12, 1997, the IACHR forwarded the pertinent parts of the victims' representatives' observations to the State, and gave it 30 days to answer.

26. In a communication of January 14, 1998, received at the IACHR the next day, the victims' representatives requested a hearing. On January 22, 1998, the IACHR received a communication from the State dated January 21, 1998, by which it reiterated its request to the IACHR to refrain from taking cognizance of case 11,681 due to duplication of procedures, in keeping with Article 39 of the Regulations then in force.

27. On January 23, 1998, the IACHR granted a hearing requested by the victims' representatives. On February 2, 1998, the IACHR forwarded the State's note of January 21, 1998, to the victims' representatives, giving them 30 days to file their response. On February 5, 1998, the State asked the IACHR to rule on its objection of duplication of procedures before holding the hearing that had been scheduled. On February 13, 1998, the victims' representatives forwarded their observations regarding the inapplicability of Article 39 of the Regulations then in force. On February 26, 1998, during the 98th regular session, the hearing was held with the presence of the State.

28. On April 2, 1998, the IACHR forwarded the observations by the victims' representatives to the State, and gave it 30 days to respond.¹² On April 16, 1998, the IACHR received a request for a 30-day extension from the State for submitting its observations, which was granted by the IACHR, which changed the deadline from April 28, 1998, to May 25, 1998. On May 6, 1998, the State sent a communication a copy of which was forwarded to the victims' representatives on August 4, 1998, along with a request for observations within 30 days. On August 26, 1998, the IACHR received communications dated August 18, 1998, and August 24, 1998, by which the victims' representatives requested a hearing. It was granted on September 3, 1998, to be held October 8, 1998.

29. On December 1, 1998, the IACHR received a communication dated November 27, 1998, by which the victims' representatives requested precautionary measures on behalf of

...continuation

thereof; to the contrary it is considered a merely administrative action." And it concludes stating that the provisions of Article 39 of the Regulations (in force as of that date) did not appear to prohibit consideration of case 11,681 by the Commission.

¹¹ In this communication the State reiterates its request that the IACHR refrain from taking cognizance of case 11,681, considering that "it constitutes substantially a reproduction of the petition contained in case 11,420."

¹² In communications of April 2, 1998, the IACHR informed the parties and the State that it was combining cases 11,681 and 11,420 into a single case, which it would identify from that date onward as case 11,420. Notwithstanding that communication, IACHR and the parties continued making reference to both case numbers.

Armando Salomé Gómez Hernández and his family.¹³ That request was transmitted to the State on December 24, 1998; it was asked to report on the security measures in place to protect the witness. On January 13 and 21, 1999 the IACHR received notes from the State dated January 11 and 19, 1999, respectively, requesting information from the victims' representatives to coordinate the witness's security. On February 5, 1999, the IACHR forwarded a communication from the State dated January 19, 1999, to the victims' representatives, giving them 15 days to answer. On February 24, 1999, the victims' representatives submitted their observations and reiterated their request for precautionary measures. On February 25, the IACHR forwarded the communication from the victims' representatives to the State and gave it 21 days to answer.

30. On March 26, 1999, the victims' representatives asked to include the Asociación de Familiares de Detenidos Desaparecidos de Guatemala (Association of Relatives of the Detained-Disappeared of Guatemala, hereinafter "FAMDEGUA") as co-petitioner.

31. On March 30, 1999, the State forwarded a brief of observations on the request for precautionary measures dated March 26, 1999¹⁴, which was forwarded to the victims' representatives on April 1, 1999; they were given 30 days to answer. The victims' representatives stated on May 7, 1999, by note of May 6, 1999, that they were satisfied with the conduct of COPREDEH in relation to the witness's security. On May 13, 1999, the Commission forwarded the aforementioned communication to the State, and gave it 30 days to answer. The Commission incorporated FAMDEGUA as co-petitioner in the case on May 18, 1999. On June 17, 1999, by note of June 16, 1999, the State filed its observations on the petitioners' answer on precautionary measures for Mr. Gómez Hernández.

32. On June 22, 1999, the victims' representatives asked, by note of May 20, 1999, that an Article 50 report be issued. In that note, the victims' representatives forwarded their observations and arguments on the merits. On December 28, 1999, the IACHR forwarded the aforementioned communication to the State, and indicated it should submit its observations within 30 days. By note of January 19, 2000, the victims' representatives asked the IACHR to hold a hearing on the case during its 106th regional session.

33. On January 25, 2001, the victims' representatives asked the Commission for a working meeting, and forwarded copies of the proposed friendly settlement agreements exchanged with the State.

34. On April 1, 2001, representatives of the victims and the State signed a framework friendly settlement agreement.¹⁵

35. On September 4, 2001, the victims' representatives submitted information to the Commission on the agreements reached May 3, 2001, in the framework friendly settlement agreement.¹⁶

¹³According to the victims' representatives, Mr. Armando Salomé Gómez Hernández was an eyewitness to the massacre.

¹⁴ The State indicated that it had met with Mr. Gómez Hernández's father, who had opposed having permanent perimeter security as he feared revealing his place of residence. The witness's father had reportedly requested the telephone numbers of COPREDEH staff to communicate with them in case of emergency, thus it considered that it had complied with the IACHR's request in relation to the precautionary measures mentioned.

¹⁵ See section III of this report.

¹⁶ The agreements signed by the parties on May 3, 2001, refer to an agreement on economic reparation for the victims of the Las Dos Erres massacre and an agreement on disseminating a video concerning the facts.

36. On November 12, 2001, the victims' representatives asked the Commission to supervise the friendly settlement process. On November 13, 2001, a hearing was held during the IACHR's 113th regular session. On November 16, 2001, the IACHR asked the State to report, within 15 days, on commitments acquired in the friendly settlement agreement. On July 25, 2002, a working meeting was held between the parties in Guatemala. On August 12, 2002, the IACHR received a communication dated August 9, 2002, by which the victims' representatives reported on the extent to which the State had carried out the commitments it had taken on in the friendly settlement agreement. On August 23, 2002, the IACHR requested information from the State on implementation of the friendly settlement agreement. On August 23, 2002, the victims' representatives proposed the appointment of an inspector (*veedor*) of the domestic proceedings pursued in Guatemala in relation to the Las Dos Erres Massacre.

37. On March 4, 2004, a meeting was held to follow up on the friendly settlement process. On March 2, 2005, a working meeting was held with the parties. On August 23, 2005, the State forwarded the IACHR a report on progress in implementing the friendly settlement, which was forwarded to the victims' representatives on August 30, 2005, with a request for their observations within 15 days. On September 1, 2005, the victims' representatives requested a hearing before the Commission; that request was rejected on September 21, 2005.¹⁷

38. On September 20, 2005, the victims' representatives submitted their observations on the State's report on August 23, 2005; these were transmitted to the State on September 22, 2005, which was to answer within one month. On October 5, 2005, the IACHR called the parties to a hearing scheduled for October 20, 2005. On October 11, 2005, the State reported on an emergency situation that kept it from attending the hearings scheduled during the 123rd regular session.¹⁸ On October 12, 2005, the Commission informed the parties of its decision to suspend the hearing. On October 24, 2005, the State requested a 30-day extension to submit observations, which was granted by the IACHR on November 2, 2005.

39. By communication of October 27, 2005, received at the IACHR on November 15, 2005, the State forwarded a copy of a communiqué from the "Asociación de familiares sobrevivientes de la masacre de *Las Dos Erres*, la Libertad, Petén" (Association of Surviving Family Members of the Las Dos Erres Massacre) dated September 26, 2005.¹⁹ The IACHR forwarded the aforementioned communication to the victims' representatives on November 18, and gave them one month to answer. On December 19, 2005, by communication of December 18, 2005, the victims' representatives requested an extension for submitting observations. On December 20, 2005, the IACHR gave the victims' representatives an additional 30 days to submit their observations. In a communication of January 19, 2006, received at the IACHR on January 20, 2006, the victims' representatives made reference to the Commission to Identify and Locate Victims and Next-of-Kin of the Massacre and asked the IACHR to call upon the State to have that Commission contact the victims.

40. On February 7, 2006, the IACHR received a report from the State dated January 26, 2006, attaching a report from the specialist in charge of providing psychological care to the next-of-

¹⁷ The request for a hearing was rejected on logistical grounds.

¹⁸ Guatemala was struck by Hurricane Stan in early October 2005.

¹⁹ In this communication, a copy of which was sent to the Commission by the State, the members of said association requested that the IACHR take into account the next-of-kin who remained outside the list of the friendly settlement for purposes of economic reparation.

kin of the victims of the massacre who live in the village of Las Cruces.²⁰ The IACHR forwarded the report to the victims' representatives on February 17, 2006, and gave them 20 days to answer. In a communication of February 20, 2006, received at the IACHR on March 8, 2006, the victims' representatives expressed their desire to discontinue the friendly settlement process, and asked the Commission to continue processing the matter.

41. On March 24, 2006, the State submitted its observations on the communication from the victims' representatives regarding not including some of the victims' next-of-kin in the list of persons to whom reparations are due. On May 11, 2006, the IACHR forwarded the aforementioned communication to the victims' representatives, and gave them one month to answer. On May 23, 2006, the victims' representatives filed their response to the State's observations, and they reiterated their decision to consider the friendly settlement process concluded. On May 24, 2006, the State submitted additional information on implementation of the commitments acquired in the friendly settlement. On May 26, 2006, the IACHR forwarded the victims' representatives' observations to the State.

42. On August 24, 2006, considering that the petition had been submitted on September 13, 1996, the IACHR informed the parties that in application of Article 41 of its Rules of Procedure, it had made the decision to continue processing case 11,681 and to apply Article 37(3) of those Rules of Procedure, considering the lengthy period the parties had to state their positions on the admissibility and merits issues raised in the petition. The IACHR gave the victims' representatives two months to submit additional observations, and requested specific information on some points.²¹

43. On September 20, 2006, the State submitted information on implementation of the friendly settlement agreement, which was forwarded to the victims' representatives on September 29, 2006; they were given one month to answer. On October 24, 2006, the victims' representatives requested a 15-day extension to submit the documentation requested by the IACHR; that extension was granted on November 1, 2006. In a communication of November 2, 2006, received at the IACHR on November 6, 2006, the victims' representatives reported that they were submitting the information requested.²² On December 5, 2006, the victims' representatives submitted their observations on the merits, which were forwarded to the State on December 14, 2006; it was given two months to submit its observations on the admissibility and merits of the petition. On February 21, 2007, the State filed its observations, which were sent to the victims' representatives on March 2, 2007; they were given one month to submit additional observations. On April 2, 2007, the victims' representatives submitted their additional observations on the State's arguments on admissibility and the merits.

44. On May 7, 2007, the IACHR requested additional information from the victims' representatives.²³ That same day, the IACHR asked the State for the definitive list of persons to

²⁰ The village of Las Cruces is located a few kilometers from Las Dos Erres. Some of the next-of-kin of the victims of the massacre live there, which is why the psychosocial care program which the State undertook to carry out by signing the friendly settlement agreement was implemented there.

²¹ On August 24, 2006, the IACHR asked the victims' representatives to submit information concerning the economic reparations granted by the State and the criminal investigations into the facts, and requested a full copy of the records in the criminal cases.

²² The victims' representatives reported that they submitted 18 exhibits from the judicial record; three exhibits from the special procedure of the Law on National Reconciliation; and 34 records in amparo proceedings on appeal before the Constitutional Court.

²³ On May 7, 2007, the IACHR asked the victims' representatives to submit the complete list of victims of the massacre, as well as the list of persons to whom economic reparation had been made and a signed copy of the framework friendly settlement agreement of April 1, 2000.

whom economic reparation had been made as a result of the events at Las Dos Erres. By communication of June 7, 2007, the IACHR asked the State for a copy of certain judicial resolutions relating to the judicial proceedings into the Las Dos Erres massacre and it reiterated to the victims' representatives the request for information made in May. The State submitted the information requested by communications dated June 28, 2007, and August 3, 2007.

45. By communication of January 8, 2008, the victims' representatives submitted updated information on the domestic judicial proceeding.

46. In the context of its 131st regular period of sessions, on March 14, 2008, the Commission approved Report on the Merits 22/08, prepared pursuant to Article 37(3) of the Commission's Rules of Procedure and Article 50 of the Convention. In this Report, it concluded as follows:

1. Las Dos Erres Massacre was planned and carried out as part of the "scorched earth" (tierra arrasada) policy directed by the State of Guatemala against population deemed to be "internal enemy," in a context that was characterized by the infringement of fundamental human rights and values shared by the Inter-American community.
2. The State of Guatemala is responsible for the violation of human rights with respect to the recognition of juridical personality, life, humane treatment, personal liberty, protection of family and children, private property, judicial protection and fair trial, according to Articles 3, 4, 5, 7, 8(1), 17, 21 and 25 of the American Convention, in relation to Article 1.1 of said instrument, by virtue of the events that took place in the Parcelamiento de Las Dos Erres, Municipality of La Libertad, Department of Petén, on December 6th, 7th and 8th, 1982, and for the subsequent denial of justice.
3. It values the acceptance of the facts and the recognition of international responsibility by the State of Guatemala and determines that such recognition has its full judicial force according to principles of international law.
4. It acknowledges the intent of the State of Guatemala to make at least partial reparations for the human rights violations that took place.
5. It continues to await the fulfillment of commitments acquired by the State of Guatemala pertaining to justice and, partially, the commitment acquired pertaining to specialized medical attention for the surviving victims and family members of the victims.

47. In that Report on the Merits, the Commission made the following recommendations to the Guatemalan State:

1. Conduct a special, thorough, impartial, and effective investigation aimed at bringing to justice and punishing those physically and intellectually responsible for the Dos Erres Massacre..
2. Remove all factual and legal obstacles that keep this case under impunity. Specifically, take all necessary measures so that the amparo action is not used as a delaying mechanism and prevent the granting of amnesties that would go against the spirit of the American Convention.
3. Implement an adequate psycho-social care program for all the surviving victims and family members of the victims of the Dos Erres Massacre.
4. Adopt measures as needed to prevent similar events in the future, under the duty to prevent and guarantee fundamental human rights as enshrined in the American Convention. In particular, implement courses on human rights and international humanitarian law in the training and education of members of the State's armed forces.

48. The State was notified of the Report of the Merits on April 30, 2008, and was given two months to report on the actions undertaken for the purpose of implementing the recommendations contained in it, in keeping with Article 43(2) of the Commission's Rules of Procedure.

49. In addition, in keeping with Article 43(3) of its Rules of Procedure, the Commission informed the victims' representatives of the adoption of the report on the merits and its transmittal to the State; and they were asked to state their views, within one month, as to the possible referral of the case to the Inter-American Court.

50. On May 30, 2008, the victims' representatives filed a brief stating their interest and the victims' interest in seeing the case forwarded to the Inter-American Court of Human Rights, indicating that the lack of justice is the main reason justifying their position, for "almost 26 years after the facts, to this day not a single person has been held liable for those violations, even though the link of the high-level military commanders of the government, in a context marked by a scorched earth policy against civilian populations, has been fully shown, and many of the direct perpetrators have been identified. In the domestic judicial system, that case has not even reached the trial stage for a determination of the respective criminal liabilities."

51. By communication dated June 27, 2008, received electronically on July 10, 2008, the State presented a report on the actions undertaken up to that time for the purpose of making reparation for the human rights violations committed, and indicating that efforts continue in the justice system to investigate the facts of the massacre and to punish the persons responsible.

52. As for the actions taken up until that time, the State alluded to the construction of a monument to be inaugurated in December 2001, the dissemination of a documentary prepared as of the friendly settlement agreement and the delivery, in December 2007, of copies of the same to FAMDEGUA, for distribution. With respect to economic compensation, it noted that such payments have been made, and it referred to what was previously reported to the Commission. In addition, in relation to the recommendations made by the IACHR in its Report 22/08, it described various courses and trainings in human rights and international humanitarian law that were given to personnel of the armed forces of Guatemala.

53. With respect to the second point, that is the steps taken to pursue justice, the State reported that two families of victims killed in the massacre are under protection in the context of the Witness Protection Program. As for the recommendation in Report 22/08 on the use of the *amparo* action as a dilatory device, it stated that as any modification of the Law on Amparo, Habeas Corpus, and Constitutionality requires at least a two-thirds majority of all the legislators who sit in the Plenary of the Congress of the Republic, and after approval on a third reading it must be submitted to the Constitutional Court, on March 28, 2008, the Honorable Congress forwarded the favorable report of the Special Committee on Justice Sector Reforms to the Constitutional Court, which had apparently not yet issued a ruling on that request from Congress.

54. Finally, the State indicated that the Ministry of Public Health and Social Assistance verbally reported that psychosocial care for the victims of the Las Dos Erres Massacre would be provided through a recently-contracted psychologist, and that the victims' representatives were asked to indicate how to contact the rest of the victims who do not live in the community, with a view to beginning to provide them with such care.

55. On July 30, 2008, after considering the information provided by the State relating to the implementation of the recommendations contained in the report on the merits, and taking into consideration the lack of substantive progress in effective compliance with them, the Commission decided to refer this case to the Inter-American Court.

VI. FRIENDLY SETTLEMENT AGREEMENT, RECOGNITION OF RESPONSIBILITY AND PARTIAL REPARATION FOR THE HARM CAUSED BY THE HUMAN RIGHTS VIOLATIONS THAT OCCURRED IN THE LAS DOS ERRES MASSACRE

56. On April 1, 2000, the State and the victims' representatives signed a friendly settlement agreement in which the State recognized its responsibility for the events of December 6 to 8 in the community of Las Dos Erres.

The Government of Guatemala recognizes the institutional responsibility of the State for the events that occurred December 6 to 8, 1982, in the place known as the *parcelamiento* Las Dos Erres, village of Las Cruces, situated in the municipality of La Libertad, department of El Petén (hereinafter *parcelamiento* Las Dos Erres), in which members of the Guatemalan Army massacred approximately 300 persons, residents of that community, men, children, elderly, and women. The Government of Guatemala also recognizes the institutional responsibility of the Guatemalan State for the delay in justice in terms of investigating the facts related to the massacre, identifying the direct perpetrators and masterminds, and applying the respective punishment. In this regard, the Government of Guatemala accepts its responsibility for the human rights violations alleged by the victims' representatives in the communication sent to the Commission on September 13, 1996, to wit, violation of the right to the recognition of juridical personality, the right to life, integrity, personal liberty, violation of protection for the family and the rights of the child, violation of the right to private property, to judicial guarantees, to judicial protection, and violation of the duty to investigate, punish, and make reparation.²⁴

57. As a result of that recognition, the State undertook as follows:

- To make public the recognition of state responsibility in the events relating to the massacre of the residents of Las Dos Erres.
- To undertake an investigation to individually identify and punish the persons responsible for the massacre, both direct perpetrators and masterminds, as well as those responsible for the delay in justice.
- To make collective reparation to the surviving victims and the victims' next-of-kin, by:
 - Restoring and completing work on the monument at the Municipal Cemetery of Las Cruces in keeping with the design presented by FAMDEGUA, as well as the construction and installation of a three-meter cross with the respective plaque at the place known as the Pozo of in the community of Las Dos Erres.
 - Producing a documentary for television, testimonial and educational in nature, to result from a consensus among the parties involved that contains a narration of the Las Dos Erres massacre, a description of the facts, mention of the victims, and recognition of the institutional responsibility of the State in the human rights violations committed.
 - Ensuring specialized medical care, public or private, to provide psychological treatment to the surviving victims and the victims' next-of-kin who need it.
- To establish a Commission for Identifying and Locating the Victims and Next-of-Kin of the Las Dos Erres Massacre.
- To make economic compensation to the surviving victims and the next-of-kin.

²⁴ In the framework friendly settlement agreement, of April 1, 2000, signed by the State and the victims' representatives.

- To reimburse the victims' next-of-kin, FAMDEGUA, and CEJIL, for the amount of their outlays for the domestic and international proceedings pursued in this case.²⁵

58. Subsequently, on May 3, 2001, the parties signed the "Agreement on Economic Reparation" and the "Agreement on the Dissemination of the Video"²⁶ to carry out the points agreed upon in the April 1, 2000 friendly settlement. The agreement on economic reparation was established in the following terms:

This Agreement on Economic Reparation is signed in the framework of the Friendly Settlement Agreement by which the Guatemalan State undertakes, among other things, to make economic compensation, as appropriate, to the victims of the massacre. Based on this commitment, COPREDEH, in representation of the Government of Guatemala, and the Asociación de Familiares de Desaparecidos de Guatemala (hereinafter FAMDEGUA) and the Center for Justice and International Law (hereinafter CEJIL), in their capacity as the representatives of the victims of the massacre, agreed, as economic reparation, on the sum of fourteen million five hundred thousand quetzals (Q 14,500,000.00), said amount to be earmarked to the victims of Las Dos Erres, identified to date, in keeping with the concept of victim agreed upon in Act Number One of the Commission on Identification of Victims, established by Executive Order (Acuerdo Gubernativo) 835-2000. The sum agreed upon shall be distributed among the victims, as appropriate, within four months of the signing of this Agreement. The economic reparation shall be made in a lump-sum, by personal check, not negotiable, at the place, date, or time set by the Government of Guatemala within the agreed upon time frame. The amount of the reparations will be based on the criteria approved by the parties, as appears in the annexes to this agreement, which are an integral part of it. With respect to the administrative processing required to guarantee the payment of economic reparation, COPREDEH will establish the necessary conditions, which may in no way be an obstacle to making the payment within the period indicated. From the signing of this agreement, a period of four months is set for the Commission for Identification of Victims, as it sees fit, to be able to receive and characterize victims of the massacre not yet identified, to whom reparation will be made based on the same criteria used for this agreement.²⁷

59. The victims' representatives, in a communication of February 20, 2006, received at the IACHR on March 8, 2006, stated that the Agreement represented the parties' interest in reaching consensus on measures to address the magnitude of the massacre that occurred in Las Dos Erres in 1982. They added that at the time they signed the friendly settlement agreement, the motivations of the petitioner, representing the victims of the massacre and their next-of-kin, could be summarized as: (a) Recovering the dignity of the victims; (b) recovering trust in the State that such incidents would not recur; (c) seeing that justice be done and that the impunity that has prevailed in the case end, including psychological and economic measures of reparation.

60. They said that the friendly settlement agreement was an instrument in which the parties deposited their trust and hope, and that they endeavored to carry it out. In this respect they stated that no doubt both parties made efforts to carry it out.

61. In addition, they stated that in order to assess the extent of compliance, one had to recur to a qualitative rather than a quantitative assessment, because the important thing was to assess whether the spirit of the agreement had been satisfied. In this regard, they said that it doesn't matter that a monument be built when the victims do not know why the acts occurred and do not know who was responsible.

²⁵ In the framework friendly settlement agreement, of April 1, 2000, signed by the State and the victims' representatives.

²⁶ In the "Agreement on Dissemination of the Video," of May 3, 2001.

²⁷ In the "Agreement on Economic Reparation" of May 3, 2001.

62. According to the victims' representatives, the State completely breached its commitment in respect of justice, and partially breached its commitment to provide specialized medical care to the surviving victims and the next-of-kin of the victims, and to disseminate the documentary, as it had undertaken to do.

63. The State, for its part, said that it has shown "its diligence, will, and commitment to the Friendly Settlement Agreement by totally and partially carrying out its terms in most of the commitments taken on." It added that it recognized the delays in the investigation and that with respect to care for the surviving victims of the massacre, it was important to consider the efforts made because several factors came into play in limiting the provision of full medical and psychosocial care.

64. The Commission was informed that the documentary committed to was disseminated and that FAMDEGUA received 150 copies of it.

65. In its report on the merits the Commission valued the importance of the efforts made by the Guatemalan State to implement the commitments acquired in the friendly settlement agreement, and it does so again on this occasion. It acknowledges the important actions taken in relation to collective and individual reparations.

66. Nonetheless, the Commission finds that the commitment taken on by the Guatemalan State regarding justice is still pending, as is, in part, the commitment acquired in respect of specialized medical care for the surviving victims and the victims' next-of-kin.

VII. BACKGROUND AND CONTEXT

A. The armed conflict in Guatemala, 1962-1996

67. From 1962 to 1996, Guatemala experienced an internal armed conflict that took a major toll in terms of the human, material, institutional, and moral costs. It has been estimated that there were more than 200,000 victims of arbitrary executions and forced disappearances during this period.

68. Among the causes of the armed conflict identified by the Commission for Historical Clarification (hereinafter "CEH": Comisión de Esclarecimiento Histórico) in its report "Guatemala: Memoria del Silencio"²⁸ are the prevailing structural injustice, racism, and the institutional exclusion of broad sectors of society.²⁹ There were also many actors in the internal armed conflict: in addition to the armed actors – the State and the guerrilla organizations – the economic groups, political parties, university students, churches, other sectors of civil society, and foreign governments that were often involved in Guatemala's internal affairs all played a role.³⁰

²⁸ The Commission on Historical Clarification was established on June 23, 1994, by the Oslo Agreement, to clarify the human rights violations linked to the armed confrontation in Guatemala.

²⁹ CEH, *Memoria del Silencio*, Tome V, Conclusions and Recommendations, p. 24.

³⁰ *Id.* "[The] magnitude and inhumane irrationality of the violence that struck the country for more than three decades cannot be explained simply as the consequence of an armed confrontation between two parties."

69. During the internal armed conflict the so-called national security doctrine³¹ was applied; it had been adopted in the late 1960s by the governments and armed forces of various countries of the Americas in response to the action and discourse of insurgent movements. During the period of the armed confrontation in Guatemala, the notion of "internal enemy," a central component of that doctrine, was construed in an ever broader manner. In its research the CEH concluded that in carrying out the national security doctrine, the State forces and related paramilitary groups were responsible for 93% of the violations documented by the CEH, including 92% of arbitrary executions and 91% of forced disappearances. In addition, the CEH attributed to the insurgent armed forces³² 3% of the violations on record, and with respect to the remaining 4%, it was not possible to gather information sufficient to attribute responsibility for the violation to a given actor.

70. Of the violations recorded by the CEH, 91% occurred from 1978 to 1983, under the dictatorships of General Romeo Lucas García (1978-1982) and General Efraín Ríos Montt (1982-1983), making it the most violent period of the armed conflict. It was in this context that the massacre took place in the community of Las Dos Erres.

71. Counterinsurgency policy³³ in Guatemala was characterized, especially during the most violent period of the conflict³⁴, by military actions aimed at destroying groups and communities, as such, as well as forcibly displacing them when they were considered possible guerrilla auxiliaries. These military actions, carried out with the knowledge of or on orders from the

³¹ The CEH noted that the national security doctrine was a practical way of confronting, internally or externally, the possible or real communist threat in the context of the Cold War and of the new relations between the United States and Latin America. This doctrine helped unify the ideological profile of the Latin American armies, bringing them into line with clearly anticommunist concepts. The national security doctrine considered that national power was made up of four elements, economic, social, political, and military power, which required a particular strategy for its implementation, and for it to become, subsequently, a national strategy. Considering these four components of national power, and in keeping with strategic planning, the governments increased the intervention of the military power so as to confront and eliminate the subversive forces, a concept that included any person or organization that represented any form of opposition to the government in place or to the State; that notion came to be the equivalent of that of "internal enemy." This conception meant in Guatemala that all the structures of the State and all the resources of power should be placed at the disposal of the Army to fight and defeat the guerrillas, in keeping with the broad conception of internal enemy. CEH, Tome I, Causes and origins of the internal armed confrontation, p. 117.

³² The CEH applied to the acts of violence committed by the guerrillas the principles common to international human rights law and international humanitarian law in order to give the parties equal treatment. CEH, Tome I, p. 47.

³³ The counterinsurgency policy from 1978 to 1983 can be divided into three phases. (a) Selective phase (1978-1981), in which the main objective of military operations were certain individuals; (b) collective and massive phase in 1981 and 1982, the period during which the largest number of massacres took place; and (c) the phase of development and stability, in 1983. The displaced population was relocated in model towns and development poles supervised by the Army. In complaint brief filed by the victims' representatives.

³⁴ On July 1, 1982, a state of siege law was issued that prohibited all political activity and by which "official control of the media was ensured, on declaring it a crime to public any information about guerrilla activity...." (Amnesty International, "Guatemala: *The Human Rights Record*"). That provision also prohibited making known opinions on the country's political situation. In addition, during the years of the armed conflict that saw the most violence, the Army designed a tactic aimed at disinformation for the purpose of distorting public opinion and legitimating the action of the State as a valid measure for the military struggle against the guerrillas. (Document "Plan de Acción Anti-subversivo de la Armada," which is in the record). That Plan *Victoria 82* provided for the "censorship or suspension of civilian broadcasts and the monitoring and control of vulnerable aspects of the region [including] the system of radio stations, antennas, and repeaters [... and the] prevention of civilian interference in military operations ... control free access to the sources of information." Report of the CEH, Guatemala: Memoria del Silencio, Chapter II, Volume 3, paras. 480 and 481.

highest-level authorities of the State, mainly entailed killings of defenseless population, known as massacres³⁵ and scorched earth operations.³⁶ The CEH recorded 626 massacres committed by the State forces during the armed conflict, mainly the Army, supported by paramilitary structures such as the Civil Self-Defense Patrols (PAC: Patrullas de Autodefensa Civil)³⁷, the Military Commissioners³⁸, and the Judicial Commissioners.³⁹

72. The massacres perpetrated during the armed conflict in Guatemala were characterized by acts of excessive cruelty aimed at eliminating persons or groups of persons previously identified as the targets of military operations.⁴⁰

73. The CEH established as follows with respect to the strategies used by the State in carrying out massacres:

The CEH has noted particularly serious cruelty in many acts committed by agents of the State, especially members of the Army, in their operations against Mayan communities. The counterinsurgency strategy not only led to violations of basic human rights, but also to the fact that these crimes were committed with particular cruelty, with massacres representing their archetypal form. In the majority of massacres there is evidence of multiple acts of savagery, which preceded, accompanied or occurred after the deaths of the victims. Acts such as the killing of defenceless children, often by beating them against walls or throwing them alive into pits where the corpses of adults were later thrown; the amputation of limbs; the impaling of victims; the killing of persons by covering them in petrol and burning them alive; the extraction, in the presence of others, of the viscera of victims who were still alive; the confinement of people who had been mortally tortured, in agony for days; the opening of the wombs of pregnant women, and other similarly atrocious acts, were not only actions of extreme cruelty against the victims, but also morally degraded the perpetrators and those who inspired, ordered or tolerated these actions.⁴¹

³⁵ The CEH defined massacres as arbitrary executions of more than five persons, carried out in the same place and as part of a single operation, when the victims were absolutely or relatively defenseless. CEH, *Memoria del Silencio*. Tome III, p. 251.

³⁶ The so-called scorched earth operations provoked the forced displacement of the civilian population as a result of the repression directed against them through killings and the systematic destruction of crops and property. The CEH estimated that from 500,000 to 1.5 million Guatemalans were forced to flee as a direct result of the repression, in particular in the early 1980s. The massive displacement of the early 1980s was a direct consequence of the military plans and operations that the Army carried out to regain control over the civilian population in the zones of conflict. CEH, *Memoria del Silencio*. Tome III, p. 211.

³⁷ The PACs were created in late 1981 by the military regime of General Ríos Montt, as part of the policy of exterminating the guerrilla movement by relocating the indigenous population, and wiping out "any community or killing any person that his government was suspicious of, using methods that violated human rights." The PACs were begun in the department of El Quiché, and expanded to other departments. IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, 1993.

³⁸ From the outset of the armed confrontation the military commissioners were the representatives of the Army in each community. The post was created in 1938 by executive order and they were "vested with the character of agents of the military authority, who were to carry out their mission within the territorial demarcation of the villages, hamlets, and population centers whose importance so required in view of the organization of the militias..." In 1973 it was established by executive order that the command over the military commissioners and their aides corresponded solely and exclusively to the military authority. In a document that is in the record, and in CEH, *Memoria del Silencio*, Tome II, pp. 158-160.

³⁹ The judicial commissioners were an investigative corps of the National Police which, during the armed conflict, especially in the years of greatest violence, were intervened in and controlled by the Army.

⁴⁰ In all, 95% of the massacres were perpetrated from 1978 and 1984, and during this period 90% were carried out in areas inhabited predominantly by the Maya people, such as the departments of Quiché, Huehuetenango, Chimaltenango, and Alta and Baja Verapaz.

⁴¹ CEH, *Memoria del Silencio*, Tome V, *Conclusions and Recommendations*, para. 87.

74. One witness to the events at Las Dos Erres testified as follows:

The women asked to go to their houses to cook because their children wanted to drink water and eat, and they weren't allowed to go out, and then they told them 'don't feel bad, soon you'll rest, we're going to kill you and you're all going to die, so soon you will rest.'

The men, from the moment they were taken, were told that they were going to be killed and that they were going to perform a cleansing, a general cleansing ... that the village was going to be finished off, no one was going to survive.⁴²

75. The National Plan for Security and Development⁴³ and the Campaign Victory 82 Plan were implemented by the Army in 1982 and directed especially against the guerrilla fronts in northwestern and northern Guatemala. According to the victims' representatives, a large part of the military offensive was concentrated in the areas under the influence of the Ejército Guerrillero de los Pobres (hereinafter "EGP"), due to the fact that the EGP had the support of the local population in that region. Appendix H⁴⁴ of the National Security Plan mentioned expresses the need to deny the subversives access to the population that constituted its social and political base. The following are mentioned among the tactics to be used against the guerrilla force: deceive them, find them, attack them, and annihilate them. *"The mission is to annihilate the guerrilla force and parallel organizations."* The Army determined that *"... there is subversion, because a small group of persons supported it, and a large number of persons tolerate it, either out of fear or because there are causes that generate it. The war must be fought in all fields.... The minds of the population constitute the main objective. ..."*⁴⁵

76. It is a public and well-known fact that in Guatemala, on March 23, 1982, as a result of a coup d'état, a military government junta was installed presided over by José Efraín Ríos Montt, and made up, as well, of Horacio Egberto Maldonado Schaad and Francisco Luís Gordillo Martínez.

77. That military junta constituted the highest-level authority of the Republic of Guatemala up until June 8, 1982, the date on which Ríos Montt⁴⁶ assumed the positions of President of the Republic and Minister of National Defense. Ríos Montt remained in power as the de facto president until August 31, 1983.

78. At the time of the facts, December 1982, José Efraín Ríos Montt was the de facto President of the Republic, and General Oscar Humberto Mejía Víctores was defense minister.

79. According to the Law Constituting the Army, Decree 1782, in force at the time of the Las Dos Erres massacre, the President of the Republic, the Defense Minister, and the Chief of Staff of the Army constituted the High Command of the Guatemalan Army, which exercised control of a professional army.

⁴² Statement by Salomé Armando Gómez Hernández, made in a hearing October 8, 1998, during the 99th regular session of the IACHR.

⁴³ The document "Plan Nacional de Seguridad y Desarrollo" is dated April 10, 1982, and signed on behalf of the governing Military Junta by José Efraín Ríos Montt as President, Horacio Maldonado, and Luis Gordillo Martínez.

⁴⁴ Plan Nacional de Seguridad y Desarrollo, op. cit.

⁴⁵ Plan de Campaña Victoria 82.

⁴⁶ José Efraín Ríos Montt assumed the executive and legislative functions of the State, as President of the Republic and General Commander of the Army, with the authorities, powers, and prerogatives that Decree Law 24-82 conferred on the government Military Junta, pursuant to Decree Law 36-82.

80. On April 27, 1982, the military junta signed the Fundamental Government Statute, Decree-Law 24-82, which establishes as follows at Article 3: "Government authority shall vest in a Military Government Junta made up of one Chairman and two other Members." Article 4 of the same decree stated that "the Military Government Junta shall exercise executive and legislative functions." Article 89 stated that the organization of the Guatemalan Army "is hierarchical and is based on the principles of discipline and obedience," adding that "... the Military Government Junta is the highest-level authority of the Army and shall give its orders through its Chairman."

81. In April 1982, the Military Government Junta issued the National Plan for Security and Development⁴⁷, which established national objectives in military, administrative, legal, social, economic, and political terms. This National Plan for Security and Development identified the main areas of conflict, among them the departments of El Quiché, Huehuetenango, and Chimaltenango. The Military Junta and the High Command designed and ordered the implementation of a military campaign plan called "Victory 82," using new strategic definitions in the context of counterinsurgency and the objectives of the National Plan for Security and Development.

82. That military campaign plan ordered the annihilation of the "subversives," having identified as such mainly the Mayan population, although the notion of "internal enemy" was also applied to the detriment of non-indigenous peasants, students, members of religious congregations and community leaders or cooperative members.⁴⁸

83. The IACHR, in its second special report in 1983 entitled "The Situation of Human Rights in Guatemala," documented the massive displacement caused in Guatemala by the massive repression of 1981 and 1982. In that report the Commission referred to the indiscriminate attacks suffered by the rural population in which no distinction was made between civilians and insurgents, and adults and children were equally subject to attacks.⁴⁹

1. The *kaibiles*⁵⁰

84. Similarly, it has been shown that a large part of the counterinsurgency operations carried out by the state were carried out by a specialized group of the Guatemalan armed forces trained at what was known as the "Escuela *Kaibil*," or school for Kaibiles.⁵¹ At the time of the events, that training school was located in the village of El Infierno, La Pólvora, Melchor de Mencos, Petén.⁵² The CEH highlighted the barbarism and extreme cruelty of the methods for training the *kaibiles*⁵³, which

⁴⁷ Plan Nacional de Seguridad y Desarrollo, op. cit.

⁴⁸ See document "State Violence in Guatemala, 1960-1996: A Quantitative Reflection," Chapter 14 "The Victims," Patrick Ball, Paul Kobrak, and Herbert F. Spirer. Available at: <http://shr.aaas.org/guatemala>.

⁴⁹ OEA/Ser.L/V/II.66, doc. 47, October 5, 1983, Original: Spanish.

⁵⁰ The *kaibiles* were the special counterinsurgency force of the Guatemalan Army.

⁵¹ Kaibil Balam was a king of the Mam empire, who could not be captured by the Spanish conquistadors, as he was so astute. He was considered a genuine strategist and he consulted with caciques of other tribes. In Memoria del Silencio, Tome II, *Human rights violations and the acts of violence*, para. 883.

⁵² Based on a historical overview published by the Guatemalan Army.

Available at: <http://www.mindef.mil.gt/ftierra/cespeciales/fuerzasesp/index.html#>.

⁵³ "In the mystique of the Kaibil several factors came into play aimed at creating an elite soldier with the best professional training. Within the course, the sense of aggressiveness and valor was fostered to the utmost through dehumanizing mental and physical pressure. It was essential to kill animals, especially dogs, eat them raw or grilled, and drink their blood to show one's valor." In Memoria del Silencio, Tome II, *Human rights violations and the acts of violence*, para. 895.

'were implemented in several operations carried out by these troops, rendering true one of the 10 pledges made by its members: "*The kaibil is a killing machine*" ("*El kaibil es una máquina de matar*").⁵⁴

85. The testimony of the survivors of the Las Dos Erres massacre and of persons who participated in it coincide in affirming that the acts alleged were committed by members of the Army, specifically by instructors of the Escuela *Kaibil* of La Pólvora, Petén, along with *kaibiles* posted in military zone 23 based in Poptún.⁵⁵

86. One of the *kaibiles* who participated in the facts stated:

In the first days of December those from the patrol of *kaibiles* brought us together and told us what we had to do in "Las Dos Erres" At the meeting they explained to us that they had orders to go to the hamlet of "Las Dos Erres," which was a conflictive area, and that we had to go there to destroy the village, everything that moved had to be killed.⁵⁶

2. Violence against children

87. With respect to children as victims of the armed conflict in Guatemala, the CEH confirmed "with particular concern that a large number of children were also among the direct victims of arbitrary execution, forced disappearance, torture, rape and other violations of their fundamental rights. Moreover, the armed confrontation left a large number of children orphaned and abandoned, especially among the Mayan population, who saw their families destroyed and the possibility of living a normal childhood within the norms of their culture, lost."⁵⁷

88. In addition, the Inter-Diocesan Project for Recovery of Historical Memory (hereinafter REMHI: Proyecto Interdiocesano de Recuperación de la Memoria Histórica)⁵⁸ compiled hard-hitting testimony that documents the way in which children were victimized by the conflict and experienced it through their first-hand experiences as victims and witnesses and also as indirect violations against their parents and other family members. The children were most vulnerable to violations due to their lack of understanding of the risk and the mechanics of the violence, and were profoundly affected – and continue to be so – by the deprivation of security, trust, and care necessary for normal development.⁵⁹

89. In 2000, the Office of Human Rights of the Archdiocese of Guatemala City (ODHAG) published a study on children disappeared during the internal armed conflict in which it is estimated that more than 400 children disappeared.⁶⁰ It has been extensively documented that some children were saved from the massacres to be adopted by army officers or taken to their homes as servants.

⁵⁴ CEH, Memoria del Silencio, Tome V, Conclusions and Recommendations, para. 42. See also in Memoria del Silencio, Tome II, *Human rights violations and the acts of violence*, para. 885.

⁵⁵ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, pp. 398-399. At the time of the facts, Military Zone 23 was called "Brigada militar General Luis García León." See CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, footnote at p. 1184.

⁵⁶ Statement by Favio Pinzón Jerez given August 22, 1996 before a notary.

⁵⁷ CEH, Memoria del Silencio, Tome V, Conclusions and Recommendations, para. 28.

⁵⁸ Project led by the Office of Human Rights of the Archdiocese of Guatemala City (ODHAG). The report of the REMHI Project was published in 1998 under the title *Guatemala Nunca Más*.

⁵⁹ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, adopted April 6, 2001, para. 27.

⁶⁰ ODHAG, *Hasta Encontrarte: Niñez Desaparecida por el Conflicto Armado Interno en Guatemala* (2000), p. 35.

One example is a child survivor of the Las Dos Erres massacre, Ramiro Fernando López García, who was adopted by one of the soldiers who participated in the events.⁶¹

90. On giving his testimony as to what happened at Las Dos Erres, Ramiro Fernando López García stated as follows:

As I was saved, the one to whom I owe my life and who is now my father, for he did not let them do me any harm, he took me with him through the mountains and shared his food with me, that's how I ended up at the School of *Kaibiles*, I was at the School of *Kaibiles* for approximately two months, from there he took me to his home, registered me in Santa Cruz Muluá, Retalhuleu, and I took his last names.⁶²

91. When questioned by the District Prosecutor of the Public Ministry as to the reasons that had led him to testify, Mr. López García answered: "Because I have kept it in me for a long time, it is a pain that I have always borne in my heart."⁶³

3. Violence against women

92. The CEH concluded that women accounted for approximately one-fourth of the direct victims of human rights violations in the conflict.⁶⁴ The reports of the Inter-Diocesan Project for the Recovery of Memory and the Commission for Historical Clarification document show how women were insulted and dehumanized, terrorized and tortured, raped, disappeared, and massacred by state agents, almost always soldiers and members of the civil patrols.⁶⁵ Sexual violence against women was a widespread and systematic practice as part of the Army's counterinsurgency strategy⁶⁶ and one of the most specific expressions of gender violence during the internal armed conflict in Guatemala.⁶⁷

93. In 99% of the rape cases recorded by the CEH, the victim was female.⁶⁸ One-third of the victims in the rape cases documented⁶⁹ were minors.⁷⁰ The women who survived had to face the physical and psychological consequences, including the stigma associated with rape, pregnancy, and sexually transmitted disease.⁷¹

⁶¹ Olga López Ovando, "Hablan niños de la Guerra," *Prensa Libre*, August 23, 2000. See section on the judicial proceeding in this report.

⁶² Statement by Ramiro Fernando López García, given before the judge of the Criminal Court of First Instance of Petén on February 11, 1999. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 882-883.

⁶³ Statement by Ramiro Fernando López García, given before the judge of the Criminal Court of First Instance of Petén on February 11, 1999. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 883.

⁶⁴ CEH, *Memoria del Silencio*, Tome V, Conclusions and Recommendations, para. 29.

⁶⁵ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, adopted on April 6, 2001, para. 42.

⁶⁶ CEH, *Memoria del Silencio*, Tome III, *Human rights violations and the acts of violence* para. 2351.

⁶⁷ CEH, *Memoria del Silencio*, Tome III, *Human rights violations and the acts of violence* para. 2350.

⁶⁸ CEH, *Memoria del Silencio*, Tome III, *Human rights violations and the acts of violence* para. 2376.

⁶⁹ CEH, *Memoria del Silencio*, Tome III, *Human rights violations and the acts of violence* para. 2388.

⁷⁰ CEH, *Memoria del Silencio*, Tome III, *Human rights violations and the acts of violence* para. 2391.

⁷¹ REMHI, *Guatemala Nunca Más* (1998), Tome I, "Impacts of the violence", chapter six, "Confronting the pain. From violation to women's affirmation."

4. The peace process

94. The peace process in Guatemala began in 1990 and culminated in 1996. This process was aimed at overcoming the violent conflict that had been ongoing for over 34 years. The parties, the Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (hereinafter "URNG"), with the participation of a wide-ranging Assembly of Civil Society, signed 12 agreements.⁷² On June 23, 1994, they signed the "Agreement for the Establishment of the Commission for Historical Clarification of Human Rights Violations and the Acts of Violence that have Caused Suffering to the Guatemalan Population." The CEH began its work on July 31, 1997, and handed in its report on February 25, 1999.

95. The work of the CEH was a valuable contribution to Guatemalan society and the international community, especially for understanding the causes and scale of the events provoked by the political violence and the consequences suffered by its victims.

B. The massacre at the community of Las Dos Erres

96. In the events described below, the following persons lost their lives: (1) Geronimo Muñoz Batres; (2) José Domingo Batres; (3) Elvida Cano Aguilar; (4) Margarita Cortes; (5) Abel Muñoz Cano; (6) Bernabé Muñoz Cano; (7) Vilma Muñoz Cano; (8) Oralia Muñoz Cano; (9) Isabel Muñoz Cano; (10); Elizabeth Muñoz Cano (11) Geronimo Muñoz Cano; (12) newborn; (13) Cayetano Ruano Castillo; (14) Irma Aracely Ruano Arana; (15) Nery Ruano Arana; (16) Isabel Ruano Arana; (17) Paulina Ruano Arana; (18) Tito Ruano Arana; (19) Mártir Alfonso Ruano Arana; (20) Esperanza Consuelo Ruano Arana; (21) Obdulio Ruano Arana; (22) Mirian Ruano Arana; (23) Edgar Leonel Ruano Arana; (24) Juan Mejía Echeverría; (25) José Antonio Mejía Morales; (26) Estanislao González; (27) Josefina Arreaga de Galicia; (28) Miguel Ángel Galicia; (29) Maribel Galicia Arreaga; (30) Samuel Galicia Arreaga; (31) Raquel Galicia Arreaga; (32) Noé Galicia Arreaga; (33) Celso Martínez Gómez; (34) Cristina Castillo Alfaro; (35) Santos Pernillo Jiménez; (36) Hilario Pernillo Jiménez; (37) Graciela Pernillo Jiménez; (38) Agustín Loiza Contreras; (39) Benedicto Granados; (40) Marcelino Granados Juárez; (41) Raúl Antonio Corrales Hércules; (42) Tomas de Jesús Romero Ramírez; (43) Abel Granados Sandoval; (44) Ilda Rodríguez Cardona de Granados; (45) Adolfo Granados Rodríguez; (46) Mirian Granados Rodríguez; (47) Leticia Granados Rodríguez; (48) Irma Granados Rodríguez; (49) Carlos Enrique Granados Rodríguez; (50) María Magdalena Granados Rodríguez; (51) Amanda Granados Rodríguez; (52) Elida Esperanza González Arreaga; (53) Ana Alcira González Arreaga; (54) Rubilio Armando Barahona Medrano; (55) Catarino Medrano Pérez; (56) Juan Pablo Arévalo; (57) Marta de Jesús Valle de Arévalo; (58) Josué Arévalo Valle; (59) Dina Elisabeth Arévalo Valle; (60) Joel Arévalo Valle; (61) Abel Antonio Arevalo Valle; (62) Dora Patricia López Arevalo; (63) Elda Rubi Hernández Lima; (64) Justiniano Hernández Lima; (65) Bertila Hernández Lima; (66) Angelina Hernández Lima; (67) Fernando Garcia; (68) Francisca Leticia Megia; (69) Germayin Mayen Alfaro; (70) Audias Mayen Alfaro; (71) Marta Marleny Mayen; (72) Victor Manuel Campos Lopez; (73) Salvador Campos López; (74) José Rubén Campos Lopez; (75) Canuto Pérez Morales; (76) Cecilio Gustavo Pérez López; (77) Abel Perez López; (78) Ramiro Aldana; (79)

⁷² Framework agreement for resuming the process of negotiation between the Government of Guatemala and the URNG (January 1994); Comprehensive agreement on human rights (March 1994); Agreement for resettlement of the populations uprooted by the armed confrontation (June 1994); Agreement on the establishment of the commission for the historical clarification of the human rights violations and acts of violence that have caused suffering to the Guatemalan population (June 1994); Agreement on identity and rights of the indigenous peoples (March 1995); Agreement on socioeconomic aspects and agrarian situation (May 1996); Agreement on strengthening the civilian authorities and the function of the army (September 1996); Agreement on the definitive ceasefire (December 1996); Agreement on constitutional reforms and electoral regime (December 1996); Agreement on the bases for incorporation of the URNG to legality (December 1996); Agreement on the timeline for the implementation, compliance with, and verification of the peace agreements (December 1996); Agreement for a firm and lasting peace (December 1996).

Albina Canand de Aldana; (80) Delia Aracely Aldana Canan; (81) Gladis Judith Aldana Canan; (82) Sandra Nohemi Aldana Canan; (83) Rosa Albina Aldana Canan; (84) Edi Rolando Aldana Canan; (85) Ana Maritza Aldana Canan; (86) Mario Amilcar Mayen Ramirez; (87) Francisco Mayen Ramírez; (88) Juan Carlos Mayen Ramirez; (89) Maynor Mayen Aquino; (90) Edelmira Mayen Aquino; (91) Marco Antonio Mayen Aquino; (92) five month old girl, no name; (93) Rolando Barrientos Corado; (94) Dionicio Ruano Castillo; (95) Juan López Méndez; (96) Francisco Deras Tejada; (97) Francisco González Palma; (98) Rigoberto Ruano Aquino; (99) Lencho Portillo Perez; (100) Arturo Salazar Castillo; (101) Jose Esteban Romero; (102) Natividad de Jesús Ramires; (103) María Ines Romero Ramires; (104) Paula Romero Ramirez; (105) Maximiliano Peralta Chinchilla; (106) Gilberta Hernández García; (107) Geovani Ruano Hernández; (108) Jaime Ruano Hernández; (109) María Linarez Pernillo; (110) Rosa García Linares; (111) Silvia Garcia Linares; (112) Santos Cermeño Arana; (113) newborn male six days old, not identified; (114) Isidro Alonzo Rivas; (115) Marcelino Ruano Castillo; (116) Manuel Ruano Pernillo; (117) Jorge Ruano Pernillo; (118) Marcelino Ruano Pernillo; (119) Anabela Adela Ruano Pernillo; (120) Consuelo Esperanza Ruano Pernillo; (121) one-year old girl, unidentified; (122) Patrocinio Garcia Barahona; (123) Francisco Javier Cabrera Galeano; (124) Solero Salazar Cano; (125) Eren Rene Salazar Castillo; (126) Elsa Oralía Salazar Castillo; (127) Irma Consuelo Salazar Castillo; (128) Edgar Rolando Salazar Castillo; (129) Leonarda Lima Moran; (130) Fredy de Jesús Cabrera Lima; (131) Lorenzo Corado Castillo; (132) Toribio López Ruano; (133) Santos López Ruano; (134) Alicia Lopez Ruano; (135) Mariano López Ruano; (136) Clorinda Recinos; (137) Eleluina Castañeda Recinos; (138) Antonio Castañeda Recinos; (139) Cesar Castañeda Recinos; (140) Alfredo Castañeda Recinos; (141) Esther Castañeda Recinos; (142) Enma Castañeda Recinos; (143) Maribel Castañeda Recinos; (144) Israel Medrano Flores; (145) Rene Jiménez Flores; (146) Victoriano Jiménez Pernillo; (147) Lucita Jiménez Castillo; (148) Lilian Jiménez Castillo; (149) Mayra Jiménez Castillo; (150) Adan Jiménez Castillo; (151) Baldomero Jiménez Castillo; (152) Lucita Castillo Pineda; (153) Odilia Pernillo Pineda; (154) Rudy Cermeño Pernillo; (155) Amparo Cermeño Pernillo; (156) Wendy Yesenia Cermeño Pernillo; (157) Santos Oliverio Cermeño; (158) Jeremías Jiménez; (159) Serapio García García; (160) Timoteo Morales Pérez; (161) Everildo Granados Sandoval; (162) Eulalio Granados Sandoval; (163) Angelina Escobar Osorio de Granados; (164) Celso Martínez Gómez; (165) Ilda Rodríguez Cardona de Granados; (166) Francisco de Jesús Guevara; (167) Noé Guevara Yanes; (168) Roberto Pineda García; (169) Juana Linares Pernillo; (170) Leonel Pineda Linares; (171) Dora Alicia Pineda Linares; (172) Adán Pineda Linares; (173) Sonia Pineda Linares; (174) Felipe Arreaga; (175) Luís Alberto Arreaga Alonzo; (176) María Carmela Arreaga Alonzo; (177) Juan Humberto Arreaga Alonzo; (178) Rosa Lorena Arreaga Alonzo; (179) Juana Maura Arreaga Alonzo; (180) María Decidora Marroquín Miranda; (181) Vilma Pastora Coto Rivas; (182) Leonarda Antonio Coto; (183) Juan Antonio Cermeño Ortega; (184) José Esteban Romero; (185) Natividad de Jesús Ramírez; (186) María Inés Romero Ramírez; (187) Paula Romero Ramírez; (188) Maximiliano Peralta Chinchilla; (189) Sotero Cermeño Arana; (190) Julia Arana Pineda; (191) Horacio Cermeño Arana; (192) Oliva Cermeño Arana; (193) Catalino Cermeño Arana; (194) Ramiro Cermeño Arana; (195) María del Rosario Cermeño Arana; (196) Rosa María Cermeño Arana; (197) Julio Cesar Cermeño Arana; (198) Ricardo Cermeño Arana; (199) Julián Jiménez Jerónimo; (200) Petrona Cristales Montepeque; (201) Víctor Manuel Corado Osorio; (202) Víctor Hugo Corado Cristales; (203) Rony Corado Cristales; (204) Adelfo Corado Cristales; (205) Félix Hernández Moran; (206) Dora Alicia Hernández; (207) María Antonia Hernández; (208) Dorca Hernández; (209) Blanca Hernández; (210) Federico Ruano Aquino; (211) Cristóbal Aquino Gudiel; (212) Juana Aquino Gudiel; (213) Juan de Dios Falla Mejia; (214) Ramiro Gómez; (215) Ramiro Aldana; (216) Albina Canan Aldana; (217) Delia Aracely Aldana Canan; (218) Gladys Judith Aldana Canan; (219) Sandra Nohemi Aldana Canan; (220) Rosa Albina Aldana Canan; (221) Mario Amilcar Mayen Ramírez; (222) Francisco Mayen Ramírez; (223) Juan Carlos Mayen Ramírez; (224) Maynor Mayen Aquino; (225) Edelmira Mayen Aquino; (226) Marco Antonio Mayen Aquino; (227) Five-month old girl, no name; (228) Sonia Ruano García; (229) Raquel Silvestre Ruano García; (230) Oliverio Ruano García; (231) José Esteban Romero; (232) Natividad de Jesús Ramírez; (233) María Inés Romero Ramírez; (234) Paula Romero Ramírez; (235) Maximiliano Peralta Chinchilla; (236) Petrona Cristales Montepeque; (237) Víctor Manuel Corado Osorio; (238) Víctor Hugo Corado

Cristales; (239) Rony Corado Cristales; (240) Adeldo Corado Cristales; (241) Héctor Corado Cristales; (242) Albino Israel González Carias; (243) Sotero Cermeño Barahona; (244) Julia Arana Pineda, (245) Horacio Cermeño Arana; (246) Olivia Cermeño Arana; (247) Catalino Cermeño Arana; (248) Ramiro Cermeño Arana; (249) María del Rosario Cermeño Arana; (250) Julio Cesar Cermeño Arana; and (251) Ricardo Cermeño Arana.

1. Events prior to the massacre

97. The community (*parcelamiento*) of Las Dos Erres, in La Libertad, Petén, was founded in 1978 in the context of a significant migration of peasant farmers in search of lands, and as an effect of the colonization promoted by the government agency Fomento y Desarrollo de Petén (FYDEP). Las Dos Erres was founded by Federico Aquino Ruano and Marcos Reyes, who called it “Las Dos Erres” (“the two ‘R’s”) for the initials of their last names. In 1979 and 1980, persons came to Las Dos Erres from eastern and southern Guatemala. By December 1982 Las Dos Erres had a population of approximately 300 to 350.⁷³

98. In early 1982 members of the Fuerzas Armadas Rebeldes (FAR) carried out an incursion into the neighboring village of Las Cruces to hold an assembly and purchase foodstuffs, in the wake of which the military presence in the zone was increased. Indeed, a detachment was posted in the very community of Las Cruces. Tensions mounted in Las Dos Erres in the wake of the massacre carried out in the village of Los Josefinos in April 1982.⁷⁴ As of that time, military combat planes began flying over the zone at low altitude, and the Army began to make frequent visits to Las Dos Erres.⁷⁵

99. In September 1982 FAR commands carried out mortar attacks on the barracks of the Military Police (Policía Militar Ambulante) and the Treasury Guard (Guardia de Hacienda) in Las Cruces. As a result, the local military commissioner organized a Civil Defense Patrol (“PAC”) in Las Cruces and in Las Dos Erres. The objective was for the civil defense patrol in Las Dos Erres not to patrol in its own community, but that it become part of the PAC in Las Cruces; this alternative was rejected by the population of Las Dos Erres, who only agreed to form the patrol to protect their community.⁷⁶ As a result, the residents of Las Dos Erres were accused of being members of the guerrilla forces.⁷⁷

100. On this point, one witness stated as follows:

At that time the commander was Lt. Carias, who was very bad, he wanted us to care for the village, and Lt. Carias wanted the people from Las Dos Erres to do a shift in the village of Las Cruces, these people came for just one shift and afterwards those people refused because they said that they could not come to Las Cruces to do a shift and leave their families alone, but Lt. Carias would tell them that if they didn’t do it, it was because they were members of the guerrilla forces.⁷⁸

⁷³ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, pp. 397-398.

⁷⁴ See CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, footnote p. 4.

⁷⁵ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, pp. 397-398.

⁷⁶ Documentary video made by the State in compliance with the Framework Friendly Settlement Agreement.

⁷⁷ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 398.

⁷⁸ Statement by Orlando Amílcar Aguilar Marroquín given to the Prosecutorial Agent on August 28, 1996. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 833.

101. According to the information collected by the CEH, the Commissioner of Las Cruces spread the rumor that the inhabitants of Las Dos Erres belonged to the guerrillas and among the evidence shown to the Army there as a sack for collecting the crops that belonged to one of the founders of the community, Federico Aquino Ruano, with the initials FAR. These initials corresponded to his name and were the same as those of the Fuerzas Armadas Rebeldes.⁷⁹ Indeed, when the “allegiance to the flag” ceremony was held in Las Cruces, in September 1982, the military commissioner prohibited the population of Las Dos Erres from participating in the event. The refusal to pledge allegiance meant, at that time, in the eyes of the Army, that one had sided with the insurgency.

102. According to one witness’s statement:

When Lt. Carias assembled them in the place known as *la concha*, and was telling them that the people from Las Dos Erres were guerrillas, and that those people were affecting the people of Las Cruces, because they were connected and they too were guerrillas. At that time the Auxiliary Mayor ... was telling us that if Lt. Carias told us that they were guerrillas, that we should tell him that yes they were.⁸⁰

103. When the rumor was already circulating in the area that the Army was going to bomb Las Dos Erres soon, a military convoy was ambushed by the FAR a few kilometers from Las Cruces and the FAR took 21 rifles from the Army.⁸¹

104. In response, military zone 23 of Poptún asked that a special squad of *kaibiles* be dispatched to recover the rifles. On December 4, 1982⁸², a squad of 17 *kaibiles*⁸³ arrived by airplane⁸⁴ to the air base at Santa Elena, Petén, from Retalhuleu; they joined up with a group of 40 *kaibiles* posted in military zone 23 of Poptún.⁸⁵ At the Santa Elena military base they were assigned a guide to take them to Las Dos Erres.⁸⁶

105. On or about December 6, 1982, the superiors met with the *kaibiles* and told them what they had to do in Las Dos Erres.⁸⁷

⁷⁹ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 398.

⁸⁰ Statement given by Alejandro Gómez Rodríguez to Prosecutorial Agent Otto Daniel Ardón Medina, on August 28 1996. See Exhibit XIII of case 1316-94 before the Criminal Court of First Instance of Petén, folio 825.

⁸¹ Testimony of Favio Pinzón, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 976.

⁸² Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1054.

⁸³ Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, 999.

⁸⁴ Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1055.

⁸⁵ Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1055.

⁸⁶ According to a supplemental statement given by witness César Franco Ibáñez to the Public Ministry of October 21, 1997, the guide was one of the guerrillas who had carried out the ambush and knew where the rifles could be found. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1068.

⁸⁷ According to the report of the CEH, the day of the meeting and subsequent deployment of the *kaibiles* from Santa Elena to Las Dos Erres was December 5, 1982. Nonetheless, on analyzing the statements that appear in the judicial record in the case, one reaches the conclusion that those events took place on December 6, 1982.

106. In this respect, one witness stated:

In the first days of December they brought all of us in the patrol of *kaibiles* together, and they told us what it was that we had to do in "Las Dos Erres." The meeting included Lt. Rivera Martínez, Lt. Adán Rosales Batres, Second Lt. Sosa Orantes, and the other one, Lt. Ramírez, nicknamed "Cocorico." At the meeting they explained to us that they had orders to go to the hamlet of "Las Dos Erres," which was a conflictive zone, and that we had to go to destroy the village, everything that moved had to be killed.⁸⁸

107. At that meeting they ordered the *kaibiles* to dress as guerrillas to confuse the population⁸⁹, i.e. to dress in olive green shirt and pants, and with a red arm band tied on the right arm to identify themselves to one another.⁹⁰ At about 9 p.m. they left the military base of Santa Elena headed to Las Dos Erres, aboard civilian trucks. At about 12 midnight they were made to get off the trucks and they walked for approximately two hours, until reaching Las Dos Erres at 2 a.m. the morning of December 7, 1982.⁹¹

2. The events of December 7 and 8, 1982

108. Once the soldiers reached Las Dos Erres, they began to remove the residents from their homes. The people moved without putting up any resistance to the place indicated by the soldiers.⁹²

109. According to a former *kaibil* who was present when the massacre happened:

We reached the hamlet of "Las Dos Erres" at approximately 2 a.m., and the people were then removed, house by house, children, women, the elderly, newborn children.⁹³

110. They enclosed the women and children in the evangelical church, while the men were confined in the school.⁹⁴

111. On this point, one child survivor of the massacre testified:

One soldier was directing the others and others went to the sides taking care of all the peasant farmer people, so that not a one would leave, and there were others further back. They took us to the school and to the evangelical church of Dos Erres and there they gathered

⁸⁸ Statement by Favio Pinzón, a former *kaibil*, made to a Notary in Guatemala City, on August 22, 1996. Copy in the record.

⁸⁹ Testimony by Favio Pinzón and César Franco Ibáñez. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 964-965 and 1023.

⁹⁰ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 399.

⁹¹ Testimony by Favio Pinzón, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 965.

⁹² Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1013.

⁹³ Statement by Favio Pinzón, former *kaibil*, made before a notary in Guatemala City on August 22, 1996. Copy in the record.

⁹⁴ Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1021. See also CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 400. The separation of the population in groups, "generally men, on the one hand, and women and children, on the other," was a tactic used by the Army to reduce their possibilities of resistance and at the same time increase their "impotence, desperation, and humiliation." See CEH, Memoria del Silencio, Tome III, *The human rights violations and acts of violence*, para. 3098.

the men in the school and the women in the church. I went with my brother Ramiro, I sat beside him, and these men said 'no, we don't want children here, they must go with the women...'; they forced me to leave my brother. He told me "take it easy, go ahead, nothing's going to happen, everything's going to be fine." But he was already sad.⁹⁵

112. While kept confined, the men, women, and children were beaten by the *kaibiles*. Some even died from the blows.

113. On this point, one witness recounts that:

The distance from the school was very close, I was looking at everything when they beat the men ... the soldiers beat the campesinos they had at the school ... there were spaces to see, I wanted to see everything and I looked at everything and I saw clearly when they kicked them, beat them, struck them with the weapons. I saw very clearly when they killed some campesino men there in the school. Some shots were heard, and the men fell. They killed them. Then these men who were where I was with the women, they beat them, they kicked them, they treated them real bad. They would grab the children who were crying kicking, they drew blood from them. Some children died from the blows, their mothers were crying, they were grabbing them and it hardly mattered to these men, the more the mothers cried for their children, the harder the men hit the mothers.⁹⁶

114. At dawn the rumor spread that one of the lieutenants had raped one of the girls in the church.⁹⁷ According to one witness, other "specialists" followed the example and they began to rape the girls.⁹⁸

115. At approximately six o'clock in the morning, the chiefs of the patrols of *kaibiles* consulted their superiors by radio as to the actions to take. After receiving such instructions, they informed the rest of the troops that the residents would be "vaccinated" after breakfast.

116. One eyewitness, on referring to the start of the massacre, stated:

After the meeting held by the officers and in which it was decided to kill all the inhabitants of the hamlet, at about 2 p.m. the execution began. It began with a child three or four months old, he was thrown alive into the well, and so it continued with all the children. The adults were still enclosed in the evangelical church, people who could be heard were praying that nothing happen to them and all recommended themselves to God.⁹⁹

117. The soldiers began killing the children. According to the CEH, all the children were executed by blows to the head, "while the smallest ones were crashed against walls or trees, holding them by the feet; then they were thrown into the well."¹⁰⁰

⁹⁵ Testimony of Salomé Armando Gómez, given during a hearing before the IACHR, October 8, 1998.

⁹⁶ Testimony of Salomé Armando Gómez, given during a hearing before the IACHR, October 8, 1998.

⁹⁷ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 400.

⁹⁸ Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1030.

⁹⁹ Statement by Favio Pinzón, ex-*kaibil*, made a Notary in Guatemala City, August 22, 1996. Copy in the record.

¹⁰⁰ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 401.

118. At about 4:30 pm¹⁰¹, the *kaibiles* took the men out of the school and with their eyes blindfolded took them to the well.¹⁰²

119. According to one survivor:

They took them in line ... they took them with their hands tied and taking good care all around them, aiming their weapons at them ... after about 10 minutes, taking us out to the patio, one heard the shots fired executing the men. They shot them ... the weapons were fired for about five minutes or more. Then shots were heard one by one, finishing off the men.¹⁰³

120. After a while they took out the women and children, leading them in a single file to the same place. The *kaibiles* raped many girls along the way:

The girls ages 11, 12 years were set aside and they raped them ... I saw it all in front of me. The mothers cried with great anguish and they kicked them, with their weapons they hit them and they picked them up by the hair and pushed them up to the bush where they were going to kill them. Then, after they took us, the mothers were saying, crying, "if you're going to kill us, you already told us you're going to kill us, kill us here, in the street, in the open, don't kill us in the bush, for we're not animals, kill us here ... why are you going to leave us hidden in the bush?"¹⁰⁴

121. A former *kaibil* who was present testified:

Among the women, there were girls 12 and 13 years old, the deputy instructors proceeded to rape them. They stood them on the edge of the well and dealt them a blow with a stick, and they went into it, and that was the procedure with men and the elderly. They gave me a girl about 12 years old to execute at the well, but I came and asked the girl, reaching the well, why are you crying, I took a piece of cloth from the pocket of my pants to clean her eyes, telling her that nothing was going to happen, then the deputy instructor Manuel Potzún told me: "And what about this one." I answered that this girl was going to be vaccinated, and the wretched deputy instructor Potzún took her as he wished and raped her to the point that it could go on no longer, and after raping her proceeded to execute her, he took her by the hair and kicked her in the head, and cast her into the well. And the same procedure was then applied to the men, women, and elderly.¹⁰⁵

122. One survivor of the facts describes the reaction of one of the *kaibiles* who was directing the group to the women who didn't want to continue the walk in the following terms:

This man said with bad words "these women why aren't they going to go on, I'm going to make them go on by beating them," and returned and grabbed them by the hair and began to

¹⁰¹ Testimony of Salomé Armando Gómez, given during a hearing before the IACHR, October 8, 1998.

¹⁰² According to the report submitted by the members of the Argentine Forensic Anthropology Team on July 25, 1995, the place known as "El Pozo" is "an unfinished water well, circular, and two meters fifteen in diameter at its mouth at the surface level of the ground." See Exhibit V of the judicial record in case 1316-94 before the judge of the Criminal Court of First Instance of Petén, folios 15-18.

¹⁰³ Testimony of Salomé Armando Gómez, given during a hearing before the IACHR, October 8, 1998.

¹⁰⁴ Testimony of Salomé Armando Gómez, given during a hearing before the IACHR, October 8, 1998. César Franco Ibáñez, testified: "even when they took them to the pozo one could hear the shouts and cries of the poor girls there who they were raping, before taking them to the pozo." See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1030.

¹⁰⁵ Statement by Favio Pinzón, ex-*kaibil*, made before a Notary of Guatemala City, August 22, 1996. Copy in the record.

beat them and told his soldiers to push them, to beat them so they might walk. The women did not want to walk because they knew they were going to die.¹⁰⁶

123. According to the information collected by the CEH, the cruelty displayed by the soldiers of the Guatemalan Army reached the point that pregnant women miscarried as a result of the blows they were dealt. The *kaibiles* were even said to have jumped on the abdomen of those women until the fetus came out miscarried.¹⁰⁷

124. On reaching the well, the *kaibiles* set the victims on their knees and asked if they belonged to the guerrillas, they then struck them with a mallet or iron rod¹⁰⁸ in the skull or shot them, and then cast the corpses into the well.¹⁰⁹ One of the men who had fallen into the well alive was able to remove the blindfold and insult one of the *kaibiles* who was at the edge. The *kaibil* shot him with his Galil rifle, and on seeing that he wasn't dying, threw a fragmentation grenade at him.¹¹⁰

125. At about 6 p.m. two girls arrived in Las Dos Erres. According to an eyewitness, two military instructors raped the girls:

These two grabbed those poor women at approximately half past seven at night, something like that, they savagely raped the poor girls, they raped them, they did whatever they wanted to them, and what was happening to those poor women didn't matter in the least to the officers.¹¹¹

126. The next morning, December 8, 1982, when the *kaibiles* were preparing to leave, approximately six families arrived in Las Dos Erres. The *kaibiles* took them to the mountain and shot them. As there was no more room in the well, they left these persons' bodies on the ground.¹¹²

127. The *kaibiles* next proceeded to abandon Las Dos Erres, taking with them the two girls they had raped the night before. After walking all day, the patrol decided to make camp. There the soldiers once again raped the girls and then slit their throats.¹¹³

128. The *kaibiles* assassinated the inhabitants of Las Dos Erres and only two minors were saved from dying at the hands of the Guatemalan Army: one boy who was abducted by one of the *kaibiles*¹¹⁴ and another boy who was able to escape from the soldiers when they were taking them

¹⁰⁶ Testimony of Salomé Armando Gómez, given during a hearing before the IACHR, October 8, 1998.

¹⁰⁷ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 401.

¹⁰⁸ *Almádana*.

¹⁰⁹ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 401.

¹¹⁰ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 401.

¹¹¹ Testimony of Favio Pinzón, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 970.

¹¹² Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1030.

¹¹³ Testimony of Favio Pinzón, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 970.

¹¹⁴ The child Ramiro Fernando López García, who was approximately 5 years old at the time of the massacre, was abducted by a *kaibil* by the name of Santos López Alonzo and raised as his adoptive son.

to the well.¹¹⁵ During the massacre the *kaibiles* surrounded Las Dos Erres, allowed people in, and made sure no one got out alive.¹¹⁶

3. Events subsequent to December 8, 1982

129. Three days after having left behind what remained of Las Dos Erres, the soldiers decided to eliminate their guide. One eyewitness described the torture and subsequent murder of the guide at the hands of the *kaibiles* in the following terms:

When we had already been walking for about three days, in the mountain we didn't have anything to eat, we didn't carry food or anything, so a lieutenant ... a specialist, look you ... get me something to eat, you, he said, but I want meat, take at least one piece of meat from that guerrilla and give it to me, he told him. So he took out his knife and grabbed him ... and he sliced off a piece of pure flesh, and as there was a good fire, he came and told him, my lieutenant, here's the meat, but the man's flesh was moving, and the man was standing on a stick ... tied, he had taken a piece, here it is, and that which is you ... the other day ... they slit his throat and they threw him into the fire ... and as it was well into the mountains, he stayed there and as we continued hiking ... and from that point on we continued without a guide.¹¹⁷

130. According to the information collected by the CEH, on December 9, 1982, some residents of the village of Las Cruces approached Las Dos Erres. They found the inhabitants' household utensils and the like cast about everywhere, and their animals loose. The residents of Las Cruces also saw blood, umbilical cords, and placentas on the ground.¹¹⁸

131. That same day the Commander of the military detachment at Las Cruces gave orders to remove all that could be removed from Las Dos Erres for it was then to be set ablaze. The soldiers under him took everything they found: household utensils, animals, and grain, among other things. Those goods were distributed among the soldiers or sold in Las Cruces.¹¹⁹ The next day the soldiers and patrol members burned down the houses in Las Dos Erres.¹²⁰

132. One witness said of these events:

The next day people who had relatives in Las Dos Erres came upon and asked second lieutenant Carías what had happened, and he answered that the guerrillas had come to Las Dos Erres, and had taken the people to Mexico, but at that moment he would bring a tractor and wagons to bring everything that was left behind, and he did so, and hens, carriages, animals, and everything that could be was brought, and he sold it to the people just with a little piece of paper.¹²¹

¹¹⁵ Salomé Armando Gómez.

¹¹⁶ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 403.

¹¹⁷ Testimony of César Franco Ibáñez, former *kaibil*. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 1032-1033.

¹¹⁸ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 404.

¹¹⁹ CEH, Memoria del Silencio, Illustrative Case No. 31, Tome VI, Illustrative Cases, Annex I, p. 404.

¹²⁰ Testimony of Baldomero Pineda Batres, given August 28, 1996, before the Prosecutorial Agent of the Public Ministry. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 829.

¹²¹ Testimony of Inocencio González, given August 28, 1996, before the Prosecutorial Agent of the Public Ministry. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 826.

133. Another witness testified:

Lieutenant Carías entered Las Dos Erres along with the military commissioner don Oscar, and the Auxiliary Mayor of Las Cruces ... with tractors and wagons and brought all the people's things, horses, chickens, and all the rest. Afterwards he said that the guerrillas had taken the people to Mexico.¹²²

134. According to another witness:

On Thursday about the ninth of December ... Lieutenant Carías went with 50 soldiers and 50 civilians organized by Lieutenant Carías, I went with Mr. Ramón Rodas who lives in Las Cruces the same day the patrol members went, that is four days after the facts, when we reached the village it was deserted, and the soldiers and patrol members were burning the houses on the lieutenant's orders.¹²³

135. Meanwhile, the *kaibiles* who participated in the Las Dos Erres massacre continued on their way in the mountains. In late December 1982 the members of the patrol of *kaibiles* returned to their base at Santa Elena in Army helicopters.

136. According to a former *kaibil* who witnessed the facts:

The radio operator communicated to the Santa Elena military base advising that we were already at the point for the helicopter to come get us. About an hour after the call, at 8 or 9 in the morning, the helicopter arrived, and it made several trips to evacuate the patrol to take us to the Santa Elena military base. This was December 27. Once we were at the base they told us that we had eight days rest. And that's how the 'Las Dos Erres' massacre ended.¹²⁴

VIII. THE FACTS

The investigation into the Las Dos Erres Massacre

A. The exhumations

137. On June 14, 1994, Aura Elena Farfán, in her capacity as president of FAMDEGUA, filed a criminal complaint before the Criminal Court of First Instance for Criminal Matters, Drug-trafficking, and Environmental Crimes for the department of Petén (hereinafter "Criminal Court of First Instance of Petén"), for the crime of murder to the detriment of the persons buried in the hamlet known as Las Dos Erres. This was based on information received according to which in that place, now called the village of Nuevo León, "there are a great many corpses buried, victims of the political violence." In addition, she asked the judge to order the exhumation of the corpses in that place, and proposed that it be done by the Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense, hereinafter "EAAF")¹²⁵.

¹²² Testimony of Jerónimo Baten Ixcoy, given August 28, 1996, before the Prosecutorial Agent of the Public Ministry. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 831.

¹²³ Testimony of Baldomero Pineda Batres, given August 28, 1996, before the Prosecutorial Agent of the Public Ministry. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 829.

¹²⁴ Statement by Favio Pinzón, former *kaibil*, given before a notary in Guatemala City on August 22, 1996. Copy in the record.

¹²⁵ Exhibit I of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1, Annex 17.

138. On June 15, 1994, the Judge ruled that the facts should be gathered as part of the criminal proceeding to determine who was responsible for the illegal conduct alleged, and ordered the exhumation of the corpses, to which end he appointed the EAAF and the local forensic physician.¹²⁶

139. The work of exhuming the corpses was begun on July 4, 1994¹²⁷ and was suspended on July 13, 1994, due to the heavy rains and the technical complexity of the excavation.¹²⁸

140. On July 25, 1994, the EAAF handed in its first report on the results obtained in the archeological excavation done at Las Dos Erres from July 4 to 13, 1994.¹²⁹

141. On April 26, 1995, FAMDEGUA asked the Office of the Public Prosecutor for Petén for an order to reinstate the exhumations. By resolution of May 3, 1995, the Criminal Court of First Instance of Petén ordered that the exhumations continue.

142. From May 8, 1995 to July 15, 1995, the exhumation of corpses continued at three sites: El Pozo ("the well")¹³⁰, La Aguada ("the watering hole")¹³¹, and Los Salazares.¹³²

143. On July 29, 1995, a showing was done as part of the judicial process of the 162 sets of skeletalized remains and evidence from the exhumations performed at the well (El Pozo) in Las Dos Erres, at the multiple-use room of the village of Las Cruces, municipality of La Libertad,

¹²⁶ Exhibit I of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 4, Annex 17.

¹²⁷ Exhibit I of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 12-15, Annex 17.

¹²⁸ Press articles, Annex 6, Exhibit X of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 26.

¹²⁹ Exhibit I of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 17.

¹³⁰ According to the report presented by the EAAF on July 25, 1995, to the courts of justice, site 1 or "the Well" is "an uncompleted well for water, circular in shape and two meters 15 in diameter at its mouth, at ground level." The report adds: "During the work done in 1994 it was possible to establish the veracity of the testimonies that affirmed that inside were found corpses of persons killed during the events of December 1982." Similarly, the report reflects that the provisional result of the exhumation of human remains in this place corresponds to no fewer than 162 individuals, of both sexes.... In addition, remains were recovered with clothing and personal effects associated with the bony materials and fragments of projectiles from firearms that constitute clear evidence of the cause of death." See Exhibit V of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 15-18, Annex 21.

¹³¹ According to the EAAF report of July 25, 1995, the site called "La Aguada" owes its name to the fact that a seasonal waterhole that was dry at the time of the events under consideration and is situated 30 minutes by foot to the north of El Pozo. According to the EAAF, "with a surface area of nearly 1,400 square meters, covered with leafy vegetation, unarticulated, semi-interred human skeletalized remains were found, very poorly conserved. At present this area is subjected to periodic slashing and burning." The laboratory report determined that "the remains correspond to at least four skeletalized remains." The report adds that "in the case at hand, and as we have found only three skeletalized remains, we have found marks compatible with those produced by rodents on different bones." See Exhibit V of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 64-68, Annex 21.

¹³² According to the EAAF report of July 25, 1995, the site known as "Los Salazares" is situated one-and-a-half hours by foot to the south of El Pozo; its area is approximately 400 square meters and its vegetation is predominantly brush. As the report explains, "and at site 2 one observes human remains at the surface, which show unequivocal signs of intentional burning." Skeletalized remains were found corresponding to at least five individuals, mostly male adults. The report adds that "given the characteristics of the site, in this case one cannot establish whether the victims were taken to the site alive. Nonetheless, one can conclude that at least three (3) spent cartridges were found compatible with projectiles fired by a Galil rifle. This finding would lead one to think that some of the victims may have been assassinated at that place."

Petén, at which it was possible to identify several skeletalized remains.¹³³ This was done, under the jurisdiction of the Justice of the Peace, with representatives of FAMDEGUA and the EAAF.¹³⁴

144. On July 30, 1995, the Justice of the Peace (Juez de Paz) ordered the Civil Registry of the municipality of La Libertad, Petén, to proceed to enter the deaths of the 162 skeletalized remains exhumed at the Pozo of Las Dos Erres, whose deaths were presumed to have occurred in December 1982, as a result of traumatismos and gunshot wounds.¹³⁵

145. The final report prepared by the EAAF on the excavations performed in the area was delivered to the judicial authorities on September 28, 1995.¹³⁶

B. The criminal proceeding

146. On November 24, 1995, the prosecutor in charge of the investigation asked the Attorney General to appoint a special prosecutor for the case involving the Las Dos Erres massacre.¹³⁷

147. On April 17, 1996, the Civil Registrar of La Libertad, Petén signed the death certificates for the unidentified victims of the massacre.¹³⁸

148. On June 14, 1996, the representatives of FAMDEGUA filed a brief with the Attorney General asking that the Ministry of Defense be ordered to produce a report with the names of the commanders of the military bases in Petén and the name of the commander of the detachment at Las Cruces, municipality of La Libertad (Petén), during the period when the massacre took place. In addition, they requested the complete name, position performed, and detachment to which officer Carlos Manuel Carías was assigned; his participation in the acts had been noted on several occasions by survivors and family members of the victims; and a report on the investigations undertaken to clarify the facts alleged.¹³⁹ In a memorial of the same date, the representatives of FAMDEGUA proposed to the prosecutor that an on-site inspection be performed of the place where the events unfolded.¹⁴⁰

¹³³ By identification of the clothing and personal effects that were associated with the skeletalized remains.

¹³⁴ See Exhibit XV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 1209-1215, Annex 31.

¹³⁵ Exhibits II, III and IV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annexes 18, 19, and 20.

¹³⁶ Copy of the report is to be found at Exhibit V of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 21.

¹³⁷ Exhibit VI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 488, Annex 22.

¹³⁸ Exhibits VII and VIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annexes 23 and 24.

¹³⁹ FAMDEGUA conveys to the Attorney General in that memorial that from the testimony one can deduce: (1) the participation of the National Army in the perpetration of the illegal acts under investigation, as well as the coordination and direction of the actions by commanding officers in the region where they occurred. See Exhibit XI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 787, Annex 27.

¹⁴⁰ Exhibit XI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 789, Annex 27.

149. On June 17, 1996, representatives of FAMDEGUA filed a memorial with the Attorney General requesting that a statement be taken from General Benedicto Lucas García in the context of the investigation.¹⁴¹

150. On June 19, 1996, the metropolitan district prosecutor (Fiscal Distrital Metropolitano) referred the case of Las Dos Erres to the Office of the Prosecutor for Special Cases, to continue the investigation.¹⁴²

151. On June 20, 1996, FAMDEGUA filed a memorial with the Criminal Court of First Instance of Santa Elena, Petén, requesting that Ms. Lilian de Rivas, legal representative of FAMDEGUA as an additional accuser (*querellante adhesiva*) and Ms. Aura Elena Farfán as a private accuser (*querellante particular*).¹⁴³

152. On June 26, 1996, the prosecutor of the Special Cases Unit requested information sought by the additional accusers from the Ministry of Defense.¹⁴⁴

153. On July 19, 1996, representatives of FAMDEGUA expressed their concern to the Attorney General over the return of the case from the Special Cases Unit to the Attorney General and for the failure of the Minister of Defense to respond to a prosecutor's request for information. In addition, they sought the immediate appointment of a special prosecutor for the case.¹⁴⁵ In a memorial of the same date, the additional accusers asked that an arrest warrant issue for Carlos Manuel Carías López and that he be detained.¹⁴⁶

¹⁴¹ The request is made by FAMDEGUA based on testimony that indicates the presence of General Benedicto Lucas García at the place of the massacre three days after it occurred. See Exhibit XI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 792, Annex 27.

¹⁴² Exhibit XI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 784, Annex 27.

¹⁴³ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 804, Annex 29.

¹⁴⁴ The information requested of the Ministry of National Defense by the Prosecutorial Agent of the Public Ministry is the following: "(A) First and last names of the Commander of the Military Base of Petén in November and December 1982; (B) First and last names of the current Commander of the Military Base of Petén; (C) First and last names of the officers of the different detachments located in Petén in November and December 1982; (D) First and last names of the current officers at the various detachments situated in the department of Petén as of this date; (E) First and last names of the officer in charge of the detachment located in the village of Las Cruces, municipality of La Libertad, department of Petén, in November and December 1982; (F) first and last names of the officer in charge of the detachment situated in the village of Las Cruces, municipality of La Libertad, department of Petén as of the present date; (G) Complete first and last names, position currently held, and military base or detachment where Officer CARLOS MANUEL CARIAS, CARLOS CARIAS, or MANUEL CARIAS is to be found, and whether said officer was assigned to Petén in November and December 1982; (H) What knowledge and/or information did the High Command of the National Army have of the tragic events that occurred in the village of "Dos Erres," municipality of La Libertad, department of Petén, December 7 and 8, 1982; (I) What type of actions and investigations did the National Army undertake, institutionally, to determine what happened December 7 and 8, 1982, in the village of "Dos Erres", municipality of La Libertad, department of Petén." See Exhibit XI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 793, Annex 27.

¹⁴⁵ Exhibit XII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 797-799, Annex 28.

¹⁴⁶ Exhibit XII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 800, Annex 28.

154. On July 26, 1996, the accusers asked the judge of the Criminal Court of First Instance of Petén to order that an arrest warrant issue for officer Carlos Manuel Carías López and that he be detained.¹⁴⁷

155. On August 12, 1996, the Office of the Metropolitan Prosecutor (Fiscalía Metropolitana) removed the case to the Criminal Court of First Instance of Petén for processing) The court case bears the number 1316-94.¹⁴⁸

156. On August 27, 1996, the prosecutor submitted ballistics evidence from the Director of Criminological Investigations of the Public Ministry.¹⁴⁹ On that same date the prosecutor sought X-ray evidence from the Department of Forensic Medicine of the Public Ministry.¹⁵⁰

157. On August 28, 1996, the prosecutor took statements from Alejandro Gómez Rodríguez; Inocencio González; Baldomero Pineda Batres; Jerónimo Baten Ixcoy; Demetrio Baten Ixcoy; Orlando Amílcar Aguilar Marroquín; and Domingo Estrada Chitoc.¹⁵¹

158. On September 12, 1996, the prosecutor received a statement from Desiderio Aquino Ruano.¹⁵²

159. On September 19, 1996, the Minister of Defense informed the Public Ministry that the Chief of the Presidential High Command at the date requested was Víctor Manuel Argueta Villalta. Similarly, he reported that in 1982 the Minister of National Defense was Luís René Mendoza Palomo, and, from March 23, 1982, to August 8, 1983, José Efraín Ríos Montt.¹⁵³

160. In a communication of September 2, 1996, the Ministry of Defense partially answered the request for information put to it by the prosecutor from the Special Cases Unit on June 26, 1996.¹⁵⁴

¹⁴⁷ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 807, Annex 29.

¹⁴⁸ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 804, Annex 29.

¹⁴⁹ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 822-823, Annex 29.

¹⁵⁰ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 824, Annex 29.

¹⁵¹ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 825-835, Annex 29.

¹⁵² Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 841, Annex 29.

¹⁵³ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 842, Annex 29.

¹⁵⁴ In response to the request for information made June 26, 1996, by the Prosecutor of the Special Cases Unit, the Minister of Defense stated as follows: (i) from October to December 1982, Colonel Luís Roberto Tobar Martínez served as Commander of the Military Base of Petén; (ii) the current Commander of the Military Base of Petén is Colonel Guillermo Leopoldo Pimentel Recinos; (iii) in November and December 1982 no officer by the name of Carlos Manuel Carías, Carlos Carías, or Manuel Carías was not assigned there. Moreover, with respect to the questions: (C) Officers of detachments of the department of Petén in November and December 1982; (E) Name of the officer in charge of the detachment at Las Cruces in November and December 1982; (H) Knowledge the High Command had of the massacre; (I) What actions were taken to clarify the facts, the Minister of Defense stated that "since the documents from that time have been incinerated, there is no information in that regard)." See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 846-847, Annex 29.

161. On October 7, 1996, the Presidential Commission for Coordinating the Policy of the Executive in the area of Human Rights (“COPREDEH”), informed the prosecutor that officer Carías was at that time posted in Guatemala City.¹⁵⁵

162. On January 21, 1997, the Minister of Defense reported that as there was no permanent detachment in the village of Las Cruces in 1982, he could not give names of those in charge of it, or of its members. In addition, he provided a list of weapons used at the time.¹⁵⁶

163. On February 27, 1997, the Minister of Defense informed the prosecutor that there were no payrolls in the Armed Forces showing salaries for November and December 1982 corresponding to the officers posted in Petén.¹⁵⁷

164. On May 5, 1997, a new special prosecutor was appointed to pursue the investigation into the Las Dos Erres massacre.¹⁵⁸

165. On May 27, 1997, witnesses Inocencio González¹⁵⁹, Favio Pinzón¹⁶⁰, and César Franco Ibáñez¹⁶¹ gave testimony to the prosecutor.

166. On June 4, 1997, the Minister of Defense reported that in November and December 1982, Carlos Antonio Carías López was enlisted in Poptún, department of Petén, with the rank of second lieutenant (reserve) in the infantry area and that at present “he is now enlisted in the military industry as a section chief.”¹⁶²

167. By official note of June 12, 1997, the Ministry of Defense informed the special prosecutor that there were several officers whose first last name was Carías. In also reported that the position of Minister of National Defense in 1982 and 1983 was held by Division Generals Luís René Mendoza Palomo and Oscar Humberto Mejía Víctores.¹⁶³

¹⁵⁵ The communication from COPREDEH states: “... we have interceded with the Ministry of Defense to establish the location of Army Officer Carlos Carías López” See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 848, Annex 29.

¹⁵⁶ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 851-853, Annex 29. The list provided by the Minister of Defense of the arms and munitions used by the National Army in 1982 includes Galil rifles.

¹⁵⁷ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 857, Annex 29.

¹⁵⁸ Attorney Mynor Alberto Melgar Valenzuela.

¹⁵⁹ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 993-1052, Annex 30.

¹⁶⁰ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 958-991, Annex 30.

¹⁶¹ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 1099-1105, Annex 30.

¹⁶² Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1107, Annex 30.

¹⁶³ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1108, Annex 30.

168. By official note of August 29, 1997, the Ministry of Defense reported the last registered domicile of some of the suspects¹⁶⁴, as well as the posts held by some members of the Army related to the facts investigated.¹⁶⁵

169. On February 9, 1999, the Public Ministry, through the prosecutor, asked the judge of the Criminal Court of First Instance of Petén to take the testimony of Ramiro Fernando López García as anticipated evidence.¹⁶⁶

170. On February 11, 1999, the anticipated evidence was taken before the judge of the Criminal Court of First Instance of Petén, in the presence of prosecutors, additional accusers, and an attorney from the public defender's office.¹⁶⁷

171. On February 23, 1999, Mr. Miguel Ángel Cristales and Ms. Reina Montepeque gave statements to the prosecutor from the Public Ministry.¹⁶⁸

172. On July 16, 1999, Lidia García Pérez, the wife of Santos López Alonzo, made a statement, and said that Ramiro López was an adoptive child and that her husband told her that he had taken him from Las Dos Erres.¹⁶⁹

173. On October 7, 1999, the Criminal Court of First Instance of Petén ordered the arrest, for the crime of assassination, of former *kaibil* Santos López Alonzo, the adoptive father of Ramiro Fernando López García.¹⁷⁰

174. On March 7, 2000, the special prosecutor asked the judge of the Criminal Court of First Instance of Petén to take the witness statement, as anticipated evidence, of Favio Pinzón Jerez and César Franco Ibáñez, members of the patrol of *kaibiles* who witnessed the unlawful act investigated, and who for reasons of security could not be present in court.¹⁷¹ The First Judge of the Criminal Court of First Instance of Petén ruled on March 8, 2000 that witness statements should be taken, as anticipated evidence, and set a hearing for March 17, 2000, with the presence of an attorney from the office of the public defender.¹⁷²

¹⁶⁴ Domicile of Jorge Vinicio Sosa Orantes, Obdulio Sandoval, Manuel Cupertino Montenegro, Pedro Pimentel Ríos, Fredy Antonio Samayoá Tobar, Daniel Martínez Méndez, César Franco Ibáñez, Favio Pinzón Jerez, and Santos López Alonzo.

¹⁶⁵ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 898-902, Annex 29.

¹⁶⁶ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 875-876, Annex 29.

¹⁶⁷ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 882-885, Annex 29.

¹⁶⁸ Biological grandparents of Ramiro López, survivor of the massacre. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 913-917, Annex 29.

¹⁶⁹ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 918-920, Annex 29.

¹⁷⁰ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 921, Annex 29.

¹⁷¹ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio number, Annex 29.

¹⁷² Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio number, Annex 29.

175. On March 17, 2000, measures were taken for anticipated evidence, to receive the statements by former *kaibiles* César Franco Ibáñez and Favio Pinzón Jerez.¹⁷³

176. On April 4, 2000, the judge of the Criminal Court of First Instance of Petén ordered the arrest of Roberto Aníbal Rivera Martínez¹⁷⁴, César Adán Rosales Batres¹⁷⁵, Jorge Vinicio Sosa Orantes, Bulux Vicente Alfonso¹⁷⁶, Manuel Pop Sun¹⁷⁷, Manuel Cupertino Montenegro Hernández, Fredy Antonio Samayoa Tobar, Carlos Humberto Oliva Ramírez¹⁷⁸, Pedro Pimentel Ríos, Reyes Collin Gualip, Daniel Martínez Méndez, Jorge Basilio Velásquez López, Mardoqueo Ortiz Morales, Gilberto Jordán, Carlos Antonio Carias López¹⁷⁹, and Cirilo Benjamín Caal Ac, for the crime of murder committed to the detriment of the residents of Las Dos Erres.¹⁸⁰

177. On April 6, 2000, the judge of the Criminal Court of First Instance of Petén gave notice to the General Directorate of the National Civilian Police, the San Benito Commissariat (Petén), and the National Civilian Police Station in Melchor de Mencos, to execute the arrest warrants for the accused.¹⁸¹

178. On April 11, 2000, accused Roberto Aníbal Rivera Martínez, Carlos Humberto Oliva Ramírez, César Adán Rosales Batres, Reyes Collin Gualip, and Carlos Antonio Carias López filed an amparo action before the Twelfth Chamber of the Court of Appeals, against the resolution of April 4, 2000, by which the judge of the Criminal Court of First Instance of Petén ordered the arrest.¹⁸² The amparo action was based on the fact that “Decree number 145-96 of the Congress of the Republic, Law of National Reconciliation, at Article 11, paragraph three, establishes that when the Public Ministry or a judicial authority takes cognizance of any of the criminal offenses referred to in Articles 4 and 5 of that law, he or she shall immediately remove the matter to the Chamber of the Court of Appeals fit to hear the matter, by reason of its jurisdiction, for the purposes of determining, by the procedure pre-established in that provision, whether or not the extinction of criminal liability referred to by said Law on National Reconciliation applies.”¹⁸³

179. That motion was denied by the Twelfth Chamber of the Court of Appeals on April 14, 2000.¹⁸⁴

¹⁷³ Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 943-954, Annex 29.

¹⁷⁴ Lieutenant of the Guard of Honor, Military Brigade of Guatemala City.

¹⁷⁵ Chief of CYEM course at the Centro de Estudios Militares, in Guatemala City.

¹⁷⁶ Clerk with the War Deposit of the National Army of Guatemala in military zone 1316 of Cuyotenango, department of Suchitepéquez.

¹⁷⁷ Sergeant Major Specialist, driver of group (*comitiva*) 4-18 of zone 1 in Guatemala City.

¹⁷⁸ Assigned in the Guatemalan Army to the Kaibil Center for Training and Special Operations in Poptún, department of Petén.

¹⁷⁹ First Reserve Captain in the Infantry Branch and Section Chief in the Military Industry located in zone 5 of Guatemala City.

¹⁸⁰ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio number, Annex 30.

¹⁸¹ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio numbers, Annex 30.

¹⁸² Amparo No. 107-2000, Annex 36.

¹⁸³ Appeal of Amparo Judgment No. 901-2000, p. 18, Annex 36.

¹⁸⁴ According to what is established at folio 1195, Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 30.

180. On April 18, 2000, the judge reiterated the arrest warrant for the accused already mentioned¹⁸⁵ and also ordered that he be detained.¹⁸⁶

181. On April 24, 2000, the Constitutional Court overturned a judgment by the Twelfth Chamber of the Court of Appeals in ruling on the provisional amparo action filed by Roberto Aníbal Rivera Martínez; César Adán Rosales Batres; Carlos Antonio Carías López; Carlos Humberto Oliva Ramírez; and Reyes Collin Gualip. In its place, the Court granted the provisional amparo sought against the resolution of April 4, 2000.¹⁸⁷

182. On April 25, 2000, the accused Manuel Pop Sun was arrested after having been admitted to the Centro Médico Militar of zone 16 in Guatemala City, and he was brought before the Second Justice of the Peace for Criminal Matters on duty.¹⁸⁸

183. On April 26, 2000, the Second Justice of the Peace for Criminal Matters on duty appeared at the Men's Medical Ward, pavilion "B", number 206 (Sala de Medicina de Hombres "B" pabellón número 206) of the Centro Médico Militar to inform Manuel Pop Sun of the grounds for his arrest. The detainee stated his refusal to make a statement.¹⁸⁹ That same day the accused Manuel Pop Sun filed an amparo action before the Twelfth Chamber of the Court of Appeals against the resolution of April 4, 2000, by which the judge of the Criminal Court of First Instance of Petén ordered his arrest.¹⁹⁰

184. On May 3, 2000, the judge of the Criminal Court of First Instance of Petén partially overturned the resolutions of April 4 and 18, 2000¹⁹¹, pursuant to the April 24, 2000 decision of the Constitutional Court that granted a provisional amparo to Roberto Aníbal Rivera Martínez, César Adán Rosales Batres, Carlos Antonio Carías López, Carlos Humberto Oliva Ramírez, and Reyes Collin Gualip. Therefore, the judge of the Criminal Court of First Instance of Petén provisionally vacated the resolutions ordering the arrest of the persons protected by the provisional amparo.

185. On May 8, 2000, the Fifth Justice of the Peace for Criminal Matters was prepared to take the first statement from Manuel Pop Sun in his capacity as an accused; he refrained from testifying since his defense counsel was not present.¹⁹² On that same day, the Constitutional Court ruled on the appeal brought against an order of the Twelfth Chamber of the Court of Appeals,

¹⁸⁵ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio number, Annex 30.

¹⁸⁶ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 1169-1185, Annex 30.

¹⁸⁷ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1195, Annex 30.

¹⁸⁸ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1186, Annex 30.

¹⁸⁹ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1191, Annex 30.

¹⁹⁰ Amparo No. 136-2000, Annex 30.

¹⁹¹ Resolutions ordering and reiterating the arrest warrants for those pursuing amparo actions. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1198, Annex 30.

¹⁹² Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio number, Annex 30.

granting the provisional amparo to Manuel Pop Sun, and provisionally vacating the resolution of April 4, 2000 in respect of the moving party.¹⁹³

186. On May 12, 2000, the accused Manuel Pop Sun asked the judge to refrain from taking his first statement since he was favored by the provisional amparo ruling.¹⁹⁴

187. On May 19, 2000, the judge of the Criminal Court of First Instance of Petén partially overturned the orders of April 4 and 18, 2000, with respect to Manuel Pop Sun, and whereas he had been arrested, it ordered that the respective custody be removed.¹⁹⁵ That same day the special prosecutor asked that an entry be made in the Civil Registry of La Libertad, Petén, regarding the deaths of 71 persons who died in the Las Dos Erres massacre and who were identified.¹⁹⁶

188. On May 22, 2000, the judge of the Criminal Court of First Instance of Petén ruled against the special prosecutor's request of May 19, 2000.¹⁹⁷ On that same day, it considered notice was given, in the proceeding into the crime of assassination, to the accused Roberto Aníbal Rivera Martínez, César Adán Rosales Batres, Carlos Humberto Oliva Ramírez, Reyes Collín Gualip, and Carlos Antonio Carías López, and their attorneys, Leopoldo Armando Guerra Juárez and Julio Roberto Contreras Quinteros.¹⁹⁸

189. On May 24, 2000, the special prosecutor filed a motion for partial reconsideration of the order that vacated the provisional detention of Manuel Pop Sun.¹⁹⁹ On May 25, 2000, the reconsideration sought by the prosecutor was rejected by the judge of the Criminal Court of First Instance of Petén.²⁰⁰

190. On June 2, 2000, accused Manuel Cupertino Montenegro Hernández, Daniel Martínez Méndez, and Cirilo Benjamín Caal Ac filed amparo actions before the Twelfth Chamber of the Court of Appeals, against the resolution of April 4, 2000, by which the judge of the Criminal Court of First Instance of Petén ordered their arrest.²⁰¹

191. On June 2000, the Constitutional Court overturned a judgment of the Twelfth Chamber of the Court of Appeals in response to an action for provisional amparo filed by Manuel

¹⁹³ Resolution ordering the arrest of the person pursuing the amparo action. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1203, Annex 30.

¹⁹⁴ Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 2001, Annex 30.

¹⁹⁵ Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 1205-1206, Annex 30.

¹⁹⁶ Exhibit XV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 1209-1215, Annex 30.

¹⁹⁷ The judge denied the request "considering that the judicial order should be obtained in the case that should go forward in the corresponding jurisdiction," i.e. by means of a presumed death sentence. See Exhibit XIV of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1381, Annex 30.

¹⁹⁸ Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 1384, Annex 30.

¹⁹⁹ The prosecutor filed a motion to set aside considering that the Court practically ordered "the release of Mr. Manuel Pop Sun, without any clear, precise, logical, and legal indication of the motion for his release" See Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2010-2011, Annex 32.

²⁰⁰ Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 2013, Annex 32.

²⁰¹ Amparo No. 1841-2001, Annex 52.

Cupertino Montenegro, Daniel Martínez Méndez, and Cirilo Benjamín Caal Ac. In its place, the Court granted the provisional amparo sought against the resolution of April 4, 2000.²⁰²

192. On July 17, 2000, the judge of the Criminal Court of First Instance of Petén partially overturned the orders of April 4 and 18, 2002, in respect of Messrs. Manuel Cupertino Montenegro Hernández, Daniel Martínez Méndez, and Cirilo Benjamín Caal Ac, suspending the warrants issued for their arrest.²⁰³

193. On August 8, 2000, accused Reyes Collin Gualip filed a *reclamo de subsanación* against the resolutions of February 10, 1999, and March 8, 2000, by the judge of the Criminal Court of First Instance of Petén.²⁰⁴ On August 9, 2000, the judge of the Criminal Court of First Instance of Petén processed the request for a *reclamo de subsanación* and gave a hearing to the Public Ministry and the additional accuser.²⁰⁵

194. On August 22, 2000, the accusers submitted observations on the *reclamo de subsanación* filed by Reyes Collin Gualip.²⁰⁶

195. On August 23, 2000, the judge of the Criminal Court of First Instance of Petén rejected the *reclamo de subsanación* filed by Reyes Collin Gualip.²⁰⁷

196. On September 4, 2000, the accused Reyes Collin Gualip filed a motion to set aside against the order of August 9, 2000, by the judge of the Criminal Court of First Instance.²⁰⁸

197. On September 5, 2000, the judge of the Criminal Court of First Instance of Petén rejected the motion to set aside.²⁰⁹

198. On September 7, 2000, the accused Manuel Pop Sun, Cirilo Benjamín Caal Ac, César Adán Rosales Batres, Carlos Humberto Oliva Ramírez, Carlos Antonio Carías López, Manuel Cupertino Montenegro Hernández, and Roberto Aníbal Rivera Martínez each filed, individual

²⁰² Case 567-2000 of the Constitutional Court. See Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 2039, Annex 32.

²⁰³ Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 2040, Annex 32.

²⁰⁴ Resolutions that ordered that statements be taken from Ramiro Fernando López, César Franco, and Favio Pinzón as anticipated evidence. The claimant's argument is that the requirements for those statements to be taken as anticipated evidence were not met. See Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2062-2068, Annex 32.

²⁰⁵ Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 2069, Annex 32.

²⁰⁶ Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2077-2079, Annex 21.

²⁰⁷ The judge ruled that no constitutional or procedural guarantee had been violated, for at the time it was ordered that the anticipated evidence be taken, it was not known who the accused might be. See Exhibit XVI of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2077-2079, Annex 32.

²⁰⁸ The claimant alleges that on processing the *reclamo de subsanación* filed on August 9, 2000, the judge should have notified all the other accused in the case. See Exhibit XVII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2099-2105, Annex 33.

²⁰⁹ Exhibit XVII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2106-2107, Annex 33.

reclamos de subsanación against the resolution of August 9, 2000.²¹⁰ On September 8, 2000, the judge of the Criminal Court of First Instance of Petén rejected the claims filed *ab initio* for having been directed to the wrong authority.²¹¹

199. Also on September 7, 2000, the accused Cirilo Benjamín Caal Ac, Manuel Cupertino Montenegro Hernández, Carlos Humberto Oliva Ramírez, César Adán Rosales Batres, Carlos Antonio Carías López, Roberto Aníbal Rivera Martínez, and Manuel Pop Sun individually filed motions to set aside against the resolution of February 10, 1999²¹², and against the resolution of March 8, 2000.²¹³

200. On September 8, 2000, the judge of the Criminal Court of First Instance of Petén rejected the 14 motions to set aside.²¹⁴

201. On September 19, 2000, the accused Cirilo Benjamín Caal Ac, Manuel Cupertino Montenegro Hernández, Carlos Humberto Oliva Ramírez, César Adán Rosales Batres, Carlos Antonio Carías López, Roberto Aníbal Rivera Martínez, and Manuel Pop Sun individual filed *reclamos de subsanación* against the resolution of August 9, 2000. On that same day Mr. Reyes Collin Gualip once again filed a *reclamo de subsanación* along the same lines.²¹⁵

202. On September 20, the judge of the Criminal Court of First Instance of Petén rejected the eight *reclamos de subsanación* filed on September 19, 2000, *ab initio*.²¹⁶

203. On September 26, 2000, the accused Manuel Pop Sun filed an amparo action before the Third Chamber of the Court of Appeals against the resolution of February 10, 1999, and against the anticipated evidence procedure contained in the act of February 11, 1999.²¹⁷

204. On October 12, 2000, the accused Manuel Cupertino Montenegro Hernández filed an amparo action before the Twelfth Chamber of the Court of Appeals against the resolution of March 8, 2000.²¹⁸

²¹⁰ The argument regarding the *reclamo de subsanación* was that they should also be called to a hearing. See Exhibit XVII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 33.

²¹¹ The briefs were directed to the First Judge of First Instance for Criminal, Drug-trafficking, and Environmental Crimes Matters of Petén and not against the judge of the Criminal Court of First Instance of Petén. See Exhibit XVII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 33.

²¹² By which it was ordered that a witness statement be taken from Ramiro Fernando López García as anticipated evidence.

²¹³ By which it is ordered that witness statements be taken from Favio Pinzón Jerez and César Franco Ibáñez as anticipated evidence. See Exhibit XVII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 33.

²¹⁴ The judge ruled that the resolutions challenged were purely procedural in nature, and did not address the merits of the proceeding of the investigation nor did it put an end to it. See Exhibit XVII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 33.

²¹⁵ See Exhibit XVII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 33.

²¹⁶ The judge rejected the claims put forth, considering that the procedural device in question is aimed at correcting defective procedural activity, while the moving parties sought to change a resolution by this means, whereas the appropriate way to go about it is to use legal remedies. See Exhibit XVII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, Annex 33.

²¹⁷ Resolution handed down by the judge of the Criminal Court of First Instance of Petén, ordering that a statement be taken from Ramiro Fernando López García as anticipated evidence. Amparo 38-2000, Annex 39.

205. On October 13, 2000, the following amparo actions were brought: (i) by Reyes Collin Gualip before the Third Chamber of the Court of Appeals, against the resolutions of February 10 and March 8, 2000, as well as the taking of that anticipated evidence²¹⁹; (ii) by César Adán Rosales Batres before the Tenth Chamber of the Court of Appeals, against the resolution of March 8, 2000, as well as the act that contains that anticipated evidence;²²⁰ (iii) by Roberto Aníbal Rivera Martínez before the Tenth Chamber of the Court of Appeals, against the resolution of February 10, 1999, as well as the taking of anticipated evidence contained in the act of February 11, 1999²²¹; (iv) by Carlos Antonio Carías López before the Fourth Chamber of the Court of Appeals, against the resolution of March 8, 2000, as well as the act that contains the anticipated evidence²²²; (v) by Cirilo Benjamín Caal Ac before the First Chamber of the Court of Appeals, against the resolution of February 10, 1999, as well as the anticipated evidence procedure contained in the act of February 11, 1999²²³; (vi) by Manuel Cupertino Montenegro Hernández before the Second Chamber of the Court of Appeals, against the resolution of February 10, 1999, as well as the anticipated evidence procedure contained in the act of February 11, 1999²²⁴; (vii) by Carlos Humberto Oliva Ramírez before the Third Chamber of the Court of Appeals against the resolution of February 10, 1999²²⁵; (viii) by Carlos Humberto Oliva Ramírez before the Second Chamber of the Court of Appeals, against the resolution of March 8²²⁶; (ix) by César Adán Rosales Batres before the Fourth Chamber of the Court of Appeals against the resolution of February 10, 1999, as well as the anticipated evidence procedure contained in the act of February 11, 1999²²⁷; (x) by Carlos Antonio Carías López before the Fourth Chamber of the Court of Appeals against the resolution of February 10, 1999, as well as the anticipated evidence procedure contained in the act of February 11, 1999²²⁸; (xi) by Cirilo Benjamín Caal Ac before the Thirteenth Chamber of the Court of Appeals against the resolution of March 8, 2000, as well as the act that contains anticipated evidence.²²⁹

...continuation

²¹⁸ Resolution handed down by the judge of the Criminal Court of First Instance of Petén, ordering that statements be taken from Favio Pinzón Jerez and César Franco Ibáñez as anticipated evidence. Amparo 287-2000, Annex 55.

²¹⁹ Resolutions handed down by the judge of the Criminal Court of First Instance of Petén ordering that statements be taken from Ramiro Fernando López García, Favio Pinzón Jerez, and César Franco Ibáñez as anticipated evidence. Amparo 41-2000, Annex 50.

²²⁰ Resolution handed down by the judge of the Criminal Court of First Instance of Petén, ordering that statements be taken from Favio Pinzón Jerez and César Franco Ibáñez as anticipated evidence. Amparo 34-2000, Annex 55.

²²¹ Resolution handed down by the judge of the Criminal Court of First Instance of Petén, ordering that a statement be taken from Ramiro Fernando López García as anticipated evidence. Amparo 35-2000, Annex 54.

²²² Resolution handed down by the judge of the Criminal Court of First Instance of Petén, ordering that statements be taken from Favio Pinzón Jerez and César Franco Ibáñez as anticipated evidence. Amparo 353-2000, Annex 46.

²²³ Resolution handed down by the judge of the Criminal Court of First Instance of Petén ordering that a statement be taken from Ramiro Fernando López García as anticipated evidence, Amparo 102-2000, Annex 60.

²²⁴ Resolution handed down by the judge of the Criminal Court of First Instance of Petén ordering that a statement be taken from Ramiro Fernando López García as anticipated evidence. Amparo 102-2000, Annex 60.

²²⁵ Resolution handed down by the judge of the Criminal Court of First Instance ordering that a statement be taken from Ramiro Fernando López García as anticipated evidence, Amparo 42-2000, Annex 57.

²²⁶ Resolution handed down by the judge of the Criminal Court of First Instance of Petén ordering that statements be taken from Favio Pinzón Jerez and César Franco Ibáñez Amparo as anticipated evidence, Amparo 101-2000, Annex 44.

²²⁷ Resolution handed down by the judge of the Criminal Court of First Instance of Petén, ordering that a statement be taken from Ramiro Fernando López García as anticipated evidence. Amparo 351-2000, Annex 48.

²²⁸ Resolution handed down by the judge of the Criminal Court of First Instance of Petén, ordering that a statement be taken from Ramiro Fernando López García as anticipated evidence. Amparo 352-2000, Annex 45.

²²⁹ Resolution handed down by the judge of the Criminal Court of First Instance of Petén, ordering that statements be taken from Favio Pinzón Jerez and César Franco Ibáñez as anticipated evidence. Amparo 343-2000, Annex 55.

206. On October 26, 2000, the following amparos were filed: (i) by César Adán Rosales Batres before the Tenth Chamber of the Court of Appeals, against the resolutions of August 9 and September 20, 2000²³⁰; (ii) by Roberto Aníbal Rivera Martínez before the First Chamber of the Court of Appeals against the resolutions of August 9 and September 20, 2000²³¹; (iii) by Cirilo Benjamín Caal Ac before the Fourth Chamber of the Court of Appeals against the resolutions of August 9 and September 20, 2000²³²; (iv) by Reyes Collin Gualip before the Fourth Chamber of the Court of Appeals, against the resolutions of August 9 and September 20, 2000²³³; (v) by Manuel Cupertino Montenegro Hernández before the Tenth Chamber of the Court of Appeals against the resolutions of August 9 and September 20, 2000²³⁴; (vi) by Manuel Pop Sun before the Fourth Chamber of the Court of Appeals against the resolutions of August 9 and September 20, 2000²³⁵; (vii) by Carlos Antonio Carías López before the Fourth Chamber of the Court of Appeals against the resolutions of August 9 and September 20, 2000.²³⁶

207. On October 27, 2000, the accused Carlos Humberto Oliva Ramírez filed an amparo action before the Third Chamber of the Court of Appeals against the resolutions of August 9 and September 20, 2000.²³⁷

208. On October 29, 2000, the accused Manuel Pop Sun filed a writ of amparo before the Third Chamber of the Court of Appeals against the resolution of March 8, 2000.²³⁸

209. On January 22, 2001, the defense requested that the statements made by Mr. Manuel Pop Sun on June 14, 2000 and July 5, 2000, to the Public Ministry²³⁹ be stricken from the record.

²³⁰ Resolutions handed down by the judge of the Criminal Court of First Instance, which admitted the *recurso de subsanación*, grant a hearing to the Public Ministry, and not to the other accused. Amparo 36-2000, Annex 53.

²³¹ Resolutions handed down by the judge of the Criminal Court of First Instance of Petén, accepting as properly filed the *recurso de subsanación*, a hearing is granted to the Public Ministry and not to the other accused. Amparo 109-2000, Annex 36.

²³² Resolutions handed down by the judge of the Criminal Court of First Instance of Petén, accepting as properly filed the *recurso de subsanación*, a hearing is granted to the Public Ministry and not to the other accused. Amparo 368-2000, Annex 53.

²³³ Resolutions handed down by the judge of the Criminal Court of First Instance of Petén, accepting as properly filed the *recurso de subsanación*, a hearing is granted to the Public Ministry and not to the other accused. Amparo 369-2000, Annex 49.

²³⁴ Resolutions handed down by the judge of the Criminal Court of First Instance of Petén, accepting as properly filed the *recurso de subsanación*, a hearing is granted to the Public Ministry and not to the other accused. Amparo 370-2000, Annex 52.

²³⁵ Resolutions handed down by the judge of the Criminal Court of First Instance of Petén, accepting as properly filed the *recurso de subsanación*, a hearing is granted to the Public Ministry and not to the other accused. Amparo 371-2000, Annex 47.

²³⁶ Resolutions handed down by the judge of the Criminal Court of First Instance of Petén, accepting as properly filed the *recurso de subsanación*, a hearing is granted to the Public Ministry and not to the other accused. Amparo 372-2000.

²³⁷ Resolutions handed down by the judge of the Criminal Court of First Instance of Petén, accepting as properly filed the *recurso de subsanación*, a hearing is granted to the Public Ministry and not to the other accused. Amparo 43-2000, Annex 42.

²³⁸ Resolution handed down by the judge of the Criminal Court of First Instance of Petén ordering that statements be taken from Favio Pinzón Jerez and César Franco Ibáñez as anticipated evidence. Amparo 37-2000, Annex 38.

²³⁹ The defense alleges that at that time Manuel Pop Sun was already covered by a provisional amparo. In addition, they alleged that their client was illegally held and that the statement was taken without the presence of his counsel. On January 23, 2001, the judge decided to wait for the original records of the proceeding described to be returned. See Exhibit

210. On April 3, 2001, the Constitutional Court ruled in the appeal of the amparo brought by Carlos Antonio Carías, Roberto Aníbal Rivera, César Adán Rosales Batres, Carlos Humberto Oliva Martínez and Reyes Collin Gualip against the resolution of April 4, 2000.²⁴⁰ The Court decided to suspend, in respect of the claimants, the arrest warrant, and considered that the criminal file should immediately be referred to the Court of Appeals, to decide on the application of the Law on National Reconciliation, since it referred to events that occurred during the armed conflict.²⁴¹

211. On April 4, 2001, the Constitutional Court resolved the appeal of the amparo brought by Manuel Pop Sun against the resolution of April 4, 2000.²⁴² The Court granted the amparo relief sought and decided to suspend the arrest warrant as per him.²⁴³ That same day, the Constitutional Court ruled on the appeal of the amparo brought by Manuel Cupertino Montenegro Hernández, Daniel Martínez Méndez, and Cirilo Benjamín Caal Ac against the resolution of April 4, 2000.²⁴⁴ The Court decided to suspend the arrest warrant in respect of the plaintiffs in amparo.²⁴⁵

212. On July 30, 2001, Messrs. Roberto Aníbal Rivera Martínez, Carlos Antonio Carías López, César Adán Rosales Batres, Reyes Collin Gualip, and Carlos Humberto Oliva Ramírez filed, individually, *reclamos de subsanación* to undo what had been done in the courts as of December 28, 1996.²⁴⁶

213. On February 19, 2002, the Constitutional Court affirmed the judgment of the Third Chamber of the Court of Appeals, of March 19, 2001, by which it declared unfounded the amparo brought by Manuel Pop Sun against the resolution of March 8, 2000.²⁴⁷

214. On March 4, 2002, the Special Prosecutor asked the judge of the Criminal Court of First Instance of Petén to reiterate the arrest warrants for Bulux Vicente Alfonso, Fredy Antonio Samayoa Tobar, Mardoqueo Ortiz Morales, Pedro Pimentel Ríos, Jorge Vinicio Sosa Orantes, Santos López Alonzo, and Gilberto Jordán.²⁴⁸

...continuation

XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2303-2307, Annex 34.

²⁴⁰ Resolution issuing arrest warrant against those bringing the challenge.

²⁴¹ Appeal of Amparo Judgment No. 901-2000, Annex 36.

²⁴² Resolution ordering his arrest.

²⁴³ Appeal of Amparo Judgment No. 820-2000, Annex 35.

²⁴⁴ Resolution ordering the arrest of those bringing the challenges.

²⁴⁵ Appeal of Amparo Judgment No. 965-2000, Annex 37.

²⁴⁶ For the claimants, by virtue of the judgment of the Constitutional Court of April 3, 2001, the judge of the Criminal Court of First Instance of Petén took a defective procedural initiative as of the entry into force of the Law on National Reconciliation, Decree 145-96, since the proceeding had to be transferred immediately to the appeals chamber with jurisdiction, considering that the facts fit within alleged crimes committed in the context of the armed conflict. On July 31, 2001, the judge of the Criminal Court of First Instance of Petén ruled individually, as the *reclamos de subsanación* were presented, that prior to ruling on the petition set forth, the matters should return to the Constitutional Court. See Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2321-2423, Annex 34.

²⁴⁷ Appeal of Amparo Judgment No. 565-2001, Annex 38.

²⁴⁸ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2441-2442, Annex 34.

215. On March 7, 2002, the judge of the Criminal Court of First Instance of Petén reiterated the arrest warrants that had issued against Bulux Vicente Alfonso, Fredy Antonio Samayoa Tobar, Mardoqueo Ortiz Morales, Pedro Pimentel Ríos, Jorge Vinicio Sosa Orantes, Santos López Alonzo, and Gilberto Jordán.²⁴⁹

216. On April 1, 2002, the judge of the Criminal Court of First Instance of Petén gave the parties to the proceeding three days to file briefs with respect to the *reclamos de subsanación* filed on July 30, 2001.²⁵⁰

217. On April 24, 2002, the Constitutional Court upheld the judgment of the Fourth Chamber of the Court of Appeals, of June 12, 2001, by which it declared unfounded the amparo sought by Manuel Pop Sun against the resolutions of August 9, 2000, and September 20, 2000, handed down by the judge of the Criminal Court of First Instance of Petén. The court that heard the matter on appeal included Alternate Judge Francisco José Palomo Tejeda.²⁵¹

218. On May 9, 2002, the Constitutional Court affirmed the judgment of the Fourth Chamber of the Court of Appeals, of May 10, 2001, by which it denied the amparo sought by César Adán Rosales Batres against the resolution of February 10, 1999, and the act of February 11, 1999.²⁵²

219. On May 30, 2002, the special prosecutor requested from the judge of the Criminal Court of First Instance of Petén, as anticipated evidence, the witness statements of Reina Montepeque and Miguel Ángel Cristales, as they are biological grandparents of witness Ramiro Fernando López García.²⁵³ On that same date, the prosecutor asked that blood samples be taken for DNA tests from Reina Montepeque, Miguel Ángel Cristales, and Lidia García Pérez. In addition, he asked that a public defender be designated for the accused who did not have defense counsel and who had not been arrested.²⁵⁴

220. On June 4, 2002, the judge of the Criminal Court of First Instance of Petén accepted for processing the requests for anticipated evidence of the statements of Reina Montepeque and Miguel Ángel Cristales, and set a hearing for July 3, 2002, at which the parties to the proceeding were to be present along with an attorney from the public defender service.²⁵⁵ That same day, a hearing was ordered to take blood samples for DNA analysis.²⁵⁶

²⁴⁹ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 2443, Annex 34.

²⁵⁰ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2452-2457, Annex 34.

²⁵¹ Due to the absence of Judge Rodolfo Rohmoser Valdeavellano. See Appeal of Amparo Judgment No. 1205-2001, Annex 47.

²⁵² Appeal of Amparo Judgment No. 1206-2001, Annex 48.

²⁵³ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio number, Annex 34.

²⁵⁴ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio number, Annex 34.

²⁵⁵ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 2522, Annex 34.

²⁵⁶ The hearing was set for July 3, 2002; all the parties and a public criminal defender were to be present. See Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio number, Annex 34.

221. Also on June 4, 2002, the prosecutor presented an explanation of his actions in relation to the *reclamos de subsanación* raised by César Adán Rosales Batres²⁵⁷, Carlos Humberto Oliva Ramírez²⁵⁸, and Carlos Antonio Carías López²⁵⁹ against the judge of the Criminal Court of First Instance of Petén, for its actions after December 28, 1996. On that same day, the prosecutor filed a memorial in a hearing on charges against him set forth in a complaint filed by Manuel Pop Sun's defense counsel.²⁶⁰

222. On June 6, 2002, the judge of the Criminal Court of First Instance of Petén ruled on the *reclamos de subsanación* filed by César Adán Rosales Batres²⁶¹, Reyes Collin Gualip²⁶², Carlos Humberto Oliva Ramírez²⁶³, and Carlos Antonio Carías López²⁶⁴, rejecting them.

223. On June 21, 2002, the judge ruled to send to the Twelfth Chamber of the Court of Appeals case 1316-94 for the respective legal purposes, i.e. application of the Law of National Reconciliation, following what the Constitutional Court ordered in its decision of April 3, 2001.

C. The special procedure of the Law on National Reconciliation (Decree 145-96 of the Congress of the Republic of Guatemala)

224. On June 25, 2002, the judges of the Twelfth Chamber of the Court of Appeals considered as filed the pleadings in criminal proceeding number 1316-94 of the Criminal Court of First Instance of Petén, and recused themselves from taking cognizance of the special procedure of the Law on National Reconciliation.²⁶⁵ On the same date, the presiding judge of the Chamber convened a sitting of the Twelfth Chamber with the alternate judges.²⁶⁶

225. On June 27, 2002, the judge of the Criminal Court of First Instance of Petén refrained from ruling on the motions to set aside filed by the accused Carlos Humberto Oliva and César Adán Rosales Batres, against the resolution of June 6, 2002. It justified its ruling by reference

²⁵⁷ In this respect, the prosecutor adduces that the claimant is not even a procedural party, strictly speaking, and will not be so until a decision is reached as to the appropriate jurisdiction for deciding the matter, accordingly it is asked that the *reclamo de subsanación* be rejected in limine. See Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2527-2529, Annex 34.

²⁵⁸ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2550-2551, Annex 34.

²⁵⁹ The prosecutor asks that: "As it is case merely of law, no evidence is taken, and ruling in final instance, the *subsanación* sought is rejected ab initio, for being notably unfounded." See Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2557-2559, Annex 34.

²⁶⁰ The prosecutor states that the statements by Manuel Pop Sun were given in his capacity as one being persecuted, offended by the alleged persecution by members of the National Army. See Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2565-2566, Annex 34.

²⁶¹ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén. No visible folio numbers, Annex 34.

²⁶² Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2545-2549, Annex 34.

²⁶³ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2557-2556, Annex 34.

²⁶⁴ Exhibit XVIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 2560-2564, Annex 34.

²⁶⁵ Amnesty case 162-02 Recusal of the Twelfth Chamber of the Court of Appeals. The judges recused themselves for having heard and denied amparos numbers 107-2000, 136-2000, and 184-2000, Annex 63.

²⁶⁶ Amnesty case 162-02 Recusal of the Twelfth Chamber of the Court of Appeals, Annex 63.

to the pendency, before the Twelfth Chamber of the Court of Appeals, of the decision on the applicability of the Law on National Reconciliation.²⁶⁷

226. On July 2, 2002, the accused Reyes Collin Gualip filed an action to amend the procedure (*acción de enmienda del procedimiento*), as of December 28, 1996, before the Twelfth Chamber of the Court of Appeals.²⁶⁸ On that same date, the Twelfth Chamber ruled on the memorial, ordering that one await resolution of the recusal invoked.²⁶⁹

227. On July 3, 2002, the accused César Adán Rosales Batres filed an action to amend the procedure (*enmienda de procedimiento*), as of December 28, 1996, before the Twelfth Chamber of the Court of Appeals.²⁷⁰ On that same date, the Twelfth Chamber ruled on the memorial, ordering that one await resolution of the recusal invoked.²⁷¹

228. On July 3, 2002, the accused Roberto Aníbal Rivera Martínez filed, with the Twelfth Chamber of the Court of Appeals, a *reclamo de subsanación* against all the judicial actions as of December 28, 1996.²⁷² On that same day, the Twelfth Chamber ruled on the memorial, ordering that one await resolution of the recusal invoked.²⁷³

229. On July 11, 2002, the Constitutional Court affirmed the judgment of the Third Chamber of the Court of Appeals of March 20, 2001, by which it denied the amparo sought by Manuel Pop Sun against the resolution of February 10, 1999, and the act of February 11, 1999.²⁷⁴ It ruled likewise on the appeal filed by Roberto Aníbal Rivera Martínez and Carlos Humberto Oliva Ramírez against the amparo judgments handed down by the Tenth and Second Chambers of the Court of Appeals, regarding the resolutions of February 10, 1999, and March 8, 2000, respectively.²⁷⁵ That same day, the Court affirmed the judgment of the Fourth Chamber of the Court of Appeals of October 1, 2001, by which it rejected the amparo sought by Cirilo Benjamín Caal Ac against the resolutions of August 9, 2000, and September 20, 2000, handed down by the judge of the Criminal Court of First Instance of Petén. This notwithstanding, the Court decided to amend the judgment so as to order that the judge of the Criminal Court of First Instance of Petén hand down a resolution disqualifying himself from taking cognizance of the criminal proceeding brought against the plaintiff in amparo and to refer the pleadings to the chamber with jurisdiction to rule on the application of the Law on National Reconciliation.²⁷⁶ Along the same lines, and also on July 11,

²⁶⁷ The resolution appealed is that which denied the request to cure the procedure (*la solicitud de subsanación de procedimiento*). The judge, on deciding the motions to set aside filed, stated as follows: "prior to ruling, it is hoped that the Honorable Twelfth Chamber of the Court of Appeals of Guatemala City rules on whether or not the grounds for extinction of liability provided for in Decree one hundred forty-five – ninety-six of the Congress of the Republic apply, considering that said Court does not have jurisdiction to continue taking cognizance, within this proceeding, until that judicial organ rules what the law calls for."

²⁶⁸ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 2, Annex 65.

²⁶⁹ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 4, Annex 65.

²⁷⁰ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 5-6, Annex 65.

²⁷¹ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 7, Annex 65.

²⁷² Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 8-11, Annex 65.

²⁷³ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 12, Annex 65.

²⁷⁴ Resolution ordering that a statement be taken from Ramiro Fernando López García as anticipated evidence, and the act that contains his statement. See Appeal of Amparo Judgment No. 620-2001, Annex 39.

²⁷⁵ Appeals of Amparo Judgments Nos. 156-2002 and 1045-2001, Annexes 44 and 54.

²⁷⁶ Appeal of Amparo Judgment No. 1831-2001, Annex 51.

2002, the Court of Appeals ruled on the judgment in the amparo filed by Reyes Collin Gualip²⁷⁷ and Carlos Humberto Oliva Ramírez.²⁷⁸

230. On July 11, 2002, the following amparos were filed: (i) by Carlos Humberto Oliva Ramírez before the Third Chamber of the Court of Appeals against the resolution of June 27, 2002²⁷⁹; and (ii) by César Adán Rosales Batres before the Tenth Chamber of the Court of Appeals against the resolution of June 27, 2002.²⁸⁰

231. On July 15, 2002, the alternate judges who made up the Twelfth Chamber of the Court of Appeals accepted the recusal invoked by the principal judges.²⁸¹

232. On August 1, 2002, the president of the Judicial Branch accepted as received the recusal of the judges of the Twelfth Chamber and designated the Tenth Chamber of the Court of Appeals to continue taking cognizing of the proceeding regarding the Law on National Reconciliation.²⁸²

233. On August 6, 2002, the accused Reyes Collin Gualip filed an amparo action before the Fourth Chamber of the Court of Appeals against the resolution of June 27, 2002, handed down by the judge of the Criminal Court of First Instance of Petén, in which he refrained from ruling on the motion to set aside filed against the resolution of June 6, 2002, that denied the request for curing the procedure.²⁸³

234. On August 13, 2002, the judges of the Tenth Chamber of the Court of Appeals recused themselves from hearing the procedure since Mr. Alejandro Zamora Batarse, a member of the law firm of Abogados Palomo y Palomo, had entered an appearance as defense counsel.²⁸⁴

235. On August 14, 2002, the Constitutional Court affirmed the judgment of the Fourth Chamber of the Court of Appeals, of May 10, 2001, by which it denied the amparo sought by Carlos Antonio Carías López against the resolution of February 10, 1999, and the act of February

²⁷⁷ Appeal of Amparo Judgment No. 1240-2001. This appeal was filed against the judgment of the Fourth Chamber of the Court of Appeals which declared unfounded the amparo brought against the resolutions of August 9 and September 20, 2000, Annex 49.

²⁷⁸ Appeal of Amparo Judgment No. 874-2001. This appeal was brought against the judgment of the Third Chamber of the Court of Appeals, which declared unfounded the amparo brought against the resolutions of August 9 and September 20, 2000, Annex 42.

²⁷⁹ Resolution issued by the judge of the Criminal Court of First Instance of Petén, by which it refrained from resolving a motion to set aside against the resolution of June 6, 2002, which denied the request for *subsanción de procedimiento*. Amparo 33-2002, Annex 56.

²⁸⁰ Resolution issued by the judge of the Criminal Court of First Instance of Petén, by which it refrained from resolving a motion to set aside against the resolution of June 6, 2002, which denied the request for *subsanción de procedimiento*. Amparo 34-2002, Annex 58.

²⁸¹ Amnesty Case 162-02 recusal of the Twelfth Chamber of the Court of Appeals, Annex 63.

²⁸² Exhibit II of Amnesty Case 251-2002. Folio 20. In the Tenth Chamber the proceeding is identified by the number Amnesty 001-2001, Annex 65.

²⁸³ Annexes 56 and 58.

²⁸⁴ In the judges' recusal they note that on repeated occasions they have recused themselves from taking cognizance of proceedings in which attorney Francisco José Palomo Tejeda is involved "since he has made slanderous remarks against us in the news media" and they assert that "although attorney Palomo does not appear as defense counsel in the proceeding, his involvement is evident as his law firm is the one hired for the defense." See Exhibit II of amnesty case No. 251-2002, folio 23, Annex 65.

11, 1999.²⁸⁵ That same day, the Tenth Chamber of the Court of Appeals, as part of case 001-2002, considered received the background and the recusal of the judges, ruled to consider received the background from the Presidency of the Judicial Branch, and also the recusal of the principal judges of the Tenth Chamber, and, given, the impossibility of constituting the Chamber with the alternative judges, ordered that the case be passed on to the Presidency of the Judicial Branch, so that within three days it might designate the court that should consider hearing the matter.²⁸⁶

236. On August 16, 2002, the Constitutional Court affirmed the judgment of the Tenth Chamber of the Court of Appeals, of March 1, 2002, by which it declared unfounded the amparo brought by César Adán Rosales Batres against the resolution of March 8, 2000. This notwithstanding, the Court decided to modify the judgment so as to order that the judge of the Criminal Court of First Instance of Petén hand down a resolution disqualifying himself from taking cognizance of the criminal proceeding against the plaintiff in amparo and referring the pleadings to the chamber with jurisdiction to rule on the applicability of the Law on National Reconciliation.²⁸⁷

237. On August 19, 2002, the Constitutional Court affirmed the judgment of the Fourth Chamber of the Court of Appeals, of June 12, 2001, by which it denied the amparo brought by Carlos Antonio Carías López against the resolution of March 8, 2000, handed down by the judge of the Criminal Court of First Instance of Petén.²⁸⁸

238. On September 2, 2002, the Presidency of the Judicial Branch designated the Fourth Chamber of the Court of Appeals to continue taking cognizance of the proceeding in question, by virtue of the recusal invoked by the principal judges of the Tenth Chamber and considering that it had not been possible to constitute that Court.²⁸⁹

239. On September 5, 2002, the Fourth Chamber of the Court of Appeals heard the recusal invoked by the Tenth Chamber of the Court of Appeals under number 251-200, within the case identified by number Amnesty 001-2002 (procedure under the Law on National Reconciliation).²⁹⁰

240. On September 27, 2002, the Constitutional Court affirmed the judgment of the First Chamber of the Court of Appeals, of May 15, 2001, by which it denied the amparo brought by Cirilo Benjamín Caal Ac against the resolution of February 10, 1999. This notwithstanding, the Court decided to amend the judgment so as to order the judge of the Criminal Court of First Instance of Petén to hand down a resolution disqualifying himself from taking cognizance of the criminal proceeding brought against the plaintiff in amparo and to refer the pleadings to the chamber with jurisdiction to rule on the applicability of the Law on National Reconciliation.²⁹¹

241. On October 15, 2002, before the Fourth Chamber of the Court of Appeals, the accused Reyes Collin Gualip reiterated that on July 2, 2002, he moved before the Twelfth Chamber

²⁸⁵ Appeal of Amparo Judgment No. 1203-2001, Annex 45.

²⁸⁶ Exhibit II of Amnesty Case 251-2002, folio 24, Annex 65.

²⁸⁷ Appeal of Amparo Judgment No. 686-2002, Annex 55.

²⁸⁸ Appeal of Amparo Judgment No. 1204-2001, Annex 46.

²⁸⁹ Exhibit II of Amnesty Case 251-2002, folio 2, Annex 65.

²⁹⁰ Exhibit III of Amnesty Case 251-2002, folio 5, Annex 66.

²⁹¹ Appeal of Amparo Judgment No. 993-2001, Annex 43.

of the Court of Appeals to amend the procedure as of December 28, 1996, asking that his motion be resolved.²⁹²

242. On October 16, 2002, the Fourth Chamber of the Court of Appeals ruled on a memorial declaring that one must wait for the resolution of the recusal invoked by the judges of the Tenth Chamber within the special procedure of the Law on National Reconciliation.²⁹³

243. On October 17, 2002, the Constitutional Court affirmed the judgment of the Third Chamber of the Court of Appeals of July 31, 2001, by which it denied the amparo brought by Reyes Collin Gualip against the resolutions of February 10, 1999, and March 8, 2000. This notwithstanding, the Court decided to amend the judgment so as to order the judge of the Criminal Court of First Instance of Petén to hand down a resolution disqualifying himself from taking cognizance of a criminal proceeding against the plaintiff in amparo and referring the pleadings to the chamber with jurisdiction to rule on the applicability of the Law on National Reconciliation.²⁹⁴

244. On October 18, 2002, the Constitutional Court affirmed the judgment of the Fourth Chamber of the Court of Appeals, of October 1, 2001, by which it declared unfounded the amparo sought by Manuel Cupertino Montenegro Hernández against the resolutions of August 9, 2000, and September 20, 2000, handed down by the judge of the Criminal Court of First Instance of Petén. This notwithstanding, the Court decided to amend the judgment so as to order the judge of the Criminal Court of First Instance of Petén to hand down a resolution disqualifying himself from taking cognizance of a criminal proceeding against the plaintiff in amparo and referring the pleadings to the chamber with jurisdiction to rule on the applicability of the Law on National Reconciliation.²⁹⁵

245. On November 7, 2002, the Fourth Chamber of the Court of Appeals ruled on the recusal proposed by the judges of the Tenth Chamber of the Court of Appeals, declaring it unfounded considering that the ground invoked referred to attorney Palomo Tejeda and not attorney Zamora Batarse. In addition, it ordered that the pleadings be removed once again to the Tenth Chamber, so that it could continue to take cognizance of them.²⁹⁶

246. On November 12, 2002, the Constitutional Court affirmed the judgment of the First Chamber of the Court of Appeals, of April 26, 2001, by which it declared unfounded the amparo sought by Roberto Aníbal Rivera Martínez against the resolutions of August 9, 2000, and September 20, 2000, handed down by the judge of the Criminal Court of First Instance of Petén. This notwithstanding, the Court decided to amend the judgment so as to order the judge of the Criminal Court of First Instance of Petén to hand down a resolution disqualifying himself from taking cognizance of the criminal proceeding against the plaintiff in amparo and forwarding the pleadings to the chamber with jurisdiction to rule on the applicability of the Law on National Reconciliation.²⁹⁷

247. On December 2, 2002, the Tenth Chamber of the Court handed down a definitive ruling on the interrogatories by Reyes Collin Gualip, César Adán Rosales Batres, and Roberto Aníbal Rivera Martínez as regards amending the proceeding as of December 28, 1996, stating that it was

²⁹² Exhibit III of Amnesty Case 251-2002, folios 29-30, Annex 66.

²⁹³ Exhibit III of Amnesty Case 251-2002, folio 40, Annex 66.

²⁹⁴ Appeal of Amparo Judgment No. 1304-2001, Annex 50.

²⁹⁵ Appeal of Amparo Judgment No. 1841-2001, Annex 52.

²⁹⁶ Exhibit III of Amnesty Case 251-2002, folios 57-58, Annex 66.

²⁹⁷ Appeal of Judgment No. 802-2001, Annex 41.

not possible to resolve as one did not have the case file and its antecedents or the certification of the proceedings before the Constitutional Court.²⁹⁸

248. On December 11, 2002, the Tenth Chamber of the Court of Appeals ruled to consider received the resolutions of April 3 and 4, 2001, of the Constitutional Court, regarding cases 901-2000, 820-2000, and 965-2000.²⁹⁹

249. On December 11, 2002, the Tenth Chamber of the Court of Appeals ruled to set a hearing for the parties on December 27, 2002, in the Twelfth Chamber of the Court of Appeals, with a view to securing a ruling on the application of the Law on National Reconciliation.³⁰⁰

250. Due to vacations, the Twelfth Chamber of the Court of Appeals had to continue to take cognizance of amnesty case 001-2002 before the Tenth Chamber; nonetheless, on December 26, 2002, as there was an already-declared recusal, the matter was returned to the Presidency of the Judicial Branch.³⁰¹

251. On December 26, 2002, the Presidency of the Judicial Branch ruled that the Fourth Chamber of the Court of Appeals should continue taking cognizance of the case, considering the vacations of the Tenth Chamber of the Court of Appeals.³⁰² On December 27, 2002, the case was submitted by the Secretariat of the Presidency of the Judicial Branch to the Fourth Chamber of the Court of Appeals.³⁰³

252. On January 2, 2003, the Fourth Chamber of the Court of Appeals decided to vacate the ruling of December 11, 2002, of the Tenth Chamber of the Court of Appeals, and ordered that the parties be given the identical deadline of 10 days to state their views on the applicability of the Law on National Reconciliation.³⁰⁴

253. On January 7, 2003, the accused Roberto Aníbal Rivera Martínez designated Francisco José Palomo Tejada as his defense counsel.³⁰⁵

254. On January 16, 2003, the accused Reyes Collin Gualip reiterated his petition that the proceeding be amended back to December 28, 1996.³⁰⁶

255. On January 17, 2003, the Fourth Chamber of the Court of Appeals ruled that, as the matter related to the Law on National Reconciliation was under consideration, for the time being it could not rule favorably on the amended procedure proposed by the accused Roberto Aníbal Rivera Martínez.³⁰⁷

²⁹⁸ Exhibit II of Amnesty Case 251-2002, folio 29, Annex 65.

²⁹⁹ Exhibit II of Amnesty Case 251-2002, folio 57, Annex 65.

³⁰⁰ Exhibit II of Amnesty Case 251-2002, folio 58, Annex 65.

³⁰¹ Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folio 2, Annex 67.

³⁰² Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folio 3, Annex 67.

³⁰³ Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folio 4, Annex 67.

³⁰⁴ This decision is based on the fact that according to Article 11 of the Law on National Reconciliation, one must forward the submissions to the other party, but one should not set a hearing for them to state their views on the applicability of the Law in the specific case. Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folio 6, Annex 67.

³⁰⁵ Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folio 8, Annex 67.

³⁰⁶ Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folios 19-20, Annex 67.

³⁰⁷ Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folio 21, Annex 67.

256. On January 20, 2003, the accused César Adán Rosales Batres, filed for an amended procedure due to absolute defects in the resolution of January 2, 2003, of the Fourth Chamber of the Court of Appeals, and asked that said resolution be set aside until such time as there is a ruling on the request for amendment filed on July 2, 2002.³⁰⁸

257. On January 20, 2003, the accused Roberto Aníbal Rivera Martínez proposed curing the procedure, requesting that it be amended going back to December 28, 1996.³⁰⁹ On that same date, the Fourth Chamber of the Court of Appeals ruled inadmissible the motion for amendment filed by Roberto Aníbal Rivera Martínez, as the procedure of the Law on National Reconciliation was still being hammered out.³¹⁰

258. On January 23, 2003, the Tenth Chamber of the Court of Appeals considered received the proceedings of the Fourth Chamber of the Court of Appeals in the procedure of the Law on National Reconciliation.³¹¹

259. On January 24, 2003, the Tenth Chamber of the Court of Appeals amended the procedure on its own initiative, curing the procedure in the resolutions of January 7, in which the Fourth Chamber accepted as defense counsel Francisco José Palomo Tejeda, and denying the request.³¹²

260. On February 3, 2003, Roberto Aníbal Rivera Martínez filed a motion for reconsideration against the resolution of January 24, 2003.³¹³ Also on February 3, 2003, the Tenth Chamber denied the reconsideration sought.³¹⁴

261. On February 4, 2003, the Tenth Chamber rectified the procedure and had notice sent of the resolutions of January 17 and 20, 2003, handed down by the Fourth Chamber of the Court of Appeals.³¹⁵

262. On February 5, 2003, Special Prosecutor Mario Hilario Leal Barrientos presented his position before the Tenth Chamber of the Court of Appeals on the application of the Law on National Reconciliation. In this regard, he stated that the law in question applies only to criminal acts that took place in the internal armed confrontation, by persons involved in that confrontation, and for the purpose of "preventing, impeding, pursuing, or repressing the crimes recognized in Articles 2 and 4 of that law as political crimes and related common crimes" and asked: "How did the accused intend to prevent, impede, pursue, or repress the crimes referred to in Articles 2 and 4 of the Law on National Reconciliation by raping girls and women or by assassinating newborn

³⁰⁸ Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folios 25-26, Annex 67.

³⁰⁹ Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folios 28-30, Annex 67.

³¹⁰ Amnesty Case 369-2002, Fourth Chamber of the Court of Appeals, folio 39, Annex 67.

³¹¹ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 68, Annex 65.

³¹² Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 70, Annex 65.

³¹³ The appellant alleges the attorney of his trust is Francisco José Palomo Tejeda and that since he is forbidden from being represented by that attorney, his constitutional rights are being violated. See Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 79-81, Annex 65.

³¹⁴ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 82-83, Annex 65.

³¹⁵ See Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 83, Annex 65.

children or small children and the elderly, or by torturing and subsequently assassinating an entire unarmed and defenseless civilian population? In this context it is clear that the events that occurred ... in the *parcelamiento* of Las Dos Erres were at no time carried out by the Guatemalan Army for the purposes set forth in Article 5 of that Law." As a conclusion, the special prosecutor asked that the effort to apply the Law on National Reconciliation be rejected, and asked that the criminal proceeding go forward.³¹⁶

263. On February 6, 2003, the accused Carlos Antonio Carías López proposed Francisco José Palomo Tejeda as his defense counsel before the Tenth Chamber of the Court of Appeals.³¹⁷ Also on February 6, 2003, the Tenth Chamber of the Court of Appeals rejected the request by Carlos Antonio Carías López to name said attorney as his counsel, due to legal impediment pursuant to Article 201(a) of the Law on the Judicial Branch.³¹⁸

264. On February 12, 2003, the accused César Adán Rosales Batres filed a motion to set aside before the Tenth Chamber of the Court of Appeals against the resolution of January 20, 2003, of the Fourth Chamber of the Court of Appeals.³¹⁹

265. On February 13, 2003, the accused Roberto Aníbal Rivera Martínez filed a motion to set aside before the Tenth Chamber of the Court of Appeals against the ruling of January 20, 2003, of the Fourth Chamber of the Court of Appeals.³²⁰

266. On February 14, 2003, the Tenth Chamber of the Court of Appeals ruled on the motions to set aside filed by Cesar Adán Rosales Batres, Reyes Collin Gualip, and Roberto Aníbal Rivera Martínez. The Chamber decided to rule favorably on the motion to set aside insofar as the resolution appealed lacked foundation and did not resolve the request made by the those filing it, yet it rejected the cure requested (to annul the anticipated evidence) as it considered that the Constitutional Court referred exclusively to the judge's lack of jurisdiction to hand down arrest orders against the accused, but not to order the anticipated production of evidence or other measures in the framework of the investigation.³²¹

267. On February 14, 2003, the accused Roberto Aníbal Rivera Martínez filed a motion alleging unconstitutionality in the specific case (*Acción de Inconstitucionalidad en caso concreto*) in relation to Article 201(a) of the Law on the Judicial Branch.³²²

³¹⁶ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 84-92, Annex 65.

³¹⁷ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 94, Annex 65.

³¹⁸ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 95, Annex 65.

³¹⁹ Resolution by which said Chamber refrained from resolving the *reclamo de subsanación* filed, i.e. which sought annulment of all that was done as of December 28, 1996. See Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 122-123, Annex 65.

³²⁰ Resolution by which said Chamber refrained from resolving the *reclamo de subsanación* filed, i.e. which sought annulment of all that was done as of December 28, 1996. See Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 122-123, Annex 65.

³²¹ See Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 133-134, Annex 65.

³²² That legal provision reads: "Article 201. PROHIBITIONS. Attorneys are prohibited from: (a) Entering an appearance in those trials in which the judge has to recuse himself or herself or can be recused because of the appearance of that attorney." This article was invoked by the Tenth Chamber of the Court of Appeals as the legal basis for impeding the participation of attorney Palomo Tejeda as defense counsel for Roberto Aníbal Rivera Martínez. See Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folios 135-138, Annex 65.

268. On February 17, 2003, the Tenth Chamber of the Court of Appeals ruled to receive and consider the constitutional action filed, and suspended the procedure until the order ruling on the alleged unconstitutionality were to become firm.³²³

269. On February 18, 2003, the accused Roberto Aníbal Rivera Martínez filed an amparo action before the Chamber on Amparo and Pretrial Matters of the Supreme Court of Justice against the order of January 24, 2003, handed down by the Tenth Chamber of the Court of Appeals, by which it rectified the resolution of January 7, 2003, of the Fourth Chamber of the Court of Appeals and excluded Francisco José Palomo Tejeda as defense counsel.³²⁴

270. On February 26, 2003, the Chamber of Amparo and Pretrial Matters of the Supreme Court of Justice denied the provisional amparo action brought by Roberto Aníbal Rivera Martínez against the order of January 24, 2003, handed down by the Tenth Chamber of the Court of Appeals.³²⁵

271. On March 7, 2003, the accused Reyes Collin Gualip filed an amparo action before the Chamber of Amparo and Pretrial Matters of the Supreme Court of Justice against the order of February 14, 2003, handed down by the Tenth Chamber of the Court of Appeals, by which it rejected a motion to set aside denying the amended procedure to vacate all done since December 28, 1996.³²⁶

272. On April 5, 2003, the Constitutional Court affirmed the judgment of the Tenth Chamber of the Court of Appeals, of March 3, 2003, by which it declared unfounded the amparo requested by César Adán Rosales Batres against the resolution of June 27, 2002.

273. On April 7, 2003, the Constitutional Court affirmed the judgment of the Third Chamber of the Court of Appeals, of October 2, 2002, by which it declared unfounded the amparo action brought by Carlos Humberto Oliva Ramírez against the resolution of June 27, 2002.³²⁷

274. On June 11, 2003, accused Roberto Aníbal Rivera Martínez filed an appeal against the order of February 26, 2003.³²⁸ To rule on that appeal, the Chamber of Amparo and Pretrial Matters of the Supreme Court of Justice was made up of the alternate judges and ruled to grant the provisional amparo sought, overturning the resolutions challenged and ordering the authority challenged to admit the accused's defense counsel.³²⁹

275. On June 11, 2003, the Constitutional Court upheld the judgment of the Tenth Chamber of the Court of Appeals, of July 23, 2001, by which it declared unfounded the amparo

³²³ Exhibit II of Amnesty Case 251-2002 before the Tenth Chamber of the Court of Appeals, folio 139, Annex 65.

³²⁴ Amparo 56-2003, Annex 61.

³²⁵ Appeal of Amparo Judgment No. 508-2003. By resolution of June 27, 2002, the judge of the Criminal Court of First Instance of Petén refrained from ruling on the amparo action brought against the resolution of June 6, 2002, for lack of jurisdiction to do so, Annex 58.

³²⁶ Amparo 99-2003, Annex 62.

³²⁷ Appeal of Amparo Judgment No. 1676-2002. By resolution of June 27, 2002, the judge of the Criminal Court of First Instance of Petén refrained from ruling on the amparo action brought against the resolution of June 6, 2002, for lack of jurisdiction to do so, Annex 56.

³²⁸ Order by which the Chamber on Amparo and Pretrial Matters of the Supreme Court of Justice denied the provisional amparo action brought against the order of January 24, 2003, handed down by the Tenth Chamber of the Court of Appeals.

³²⁹ Appeal of Amparo Order No. 856-2003, Annex 59.

sought by César Adán Rosales Batres, against the resolutions of August 9, 2000, and September 20, 2000, handed down by the judge of the Criminal Court of First Instance of Petén. Nonetheless, the Court decided to amend the judgment so as to order the judge of the Criminal Court of First Instance of Petén to issue a resolution disqualifying himself from hearing the criminal proceeding brought against Mr. Rosales Batres, and removing the proceeding to the chamber with jurisdiction to rule on the applicability of the Law on National Reconciliation.³³⁰

276. On October 1, 2003, the Constitutional Court upheld the judgment of the Third Chamber of the Court of Appeals of October 25, 2002, by which it denied the amparo sought by Carlos Humberto Oliva Ramírez against the resolution of February 10, 1999.³³¹

277. On April 26, 2004, the Constitutional Court upheld the judgment of the Second Chamber of the Court of Appeals, of March 1, 2001, by which it denied the amparo sought by Manuel Cupertino Montenegro Hernández against the resolution of February 10, 1999, and the act of February 11, 1999.³³²

278. On October 23, 2004, the Constitutional Court upheld the judgment of the Chamber on Amparo and Pretrial Matters of the Supreme Court of Justice, of March 8, 2004, by which it denied the amparo sought by Roberto Aníbal Rivera Martínez against the order of January 24, 2003, by which the Tenth Chamber of the Court of Appeals rectified the resolutions of the Fourth Chamber of the Court of Appeals of January 7, 2003, and excluded Francisco José Palomo Tejada as defense counsel.³³³

279. On December 8, 2004, the Constitutional Court overturned the judgment of the Chamber on Amparo and Pretrial Matters of the Supreme Court of Justice of January 21, 2004.³³⁴ In its place, the Constitutional Court ordered the judge of the Criminal Court of First Instance of Petén to issue a resolution vacating all procedures as of December 28, 1996, disqualifying himself from taking cognizance of the criminal proceeding, and removing the case to the chamber with jurisdiction, to rule on the applicability of the Law on National Reconciliation.³³⁵

280. On March 14, 2007, the Chamber of Amparo and Pretrial Matters of the Supreme Court of Justice ruled – four years after it was filed – on the amparo action filed on March 7, 2003, by the accused Reyes Collin Gualip against the order of February 14, 2003, handed down by the Tenth Chamber of the Court of Appeals.³³⁶ This motion was denied for being clearly unfounded.³³⁷

³³⁰ Appeal of Amparo Judgment No. 8-2002, Annex 53.

³³¹ Appeal of Amparo Judgment No. 150-2003, Annex 57.

³³² Appeal of Amparo Judgment No. 1938-2003, Annex 60.

³³³ Appeal of Amparo Judgment No. 99-2003, Annex 62.

³³⁴ Judgment denying the amparo brought by Reyes Collin Gualip against the order of February 14, 2003, handed down by the Tenth Chamber of the Court of Appeals and in which the motion to set aside of the resolution that denied the *enmienda de procedimiento* to vacate all that was done as of December 28, 1996 was denied.

³³⁵ Appeal of Amparo Judgment No. 2235-2004, Annex 62.

³³⁶ Order denying a motion to set aside that denied the *enmienda de procedimiento* to annul all done as of December 28, 1996, Annex 62.

³³⁷ According to information submitted by the victims' representatives in a communication of January 8, 2008.

281. The aforementioned resolution was appealed by the defense and the matter was forwarded to the Constitutional Court, which upheld the resolution appealed on August 7, 2007.³³⁸

282. The Constitutional Court has yet to rule on the constitutional motion filed by Roberto Aníbal Rivera Martínez on February 14, 2003.³³⁹ An appeal may be brought against this resolution.³⁴⁰ In addition, the case must go back to the pertinent court for it to rule on the applicability of the Law on National Reconciliation, by a resolution that may also be appealed.³⁴¹

IX. LEGAL ARGUMENTS

Violation of the rights to a fair trial and to judicial protection (Articles 8 and 25 of the American Convention) in relation to the general obligation to respect and ensure human rights (Article 1(1) of the American Convention)

283. The Inter-American Court has established the right of all persons affected by a human rights violation to obtain from the competent organs of the state both clarification of the facts that constitute violations and a determination of the respective liabilities, by investigation into the facts and prosecution of the persons responsible, in keeping with the standards of Articles 8 and 25 of the American Convention.³⁴² These duties of the state are, in turn, part of the general obligation set forth in Article 1(1) of the Convention to respect and ensure the rights recognized in said Convention.

284. Article 8(1) of the American Convention provides that:

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.

285. Article 25 of the Convention provides:

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

2. The States Parties undertake:

- 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.

³³⁸ The parties were notified of the final decision on December 5, 2007. Information submitted by the victims' representatives in a communication of January 8, 2008.

³³⁹ According to information submitted by the victims' representatives in a communication of January 8, 2008.

³⁴⁰ Law on Amparo, Habeas Corpus, and Constitutionality, Article 127, Annex 70.

³⁴¹ Decree number 145-1996 – Law on National Reconciliation, of December 27, 1996, Article 11, Annex 75.

³⁴² I/A Court H.R., *Barrios Altos Case*. Judgment of March 14, 2001. Series C No. 75, para. 48.

286. Finally, Article 1(1) provides:

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

287. In determining a possible violation of Article 8 of the Convention, one must analyze whether, in the judicial proceeding, the procedural guarantees of the party affected were respected.³⁴³ The existence of acts of obstruction of justice, hindrances, or problems of failure of the authorities to cooperate that have impeded or are impeding the clarification of the case constitute a violation of Article 1(1) of the Convention.

288. For its part, Article 25(1) of the American Convention incorporates the principle of the effectiveness of instruments or procedural means aimed at guaranteeing human rights.³⁴⁴

289. As the Inter-American Court has held, Articles 8, 25, and 1(1) are mutually reinforcing:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered.... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention." ... That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, for the determination of his rights, whatever their nature.³⁴⁵

290. The high level of impunity in Guatemala has been recognized in itself as one of the most serious human rights violations that has taken place in that country³⁴⁶ and it has been one of the main factors contributing to the persistence of human rights violations and of criminal and social violence.³⁴⁷

291. In the instant case, as expressly recognized by the State, the facts of the Las Dos Erres massacre have not been duly investigated, nor have those responsible been prosecuted and punished. Almost 26 years after the massacre, and 14 years after the respective judicial proceeding began, the proceeding is once again back to the starting point: All the witness statements that could be obtained, with difficulty and risk to the witnesses, have been declared void. None of the

³⁴³ I/A Court H.R., *Case of Genie Lacayo*. Judgment of January 29, 1997. Series C No. 30, para. 74.

³⁴⁴ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87, October 6, 1987. Series A No. 9, para. 24.

³⁴⁵ I/A Court H.R., *Case of Loayza Tamayo. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 169.

³⁴⁶ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala* (2001), Ch. IV, para. 55.

³⁴⁷ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala* (2001), Ch. IV, para. 57. In this report, the IACHR made the following appeal to the State: "The Commission exhorts the State to devote priority attention and political will to overcoming the situation of impunity that persist, and reiterates that the State will face responsibility for all violations of human rights that occur until such time as it takes the necessary measures to ensure that justice is administered fairly and effectively."

accused has been prosecuted. To the contrary it is possible that their acts will remain in total impunity, due to the inappropriate application of the Law on National Reconciliation.

292. In addition, considering that the facts of the massacre, especially those relating to physical integrity and sexual liberties taken, had a particularly grave and intense impact on the women and girls of Las Dos Erres, in application of Article 29(b) of the American Convention, one should take into account the provisions of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the "Convention of Belém do Pará"³⁴⁸, ratified by the Guatemalan State in 2002, which imposes the obligation of acting with due diligence when investigating and punishing acts of violence against women:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: ... b. apply due diligence to prevent, investigate and impose penalties for violence against women³⁴⁹;

293. Next the Commission shall set forth the different situations that have signified, in the instant case, the total absence of justice and judicial guarantees for the surviving victims and the next-of-kin of the victims of the Las Dos Erres massacre, constituting violations of Articles 8(1) and 25 in relation to Article 1(1) of the American Convention.

A. The indiscriminate use of judicial remedies and unwarranted delay on the part of the judicial authorities

294. As detailed in the section on the facts, in this application, from the outset of the criminal proceeding into the facts of the massacre, to date, the defense has filed at least 29 amparo actions, 23 claims for curing defects (*reclamos de subsanación*)³⁵⁰, 11 motions to set aside, five motions to amend procedure (*enmiendas de procedimiento*)³⁵¹, and one constitutional motion.

295. Most of these judicial remedies were declared notably unfounded by the various courts that decided them, both at first instance and on appeal. This shows the clear dilatory

³⁴⁸ The Convention of Belém do Pará was ratified by Guatemala on August 8, 2002.

³⁴⁹ Convention of Belém do Pará, Article 7(b).

³⁵⁰ Article 282 of the Code of Criminal Procedure (Decree 51-92): "Except in those cases indicated in the next article, the interested person should seek to cure the defect or protest it, while the act is being carried out or immediately after it is carried out, when he or she has been present at it.

"If, given the circumstances of the case, it were impossible to take note of the defect in timely manner, the interested person should make a claim immediately upon learning of it.

"The *reclamo de subsanación* should describe the defect, individually identify the vitiated act, and propose the appropriate solution."

³⁵¹ Article 67 of Decree 2-89 (Law on the Judicial Branch), amended by Decree No. 112-97. "AMENDMENTS OF PROCEDURE (ENMIENDAS DEL PROCEDIMIENTO). The judges shall be authorized to amend the procedure, at any stage, when a substantial error has been made that violates the rights of any of the parties. For the purposes of this law, it shall be understood that a substantial error exists when constitutional guarantees, statutory provisions, or essential formalities of process are violated. The amendment is subject to the following limitations: (a) The judge shall specify the error, with reasons. (b) The order shall indicate, specifically, the resolutions and investigative steps affected by the amendment and shall make a note in their margin, to certify that they have been rendered invalid. (c) Evidence validly received shall not be affected. (d) Independent actions or those not related to the act or resolution that is the motive of the amendment shall not be affected. The order providing for amendment of the procedure may be appealed, except when it has been handed down by a Collegial Court, in any type of proceeding, but the appeal shall not suspend its effect and the matter will continue its course until the final resolution, when the resolution of the appeal will be awaited. The court that hears the appeal shall do so based on a copy of the record certified by the respective Secretariat."

strategy adopted by the defense, and tolerated and permitted by the judicial organs involved, in the words of the Inter-American Court, “forgetting that their function is not exhausted by enabling due process that guarantees defense at a trial, but that they must also ensure, within a reasonable time, the right of the victim or his or her next of kin to learn the truth about what happened and for those responsible to be punished.”³⁵²

296. The Court has also said that:

The right to effective judicial protection therefore requires that the judges direct the process in such a way that undue delays and hindrances do not lead to impunity, thus frustrating adequate and due protection of human rights.³⁵³

297. In the judicial proceeding into the facts of the Las Dos Erres massacre, the judicial organs’ tolerance of the exaggerated use of idle motions was aggravated by the lack of celerity on the part of the Constitutional Court in ruling on them.

298. Guatemalan legislation establishes fixed and short time periods for the processing and resolution of amparo actions. In effect, the Law on Amparo, Habeas Corpus, and Constitutionality³⁵⁴ sets forth the obligation of judges to process amparo actions the same day they are filed or within 48 hours if additional information is required.³⁵⁵ Similarly, it establishes that a hearing will be provided for interested persons within 48 hours, and, if evidence is to be taken, there will be an additional eight days for setting the time of the second hearing, to be held in the subsequent 48 hours. The judgment must be handed down within three days of holding the second hearing. In the case of the Constitutional Court, that law provides for extending the period five more days, which can be extended another five days.

299. In view of the foregoing, it appears that the period the Constitutional Court has to rule on an amparo action, in the first instance or on appeal, is approximately one month. In the instant case, the Constitutional Court took, on average, one year to resolve the amparo appeals brought by the accused.

300. In another case related to the same State, and in which the same dilatory practice and lack of celerity on the part of the courts was encountered, the Inter-American Court noted:

The Court notes that, as stated in the text entitled “Ley de Amparo, Exhibición Personal y de Constitucionalidad”, and according to the expert testimony of Henry El Khoury, the law itself places the amparo courts under the obligation to process and rule on all amparo remedies filed against any judicial authority for any procedural act. Therefore, the law itself places said courts under the obligation to process any amparo remedy, even if it is “patently inadmissible,” as the various remedies filed in this case were found to be.

³⁵² I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 114.

³⁵³ I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 115.

³⁵⁴ Decree 1-86.

³⁵⁵ Law on Amparo, Habeas Corpus, and Constitutionality (Decree 1-89) Article 33. The provision reads: “ARTICLE 33. Immediate processing of the amparo. The judges and courts are obligated to process amparo actions the same day they are filed, ordering that background information be provided, or, otherwise, a detailed report from the person, authority, public officer or employee against whom the amparo has been sought, who should comply by forwarding the background information or reporting, within the peremptory period of 48 hours, plus that of the distance, which the court shall set in the same resolution, in the exercise of its prudent judgment. If within that term the background information or report has not been sent, the court hearing the case shall decree the provisional suspension of the act, resolution, or procedure challenged.”

However, the Court calls attention to the fact that in the criminal proceeding under discussion, frequent filing of this remedy, although permissible according to the law, has been tolerated by the judicial authorities. This Court deems that the domestic judge, as an authority competent to direct the proceeding, has the duty to channel it in such a manner as to restrict the disproportionate use of actions whose effect is to delay the proceeding. Processing of the amparo remedies together with their respective appeals was, in turn, conducted without complying with the legal terms, as the Guatemalan courts took on average six months to decide each one. This situation caused a paralysis of the criminal proceeding.³⁵⁶

301. The permissiveness and tolerance of the judicial authorities vis-à-vis the dilatory practices of the defense in the instant case have led to impunity, and constitute a violation of the State's international obligation to prevent violations and protect human rights, as well as a violation of the right to truth of the victims and the victims' next-of-kin, and to have those responsible be identified and punished.

B. Lack of cooperation on the part of the authorities

302. In its *Fifth Report on the Situation of Human Rights in Guatemala* (2001), the Commission identified a worrisome pattern of lack of cooperation by certain organs of the State with the judicial system, referring in particular to the Ministry of Defense, and how it has refused to provide documentation requested through judicial channels in the investigations under way³⁵⁷, sometimes invoking the classification of certain documents as secret on national security grounds, or simply asserting that the evidence requested has been incinerated or never existed.

303. In the context of the investigations into the Las Dos Erres massacre, the prosecutor from the Public Ministry requested information from the Ministry of Defense of Guatemala on several occasions. The minister of defense provided a partial response to the requests from the prosecutor, refraining from providing much of the information needed to further the investigation. For example, the minister refrained from providing information on the name of the officer in charge of the Army detachment in the village of Las Cruces in November and December 1982, and with respect to the degree of knowledge of the Army High Command of the facts of the massacre and the actions taken to clarify them, stating that "as the documents from the time have been incinerated, no information is available in that regard."³⁵⁸ On another occasion, the defense minister refused to provide the prosecutor a copy of the payrolls of the officers stationed in Petén corresponding to the months of November and December 1982. This was based on the argument that those payrolls did not exist.

304. Moreover, there is evidence that the Presidential Commission to Coordinate Executive Policy in Human (COPREDEH) had to intercede vis-à-vis the Ministry of Defense to get it to provide information on the location of one Army officer.³⁵⁹

305. The refusal of the Ministry of National Defense to produce all the documents requested by the courts, based on these having been incinerated or not existing, when those arguments are not true, constitutes an obstruction of justice.

³⁵⁶ I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, paras. 206 and 207.

³⁵⁷ IACHR, *Fifth Report on the Situation of Human Rights in Guatemala* (2001), Ch. V, para. 34.

³⁵⁸ Communication of September 24, 1996. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folios 846-847.

³⁵⁹ Communication of October 7, 1996. See Exhibit XIII of the judicial record in case 1316-94 before the Criminal Court of First Instance of Petén, folio 848.

306. The failure of the authorities to cooperate is also reflected in the inactivity of the Police authorities when it came to enforcing arrest warrants for those accused with respect to whom they were not suspended through an amparo action.³⁶⁰ The judge ordered the arrest of former *kaibil* Santos López Alonzo on October 7, 1999, and of all the others accused of the massacre on April 4, 2000; those orders were issued to the director general of the National Civilian Police of Guatemala, the Commissioner of the National Civilian Police of San Benito, Petén, and the chief of the National Civilian Police station at Melchor de Mencos, Petén. Even though the judge reiterated the arrest warrants on March 7, 2002, none of the above-mentioned authorities carried them out.

C. Other violations of due process

307. Article 8(1) of the Convention establishes the right of all persons to be heard by a “competent, independent, and impartial tribunal,” requirements that seek to guarantee the correct determination of persons’ rights and obligations.³⁶¹

308. The requirement of an impartial court seeks to guarantee, in particular, that the judicial organs that decide disputes among persons not have any interest or personal relationship with the matter under study, and are objective in resolving them.

309. The victims’ representatives alleged during the processing of the case before the Commission that the principle of independence and impartiality of the judges was not respected in the instant case, since one of the alternate judges of the Constitutional Court, Mr. Francisco José Palomo Tejeda, has also been the attorney for several of those accused in the criminal proceeding into the Las Dos Erres massacre.

310. In effect, there is evidence in the record that Mr. Palomo Tejeda served as alternate judge of the Constitutional Court on April 24, 2002, and in that capacity participated in the decision of an amparo appeal brought by Manuel Pop Sun.³⁶² In addition, it appears in the record that on January 7, 2003, the accused Roberto Aníbal Rivera Martínez designated Mr. Palomo Tejeda as his defense attorney, which was found to be improper by the Tenth Chamber of the Court of Appeals in view of the animosity between Mr. Palomo Tejeda and the judges who make up that chamber. Approximately one month later, the accused Carlos Antonio Carías López proposed to the Tenth Chamber of the Court of Appeals that attorney Palomo Tejeda be his defense counsel. Once again the request was rejected by the chamber, considering the legal impediment. Finally, the accused Rivera Martínez filed a constitutional motion (*acción de inconstitucionalidad en caso concreto*) against the legal provision that is an impediment to him having Mr. Palomo Tejeda as his defense counsel. As of January 2008 that motion had not been resolved.

³⁶⁰ The accused Jorge Vinicio Sosa Orantes, Bulux Vicente Alfonso, Fredy Antonio Samayoa Tobar, Pedro Pimentel Ríos, Jorge Basilio Velásquez López, Mardoqueo Ortiz Morales, Gilberto Jordán, and Santos López Alonzo did not file any amparo action against the judicial resolutions by which the judge of the Criminal Court of First Instance of Petén ordered their arrest.

³⁶¹ I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 77.

³⁶² The amparo was requested by this accused against the resolutions of August 9 and September 20, 2000, handed down by the judge of First Instance of Petén.

D. The Law on National Reconciliation

311. Decree 145-1996, also known as the Law on National Reconciliation³⁶³, indicates in its whereas clauses that “by reason of the internal armed confrontation that originated 36 years ago, actions have been carried out which, according to the legislation, may be characterized as political crimes or related common crimes (*delitos políticos o comunes conexos*); and that the country’s reconciliation requires equitable and comprehensive treatment that takes into account the different circumstances and factors inherent to the internal armed confrontation, for attaining a firm and lasting peace.” It adds that “according to the Constitution of Guatemala, it is a power of the Congress of the Republic, when required on public policy grounds, to exonerate criminal liability for political crimes and related common crimes.”

312. The temporal scope of the application of the law includes the period of the armed conflict in Guatemala up until the publication of the law, i.e. up to December 27, 1996.

313. The Law on National Reconciliation provides for the total extinction of criminal liability for political crimes committed in the internal armed confrontation up to the date the law entered into force, including the masterminds and direct perpetrators, accomplices, and aiders and abettors in respect of crimes against state security, against the institutional order, and against the public administration.³⁶⁴ It also establishes the total extinction of criminal liability for common crimes committed in connection with political crimes³⁶⁵; of the crimes committed by the state authorities, members of their institutions, or any other force established by law, for the purposes of preventing, impeding, pursuing, or repressing the criminal offenses referred to by Articles 2 and 4 of the law, recognized as political crimes and common crimes committed in connection with them³⁶⁶; of all those acts carried out or not carried out, ordered or performed, attitudes taken or provisions issued by the dignitaries, officials, or authorities of the State and members of their institutions as regards preventing major risks, as well as fostering, entering into, implementing, carrying out, and

³⁶³ Decree 145-1996 or the Law on National Reconciliation was published on December 27, 1996 in the “Diario de Centroamérica.”

³⁶⁴ Article 2: It decrees the total extinction of criminal liability for those political crimes committed in the internal armed confrontation, up to the date of the entry into force of the his law, and shall include the perpetrators, accomplices, and aiders and abettors in crimes against state security, against the institutional order, and against the public administration, included in Articles 359, 360, 367, 368, 375, 381, 385 to 399, 408 to 410, and 414 to 416, of the Criminal Code, as well as those contained at title VII of the Law on Arms and Munitions. In these cases, the Public Ministry shall refrain from bringing a criminal action and the judicial authority shall decree dismissal with prejudice.

³⁶⁵ Article 3: For the purposes of this law, related common crimes shall be understood to be those acts committed in the armed confrontation that directly, objectively, intentionally, and causally are related to the commission of political crimes. The relatedness shall not be applicable if the non-existence of such a relationship is shown.

Article 4: It decrees the total extinction of criminal liability for the common crimes which, in keeping with this law are related to the political ones indicated at Article 2 committed up to the date of the entry into force of this law, and which correspond to those defined at Articles 214 to 216, 278, 279, 282 a 285, 287 to 289, 292 to 295, 321, 325, 330, 333, 337 to 339, 400 to 402, 404, 406, and 407 of the Criminal Code.

³⁶⁶ Article 5: It declares the total extinction of criminal liability for those crimes which, up until the entry into force of this law, were committed in the internal armed confrontation, as perpetrators, accomplices or aiders and abettors, the authorities of the State, members of its institutions or any other force established by law, perpetrated for the purposes of preventing, impeding, prosecuting, or repressing the crimes referred to in Articles 2 and 4 of this law, recognized by the same as political and related common crimes. The crimes in respect of which criminal liability is declared extinguished in this article are thought of as being political in nature, except those cases in which there is no rational or objective relationship between the purposes indicated above and the specific related acts committed, or answered to a personal motive. In these cases, the judicial authority shall declare the charges dismissed with prejudice, in a procedure such as that established in Article 11, unless the non-existence of the relationship or motive indicated above is shown.

culminating the negotiations and signing the agreements for a firm and lasting peace, all acts that are considered political in nature.³⁶⁷

314. Article 8 of the law establishes that the extinction of criminal liability shall not apply to the crimes of genocide, torture, forced disappearance, and those with respect to which there is no statute of limitations or that do now allow for the extinction of criminal liability, according to domestic law or the international treaties ratified by Guatemala:

The extinction of criminal liability to which this law refers shall not be applicable to the crimes of genocide, torture, and forced disappearance, as well as those crimes that are imprescriptible or that do now allow for the extinction of criminal liability, according to domestic law or the international treaties ratified by Guatemala.

315. In relation to the procedure³⁶⁸, the law establishes that the Public Ministry or a judicial authority shall take cognizance of some of the crimes referred to in Articles 4 and 5 of the law, shall immediately remove the matter to the Chamber of the Court of Appeals that has jurisdiction, and the Chamber shall give notice to the injured party, the Public Ministry, and the accused, ordering that they be heard within the ordinary term of 10 working days. Once that period has transpired, the Chamber shall hand down a reasoned order declaring whether the extinction of criminal liability may go forward. Eventually the Court could call an oral hearing to be held within no

³⁶⁷ Article 6: It declares the total extinction of criminal liability for all those acts carried out or not carried out, ordered, or executed, attitudes assumed or provisions issued by the dignitaries, officials, or authorities of the State and members of its institutions as regards preventing greater risks, as well as fostering, entering into, implementing, carrying out, and culminating the negotiations and signing the agreements for a firm and lasting peace, all of these acts considered political in nature. This declaration also extends to the negotiators and their advisers who any capacity have intervened or participated in that process.

³⁶⁸ Article 11: The related crimes established in this law shall be heard through a judicial procedure in the context of due process guarantees, which must be expeditious and adversarial in keeping with the stages indicated below.

Those crimes that fall outside of the scope of this law or those that are imprescriptible or that do not allow for extinction of criminal liability, according to the domestic law or international treaties adopted or ratified by Guatemala shall be processed in keeping with the procedure established in the Code of Criminal Procedure.

When the Public Ministry or a judicial authority takes cognizance of any of the crimes referred to in Articles 4 and 5 of this law, it shall immediately remove the matter to the Chamber of the Court of Appeals that has jurisdiction over the matter. The Chamber shall give notice to the injured party, called such at Article 117 of the Code of Criminal Procedure, to the Public Ministry, and to the accused, ordering that they be heard within the ordinary period of 10 working days.

Once that period has lapsed, the Chamber shall issue a reasoned order finding the extinction to be in order or not to be in order, and, as the case may be, the dismissal with prejudice, for which it shall have a period of five working days. If after the period for transmitting the communications to the other parties has lapsed, the Chamber were to deem it necessary to have additional information in order to make a ruling, it shall immediately schedule and give notice of an oral hearing, with the exclusive participation of the parties, in which it shall receive the relevant evidence, hear from the parties appearing or their attorneys, and immediately issue a reasoned order finding the extinction to be in order or not to be in order, and, as the case may be, the dismissal with prejudice, the oral hearing should be held within no more than 10 working days, counted from the expiration of the period for transmitting the filings to the other parties. The hearing must be held no sooner than three working days after notice is given.

The Chamber's order shall be subject only to such an appeal (*recurso de apelación*) filed within three days from the last notice, by any of those with legitimate interest, in writing, and stating the claims. If the appeal is granted, the proceedings are immediately forwarded to the Chamber of the Supreme Court of Justice that it designates for all these cases, which will resolve the matter, without further proceedings, within five days, affirming, overturning, or modifying the order appealed. No remedy may be brought against the resolution of the Supreme Court.

During the proceeding, no measures of coercion, such as *auto de procesamiento*, *prisión preventiva*, *medidas sustitutivas de la prisión preventiva*, *conducción*, and *aprehensión*. The persons allegedly responsible, indicted, or accused may be represented, during the motion, by their attorneys.

Once the proceeding is concluded, a certification of all the proceedings shall be submitted to the Commission for Historical Clarification.

less than 10 working days from the end of the period of notice to the parties. The reasoned order of the Chamber of the Court of Appeals may be appealed. If the motion for appeal is found to be properly filed, it shall be resolved by the Supreme Court without further proceedings within five days. The ruling by the Supreme Court is not subject to any appeal whatsoever.

316. The Commission wishes to emphasize that the procedure established in the Law on National Reconciliation to determine whether criminal liability extends to the specific case of the crimes committed during the internal armed conflict in Guatemala is brief and summary.

317. In the instant case, on April 11, 2000, some of the accused filed an amparo action before the Twelfth Chamber of the Court of Appeals, against the resolution of April 4, 2000, by which the judge of the Criminal Court of First Instance of Petén ordered their arrest³⁶⁹ and requested application of the procedure established in the Law on National Reconciliation for a determination of whether the extinction of their criminal liability could go forward.³⁷⁰ That determination is still pending to this day.

318. Accordingly, the Commission is of the view that the courts of justice have acted with a lack of diligence and decision to give impetus to the criminal proceeding aimed at clarifying all the facts of the Las Dos Erres massacre and punishing all those responsible³⁷¹, thereby keeping the proceeding from going forward to its culmination.³⁷²

319. As regards application of the Law on National Reconciliation so as to benefit those accused of responsibility for the Las Dos Erres massacre, the Commission recalls that provisions of any nature – legislative, administrative, or otherwise – that impede the investigation and punishment of those responsible for serious human rights violations are inadmissible.

320. As mentioned, the Law on National Reconciliation excludes from its scope the crimes of genocide, torture, forced disappearance, and those that have no statute of limitations or that do not allow for the extinction of criminal liability, according to the domestic legislation or the international treaties ratified by Guatemala.

321. In view of the foregoing, when that law is applied to a specific case, the courts of justice of Guatemala must determine whether the crime or crimes attributed to certain persons are among those that the Law on National Reconciliation itself excludes, and, therefore, whether the persons accused of being masterminds, direct perpetrators, accomplices, or aiders and abettors may or may not be considered to have committed crimes to which said extinction of criminal liability applies.

322. It should be recalled that in the case of *Myrna Mack Chang v. Guatemala* the Court warned that the State must guarantee that the domestic proceeding aimed at investigating and punishing those responsible for grave human rights violations has its proper effects, and, in particular, that it should refrain from having recourse to legal devices such as amnesty, prescription, and the establishment of defenses to liability.

... all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the

³⁶⁹ Amparo No. 107-2000.

³⁷⁰ Appeal of Amparo Judgment No. 901-2000, p. 18.

³⁷¹ I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 203.

³⁷² I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 208.

investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.³⁷³

323. In the case of *Almonacid Arellano et al. v. Chile*, the Court recognized that crimes against humanity include inhumane acts, such as assassination, committed in a context of a generalized or systematic attack directed against a civilian population.³⁷⁴

324. In the instant case, it has been shown that regular forces of the Army extrajudicially executed, by barbaric acts, 251 persons – men, women, and children – who were totally defenseless. In addition, it has been shown that the Las Dos Erres massacre was a special operation, planned and carried out by agents of the Guatemalan State, and that it was not an isolated act in an internal armed conflict in Guatemala, but that it was planned and executed as part of a state policy designed by and under the military dictatorship of Efraín Ríos Montt, based on the national security doctrine and the concept of internal enemy, aimed at eliminating the supposed social base of insurgent groups at that time.

325. While the Commission is aware that the states parties to the Convention have the right and the duty to foster policies and implement programs aimed at the reconciliation of their peoples, this does not mean that under the mantle of such measures one should cover atrocious crimes such as those committed in the community of Las Dos Erres. The Law on National Reconciliation rules out the possibility of extinction of criminal liability for grave human rights violations.

326. For the reasons stated above, the Commission asks the Court to find that the Guatemalan State is responsible for the violation of the rights to judicial guarantees and effective judicial protection, enshrined in Articles 8 and 25 of the American Convention, as well as for breaching the general obligation to respect the rights provided for at Article 1(1) of the same instrument, to the detriment of the surviving victims and next-of-kin of the victims of the Las Dos Erres massacre.

X. REPARATIONS AND COSTS

327. In view of the facts alleged in this application and the consistent case-law of the Inter-American Court, which establishes "that it is a principle of international law that every violation of an international obligation that has caused harm gives rise to an obligation to make adequate reparation for that harm,"³⁷⁵ the Commission now presents to the Court its claims in respect of reparations that the Guatemalan State should grant as a consequence of its responsibility for the human rights violations committed to the detriment of the victims.

328. Bearing in mind that the Rules of Procedure of the Court grant the individual autonomous representation, and the reparations already granted domestically to the victims based on the framework agreement signed by the Guatemalan State with the victims, the Commission will merely outline the general criteria related to reparations that it considers are still pending in the

³⁷³ I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 276.

³⁷⁴ I/A Court H.R., *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, para. 96.

³⁷⁵ I/A Court H.R. *Case of Cantoral Huamaní and García Santacruz*. Judgment of July 10, 2007. Series C No. 167, para. 156; I/A Court H.R. *Case of Zambrano Vélez et al.* Judgment of July 4, 2007. Series C No. 166, para. 103; and I/A Court H.R. *Case of Escué Zapata*. Judgment of July 4 2007. Series C No. 165, para. 126.

instant case. The Commission understands that it is up to the victims and their representatives to substantiate other claims, if they have them, in keeping with Article 63 of the American Convention and Article 23 and others of the Court's Rules of Procedure.

A. Obligation to make reparation

329. One essential function of justice is to make reparation for the harm caused to the victim. This function should be expressed through rectification or restitution and not only by means of compensation, which does not re-establish the moral equilibrium or return that which was taken.

330. Article 63(1) of the American Convention provides:

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 of his right or freedom that was violated. It 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.

331. As the Court has indicated in its consistent case-law, "Article 63(1) of the American Convention embodies an accepted tenet that is a fundamental principle of the contemporary International Law on the responsibility of States. The occurrence of a wrongful act that is attributable to a State gives rise to the State's international liability, and its resulting duty to make reparation for and remove the consequences of the violation."³⁷⁶

332. Reparations are crucial for ensuring that justice is done in an individual case, and constitutes the mechanism that elevates the decision of the Court beyond the realm of moral condemnation. Reparations consist of those measures that are aimed at wiping out the effect of the violations committed.

333. The obligation to make reparation, which is regulated in all aspects by international law (scope, nature, modalities, and determination of the beneficiaries), cannot be modified or breached by the obligated State by it invoking, for this purpose, provisions of its domestic law.³⁷⁷

334. The reparation in the instant case should vindicate the victims' rights. It should be so as to require the State to resolve this case and take specific steps to carry out diligent investigations when human rights violations have been committed, especially of the magnitude of those that occurred in the Las Dos Erres massacre. The impunity prevailing in this case sends a message to society that crimes of this nature are not priorities.

B. Measures of reparation

335. To remedy the situation of the victim and/or his or her next-of-kin the State must carry out the following duties: "duty to investigate and make known the facts that can be reliably

³⁷⁶ I/A Court H.R., *Case of La Cantuta*. Judgment on the merits, reparations, and costs. Judgment of November 29, 2006 Series C No. 162, para. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 414; I/A Court H.R., *Case of Montero- Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 116.

³⁷⁷ I/A Court H.R. *Case of Cantoral Huamani and García Santacruz*. Judgment of July 10, 2007. Series C No. 167, para. 190; I/A Court H.R. *Case of Zambrano Vélez et al.* Judgment of July 4, 2007. Series C No. 166, para. 148; I/A Court H.R., *Case of La Cantuta*. Judgment on the merits, reparations, and costs. Judgment of November 29, 2006 Series C No. 162, para. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 415.

established (truth); duty to prosecute and punish the persons responsible (justice); obligation to make integral reparation for the moral and material injury caused (reparation), and duty to remove from the security forces those known to have committed, ordered, or tolerated these abuses (creation of security forces worthy of a democratic state). These duties are not in the alternative, nor are they optional; the state responsible must carry out each and every one of them to the extent of its possibilities and in good faith."³⁷⁸

336. The United Nations Special Rapporteur on the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms has classified the components of the right in four general categories: restitution, compensation, rehabilitation, and measures of satisfaction and guarantees of non-repetition.³⁷⁹ Those measures include, in the opinion of the United Nations Special Rapporteur on the Question of Impunity for Perpetrators of Human Rights Violations, the cessation of existing violations, fact-finding, public and wide dissemination of the truth of what happened, an official declaration or judicial decision restoring the dignity, reputation, and rights of the victim and of persons with ties to him or her, an apology that includes public recognition of the facts and the acceptance of responsibility, the enforcement of judicial or administrative sanctions on those responsible for the violations, the prevention of new violations, etc.

337. The Court has noted that measures of reparation are aimed at wiping out the effects of the violations committed.³⁸⁰ Those measures include the various ways in which a state may address its international responsibility, which, under international law, consist of measures of restitution, compensation, rehabilitation, satisfaction, and measures of non-repetition.³⁸¹

338. In view of the foregoing, the Inter-American Commission asks that the Court order measures of integral reparation, which in turn send a message against the impunity associated with the vast majority of human rights violations in the member states of the Organization of American States. This requires establishing and strengthening judicial and administrative mechanisms that make it possible for victims to obtain reparation through *sua sponte* procedures that are expeditious, fair, low-cost, and accessible.

339. Based on the evidence presented in this application and in light of the criteria established by the Court in its case-law, the Inter-American Commission presents its conclusions and relief sought in terms of the measures of reparation that are still pending in the case of the Las Dos Erres massacre.

³⁷⁸ JUAN E. MÉNDEZ, EL DERECHO A LA VERDAD FRENTE A LAS GRAVES VIOLACIONES A LOS DERECHOS HUMANOS, article published in: La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales, CELS, 1997, p. 517.

³⁷⁹ Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Mr. Theo van Boven pursuant to Sub-Commission resolution 1995/117. E/CN.4/Sub.2/1997/17.

³⁸⁰ I/A Court H.R., *Case of La Cantuta*. Judgment on the merits, reparations and costs. Judgment of November 29, 2006. Series C No. 162, para. 202; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 416; I/A Court H.R., *Case of Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*. Judgment on Preliminary Objections, the Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 144.

³⁸¹ See United Nations, Study Concerning the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Theo Van Boven, Special Rapporteur, E/CN.4/Sub.2/1990/10, July 26, 1990. See also: I/A Court H.R., Blake Case. Reparations (Article 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 31; Case of Suárez Rosero, Reparations (Article 63(1) American Convention on Human Rights), Judgment of January 20, 1999. Series C No. 44, para. 41.

Measures of satisfaction, cessation, rehabilitation, and guarantees of non-repetition

340. Satisfaction has been understood as any measure that the perpetrator of a violation must adopt according to international instruments or customary law whose purpose is to recognize that a wrongful act was committed.³⁸² Satisfaction takes place when three acts are carried out, generally in cumulative fashion: apologies, or any other gesture that shows recognition of having perpetrated the act in question; the prosecution and punishment of the individuals responsible; and taking measures to ensure the harm not be repeated.³⁸³

341. On November 29, 1985, the United Nations General Assembly adopted, by consensus, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power³⁸⁴, according to which victims "are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered" and to that end one must allow "the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system."

342. In the European system, by way of contrast, the European Convention on the Compensation of Victims of Violent Crimes was drafted in 1983; in essence it addresses the situation of victims who have suffered bodily harm or detriment to their health and the dependents of those who die as a result of such crimes, but also makes reference to the duty to protect the victims, and grants them certain rights to participate in the criminal proceeding.³⁸⁵

343. One fundamental element that arises from the determination of state responsibility for human rights violations is the requirement to cease all violative conduct, and to guarantee that similar violations not recur.³⁸⁶

344. The Court has consistently found that individually identifying those responsible for human rights violations derives naturally from the obligations under the Convention, and a requirement for eliminating situations of generalized impunity.³⁸⁷

³⁸² Brownlie, *State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

³⁸³ *Id.*

³⁸⁴ A/RES/40/34, *Access to justice and fair treatment*. "4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

³⁸⁵ European Convention of November 24, 1983, on the Compensation of Victims of Violent Crimes. The Council of Europe has also issued provisions and recommendations regarding the rights of the victims of crimes.

³⁸⁶ I/A Court H.R., *Case of Castillo Páez*. Reparations (Article 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 52.

³⁸⁷ The Court has defined impunity as "the overall failure to investigate, pursue, capture, prosecute and convict those responsible for the violations of the rights protected under the American Convention." See I/A Court H.R., *Case of*

345. The Court has established that impunity constitutes a breach of the duty of a state that causes harm to the victim, his or her next-of-kin, and society as a whole, and fosters the chronic repetition of violations of the human rights in question.

346. In this regard, the Commission considers that the investigation is a measure not only of satisfaction, but of cessation, for until such time as the state carries out its duty to duly investigate, prosecute, and punish the human rights violations committed during the Las Dos Erres massacre, it is committing a continuing violation of the rights established at Articles 8(1) and 25 of the Convention, and of the obligation enshrined at Article 1(1) of the American Convention.

347. The Court has indicated repeatedly that each individual and society as a whole have the right to be informed of the what happened in relation to human rights violations.³⁸⁸ Similarly, the United Nations Commission on Human Rights has recognized that for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators and their accomplices are essential steps for rehabilitation and reconciliation; accordingly, it has urged the governments to step up their efforts to provide the victims of human rights violations fair and equitable process by which those investigations may be investigated; and it has encouraged victims to participate in that process.³⁸⁹

348. The Court has also established that

the State is required to remove all obstacles –both factual and legal– contributing to impunity ... ; grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, and use all possible measures to advance the proceeding.³⁹⁰

349. According to the case law of the Court, and given the particular gravity of the human rights violations in the Las Dos Erres massacre, integral reparation requires that the State undertake, with due diligence, a serious, impartial, and exhaustive investigation for the purpose of clarifying the historical truth of the facts. To this end, it should adopt all judicial and administrative measures necessary in order to complete the investigation, locate, prosecute, and punish the masterminds and direct perpetrators, and report on the results. In addition, the State is under an obligation to investigate and punish the persons responsible for the obstruction of justice, cover-up, and impunity that have prevailed in relation to this case.

350. The survivors of the massacre and the next-of-kin of those deceased in it should have full access and the capacity to participate in all stages and mechanisms of those investigations, in keeping with the domestic law and the provisions of the American Convention. In addition, the State should ensure effective enforcement of the decision reached by the domestic

...continuation

Blanco Romero et al. Judgment of November 28, 2005. Series C No. 138, para. 94; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, para. 76.

³⁸⁸ I/A Court H.R. *Case of Bueno Alves*. Judgment on the merits, reparations, and costs, May 11, 2007. Series C No. 164, para. 90; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 347.

³⁸⁹ E/CN.4/RES/2001/70.

³⁹⁰ I/A Court H.R., *Case of La Cantuta*. Judgment on the merits, reparations, and costs. Judgment of November 29, 2006 Series C No. 162, para. 226; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 134. See also I/A Court H.R., *Case of Almonacid Arellano*. Judgment on Preliminary Objections, Merits, Reparations, and Costs, September 26, 2006 Series C No. 154, para. 156.

courts in discharging this obligation. The result of the proceeding should be publicly disseminated, so that Guatemalan society can know the truth.³⁹¹

351. Second, Guatemala should adopt measures of rehabilitation for the victims. Such measures must necessarily include measures for psychological and medical rehabilitation.

352. In addition, the Commission considers that the State is under an obligation to prevent the recurrence of human rights violations such as those that occurred in this case, accordingly, it asks the Court to order Guatemala to adopt, on a priority basis, a policy of permanent training in human rights and international humanitarian law for the Armed Forces personnel.

C. The beneficiaries

353. Article 63(1) of the American Convention requires reparation for the consequences of a violation and "that fair compensation be paid to the injured party." The persons with a right to such compensation are generally those directly injured by the facts of the violation in question.

354. In view of the nature of the instant case, the beneficiaries of the reparations that the Court orders as a consequence of the human rights violations perpetrated by the Guatemalan State are the victims already mentioned above, in describing the purpose of this application.

D. Costs and expenses

355. According to the consistent case-law of the Court, the costs and expenses should be understood as included in the concept of reparation enshrined in Article 63(1) of the American Convention, since the activity of the injured party, his or her successors, or his or her representatives to accede to international justice entails outlays and commitments of an economic nature that should be compensated.³⁹²

356. In the instant case, the Commission asks the Court to order the Guatemalan State, once it has heard from the victims' representatives, to pay the reasonable and necessary costs and expenses, duly shown, that have originated from and that may originate from the presentation of the instant case before the Inter-American Court.

XI. CONCLUSION

357. The lack of due diligence in the investigation, prosecution, and punishment of those responsible for the massacre of 251 inhabitants of the community of Las Dos Erres, municipality of La Libertad, department of Petén, carried out by members of the Guatemalan Army from December 6 to 8, 1982, constitutes violations of the rights protected by Article 8 (right to judicial guarantees) and Article 25 (right to judicial protection) of the American Convention on Human Rights; and a breach of the general obligation to respect and ensure human rights established at Article 1(1) of the treaty.

³⁹¹ I/A Court H.R. *Case of Cantoral Huamaní y García Santacruz*. Judgment of July 10, 2007. Series C No. 167, para. 191; I/A Court H.R. *Case of Escué Zapata*. Judgment of July 4, 2007. Series C No. 165, para. 166; I/A Court H.R. *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, para. 107; I/A Court H.R. *Case of the Serrano Cruz sisters*. Judgment of March 1, 2005. Series C No. 120, para. 175.

³⁹² I/A Court H.R., *Case of La Cantuta*. Judgment on the merits, reparations and costs. Judgment of November 29, 2006 Series C No. 162, para. 243; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 455; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 152.

358. The Commission reiterates once again its recognition of the Guatemalan State for its positive attitude in respect of this proceeding, its express acceptance of the facts of the case and of the legal consequences that derive from those facts, and its manifest decision to make reparation at least in part for the human rights violations that occurred.

XII. RELIEF SOUGHT

359. Based on the arguments of fact and law set forth above, the Inter-American Commission on Human Rights asks the Court to conclude and find that

the Republic of Guatemala is responsible for violating the rights to judicial guarantees and to judicial protection, established in Articles 8 and 25 of the American Convention, in relation to the general obligation to respect and ensure human rights enshrined in Article 1(1) of the same instrument, to the detriment of survivors Ramiro Fernando López García and Salomé Armando Gómez Hernández, and of the following next-of-kin of persons killed in the Las Dos Erres massacre: (1) Baldomero Pineda Batres; (2) Catalina Arana Pineda de Ruano; (3) Francisca Morales Contreras; (4) Tomasa Galicia González; (5) Inocencio González; (6) Santos Nicolás Montepeque Galicia; (7) Pedro Antonio Montepeque; (8) Enriqueta González G. de Martínez; (9) Inés Otilio Jiménez Pernillo; (10) Mayron Jiménez Castillo; (11) Eugenia Jiménez Pineda; (12) Concepción de María Pernillo J.; (13) Encarnación Pérez Agustín; (14) María Ester Contreras; (15) Marcelina Cardona Juárez; (16) Victoria Hércules Rivas; (17) Margarito Corrales Grijalva; (18) Laura García Godoy; (19) Luís Armando Romero Gracia; (20) Edgar Geovani Romero García; (21) Edwin Saúl Romero García; (22) Aura Anabella Romero García; (23) Elvia Luz Granados Rodríguez; (24) Catalino González; (25) María Esperanza Arreaga; (26) Felipa de Jesús Medrano Pérez; (27) Felipe Medrana García; (28) Juan José Arévalo Valle; (29) Noé Arévalo Valle; (30) Cora María Arévalo Valle; (31) Lea Arévalo Valle; (32) Luís Saúl Arevalo Valle; (33) Gladis Esperanza Arevalo Valle; (34) Felicita Lima Ayala; (35) Cristina Alfaro Mejía; (36) Dionisio Campos Rodríguez; (37) Elena López; (38) Petronila López Méndez; (39) Timotea Alicia Pérez López; (40) Vitalina López Pérez; (41) Sara Pérez López; (42) María Luisa Pérez López; (43) David Pérez López; (44) Manuela Hernández; (45) Blanca Dina Elisabeth Mayen Ramírez; (46) Rafael Barrientos Mazariegos; (47) Toribia Ruano Castillo; (48) Eleuterio López Méndez; (49) Marcelino Deras Tejada; (50) Amalia Elena Girón; (51) Aura Leticia Juárez Hernández; (52) Israel Portillo Pérez; (53) María Otilia González Aguilar; (54) Sonia Elisabeth Salazar Gonzáles; (55) Glendi Marleni Salazar Gonzáles; (56) Brenda Azucena Salazar González; (57) Susana Gonzáles Menéndez; (58) Benigno de Jesús Ramírez González; (59) María Dolores Romero Ramírez; (60) Encarnación García Castillo; (61) Baudilia Hernández García; (62) Susana Linarez; (63) Andrés Rivas; (64) Darío Ruano Linares; (65) Edgar Ruano Linares; (66) Otilia Ruano Linares; (67) Yolanda Ruano Linares; (68) Arturo Ruano Linares; (69) Saturnino García Pineda; (70) Juan de Dios Cabrera Ruano; (71) Luciana Cabrera Galeano; (72) Hilaria Castillo García; (73) Amílcar Salazar Castillo; (74) Marco Tulio Salazar Castillo; (75) Gloria Marina Salazar Castillo; (76) María Vicenta Moran Solís; (77) María Luisa Corado; (78) Hilario López Jiménez; (79) Guillermina Ruano Barahona; (80) Rosalina Castañeda Lima; (81) Teodoro Jiménez Pernillo; (82) Luz Flores; (83) Ladislao Jiménez Pernillo; (84) Catalina Jiménez Castillo; (85) Enma Carmelina Jiménez Castillo; (86) Álvaro Hugo Jiménez Castillo; (87) Rigoberto Vidal Jiménez Castillo; (88) Albertina Pineda Cermeño; (89) Etelvina Cermeño Castillo; (90) Sofía Cermeño Castillo; (91) Marta Lidia Jiménez Castillo; (92) Valeria García; (93) Cipriano Morales Pérez; (94) Antonio Morales Miguel; (95) Nicolasa Pérez Méndez; (96) Jorge Granados Cardona; (97) Santos Osorio Ligue;

(98) Gengli Marisol Martínez Villatoro; (99) Amner Rivai Martínez Villatoro; (100) Celso Martínez Villatoro; (101) Rudy Leonel Martínez Villatoro; (102) Sandra Patricia Martínez Villatoro; (103) Yuli Judith Martínez Villatoro de López; (104) María Luisa Villatoro Izara; (105) Olegario Rodríguez Tepec; (106) Teresa Juárez; (107) Lucrecia Ramos Yanes de Guevara; (108) Eliseo Guevara Yanes; (109) Amparo Pineda Linares de Arreaga; (110) María Sabrina Alonzo P. de Arreaga; (111) Francisco Arreaga Alonzo; (112) Eladio Arreaga Alonzo; (113) María Menegilda Marroquín Miranda; (114) Oscar Adolfo Antonio Jiménez; (115) Ever Ismael Antonio Coto; (116) Héctor Coto; (117) Rogelia Natalia Ortega Ruano; (118) Ángel Cermeño Pineda; (119) Felicita Herenia Romero Ramírez; (120) Esperanza Cermeño Arana; (121) Abelina Flores; (122) Albina Jiménez Flores; (123) Mercedes Jiménez Flores; (124) Transito Jiménez Flores; (125) Celedonia Jiménez Flores; (126) Venancio Jiménez Flores; (127) José Luís Cristales Escobar; (128) Reyna Montepeque; (129) Miguel Angel Cristales; (130) Felipa de Jesús Díaz de Hernández; (131) Rosa Erminda Hernández Díaz; (132) Vilma Hernández Díaz de Osorio; (133) Félix Hernández Díaz; (134) Desiderio Aquino Ruano; (135) Leonarda Saso Hernández; (136) Paula Antonia Falla Saso; (137) Dominga Falla Saso; (138) Agustina Falla Saso; (139) María Juliana Hernández Moran; (140) Salomé Armando Gómez Hernández; (141) Raul de Jesús Gómez Hernández; (142) María Ofelia Gómez Hernández; (143) Sandra Ofelia Gómez Hernández; (144) Jose Ramiro Gómez Hernández; (145) Bernardina Gómez Linarez; (146) Telma Guadalupe Aldana Canan; (147) Mirna Elizabeth Aldana Canan; (148) Rosa Elvira Mayen Ramírez; (149) Augusto Mayen Ramírez; (150) Rodrigo Mayen Ramírez; (151) Onivia García Castillo; (152) Saturnino Romero Ramírez; (153) Ramiro Fernando López García; (154) Ana Margarita Rosales Rodas; and (155) Berta Alicia Cermeño Arana.

And, accordingly, that it order the State:

- e) to perform a special, rigorous, impartial, and effective investigation for the purpose of prosecuting and punishing the direct perpetrators and masterminds of the Las Dos Erres massacre;
- f) to remove all obstacles both de facto and legal that keep this case in impunity – in particular, that it take the measures necessary to see to it that the amparo action not be used as a dilatory mechanism, and not to apply amnesty provisions contrary to the American Convention;
- g) to implement an adequate program of psychosocial care for the survivors and next-of-kin of the persons killed in the Las Dos Erres massacre; and
- h) to adopt the measures necessary to ensure that similar incidents not recur, in keeping with the duty to prevent violations and guarantee the fundamental rights recognized in the American Convention. And in particular, that it implement permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces.

XIII. SUPPORTING EVIDENCE

A. Documentary evidence

360. Following is a list of the documentary evidence available at this time:

APPENDIX 1. IACHR, Report No. 22/08 (admissibility and merits), Case 11,.681, *Las Dos Erres* Massacre, Guatemala, March 14, 2008.

APPENDIX 2. Record of the procedure before the Inter-American Commission on Human Rights.

- ANNEX 1.** Copy of the friendly settlement agreement without the parties' signatures.
- ANNEX 2.** Copy of the agreement on economic reparation in the case of the *Las Dos Erres* Massacre. In the framework of the Friendly Settlement of April 1, 2000.
- ANNEX 3.** Program of symbolic delivery of reparations to the next-of-kin of the victims of Las Dos Erres.
- ANNEX 4.** Document from *Amnesty International* titled: Guatemalan victims of 1982 army massacre at Las Dos Erres exhumed, October 1995.
- ANNEX 5.** Supplement to the eleventh report on human rights of the United Nations Verification Mission in Guatemala (MINUGUA), August 2000.
- ANNEX 6.** Press articles related to the Las Dos Erres massacre and the process of investigating it.
- ANNEX 7.** Official press release of December 10, 2001, by which the State made known its recognition of institutional responsibility for the massacre.
- ANNEX 8.** Expert report on the mental health injury stemming from the massacre of the village of Las Dos Erres and the possible measures of psychological reparation.
- ANNEX 9.** Technical Opinion of the National Mental Health Program with respect to the expert report submitted by the community studies and psychosocial care team (Estudios Comunitarios y Atención Psicosocial: ECAP).
- ANNEX 10.** Progress report on psychosocial intervention with survivors of the Las Dos Erres massacre who reside in the village of Las Cruces, La Libertad, Petén.
- ANNEX 11.** Report on individual care given to the next-of-kin of the victims of the Las Dos Erres massacre by personnel of the Office of Health of Southwest Petén, Sayaxche.
- ANNEX 12.** CD that contains the video entitled: *Sobrevivientes testigos de la vida. El caso de Las Dos Erres*.
- ANNEX 13.** CD that contains the video entitled: *Guatemala, Las Dos Erres, Una mirada hacia el fondo del pasado* (Spanish-language version).
- ANNEX 14.** CD that contains the video of the hearing held October 8, 1998, before the IACHR in relation to the instant case.
- ANNEX 15.** Copies of photographs that of the exhumation of the victims of the massacre.
- ANNEX 16.** Statement given to the notary public on August 22, 1996 by Favio Pinzón Jerez, former member of the Guatemalan Army, who participated in the massacre of Las Dos Erres.
- ANNEX 17.** Exhibit I of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.
- ANNEX 18.** Exhibit II of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.
- ANNEX 19.** Exhibit III of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 20. Exhibit IV of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 21. Exhibit V of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 22. Exhibit VI of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 23. Exhibit VII of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 24. Exhibit VIII of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 25. Exhibit IX of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 26. Exhibit X of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 27. Exhibit XI of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 28. Exhibit XII of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 29. Exhibit XIII of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 30. Exhibit XIV of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 31. Exhibit XV of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 32. Exhibit XVI of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 33. Exhibit XVII of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 34. Exhibit XVIII of the record in the criminal investigation before the Criminal Court of First Instance of Petén, Case No. 541-94 M.P., Trial No. 1316-94.

ANNEX 35. Case No. 820-2000 before the Constitutional Court: appeal of amparo judgment No. 136-2000 of July 22, 2000.

ANNEX 36. Case No. 901-2000 before the Constitutional Court: appeal of amparo judgment No. 107-2000 of April 4, 2000.

ANNEX 37. Case No. 965-2000 before the Constitutional Court: appeal of amparo judgment No. 134-2000 of August 9, 2000.

ANNEX 38. Case No. 565-2001 before the Constitutional Court: appeal of amparo judgment No. 37-2000 of March 19, 2001.

ANNEX 39. Case No. 620-2001 before the Constitutional Court: appeal of amparo judgment No. 38-2000 of March 20, 2001.

ANNEX 40. Case No. 680-2001 before the Constitutional Court: appeal of amparo judgment No. 101-2000 of March 23, 2001.

ANNEX 41. Case No. 802-2001 before the Constitutional Court: appeal of amparo judgment No. 109-2000 of April 26, 2001.

ANNEX 42. Case No. 874-2001 before the Constitutional Court: appeal of amparo judgment No. 43-2000 of April 9, 2001.

ANNEX 43. Case No. 993-2001 before the Constitutional Court: appeal of amparo judgment No. 102-2000 of May 15, 2001.

ANNEX 44. Case No. 1045-2001 before the Constitutional Court: appeal of amparo judgment No. 101-2000 of March 23, 2001.

ANNEX 45. Case No. 1203-2001 before the Constitutional Court: appeal of amparo judgment No. 352-2000 of May 10, 2001.

ANNEX 46. Case No. 1204-2001 before the Constitutional Court: appeal of amparo judgment No. 353-2000 of June 12, 2001.

ANNEX 47. Case No. 1205-2001 before the Constitutional Court: appeal of amparo judgment No. 371-2000 of June 12, 2001.

ANNEX 48. Case No. 1206-2001 before the Constitutional Court: appeal of amparo judgment No. 351-2000 of May 10, 2001.

ANNEX 49. Case No. 1240-2001 before the Constitutional Court: appeal of amparo judgment No. 369-2000 of August 9, 2000.

ANNEX 50. Case No. 1304-2001 before the Constitutional Court: appeal of amparo judgment No. 41-2000 of July 31, 2001.

ANNEX 51. Case No. 1831-2001 before the Constitutional Court: appeal of amparo judgment No. 368-2000 of October 1, 2001.

ANNEX 52. Case No. 1841-2001 before the Constitutional Court: appeal of amparo judgment No. 370-2000 of October 1, 2001.

ANNEX 53. Case No. 8-2002 before the Constitutional Court: appeal of amparo judgment No. 36-2000 of July 23, 2001.

ANNEX 54. Case No. 156-2002 before the Constitutional Court: appeal of amparo judgment No. 35-2000 of February 10, 1999.

ANNEX 55. Case No. 686-2002 before the Constitutional Court: appeal of amparo judgment No. 34-2000 of March 8, 2000.

ANNEX 56. Case No. 1676-2002 before the Constitutional Court: appeal of amparo judgment No. 33-2002 of June 27, 2002.

ANNEX 57. Case No. 150-2003 before the Constitutional Court: appeal of amparo judgment No. 42-2000 of February 10, 1999.

ANNEX 58. Case No. 508-2003 before the Constitutional Court: appeal of amparo judgment No. 34-2002 of June 27, 2002.

ANNEX 59. Case No. 856-2003 before the Constitutional Court: appeal of amparo judgment No. 56-2003 of February 26, 2003.

ANNEX 60. Case No. 1938-2003 before the Constitutional Court: appeal of amparo judgment No. 102-2000 of February 10, 1999.

ANNEX 61. Case No. 1377-2004 before the Constitutional Court: appeal of amparo judgment No. 56-2003 of March 8, 2004.

- ANNEX 62.** Case No. 2235-2004 before the Constitutional Court: appeal of amparo judgment No. 99-2003 of February 14, 2003.
- ANNEX 63.** Amnesty case 162-2002 before the Twelfth Chamber of the Court of Appeals.
- ANNEX 64.** Exhibit I of amnesty case 251-2002 before the Twelfth Chamber of the Court of Appeals.
- ANNEX 65.** Exhibit II of amnesty case 251-2002 before the Twelfth Chamber of the Court of Appeals.
- ANNEX 66.** Exhibit III of amnesty case 251-2002 before the Twelfth Chamber of the Court of Appeals.
- ANNEX 67.** Amnesty case 369-2002 before the Fourth Chamber of the Court of Appeals.
- ANNEX 68.** Case 0820-2000, before the Constitutional Court.
- ANNEX 69.** Some exhibits from case 001-2002, before the Tenth Chamber of the Court of Appeals.
- ANNEX 70.** Law on Amparo, Habeas Corpus, and Constitutionality.
- ANNEX 71.** Favorable ruling by the Special Commission for Reform of the Justice Sector and the Committee on Legislation and Constitutional Points of the proposed law "Reforms to the Law on Amparo, Habeas Corpus, and Constitutionality, Decree 1-86 of the National Constituent Assembly," sent to the plenary of the Congress on November 29, 2007.
- ANNEX 72.** Law for the Protection of Procedural Subjects and Persons Associated with the Administration of Criminal Justice.
- ANNEX 73.** Law on the Judicial Branch.
- ANNEX 74.** Resolution of the Office of the Human Rights Ombudsman of Guatemala on the case of Las Dos Erres, November 26, 2003.
- ANNEX 75.** Decree number 145-1996 – Law on National Reconciliation, December 27, 1996.
- ANNEX 76.** Résumé of Carlos Manuel Garrido, expert offered by the Commission.
- ANNEX 77.** Power of attorney granted to CEJIL and FAMDEGUA by Inocencio González, President of the Committee of Victims of the Las Dos Erres massacre.
- ANNEX 78.** Power of attorney granted to CEJIL and FAMDEGUA by Bernabé Cristales Montepeque.
- ANNEX 79.** Power of attorney granted to CEJIL and FAMDEGUA by María Rebeca García Gómez.
- ANNEX 80.** Power of attorney granted to CEJIL and FAMDEGUA by Sandra Orfilia Gómez Hernández.
- ANNEX 81.** Power of attorney granted to CEJIL and FAMDEGUA by Felicita Herenia Romero Ramírez.
- ANNEX 82.** Power of attorney granted to CEJIL and FAMDEGUA by Raúl de Jesús Gómez Hernández.
- ANNEX 83.** Power of attorney granted to CEJIL and FAMDEGUA by Telma Guadalupe Aldana Canan.

361. The Commission wishes to clarify from this moment that the copies of the records of domestic proceedings that it is submitting to the Court are the best that it has and has been able to obtain to date. It is possible that some of its folios are incomplete or illegible.

362. Accordingly, the Commission asks the Court, if it considers it necessary, to request of the Guatemalan State that it submit certified copies of all the documents related to the investigations carried out in its domestic jurisdiction in relation to the facts, as well as an authenticated copy of the applicable legislation and regulations.

B. Expert evidence

363. The Commission asks that the Court receive the opinion of the following expert:

Carlos Manuel Garrido, of Argentine nationality, Full Professor of Criminal Law at the Universidad Nacional de la Plata, Prosecutor of Administrative Investigations and Expert of the United Nations Mission in Guatemala, who shall submit an expert report on impunity for human rights violations committed during the internal armed conflict that affected the country from 1962 to 1996; the structural deficiencies in the Guatemalan administration of justice; and the use of the amparo remedy as a dilatory strategy in judicial proceedings; among other aspects related to the object and purpose of this application.

XIV. INFORMATION ON THE ORIGINAL COMPLAINANTS AND THE VICTIMS

364. In keeping with the provisions of Article 33 of the Court's Rules of Procedure, the Inter-American Commission presents the following information: The original complaint was filed by the Office of Human Rights of the Archdiocese of Guatemala and the organization Center for Justice and International Law (CEJIL).

365. Inocencio González, the President of the Committee of Victims of the Las Dos Erres Massacre (Comité de Víctimas de la Masacre de Las Dos Erres), Bernabé Cristales Montepeque, María Rebeca García Gómez, Sandra Orfilia Gómez Hernández, Felicita Herenia Romero Ramírez, and Raúl de Jesús Gómez Hernández have authorized the organizations Center for Justice and International Law (CEJIL) and Asociación Familiares de Detenidos-Desaparecidos de Guatemala (FAMDEGUA) to represent them in the judicial stage of the process before the system, as appears in the documents copies of which are attached.³⁹³

366. With respect to the victims who have yet to designate a representative for the processing of the case before the Court, the IACHR, in its capacity as guarantor of the general interest in the inter-American system, provisionally assumes the defense of their interests.

367. The victims' representatives have designated as their unified domicile the following address:

[REDACTED ADDRESS]

Washington, D.C.
July 30, 2008

³⁹³ Annexes 77 to 83, copies of the powers of attorney executed on behalf of CEJIL and FAMDEGUA.