

The Massacre of the Village of Los Josefinos v. Guatemala

ABSTRACT¹

This case is about a massacre committed by the army in Guatemala in 1982, during which dozens were killed or disappeared. The Court found Guatemala in violation of several articles of the American Convention.

I. FACTS

A. Chronology of Events

1962-1996: Guatemala is ravaged by civil war.² Under the “National Security Doctrine” and using a broad definition of the term “enemy,” the State enacts large-scale violence against civilians, including populations of indigenous and rural communities.³ As a result of this violence, many children are separated from their family, and in some cases, are abducted by the State military itself.⁴ In total, more than 200,000 Guatemalans die or disappear during this period.⁵

1970s: The village of Los Josefinos, populated by non-indigenous families and located in the Department of Petén, becomes a battleground for the guerrilla and State military.⁶

1981 through 1983: The military carries out repression and commits numerous acts of violence in the Department of Petén.⁷

March through April, 1982: The military carries out two massacres in the Department of Petén.⁸ Los Josefinos villagers are attacked before and after these massacres.⁹ Immediately prior to the massacre, the military abducts and murders several villagers who they believe are aiding the guerrilla.¹⁰

April 29, 1982: In the morning, guerilla members enter the Los Josefinos village and gather the residents in the village soccer field.¹¹ There, the guerilla members kill two men who they believe are aiding the State army.¹² The killing triggers a clash between the guerilla and

¹ Sophia Suarez, Author; Charley Chen, Editor; Selene Estrada-Villela, Senior IACHR Editor; Aaron Kircher, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

² The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 442, ¶ 33 (Nov. 3, 2021).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* ¶ 35; see The Massacre of the Village of Los Josefinos v. Guatemala, Admissibility Report, Report No. 17/15, Inter-Am. Comm’n H.R., Petition. No. 1139-04, ¶ 7 (Mar. 24, 2015).

⁷ The Massacre of the Village of Los Josefinos v. Guatemala, Admissibility Report, ¶ 8.

⁸ *Id.*

⁹ *Id.*

¹⁰ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 35.

¹¹ *Id.* ¶ 36.

¹² *Id.*

military at a nearby location.¹³ At 5:00 p.m., the military unit, Company of Victors (Compañía Los Vencedores), surrounds the Los Josefinos village.¹⁴

April 30, 1982: At midnight, the military unit attacks Los Josefinos.¹⁵ The soldiers invade the village and kill five of the six village guards. Only one manages to escape.¹⁶ Soldiers begin to set homes on fire and kill the defenseless occupants.¹⁷ To ensure there are no survivors, they enter the homes and shoot or beat those still alive to death.¹⁸ The soldiers also brutally rape and torture women and girls before killing them.¹⁹ The following morning, soldiers bury nineteen unidentified victims in a mass grave in the village cemetery.²⁰

B. Other Relevant Facts

Ultimately, the massacre claims at least thirty-eight lives, not including the seven individuals killed prior.²¹ However, due to problems identifying the deceased and the total number killed, this number is likely higher.²²

At least three individuals are abducted by the military during the massacre.²³ Mr. José Álvaro López Mejía and Mr. Fabio González are taken from their homes, and Mr. Florenci Quej Bin is abducted on his way home.²⁴ As reported by the Commission and representatives, there is currently no information regarding their location.²⁵ Additionally, there is no information on other missing individuals, including children and other adults.²⁶

Eleven months after the massacre, some survivors and soldiers return to the village.²⁷ The soldiers stay until ten families arrive and occupy the village.²⁸ In total, 1,498 survivors and their 111 relatives are forcibly displaced.²⁹

The massacre of the village of Los Josefinos is documented by the Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico; “CEH”) and the Interdiocesan Project for the Recovery of Historical Memory (Proyecto Interdiocesano de Recuperación de la Memoria Histórica; “REMHI”).³⁰

II. PROCEDURAL HISTORY

¹³ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 36.

¹⁴ The Massacre of the Village of Los Josefinos v. Guatemala, Admissibility Report, ¶ 7.

¹⁵ *Id.*

¹⁶ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶¶ 36, 38.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 40.

²¹ *Id.* ¶ 38.

²² The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 38.

²³ *Id.* ¶ 39.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* ¶ 41.

²⁸ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 41.

²⁹ *Id.* ¶ 17.

³⁰ *Id.* ¶¶ 33, 37.

A. Before the Commission

October 27, 2004: The Association of Families of the Detained-Disappeared of Guatemala (Asociación Familiares de Detenidos-Desaparecidos de Guatemala; “FAMDEGUA”) and the Center for Justice and International Law (Centro por la Justicia y el Derecho Internacional; “CEJIL”) present a petition on behalf of the Los Josefinos Village to the Inter-American Commission on Human Rights.³¹

December 18, 2007: The petitioners and the State sign a friendly settlement agreement which requires the State to provide reparations and prevent future massacres.³²

October 24, 2012: Because the State does not fully comply with the settlement agreement, the petitioners ask to terminate the settlement process and continue processing the case with the Commission.³³

March 24, 2015: The Commission finds the petition admissible and issues the Report on Admissibility No. 17/15.³⁴ In the petition, the Commission denies the State’s objection to admissibility.³⁵ The State contests admissibility under Article 46(1)(a), claiming that the petitioners have not exhausted domestic legal avenues.³⁶ The petitioners argue that they are entitled to an exception under Article 46(2)(c) because the State has made little progress in the thirty years since the massacre and eighteen years since the beginning of domestic proceedings.³⁷ The Commission agrees with the petitioners, allowing the petition to proceed due to the State’s unwarranted delay in issuing a final judgment.³⁸

May 6, 2015: The Commission issues the report on admissibility.³⁹

February 12, 2019: The Commission approves Merits Report No. 16/19.⁴⁰ Therein, it concludes that the State of Guatemala has violated Articles 3 (Right to Juridical Personality), 4.1 (Prohibition of Arbitrary Deprivation of Life), 5.1 (Right to Physical, Mental, and Moral Integrity), 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 7 (Right to Personal Liberty), 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 22.1 (Right to Move Freely Within a State) and 25.1 (Right of Recourse Before a Competent Court) of the American Convention of Human Rights.⁴¹ The Commission additionally finds that the State did not oblige with Article 1 of the Inter-American Convention on Forced Disappearance of People (Convención Interamericana sobre Desaparición Forzada de Personas; “CIDFP”).⁴²

³¹ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 2.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ The Massacre of the Village of Los Josefinos v. Guatemala, Admissibility Report, ¶¶ 16, 19.

³⁶ *Id.* ¶ 16.

³⁷ *Id.* ¶¶ 20-21.

³⁸ *Id.* ¶¶ 22, 24.

³⁹ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 2, n.1.

⁴⁰ *Id.* ¶ 2.

⁴¹ *Id.* ¶ 2, n.2.

⁴² *Id.*

April 10, 2019: The State is notified of the Merits report.⁴³ The State conveys its objection to and disapproval of the report, believing it to be a bad faith act and violation of the friendly settlement agreement.⁴⁴

B. Before the Court

April 24, 2019: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁵

February 24, 2020: The representatives present their brief of pleadings, motions, and evidence to the Court.⁴⁶ They substantially agree with the arguments of the Commission and ask the Court to find the State additionally responsible for Articles 11.2 (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), 13 (Freedom of Thought and Expression), 17 (Rights of the Family), and 19 (Rights of the Child) of the American Convention.⁴⁷ Through their representation, the victims ask for financial support from the Victim's Legal Assistance Fund of the Inter-American Court.⁴⁸

September 7, 2020: The State submits its reply, including a preliminary objection which contests the Court's jurisdiction and rejects the Commission and representative's claims.⁴⁹

March 3, 2021: The International Humanitarian Law Clinic of the Federal University of Rio Grande do Sul submits an amicus curiae brief to the Court.⁵⁰

1. Violations Alleged by Commission⁵¹

Article 3 (Right to Juridical Personality)

Article 4.1 (Prohibition of Arbitrary Deprivation of Life)

Article 5.1 (Right to Physical, Mental, and Moral Integrity)

Article 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 7 (Right to Personal Liberty)

Article 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent)

Article 22.1 (Right to Move Freely Within a State)

Article 25.1 (Right of Recourse Before a Competent Court)

all in relation to:

Article 1.1 (Obligation of Non-Discrimination) of the American Convention.

Article 1 (Obligation to Adopt Measures) of the Inter-American Convention on Forced Disappearance of Persons.

2. Violations Alleged by Representatives of the Victims⁵²

⁴³ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 2.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* ¶ 5.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 6.

⁵⁰ *Id.* ¶ 9.

⁵¹ *Id.* ¶ 1.

⁵² *Id.* ¶ 5.

Same Violations Alleged by Commission, plus:

Article 11.2 (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity)

Article 13 (Freedom of Thought and Expression)

Article 17 (Rights of the Family)

Article 19 (Rights of the Child)

all in relation to:

Article 1.1 (Obligation of Non-Discrimination) of the American Convention.

III. MERITS

A. Composition of the Court

Elizabeth Odio Benito, President
 L. Patricio Pazmiño Freire, Vice-President
 Eduardo Vio Grossi, Judge
 Humberto Antonio Sierra Porto, Judge
 Eduardo Ferrer Mac-Gregor Poisot, Judge
 Eugenio Raúl Zaffaroni, Judge
 Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary
 Romina I. Sijniensky, Deputy Secretary

B. Decision on the Merits

November 3, 2021: The Court issues its Judgment on Preliminary Objection, Merits, Reparations, and Costs.⁵³

The Court found unanimously:

To reject the State's preliminary objection because:

The State argued that the Court did not have temporal jurisdiction over the events of the massacre because they occurred before the State's acceptance of the Court's contentious jurisdiction on March 9, 1987.⁵⁴ The representatives asserted they did not intend for the Court to rule on events before the acceptance date; instead, they asked the Court to rule on events and facts occurring after the State's recognition of jurisdiction.⁵⁵ The representatives argued that these events were ongoing and permanent and therefore within the Court's jurisdiction.⁵⁶ Thus, they concluded the recognition date was irrelevant.⁵⁷ The Court agreed with the representatives.⁵⁸ It affirmed its jurisdiction over events and facts pertaining to

⁵³ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 1.

⁵⁴ *Id.* ¶¶ 13, 17-18.

⁵⁵ *Id.*

⁵⁶ *Id.* ¶ 14.

⁵⁷ *Id.*

⁵⁸ *Id.* ¶ 16.

*ongoing and permanent human rights violations, even if the initial event occurred before the State's recognition of jurisdiction.*⁵⁹

The Court found unanimously that Guatemala had violated:

Articles 3 (Right to Juridical Personality), 4.1 (Prohibition of Arbitrary Deprivation of Life), 5.1 (Right to Physical, Mental, and Moral Integrity), 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 7.1 (Right to Personal Liberty and Security), in relation to Article 1.1 (Obligation of Non-Discrimination) of the Convention and Article 1(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. José Álvaro López Mejía, Mr. Fabio González, Mr. Florenci Quej Bin, Mr. Rosendo García Sermeño, Mr. Félix Lux, Mr. Félix Salvatierra Morales, Ms. Andrea Castellanos Ceballos, Ms. Braulia Sarceño Cardona, Ms. Edelmira Girón Galbez, and Ms. Paula Morales, and the children Norma Morales Alonzo, Victoriano Salvatierra Morales, Antonio Santos Serech, and Joselino García Sermeño,⁶⁰ because:

The Court has held that a forced disappearance is a multi-offense violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the Convention.⁶¹ A state perpetuates a forced disappearance when a victim's liberty is dispossessed through the explicit actions or acquiescence of state agents, where it denies the disappearance, and where it refuses to disclose the victim's fate or location.⁶² Under international jurisprudence, a state has the responsibility to investigate and punish those responsible for disappearances.⁶³

The Court determined that the State violated Articles 3 (Right to Juridical Personality), 4.1 (Prohibition of Arbitrary Deprivation of Life), 5.1 (Right to Physical, Mental, and Moral Integrity), 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 7.1 (Right to Personal Liberty and Security) because of the ongoing State suppression of Mr. Álvaro López Mejía's, Mr. González's, and Mr. Bin's whereabouts, along with corroborating witness statements indicating State threats and harassment.⁶⁴

Next, the Court examined the evidence regarding the other eleven victims who disappeared after the massacre and whose whereabouts remain unknown.⁶⁵ After the massacre, the State buried its victims in a mass grave and has since made little effort to investigate the massacre and identify the remains.⁶⁶ Nearly forty years after the massacre, the State had only identified four of the nineteen victims.⁶⁷ Because a forced disappearance concludes when the victim is located or when the remains are identified, the Court found the State in violation of Articles 3 (Right to Juridical Personality), 4.1 (Prohibition of Arbitrary Deprivation of Life), 5.1 (Right

⁵⁹ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 16.

⁶⁰ *Id.* "Declares" ¶¶ 2-3.

⁶¹ *Id.* ¶¶ 68, 70.

⁶² *Id.* ¶ 68.

⁶³ *Id.* ¶ 69.

⁶⁴ *Id.* ¶ 74.

⁶⁵ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 75.

⁶⁶ *Id.*

⁶⁷ *Id.*

to Physical, Mental, and Moral Integrity), 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 7.1 (Right to Personal Liberty and Security).⁶⁸

Article 22 (Freedom of Movement and Residence), in relation to Article 1.1 (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. María Fidelia Quevedo, Mr. Antonio Ajanel Ortiz, Ms. Alba Maritza López Mejía, Ms. Elidea Hernández Rodríguez, Mr. Sotero Chávez, Ms. Juana Leonidas García Castellanos, Ms. Zoila Reyes Pineda, and their families,⁶⁹ because:

Article 22 (Freedom of Movement and Residence) is considered a fundamental right for a person's free development.⁷⁰ The right can be violated by explicit or implicit restrictions, where a state does not provide the means or conditions for freedom of movement.⁷¹ Implicit restrictions can occur where a state does not adequately provide individuals protection from threats or harassment.⁷² Restrictions can also occur where a state does not effectively investigate violent acts which may lead to individual and community displacement, or exile.⁷³

Under this right, a state is responsible for protecting displaced people by preventing their displacement and ensuring they safely return to their places of origin.⁷⁴ This includes full collaboration with displaced populations to plan and manage their return or reintegration.⁷⁵ If the state fails to establish the correct conditions for safe return, then forced displacement and the violation of freedom of movement is ongoing.⁷⁶

After the massacre, there were two categories of displaced people: those exiled as refugees and those internally displaced within the State.⁷⁷ Because the Los Josefinos area was experiencing increased violence and was patrolled by the massacre perpetrators, many of the displaced villagers did not return due to lack of safety and fear of revenge.⁷⁸ At least seven individuals and their families were unable to return after March 9, 1987.⁷⁹ Because the State failed to adequately guarantee the villagers a safe return, the Court concluded the State was responsible for the violation of Article 22 (Freedom of Movement and Residence).⁸⁰

Article 17 (Rights of the Family), in relation to Article 1.1 (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Elvira Arévalo Sandoval and her children, Ernestina Hernández Arévalo, Romelia Hernández Arévalo, and Rolando Hernández Arévalo, as well as to the detriment of Mr. Antonio Ajanel Ortiz and his son, Carmelino Ajanel Ramos,⁸¹ because:

⁶⁸ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 75.

⁶⁹ *Id.* ¶ 83.

⁷⁰ *Id.* ¶ 76.

⁷¹ *Id.* ¶ 77.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 78.

⁷⁵ *Id.*

⁷⁶ *Id.* ¶ 79.

⁷⁷ *Id.* ¶ 80.

⁷⁸ *Id.* ¶ 81.

⁷⁹ *Id.* ¶ 82.

⁸⁰ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 83.

⁸¹ *Id.* ¶ 87.

The State is required to promote the growth and strength of the family.⁸² Therefore, the separation of a child from the family may constitute a violation of Article 17 (Rights of the Family).⁸³ With respect to forced displacement, the State has a duty to reunify families, especially those with children, in addition to other duties such as enabling them a safe return.⁸⁴ A violation of this responsibility can constitute a violation of Article 17 (Rights of the Family), as well as Article 19 (Rights of the Child).⁸⁵ Because the State failed to ensure a safe return and family reunification, the Court found the State violated Article 17 (Rights of the Family).⁸⁶

Article 19 (Rights of the Child), in relation to Article 1.1 (Obligation of Non-Discrimination) of the Convention, to the detriment of the children Norma, Victoriano, Antonio, Joselino, Rolando, and Carmelino,⁸⁷ because:

The State is obligated to establish protective measures for children in accordance with standards of international law.⁸⁸ Not only must the State protect children from inhumane treatment, but it must also preserve family unity and ensure separated children are reunified with their families.⁸⁹ Here, at least four children were victims of disappearance and subject to violence at the hands of the State's military.⁹⁰ The State failed to provide the necessary conditions for children to thrive and violated their right to a family.⁹¹ Because the State remained indifferent to the children's fates, the Court concluded that the State violated Article 19 (Rights of the Child).⁹²

Article 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25.1 (Right of Recourse Before a Competent Court), in relation to Article 1.1 of the Convention, to the detriment of the surviving victims of the massacre and relatives of victims extrajudicially executed or whose whereabouts are unknown.⁹³

Article 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25.1 (Right of Recourse Before a Competent Court), in relation to Article 1.1 of the Convention, as well as 1(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the relatives of disappeared victims,⁹⁴ because:
The Court analyzed the State's obligation to investigate and obstacles presented in the investigative process.⁹⁵ The Court also considered whether the State had finalized the investigation within a reasonable amount of time.⁹⁶

⁸² The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 84.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* ¶ 87.

⁸⁷ *Id.* "Declares" ¶ 6.

⁸⁸ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶¶ 88-89.

⁸⁹ *Id.* ¶ 89.

⁹⁰ *Id.* ¶ 90.

⁹¹ *Id.* ¶¶ 91-92.

⁹² *Id.* ¶¶ 92-93.

⁹³ *Id.* ¶ 116.

⁹⁴ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 116.

⁹⁵ *Id.* ¶¶ 104, 110, 113.

⁹⁶ *Id.*

First, the State is internationally obligated to effectively investigate human rights violations.⁹⁷ In cases of forced disappearance, the State must determine the fate or location of the victim, the events surrounding the disappearance, the identity of the responsible actor, and the responsible actor's punishment.⁹⁸ Once made aware of a rights violation, the State must begin, ex officio, a prompt, impartial, and efficient investigation.⁹⁹

In the case of the Los Josefinos massacre, the State did not initiate investigations ex officio.¹⁰⁰ While the State was aware of the massacre because of its own involvement, it did not begin an investigation until a complaint was filed by the Association of Detained and Disappeared Relatives of Guatemala.¹⁰¹ It was not until fourteen years after the massacre that the Public Ministry initiated a criminal investigation regarding the facts of the event.¹⁰² The Court noted that these actions were unacceptable delays that greatly affected the success of determining facts and capturing perpetrators.¹⁰³ Not only was the investigation deficient, the process of identifying victims was completely inadequate.¹⁰⁴ As such, the Court concluded that the State's investigation was fundamentally flawed and made without serious effort.¹⁰⁵

Second, there were various State-imposed obstacles.¹⁰⁶ Under the basis of State secrecy, the Ministry of Defense rejected requests for information several times and filed various appeals against judicial orders compelling discovery.¹⁰⁷ This was a violation of the State's obligation to comply with evidence collection because neither state secrecy, confidentiality, nor security was a valid excuse to disobey the clear obligation to provide relevant information to the authorities.¹⁰⁸ When the Ministry of Defense did provide information, it was only general and irrelevant data on officers and command posts.¹⁰⁹ This reflected the State's pattern of denying broad access to military archives for investigations.¹¹⁰ Additionally, the State failed in its duty to protect investigators, prosecutors, anthropologists, and victims from threats and harassment.¹¹¹

Lastly, the right to a hearing within a reasonable time under Article 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) refers to the investigative period before a final judgment is given.¹¹² A final judgment and resolution must be issued within a reasonable time, as delays may violate judicial guarantees.¹¹³ In determining reasonability, the Court has examined the following factors: the issue's complexity, the interested party's procedural history, the judicial officials' conduct, and the damage caused by the legal process.¹¹⁴

⁹⁷ *The Massacre of the Village of Los Josefinos v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, ¶ 100.

⁹⁸ *Id.* ¶ 101.

⁹⁹ *Id.* ¶ 104.

¹⁰⁰ *Id.* ¶ 105.

¹⁰¹ *Id.*

¹⁰² *Id.* ¶ 106.

¹⁰³ *The Massacre of the Village of Los Josefinos v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, ¶ 106.

¹⁰⁴ *Id.* ¶ 107.

¹⁰⁵ *Id.* ¶ 108.

¹⁰⁶ *Id.* ¶ 110.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* ¶ 111.

¹⁰⁹ *The Massacre of the Village of Los Josefinos v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, ¶ 111.

¹¹⁰ *Id.*

¹¹¹ *Id.* ¶ 112.

¹¹² *Id.* ¶ 113.

¹¹³ *Id.*

¹¹⁴ *Id.*

In more than thirty-nine years since the massacre, the State's investigation had not reached finality.¹¹⁵ Thus, the Court concluded the investigative period was unreasonable.¹¹⁶ Due to the State's insufficient factual and criminal investigation, the Court determined that the State failed to observe the violations suffered by the victims and was therefore in violation of Articles 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25.1 (Right of Recourse Before a Competent Court) as to the surviving victims of the massacre, relatives of victims extrajudicially executed or whose whereabouts are unknown, and relatives of disappeared persons.¹¹⁷

Article 5 (Right to Humane Treatment), in relation to Article 1.1 of the Convention, to the detriment of the surviving victims of the massacre, relatives of disappeared victims, and relatives of victims extrajudicially executed or whose whereabouts are unknown,¹¹⁸ because:

The Court has held in previous cases that victims' relatives may have their right to integrity presumptively violated through their connection to the victims.¹¹⁹ As such, relatives may be considered victims themselves.¹²⁰ If the state refutes this presumption, the Court must analyze whether a violation occurred by examining whether a close relationship exists between the victim and their relatives, and whether the evidence corroborates a violation.¹²¹ The Court has asserted that a relative's right to integrity is directly and consequently violated as a result of a forced disappearance of their loved one.¹²²

In the case of Los Josefinos, the Court decided the right of integrity of the direct relatives of those disappeared and killed was violated.¹²³ The Court reasoned that relatives continue to be deprived of information regarding the fate of their loved ones.¹²⁴ As a result, pain and trauma continues to plague generations of family members.¹²⁵

Additionally, the Court evaluated the right of integrity of surviving victims.¹²⁶ While surviving victims are not direct relatives, these victims' suffering was exceptional, considering the gravity of the massacre and the absence of judicial response.¹²⁷ Therefore, the Court decided that the surviving victims' right of integrity had been seriously violated by their ongoing suffering and generational trauma.¹²⁸

The Court did not rule on:

¹¹⁵ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 113.

¹¹⁶ *Id.*

¹¹⁷ *Id.* ¶ 116.

¹¹⁸ *Id.* "Declares" ¶ 9.

¹¹⁹ *Id.* ¶ 120.

¹²⁰ *Id.*

¹²¹ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 120.

¹²² *Id.* ¶ 121.

¹²³ *Id.* ¶ 123.

¹²⁴ *Id.* ¶ 122.

¹²⁵ *Id.*

¹²⁶ *Id.* ¶ 124.

¹²⁷ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 124.

¹²⁸ *Id.*

Article 11.2 (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) and Article 13 (Freedom of Thought and Expression).¹²⁹

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Effectively Continue Investigation

Within a reasonable time, the State shall eliminate all obstacles maintaining impunity from ongoing investigations and enact all means necessary to investigate and punish the responsible parties.¹³⁰ The State can no longer rely on excuses such as amnesty law, prescription provisions, state secrecy, or state confidentiality to avoid investigation.¹³¹

The State must effectively investigate the facts of the massacre *ex officio*, focusing in particular on forced disappearances, displacement, executions, and other human rights violations.¹³² The State must additionally identify the material facts and those who can assist with the facts, and provide thorough judicial resources throughout the investigative process.¹³³ It must ensure protection of actors active in the investigation and guarantee that the victims and their families are able to meaningfully participate in the investigation and trial of the guilty.¹³⁴ The Court also ordered public disclosure of the investigation's and trial's processes and results to ensure that the public is aware of the case's facts and identities of those responsible.¹³⁵

2. Investigate the Whereabouts of Disappeared Persons, and Identify and Deliver Remains

The State must immediately prepare a comprehensive plan including objectives and procedures to search for victims of forced disappearance and for determining the location, exhumation, identification, and cause of death of victims of execution.¹³⁶ In pursuit of this plan, the State must fully utilize the necessary scientific and technical resources to comply with national and international standards.¹³⁷ To assure this occurs, the State must submit a timeline within six months of the judgment.¹³⁸ This will include specific goals, administrative

¹²⁹ *The Massacre of the Village of Los Josefinos v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, ¶ 124.

¹³⁰ *Id.* ¶ 143.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* ¶¶ 143-144.

¹³⁵ *The Massacre of the Village of Los Josefinos v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, ¶ 144.

¹³⁶ *Id.* ¶ 148.

¹³⁷ *Id.* ¶ 149.

¹³⁸ *Id.*

and budgetary measures, and information pertaining to the state authorities that will aid in the investigation.¹³⁹

Additionally, the State must ensure the safety and protection of State officials and individuals who are part of the search, exhumation, and identification of victims.¹⁴⁰ The State must provide *ex officio* determinations as to causes of death and injury for pertinent investigations.¹⁴¹

The State shall supply the representatives with written communication regarding the investigative process and immediately return any remains to next of kin at no cost.¹⁴² The State must also afford for any funeral expenses in agreement with next of kin and with respect to their beliefs.¹⁴³

Lastly, the State is obligated to complete all exhumations within four years of the judgment and keep detailed records of the remains.¹⁴⁴

3. Guarantee Safe Return for Victims of Forced Displacement

The State must implement necessary and adequate measures to guarantee a safe return for victims of forced displacement and must prepare a report on its compliance with such measures.¹⁴⁵

4. Improve Health of the Village

Within one year of the judgment, the State must make improvements to the village clinic.¹⁴⁶ It must provide medicine, equipped ambulances, and permanent and qualified medical, dental, and mental health personnel.¹⁴⁷

5. Publish the Judgment

Within six months of the judgment, the State must publish a Court-prepared summary once in the Official Gazette and in a nationally circulated newspaper and must publish the entire judgment on an official State website.¹⁴⁸ The publication on an official State website must be available for one year and publicly accessible from the home page.¹⁴⁹ The State must immediately inform the Court of each publication.¹⁵⁰

6. Construction of Monument

¹³⁹ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 149.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* ¶¶ 149-150.

¹⁴³ *Id.* ¶ 150.

¹⁴⁴ *Id.*

¹⁴⁵ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 153.

¹⁴⁶ *Id.* ¶ 157.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* ¶ 161.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

The State shall continue its construction of a monument as approved by the victims near the mass grave and complete the project within a year of the judgment.¹⁵¹ It shall also install a plaque commemorating the events of the massacre.¹⁵²

7. Production of Documentary

Within one year of the judgment, the State is required to fully produce and distribute a documentary on the massacre and its ongoing impact on the community.¹⁵³ The film must be widely distributed to representatives, victims, and military training centers.¹⁵⁴ The State must broadcast the documentary at least once on a national channel and during prime-time television. The State must also make it available on the Army's website.¹⁵⁵

Each stage of production must include full participation on behalf of the victims.¹⁵⁶ The State must designate an interlocutor to arrange participation with the victims or representatives within four months of the judgment and must issue a progress report to the Court within six months of the judgment.¹⁵⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

Although the Court acknowledged that the victims suffered serious pecuniary losses, no pecuniary damages were awarded.¹⁵⁸ The Court indicated it was unable to establish the elements necessary for proving loss of earnings and income in a case of this complexity because it was limited by the evidence within its jurisdiction.¹⁵⁹

2. Non-Pecuniary Damages

The Court ordered \$55,000 to each victim of forced disappearance, \$5,000 to each surviving victim of the massacre, \$5,000 to each victim of forced displacement, \$10,000 to each victim whose right of protection of the family was violated, and \$10,000 to each victim whose right to childhood was violated.¹⁶⁰

The Court awarded \$30,000 to the parents, children, spouses, and permanent partners of victims of forced disappearance, victims of extrajudicial execution, and those whose fate is unknown.¹⁶¹ Siblings of these victims were awarded \$10,000.¹⁶²

3. Costs and Expenses

¹⁵¹ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 162.

¹⁵² *Id.*

¹⁵³ *Id.* ¶ 163.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 163.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* ¶ 173.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* ¶ 174.

¹⁶¹ *Id.*

¹⁶² The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 174.

The Court ordered the State to pay \$10,000 to FAMDEGUA and \$10,000 to CEJIL.¹⁶³ The State is also required to reimburse the Victim's Legal Assistance Fund for \$1,578.11 within six months of the judgment.¹⁶⁴

4. Total Compensation (including Costs and Expenses ordered):

\$ 8,351,578.11¹⁶⁵

C. Deadlines

The State must comply with the payments ordered and submit a report of compliance to the Court within one year of the judgment.

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 442, (Nov. 3, 2021).

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

¹⁶³ The Massacre of the Village of Los Josefinos v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, ¶ 182.
¹⁶⁴ *Id.* ¶ 186.

¹⁶⁵ Because the Court did not include information identifying the family members of victims of forced disappearance, extrajudicial execution, and whose fate is unknown, this amount is likely greater.

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

The Massacre of the Village of Los Josefinos v. Guatemala, Admissibility Report, Report No. 17/15, Inter-Am. Comm'n H.R., Petition. No. 1139-04 (Mar. 24, 2015).

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

[None]