

Río Negro Massacres v. Guatemala

ABSTRACT¹

In 1980 and 1982, the Guatemalan Army and members of the Civil Self-Defense Patrols destroyed the Mayan community of Río Negro that protested the building of a hydroelectric dam, by means of a series of massacres. The facts of this case fit within a more general context of massacres in Guatemala that were planned by State agents as part of a "scorched earth" policy aimed against the Mayan people, who were characterized as the "internal enemy" in a context of discrimination and racism. Remarkably, the Court found that the State violated almost all provisions of the American Convention on Human Rights, the American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, the American Convention on Forced Disappearances of Persons, and the American Convention to Prevent and Punish Torture.

I. FACTS

A. Chronology of Events

1962 – 1996: Guatemala is entrenched in civil war.² More than 200,000 people die or disappear during the conflict.³ Concerned that the Mayan people will support anti-government guerilla groups, the Guatemalan government designates Mayans internal enemies.⁴ Government agents carry out mass exterminations, termed scorched-earth operations,⁵ where women are subjected to mass and indiscriminate public rape,⁶ and children are raped, tortured and enslaved.⁷

1. Alessa Jonas, Author; Elise Cossart-Daly, Sarah Frost, Grace Kim, Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 56 (September 4, 2012).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 57.

6. *Id.* ¶ 58.

7. *Id.* ¶ 60.

1970s: The Mayan Achí community of 800 people settle on the banks of Río Negro River.⁸ They earn their living trading fish and produce with other local communities.⁹

1975 – 1977: The Guatemalan National Electricity Institute (“INDE”) plans the construction of Río Chixoy Dam, a hydroelectric dam below the Río Negro Mayan Achí community.¹⁰ The dam will flood the Río Negro Mayan Achí homeland and displace nearly 4,000 people.¹¹

1978: The hydroelectric dam floods the Río Negro community.¹² The Guatemalan government declares a state of emergency and offers to resettle this community in Pacux.¹³ The housing provided in Pacux is not in line with traditional Mayan housing, and the Mayan Achí community refuses to resettle.¹⁴ Officials of the Guatemalan Army decide the community’s refusal is due to subversive influences of anti-government guerilla groups.¹⁵

March 4, 1980: Members of the Guatemalan Army and an agent of the Military Foot Patrol Police (“PMA”) confront the Río Negro community.¹⁶ They accuse several individuals of stealing provisions from the INDE crew that constructed the Río Chixoy dam.¹⁷ Members of the community gather in front of the village chapel and an argument breaks out.¹⁸ The PMA agent is reportedly struck in the ensuing fight.¹⁹ It is unclear exactly who, but either the agent or his companions open fire on the group, killing seven people.²⁰

July 8, 1980: Two community leaders, Valeriano Osorio Chen and Evaristo Osorio, leave Río Negro to attend a meeting in Chinatzul at the offices of the INDE in order to discuss the resettlement of the Río

8. *Id.* ¶ 65.

9. *Id.*

10. *Id.* ¶ 66.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* ¶ 68.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* ¶ 68.

Negro community.²¹ They never arrive at the meeting.²² Their naked bodies are discovered several days later in Purulha, Baja Verapaz.²³ The bodies have several gunshot wounds.²⁴

Early February 1982: A group of armed men set fire to a market in Xococ, a village that neighbors Río Negro.²⁵ Five people are killed.²⁶ The Guatemalan Army attributes the fire to guerrilla groups and the community of Río Negro.²⁷ As a result, the Xococ community declares itself an enemy of Río Negro and discontinues trade with the Río Negro people.²⁸ The Guatemalan Army arms and trains Xococ villagers, organizing them into paramilitary civil self-defense patrol units.²⁹

February 6 or 7, 1982: Xococ patrollers summon Río Negro villagers to their community on behalf of the Guatemalan Army.³⁰ When the Río Negro villagers arrive in Xococ they are accused of being guerrillas and of setting fire to the Xococ market.³¹ The patrollers retain the Río Negro villagers' identification cards order them to return the following Saturday to recover the cards.³²

February 13, 1982: Approximately seventy Río Negro villagers return to Xococ to recover the identification cards.³³ Soldiers and members of the Xococ civil self-defense patrol, armed with clubs, poles, ropes and machetes, surround the group, take some of their money, and then allow them to leave and shop in the market.³⁴ Afterward, they separate the men from the women and children.³⁵ The men are taken away and killed.³⁶ The patrollers assemble the remaining Río Negro villagers in front of a church, bind them, and attack them with clubs and machetes.³⁷

21. *Id.* ¶ 69.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* ¶ 70.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* ¶ 71.

31. *Id.*

32. *Id.*

33. *Id.* ¶¶ 72, 74.

34. *Id.* ¶ 72.

35. *Id.*

36. *Id.*

37. *Id.* ¶ 73.

The patrollers then lock the villagers in a building and deny them food and water for two days.³⁸ Only two villagers survive.³⁹

February 14, 1982: Teodora Chen manages to escape from Xococ.⁴⁰ She rushes to Río Negro to warn the community of what happened in Xococ; several members of the community flee to the surrounding hills.⁴¹ The same day, soldiers and Xococ patrollers arrive in Río Negro and go house to house asking for the Río Negro men.⁴² Accusing the men of being guerrillas, the patrollers vow to “eliminate” the women in a month if the men do not appear.⁴³

March 13, 1982: Early in the morning, Xococ patrollers and soldiers arrive in the village of Río Negro armed with weapons, spades, pickaxes, ropes, wire and machetes.⁴⁴ They go from door to door demanding to see the men of the household.⁴⁵ Many of the Río Negro men have hidden in the hills and are not present when the patrollers and soldiers knock on their doors.⁴⁶

The Xococ patrollers and soldiers demand that everyone leave their houses, supposedly to take part in a meeting.⁴⁷ They force the villagers, mainly women, some of whom are pregnant, as well as the elderly, and children, to walk three kilometers to Cerro Pacoxom.⁴⁸ Many of the Río Negro people are tied together by their necks and hands.⁴⁹ Once the women, elderly, and children are taken away, the patrollers and soldiers sack the Río Negro community.⁵⁰ Throughout the walk to Cerro Pacoxom, the Río Negro people are pushed, whipped, beaten, and insulted by the soldiers and patrollers.⁵¹ Those who cannot continue walking are killed.⁵² The soldiers and patrollers separate some of the women from the group and rape them.⁵³

38. *Id.*

39. *Id.*

40. *Id.* ¶ 75.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* ¶ 76.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* ¶¶ 76, 77.

49. *Id.* ¶ 77.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

María Eustaquia Uscap Ivoy, a minor, is one of the girls separated from the rest of the group.⁵⁴ She is taken to a hill to be raped by four men, two patrollers and two soldiers.⁵⁵ When she returns to the group, she discovers that her grandmother has been murdered.⁵⁶ The patrollers take her to Xococ, where another patroller rapes her in the market.⁵⁷ Upon reaching Cerro Pacoxom, the patrollers and soldiers kill the remaining Río Negro people and dispose of their bodies in a mass grave.⁵⁸ They murder many of the children by grabbing their legs or hair and slamming them against trees until they are dead.⁵⁹ Seventeen children who are not killed are taken back to the village of Xococ and enslaved there for several years.⁶⁰ At least seventy women and 107 children are murdered.⁶¹

May 14, 1982: Only a few survive the massacre.⁶² Those who survive take refuge in Los Encentros, a sacred place in the Mayan culture.⁶³ The day after the massacre, Xococ soldiers and patrollers discover the remaining villagers.⁶⁴ Soldiers and patrollers burn down houses, rape several women, and hang people from trees or force them to stand on an iron sheet heated by a fire until they die.⁶⁵ At least seventy-nine people are killed.⁶⁶

On various occasions, people are forced to board helicopters and are never heard from again.⁶⁷ Over time, at least fifteen individuals disappear in this way.⁶⁸

September 14, 1982: Survivors who fled the sites of the Pacoxom and Los Encentros massacres live in a village known as Agua Fría in Quiché.⁶⁹ A group of soldiers and patrollers find them, assemble them in

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* ¶ 78.

59. *Id.*

60. *Id.* ¶ 79.

61. *Id.*

62. *Id.*

63. *Id.* ¶ 80.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* ¶ 81.

a building, and shoot at them from the outside.⁷⁰ They then set the building on fire, killing at least ninety-two people.⁷¹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

July 19, 2005: The Inter-American Commission on Human Rights receives a complaint submitted by the Association for the Integral Development of the Victims of Violence in Verapaz (*Asociación para el Desarrollo Integral de las Víctimas de la Violencias en las Verapaces, Maya Achí*, “ADIVIMA”) on behalf of the Río Negro survivors.⁷² The petition alleges that the Guatemalan Army and Civil Defense Patrols (“PAC”) systematically persecuted the indigenous community of the Mayan Achí living in Río Negro.⁷³ The State does not contest these facts, but argues that domestic remedies have not been exhausted.⁷⁴

B. Before the Court

November 20, 2010: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁷⁵

1. Violations Alleged by Commission⁷⁶

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Humane Treatment)

70. *Id.*

71. *Id.*

72. Río Negro Massacres v. Guatemala, Admissibility Report, Report No. 13/08, Inter-Am. Comm'n H.R., Case No. 12.649, ¶ 1 (March 5, 2008).

73. *Id.*

74. *Id.* ¶ 4.

75. Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 1. The representatives of the victims did not allege violations of Article 4 or Article 18 in relation to any Article of the American Convention.

76. *Id.* ¶ 3.

Article 6 (Prohibition on Slavery and Servitude)
Article 7 (Right to Personal Liberty)
Article 8 (Right to a Fair Trial)
Article 11 (Right to Privacy)
Article 12 (Freedom of Conscience and Religion)
Article 16 (Freedom of Association)
Article 17 (Protection of the Family)
Article 19 (Rights of the Child)
Article 21 (Right to Property)
Article 22 (Freedom of Movement and Residence)
Article 24 (Right to Equal Protection)
Article 25 (Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.
Article 1 (Obligation to Adopt Measures) of the Convention on Forced Disappearance of Persons.
Article 1 (Obligation to Prevent and Punish Torture)
Article 6 (Obligation to Take Effective Measures)
Article 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture.
Article 7(b) (Duty to Prevent, Investigate, and Punish Violence Against Women) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.

2. Violations Alleged by Representatives of the Victims⁷⁷

Same Violations Alleged by Commission, plus:

Article 4 (Right to Life)
Article 18 (Right to a Name) of the American Convention.

The representatives of the victims did not allege violations of:

Article I (Obligation to Adopt Measures) of the Convention on Forced Disappearance of Persons.
Article 1 (Obligation to Prevent and Punish Torture)
Article 6 (Obligation to Take Effective Measures) of the Inter-American

77. *Id.* ¶ 4.

Convention to Prevent and Punish Torture.⁷⁸

III. MERITS

A. *Composition of the Court*

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice-President
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

September 4, 2012: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁷⁹

The Court unanimously accepts the State's acknowledgment of international responsibility regarding:⁸⁰

Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention and Article I (Obligation to Adopt Measures) of the Convention on Forced Disappearance, to the detriment of Ramona Lajuj and Manuel Chen Sánchez.⁸¹

Articles 5 (Right to Humane Treatment) and 11 (Right to Privacy) of the Convention, to the detriment of María Eustaquia Usap Ivoy.⁸²

78. *See id.* ¶ 4.

79. *Id.* ¶ 1.

80. *Id.* "Decides" ¶ 1.

81. *Id.* ¶ 17(a).

82. *Id.* ¶ 17(b). The Preliminary Objections, Merits, Reparations and Costs Judgment did not indicate that these Articles were violated in relation to Article 1(1) of the Convention.

Article 5 (Right to Humane Treatment), in relation to Article 1(1) (Obligation to Respect Rights), to the detriment of the Río Negro community members who survived the massacre and their next of kin.⁸³

Articles 6 (Freedom from Slavery) and 17 (Rights of the Family), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of seventeen of the Río Negro children.⁸⁴

Article 19 (Rights of the Child) of the Convention, to the detriment of children from the Río Negro Community who were under eighteen when the State accepted the Court's jurisdiction.⁸⁵

Articles 12 (Freedom of Conscience and Religion) and 16 (Freedom of Association), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the Río Negro community.⁸⁶

Article 22 (Freedom of Movement and Residence), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the Río Negro community.⁸⁷

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention; Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures), and 8 (Obligation to Investigate) of the Convention Against Torture; and Article 7(b) (Duty to Prevent, Investigate, and Punish Violence Against Women) of the Convention of the Prevention, Punishment, and Eradication of Violence Against Women, to the detriment of the survivors and next of kin of those who were tortured and executed during the massacres.⁸⁸

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention and Article 1 (Obligation to Adopt Measures) of the Convention on Forced Disappearance, to the detriment of Ramona Lajuj

83. *Id.* ¶ 17(c).

84. *Id.* ¶ 17(d).

85. *Id.* ¶ 17(e). The Preliminary Objections, Merits, Reparations and Costs Judgment did not indicate that these Articles were violated in relation to Article 1(1) of the Convention.

86. *Id.* ¶ 17(f).

87. *Id.* ¶ 17(g).

88. *Id.* ¶ 17(h).

and Manuel Chen Sánchez.⁸⁹

The Court found unanimously that Guatemala had violated:

Article 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Ramona Lajuj, Manuel Chen Sánchez, Aurelia Alvarado Ivoy, Cornelio Osorio Lajún, Demetria Osorio Tahuico, Fermin Tum Chén, Francisco Chen Osorio, Francisco Sánchez Sic, Héctor López Osorio, Jerónimo Osorio Chen, Luciano Osorio Chen, Pablo Osorio Tahuico and Soterio Pérez Tum,⁹⁰ because:

The Court determined that forced disappearances are continuing in nature: the disappearance continues until the remains of the victim have been identified.⁹¹ The Court also noted that forced disappearances begin with a deprivation of liberty, which is contrary to Article 7's right to personal liberty, and involve forced lack of communications, which is in violation of Article 5's right to physical, mental, and moral integrity.⁹² In this case, Guatemalan officials responded to the internal conflict by instigating forced disappearances.⁹³ No one has had any contact with these individuals after they were forced to board a helicopter during the Los Encuentros Massacre.⁹⁴ Due to these facts, the Court found that Guatemala violated Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty).⁹⁵

Articles 5 (Right to Humane Treatment), and 11 (Right to Privacy), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of María Eustaquia Uscap Ivoy,⁹⁶ because:

Based on testimony provided by Mrs. Eustaquia Uscap Ivoy and the acknowledgment of international responsibility by the State, the Court recognized that the State violated Mrs. Eustaquia Uscap Ivoy's Article 5

89. *Id.* ¶ 17(i).

90. *Id.* ¶ 127.

91. *Id.* ¶ 113.

92. *Id.* ¶ 116.

93. *Id.* ¶ 126.

94. *Id.*

95. *Id.* ¶ 127.

96. *Id.* ¶ 129.

(Right to Humane Treatment) and 11 (Right to Privacy) rights.⁹⁷ The Court recognized that rape is extremely traumatic, causes long lasting physical and emotional damage to its victims, and can constitute a form of torture.⁹⁸ Additionally, the Court recognized that Article 11's right to privacy encompasses a person's sexual life.⁹⁹

Articles 5 (Right to Humane Treatment), 6 (Freedom from Slavery), 17 (Rights of the Family), and 19 (Rights of the Child), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy and Juan Osorio Alvarado,¹⁰⁰ because:

Those taken from Río Negro during the Pacoxom massacre and forced to work in the homes of their captors suffered an increased impact on their mental integrity.¹⁰¹ The testimony given in the domestic courts highlights torture these children were subjected to, many were forced to perform manual labor and burned if they refused.¹⁰² Thus the Court found that the State violated these children's Articles 5 (Right to Humane Treatment) and 6 (Freedom from Slavery) rights.¹⁰³

Additionally, the Court found that the State violated the children's Article 17 (Rights of the Family) rights, because they were separated from their families.¹⁰⁴ The State violated Article 19 (Rights of the Child) because all of these victims were children.¹⁰⁵

Article 5 (Right to Humane Treatment), in relation to Articles 12(1) (Freedom of Conscience and Religion) and 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the community

97. *Id.* ¶ 134.

98. *Id.* ¶ 132.

99. *Id.* ¶ 133.

100. *Id.* ¶ 150.

101. *Id.*

102. *Id.* ¶ 148.

103. *Id.* ¶ 150.

104. *Id.* ¶ 145.

105. *Id.* ¶ 142.

members of Río Negro who live in Pacux,¹⁰⁶ because:

The surviving members of the massacres who now live in Pacux are subject to inadequate living conditions that have negatively affected their mental and moral integrity, and were unable to bury their dead in accordance with their traditions.¹⁰⁷ In the present case, at least seventeen people were forcibly disappeared, thus their next of kin have not been able to perform their funeral rites in accordance with their religious beliefs.¹⁰⁸ The Court determined that the Río Negro people's inability to bury their dead violates Article 12 (Right to Freedom of Conscience and Religion).¹⁰⁹ Although Article 12 does not explicitly state that people have a right to bury their dead, the Mayan culture places a significant importance on farewell rites for the dead.¹¹⁰ Additionally, Mayan Achí cemeteries are considered sacred grounds.¹¹¹ The forced relocation of the Mayan Achís to Pacux from Río Negro made the Mayan Achí people lose contact with their sacred grounds.¹¹² The Río Negro community cannot reconnect with these sacred places as they were flooded over in the construction of the Chixoy hydroelectric dam.¹¹³ Therefore, the Court found that the State violated Article 5 (Right to Humane Treatment), in relation to Articles 12(1) (Freedom of Conscience and Religion) and 1(1) (Obligation to Respect Rights) of the Convention.¹¹⁴

Article 22(1) (Freedom of Movement and Residence), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the survivors of the Río Negro massacres living in Pacux,¹¹⁵ because:

The Court has determined that Article 22(1)'s freedom of movement and residence right also protects the right to not be forcibly disappeared.¹¹⁶ The Court notes that the members of the Río Negro community were

106. *Id.* ¶ 165.

107. *Id.* ¶¶ 157, 164.

108. *Id.* ¶ 157.

109. *Id.* ¶¶ 153-155.

110. *Id.* ¶ 156.

111. *Id.* ¶ 158.

112. *Id.* ¶ 159.

113. *Id.*

114. *Id.* ¶ 165.

115. *Id.* ¶ 184.

116. *Id.* ¶ 172.

forced to flee their ancestral lands after the massacres of 1980 and 1982.¹¹⁷ The victims of this flight were relocated by the State in the Pacux settlement, where they currently reside.¹¹⁸ Thus, even though the Court did not acquire jurisdiction over the State until after the victims fled, their continued displacement constitutes a persistent situation and the Court can exercise contentious jurisdiction here.¹¹⁹

The massacres of 1980 and 1982 forced survivors to take refuge in rough conditions in the nearby mountains in order to flee the systematic persecution of the State.¹²⁰ Survivors were also forced to relocate to Pacux settlement where they endured forced labor, threats, and torture.¹²¹ The resettlement of the survivors continued after 1987 when the State accepted the Court's jurisdiction.¹²² Due to the violent events, extreme deprivation, and continuing violence that occurred until 1997, the Court recognizes the survivors' inability to return to their ancestral lands as a violation of freedom of movement provided for in Article 22(1) (Freedom of Movement and Residence).¹²³

Articles 8(1) (Right to a Fair Trial) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the victims of this case,¹²⁴ because:

The Court determined that it has jurisdiction to review this claim because the State has an obligation to investigate with due diligence all the facts of the case and that obligation was still pending when the State accepted the jurisdiction of the Court in 1987.¹²⁵

Under Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, States have a duty to investigate and punish all human rights violations and to provide effective judicial remedies to the victims in keeping with due process of law.¹²⁶ This right

117. *Id.* ¶ 174.

118. *Id.* ¶ 178.

119. *Id.*

120. *Id.* ¶ 179.

121. *Id.*

122. *Id.*

123. *Id.* ¶¶ 179-184.

124. *Id.* ¶ 237.

125. *Id.* ¶ 235.

126. *Id.* ¶¶ 190-191.

to access justice must be effectuated within a reasonable time.¹²⁷ Also, the court notes that this right to investigate must be undertaken as more than just a formality predestined to be unsuccessful.¹²⁸

The Court determined that the complete lack of investigation into the matters at the Río Negro Chapel and at Los Encuentros violates Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection).¹²⁹ The Court noted that the State was aware of these massacres after hearing victim testimony and seeing documentation from State entities during the investigation of the Agua Fría and Cerro Pacoxom massacres.¹³⁰ However, the State failed to even open an investigation into the acts that occurred in the Río Negro Chapel and at Los Encuentros.¹³¹

The Court also found that the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) regarding the Cerro Pacoxom and Agua Fría massacres.¹³² These massacres were investigated ten years after they occurred and were only looked into after the victims brought evidence to the Public Prosecutor.¹³³

Additionally, the Court found the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) because the State did not prosecute those responsible for the Agua Fría and Cerro Pacoxom massacres.¹³⁴ The remains of approximately 148 victims of the Río Negro massacre have been found, yet the State only considers two victims murdered as they were the only individuals where a violent death was proven.¹³⁵ Only three of the individuals determined responsible for the massacre have been tried and punished.¹³⁶ The State has continually failed to determine responsibility and prosecute those responsible, thus the Court found that the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention.¹³⁷

127. *Id.* ¶ 191.

128. *Id.* ¶ 192.

129. *Id.* ¶ 195.

130. *Id.*

131. *Id.*

132. *Id.* ¶ 198.

133. *Id.*

134. *Id.* ¶ 199.

135. *Id.* ¶ 200.

136. *Id.* ¶ 201.

137. *Id.* ¶¶ 199-206.

Article 5(1) (Right to Humane Treatment), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the survivors of the Río Negro massacre,¹³⁸ because:

Article 5 (Right to Humane Treatment) provides a right to personal integrity.¹³⁹ The Court found that here, the next of kin of the victims of the Río Negro massacre suffered a violation of their right to personal integrity because State authorities continue to fail to investigate the massacres.¹⁴⁰ The Court noted that this failure to act and the omission of facts in investigating causes additional suffering and anguish and thus violates the survivors' next of kin's personal integrity.¹⁴¹ This anguish and suffering is expressed in the testimony of the survivors who indicate that they are frustrated that the torturers are still free.¹⁴² As a result, the Court found that the State violated survivors' and their next of kins' Article 5 (Right to Humane Treatment) rights.¹⁴³

The Court found that the State did not violate:

Article 16 (Freedom of Association), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the survivors of the Río Negro massacre,¹⁴⁴ because:

The community of Río Negro is an indigenous community that cannot be recognized as an association in terms of Article 16 (Freedom of Association).¹⁴⁵ This Article protects individuals' right to freely associate in order to reach a common legal objective without pressure from public authorities.¹⁴⁶ Though the State acknowledged partial responsibility for violating Article 16, the Court found that the State did not violate Article 16 (Freedom of Association) in this case.¹⁴⁷

IV. REPARATIONS

138. *Id.* ¶ 244.

139. *Id.* ¶ 238.

140. *Id.* ¶ 240.

141. *Id.*

142. *Id.* ¶ 242.

143. *Id.* ¶ 243.

144. *Id.* ¶ 168.

145. *Id.*

146. *Id.* ¶ 167.

147. *Id.* ¶¶ 166-168.

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

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

1. Investigate, Prosecute, and Punish Those Responsible

The Court ordered the State to continue to investigate the facts and execute arrest warrants for those presumed responsible for the massacres.¹⁴⁸ The Court also ordered the State to determine the identity of the persons in charge of the massacres, open disciplinary proceedings against those responsible and ensure that they are punished.¹⁴⁹

2. Identify and Return the Victim's Remains

The State authorities must search for, exhume and identify those disappeared.¹⁵⁰ The Court ordered the State to ensure the safety of those who identify, exhume and search for the disappeared.¹⁵¹

3. Publish the Judgment

The Court ordered the State to publish a summary of this judgment in the State's official gazette in both Spanish and Maya Achí.¹⁵² This judgment must be posted in its entirety, in both languages, for at least one year, on an official State website.¹⁵³ The State must also reproduce an official summary and distribute it in the communities of Baja Verapaz.¹⁵⁴

3. Publically Acknowledge Responsibility

The State must hold a public act acknowledging responsibility in Pacux in Spanish and Maya Achí.¹⁵⁵ The State must broadcast this act

148. *Id.* ¶ 257.

149. *Id.*

150. *Id.* ¶ 268.

151. *Id.*

152. *Id.* ¶ 274.

153. *Id.*

154. *Id.*

155. *Id.*

on radio or television.¹⁵⁶ This act must mention the five massacres, the grave and massive human rights violations, and the State's international responsibility.¹⁵⁷ Senior members of both the executive and judiciary branches must attend the event.¹⁵⁸ Additionally, the State must transport victims who do not live in Pacux to the location of the act.¹⁵⁹

4. Create a Museum in Honor of the Victims of the Internal Armed Conflict

The Court recognizes that State has already undertaken measures to build a museum in memory of the victims.¹⁶⁰

5. Improve Infrastructure and Implement Basic Services in Pacux

The Court appreciates the State's willingness to improve the living conditions of the members of the Río Negro community who live in the Pacux settlements.¹⁶¹ However, the State must specifically implement the following in Pacux: an improved health center including psychological care; nutrition programs; improved streets and avenues; a drainage system; and the reconstruction of elementary and high school education programs.¹⁶² The State must design and implement a program to preserve the Maya Achí culture.¹⁶³

6. Provide Medical and Psychological Care

The State must provide victims who choose to accept medical and psychological treatment with such treatment at no cost.¹⁶⁴

7. Train Prosecutors, Judges, and Members of the Military

The Court ordered the State to train prosecutors, judges, and members of the military in compliance with the Court's previous orders

156. *Id.* ¶ 276.

157. *Id.* ¶ 277.

158. *Id.*

159. *Id.*

160. *Id.* ¶ 279.

161. *Id.* ¶ 284.

162. *Id.*

163. *Id.* ¶ 285.

164. *Id.* ¶ 289.

in *Myrna Mack Chang v. Guatemala* and the *Dos Erres Massacre v. Guatemala* in order to avoid repetition of the facts of this case.¹⁶⁵

B. *Compensation*

The Court awarded the following amounts:

1. Pecuniary Damages

The Court orders \$30,000 for each victim of forced disappearance, \$15,000 for each surviving victim of the massacres, \$10,000 for each survivor of the massacres who is a member of the family of the victims of forced disappearance, \$10,000 for each survivor of the massacres who was a victim of acts of slavery and involuntary servitude, \$15,000 for María Eustaquia Uscap Ivoy because she was a victim of rape and slavery.¹⁶⁶

Fifty percent of the compensation ordered for disappeared victims shall be divided in equal parts among the victims' children and fifty percent of the compensation must be delivered to the victim's spouse or permanent companion.¹⁶⁷ If the victim does not have a spouse or children, the money will be distributed to their heirs according to domestic law.¹⁶⁸

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

[None]

4. Total Compensation (including Costs and Expenses ordered):¹⁶⁹

165. *Id.* ¶¶ 291, 292.

166. *Id.* ¶ 309.

167. *Id.* ¶ 310.

168. *Id.*

169. The Court does not indicate the number of massacre survivors who also lost family members to forced disappearance. Therefore, this calculation of total compensation does not include compensation for massacre survivors who lost family members to forced disappearance. *See id.* ¶¶ 127, 309(c).

\$ 6,450,000

C. *Deadlines*

The State must submit a timetable for improving the infrastructure in Pacux with short and medium goals to the Court within three months of this judgment.¹⁷⁰ The State must return a timetable of short and medium goals for identifying and returning victims bodies to the Court within six months of this judgment.¹⁷¹ The victims and their representatives must agree upon the details of the State's act publically acknowledging responsibility within six months of this judgment; the act must occur within one year of this judgment.¹⁷² The payments shall be delivered within two years of this judgment.¹⁷³

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Case of Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 250 \(Sept. 4, 2012\).](#)

2. Decisions on Merits, Reparations and Costs

[Case of Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 250 \(Sept. 4, 2012\).](#)

3. Provisional Measures

[Not available]

170. *Id.* ¶ 285.

171. *Id.* ¶ 268.

172. *Id.* ¶ 278.

173. *Id.* ¶ 318.

4. Compliance Monitoring

[Not available]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not available]

2. Report on Admissibility

[Case of Río Negro Massacres v. Guatemala, Admissibility Report, Report No. 13/08, Inter-Am. Comm'n H.R., Case No. 12.649 \(Mar. 5, 2008\).](#)

3. Provisional Measures

[Not available]

4. Report on Merits

[Case of Río Negro Massacres v. Guatemala, Report on the Merits, Report No. 86/10, Inter-Am. Comm'n H.R., Case No. 12.649 \(July 14, 2010\).](#)

5. Application to the Court

[Not available]

VIII. BIBLIOGRAPHY

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(1999), http://che.rabinal.info/doc/ChixoyDam_StoryOfForcedResettlement.pdf.

Nick Dearden, *Guatemala's Chixoy Dam: Where Development and Terror Intersect*, JUBILEE DEBT CAMPAIGN (Dec. 10, 2012), <http://jubileedebt.org.uk/comment/guatemalas-chixoy-dam-where-development-and-terror-intersect>.

Kathleen Dill, *International Human Rights and Local Justice in Guatemala: The Rio Negro (Pak'oxom) and Agua Fria Trials*, 17 CULTURAL DYNAMICS 323, 323-50 (2005).

Selvin Pérez & Adrián Velásquez, *Recuerdan Río Negro; Comitiva Visita Lugar de Masacre*, NUESTRO DIARIO, Mar. 16, 2011, at 92-93.