



CONTINUING THE STRUGGLE FOR  
JUSTICE AND ACCOUNTABILITY IN

# GUATEMALA



REPORT

MISSION

MAKING REPARATIONS

A REALITY IN THE CHIXOY DAM CASE

COHRE Americas Programme  
COHRE ESC Rights Litigation Programme

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COHRE Mission Report, 2004

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Making Reparations a Reality in the Chixoy Dam Case

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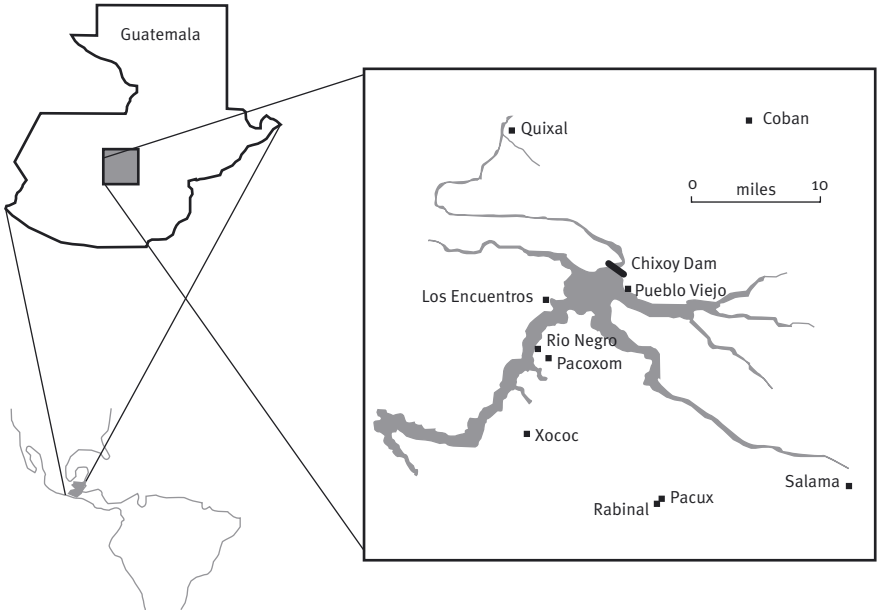
Photos: Bret Thiele

Cover Photo: Survivor of the Río Negro forced evictions pointing to the site of the second massacre.

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**MAP OF GUATEMALA, BAJA VERAPAZ AND RABINAL**



Source: Witness for Peace

**Acknowledgements**

The Centre on Housing Rights and Evictions (COHRE)<sup>1</sup> has partnered with Rights Action,<sup>2</sup> one of the leading organisations dealing with the Chixoy Dam case. Together, COHRE and Rights Action have joined with other human rights organisations, including International Rivers Network<sup>3</sup> and the Committee to Reform the World Bank,<sup>4</sup> to form the Chixoy Dam Reparations Campaign. The Campaign’s primary goal is to seek justice for the survivors of the massacres, forced eviction and other human rights violations that occurred on account of the planning and construction of the Chixoy Dam. A secondary goal is to highlight means by which to hold all responsible actors, whether State, non-State or multi-State organisations, accountable for such human rights violations.

From 18 to 25 July 2003, a COHRE fact-finding mission team visited Guatemala to meet with communities displaced by the construction of the Chixoy Dam, in order to evaluate their current living conditions and to gather eye-witness testimony. COHRE and Rights Action would like to thank all those who offered testimony in this case. Individual identities have been withheld for security purposes.

Finally, COHRE would like to thank The Ford Foundation – Brazil for providing funding for this important project and report.

1 For more information on the Centre on Housing Rights and Evictions (COHRE), see <http://www.cohre.org>  
2 For more information on Rights Action, see <http://www.rightsaction.org>  
3 For more information on International Rivers Network, see <http://www.irn.org>  
4 For more information on the Committee to Reform the World Bank, see <http://www.crbm.org>

Sign at entrance  
to the Chixoy Dam site



## Executive summary

This COHRE report, prepared in collaboration with Rights Action,<sup>5</sup> addresses the issue of reparations for the forced eviction and displacement of Maya-Achi communities in Guatemala, specifically in the context of the construction of the Pueblo Viejo-Quixal Hydroelectric Project (Chixoy Dam). Between 1980 and 1982, an estimated 440 persons of the Río Negro community were brutally murdered in a series of massacres, the principal means used to forcibly evict the community in order to make way for the Chixoy Dam Reservoir. Prior to the massacres, a large number of residents had peacefully resisted displacement from their village.

Both the Inter-American Development Bank (IDB) and the World Bank provided funding for the Chixoy Dam Project. The World Bank actually transferred its second loan instalment to the Government of Guatemala in 1985 – three years *after* the massacres took place. The few internal reports released by the IDB and the World Bank refer to problems with resettlement, but make no mention whatsoever of the appalling fact that, shortly before the reservoir filled, hundreds of people who were supposed to be resettled were actually murdered instead. To this day, both institutions deny any knowledge of, or responsibility for, the role

5 Rights Action is a community development and human rights organisation with offices in Guatemala, Canada and the United States. Rights Action provides funds directly to over 50 grassroots development organisations and projects, and provides technical support, popular education, and training for organisational strengthening to these grassroots organisations. In this way, Rights Action works to build alliances for global justice between community development and human rights organisations and projects, both regionally and north-south. Rights Action has been at the forefront of the Chixoy Reparations Campaign and has been working with the survivors of the Chixoy massacres for several years. For more information, see <http://www.rightsaction.org>

that they played in the massacres through their financial backing of the Chixoy Dam Project. However, in 1991, the World Bank alluded to the problems that occurred in relation to the Chixoy Dam Project in a confidential 'Project Completion Report'. The report noted that the resettlement plans were "conceptually ... seriously flawed" and also mentioned "delays in implementing the program due to intensive insurgency activity in the project area during the years 1980-1983."<sup>6</sup>

Yet, as the independent non-governmental organisation Witness for Peace has so aptly noted:

*If the [World] Bank knew about the massacres, then giving an additional loan to the project was at best a calculated cover up, and at worst an act of complicity in the violence. If the Bank did not know about the slaughter, then it was guilty of gross negligence. Either way, the Bank is implicated in the horrors perpetrated against the village of Río Negro in 1982.*<sup>7</sup>

As this report highlights, all parties involved knew or should have known about the gross violations of human rights occurring at the hands of Guatemalan authorities, as they were well reported throughout the period in question.<sup>8</sup>

The Chixoy Dam case clearly highlights the complicity of international financial institutions, including the IDB and the World Bank, in the brutal and unlawful displacement of indigenous communities from their lands in Guatemala. Although the international community has, to a limited extent, repudiated the Government of Guatemala for the mass killings, 'disappearances', torture and mass displacements which occurred at the hands of the State during the 1961-1996 civil war, few have raised their voice with regard to the role of international financial actors in perpetuating, or failing to stop, such bloodshed and other grave abuse of human rights.

This report examines, from the perspective of international human rights law, the legal issues surrounding the question of reparations for the survivors of the Chixoy massacres and forced displacement. Beyond this particular case, we also sincerely hope that this report will be useful to a wide range of human rights advocates, and that the arguments put forth here will be used to redress other situations in which international financial institutions have acted with gross negligence or recklessness, resulting in mass human rights violations. The time has come to dispense with the impunity to which these institutions have grown so accustomed,

6 Witness for Peace, *A People Dammed: The World Bank-Funded Chixoy Hydroelectric Project and its Devastating Impacts on the People and Economy of Guatemala* (Washington, DC: Witness for Peace, May 1996).

7 Ibid.

8 The United Nations, the media and non-governmental organisations such as Amnesty International were reporting widely on such gross violations of human rights in Guatemala during the late 1970s and early 1980s. For example, Amnesty International was reporting on gross violations of human rights as early as 1977 and continued to do so throughout the 1980s. Other human rights organisations, including the Washington Office on Latin America, NISGUA and the Guatemalan-based Guatemalan Human Rights Commission, also published numerous reports on widespread human rights violations by the Government of Guatemala in the early 1980s. In addition, the United Nations General Assembly and the United Nations Commission on Human Rights issued annual resolutions addressing the widespread human rights abuses in Guatemala. (See, for example, UNGA Res. 37/184 adopted 17 Dec. 1982 and CHR Res. 1982/31 adopted 11 Mar. 1982, both of which expressed "profound concern at the continuing deterioration in the situation of human rights and fundamental freedoms in Guatemala" as well as "deep concern at the serious violations of human rights reported to take place in Guatemala, particularly those reports of widespread repression, killing and massive displacement of rural and indigenous populations"; see also, for example, UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities Res. 1982/17, in which the Sub-Commission expressed "alarm at reports of massive repression against and displacement of indigenous populations".)

and advocates in all parts of the world must work together to ensure that these institutions conform to their own stated commitments and to international human rights norms and principles. For international financial institutions, human rights have all too often been a matter only of rhetoric and public relations. For communities such as the one of Río Negro, human rights are literally the difference between life and death.

This report concludes, *inter alia*, that the Government of Guatemala, with the complicity of the Inter-American Development Bank and the World Bank, unlawfully forcibly evicted the community of Río Negro in 1982. Methods used to carry out the forced eviction included a series of massacres resulting in the deaths of an estimated 440 community-members. The present atrocious living conditions of the survivors are a direct result of, *inter alia*, the displacement of the Río Negro community and the failure of the Government of Guatemala, the Inter-American Development Bank and the World Bank to provide just and fair compensation to the survivors, including adequate alternative housing as required by, *inter alia*, General Comment No. 7 of the United Nations Committee on Economic, Social and Cultural Rights.

The Government of Guatemala should provide full reparations, including just and fair compensation, to the Río Negro survivors.<sup>9</sup> The Inter-American Development Bank and the World Bank should fully implement, and thus fully complete, the relocation component of the Chixoy Dam Project, including the provision to the survivors of adequate alternative housing and just and fair compensation for, *inter alia*, lost housing, land, crops and other property. All this should be done in full consultation with the Río Negro survivors themselves.

The Inter-American Development Bank and the World Bank must abide by their legal obligation to provide full reparations, including just and fair compensation, to the survivors of Río Negro, and to other communities negatively affected by the implementation of the Chixoy Dam Project.

9 While this report focuses on the case of the Río Negro community, the Chixoy Dam also resulted in the forced displacement of several other communities from the reservoir basin, including the communities of Aldea Chirramos, Cubulco, Baja Verapaz; Aldea Chitomax, Cubulco, Baja Verapaz; Aldea Chicruz, Cubulco, Baja Verapaz; Caserio Guaynep, Aldea Chicruz, Cubulco, Baja Verapaz; Caserio Chisajcap, Aldea Chicruz, Cubulco, Baja Verapaz; Caserio Pueblo Viejo Cauinal, Aldea Chicruz, Cubulco, Baja Verapaz; Caserio S. Juan las Vegas, Aldea Chicruz, Cubulco, Baja Verapaz; Chuaxon, Cubulco, Baja Verapaz; Los Encuentros (El Chebollah), Cubulco, Baja Verapaz; Caserio El Zapote, Aldea San Miguel Chicaj, Salama, Baja Verapaz; Aldea Camalmapa, San Miguel Chicaj, Salama, Baja Verapaz; Finca Santa Ana, San Cristobal, Alta Verapaz; Caserio Los Chicos, San Cristobal, Alta Verapaz; Caserio Pueblo Viejo, San Cristobal, Alta Verapaz; and Caserio Puente Viejo, San Cristobal, Alta Verapaz. The analysis, conclusions and recommendations of this report apply to them as well.





Survivor of the Río Negro forced eviction

## Introduction

*“Between 1975 and 1985, the World Bank and the IDB made loans to the US-backed military government of Guatemala in support of the Chixoy Dam Project. By channeling \$350,000,000 to such a military regime, and by promoting and continuing with the project during the worst years of state terrorism and genocide, the World Bank and the IDB legitimized the repression. Between February and September 1982, 440 villagers from Río Negro were killed in a series of massacres, due to their resistance to being forcibly displaced to make way for the dam. Shortly after the final massacre, the land and now-destroyed Maya-Achi community of Río Negro was flooded. The survivors received little of the largely empty promises the government offered for resettlement. Most survivors live today in conditions of endemic poverty; many suffer on-going trauma related to the massacres and forced displacement.”*

— Rights Action, 14 May 2002

From 1961 to 1996, Guatemala was embroiled in a bloody civil war, with State forces brutally seeking to quell a growing movement for land rights and social justice, as well as insurgency led by the Guatemalan National Revolutionary Unity (*Unidad Revolucionaria Nacional Guatemalteca*, URNG). In order to achieve its ends, the Government of Guatemala adopted a ‘scorched earth’ policy in the Guatemalan countryside, aiming to exterminate the rebel forces and all suspected rebel sympathisers. Consequently, Guatemalan State security forces inflicted horrendous violence on the innocent civilian population, many of whom belonged to the country’s indigenous Maya ethnic group. During the conflict, hundreds of villages were destroyed and more than one million people driven from their homes. Indeed, the independent Commission for Historical Clarification (*Comisión para el Esclarecimiento Histórico*, CEH), established under the auspices of the Peace Accords and the guidance of the United Nations, found that a total of over 200 000 persons, mainly of Maya ethnicity, were killed or ‘disappeared’.<sup>10</sup>

Like many other right-wing Central American governments of the time, the Government of Guatemala was assisted, both financially and through the provision of technical and military expertise and equipment, by the Government of the United States of America, which itself sought to eliminate any trace of a so-called ‘communist threat’ from the region. The United States, in this regard, was a major actor in Guatemala’s civil conflict, directly and indirectly contributing to the systematic violation of human rights. Although this report focuses on the legal human rights responsibilities of the Inter-American Development Bank and the World Bank, the legal and human rights responsibilities of the US Government for what happened in Guatemala during the years of genocide and repression certainly merit their own separate investigation and report. In line with our conclusion that these two Banks have pending and long-overdue obligations to provide reparations, including compensation, to the survivors of the Río Negro massacres, it is highly probable that the US Government, because of its complicity in facilitating these violations of international human rights law, would be similarly obligated to provide reparations to the victims of the repression and genocide in Guatemala.

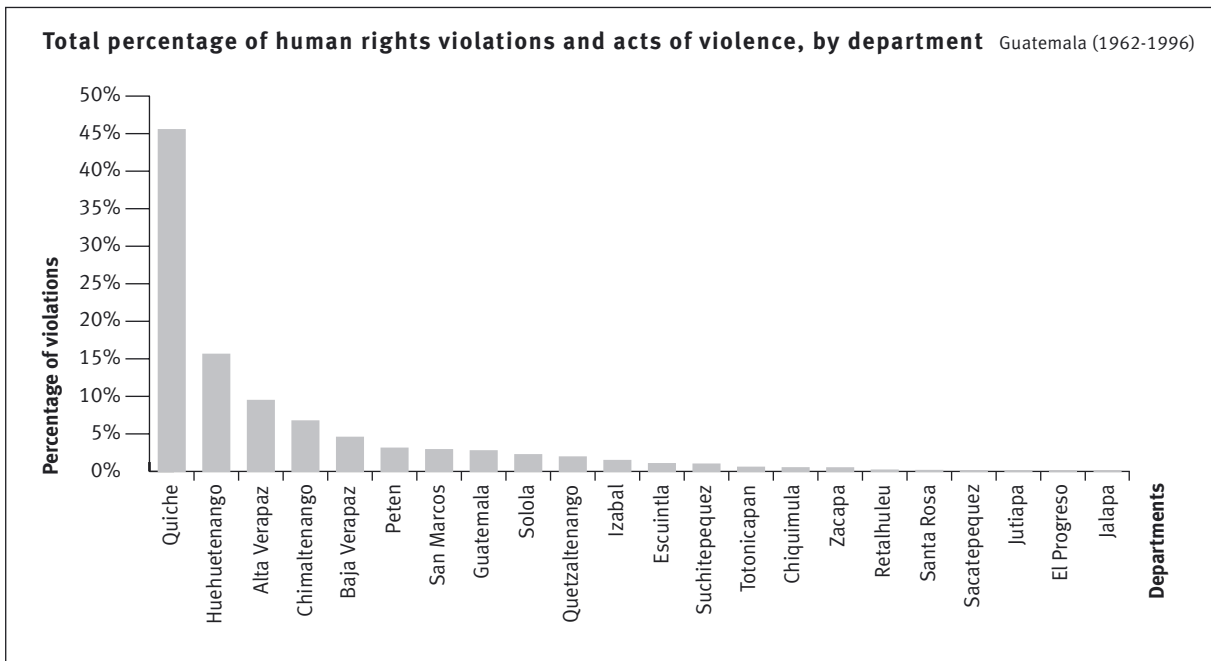
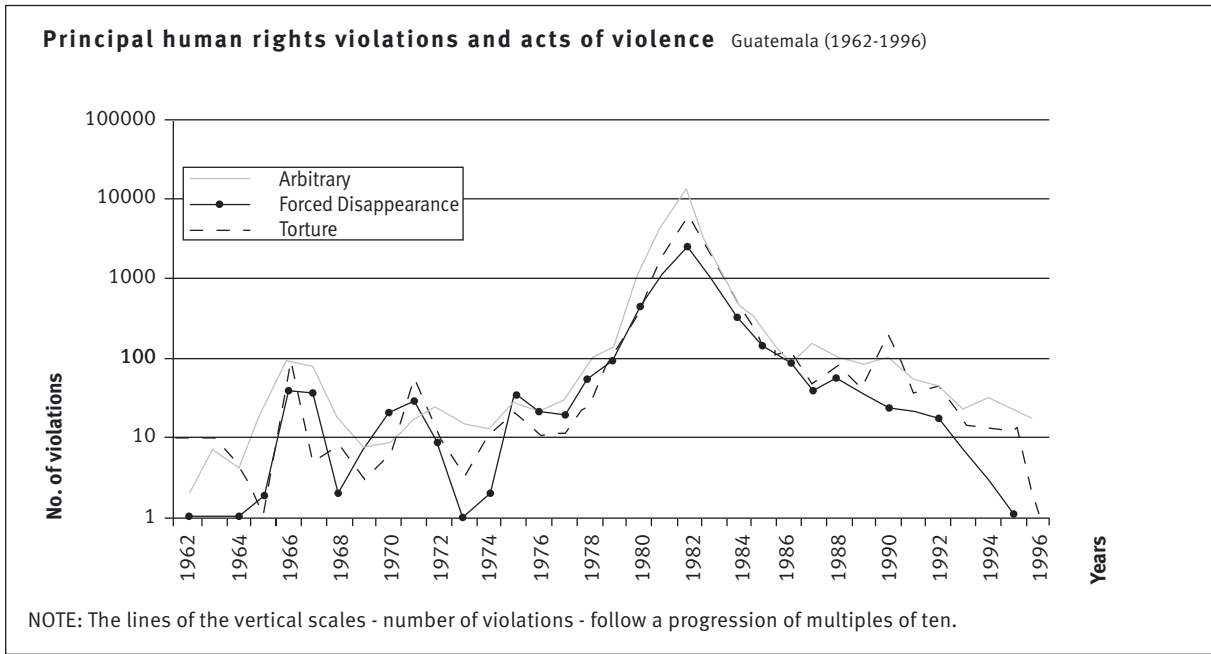
The CEH was established after the civil war to document and expose the atrocities, acts of violence and other human rights violations committed, and to investigate the perpetrators. The CEH registered a total of 42 275 victims, including women, men and children. They were of all backgrounds, with intellectuals, students, professionals, *campesinos*, clergy members, and human rights advocates among the dead.

Of these 42 275 identified victims, 23 671 were victims of arbitrary execution and 6 159 were victims of forced ‘disappearance’. Eighty-three percent of the fully identified victims were Mayan and seventeen percent were *Ladino* (local Spanish for *Mestizo*; that is, of mixed descent).<sup>11</sup> The CEH concluded that the Guatemalan Army had, in fact, committed genocide in certain regions and against people of certain ethnicities. These regions include the area in which the Mayan village of Río Negro was located. The CEH also found that the Guatemalan Army was responsible for the vast majority (93 per cent) of the documented atrocities, and had acted with the knowledge of, or on the orders of, the highest State authorities.

10 Guatemalan Commission for Historical Clarification (CEH), *Guatemala: Memory of Silence* (1999), <http://hrdata.aas.org/ceh/report/english/toc.html>

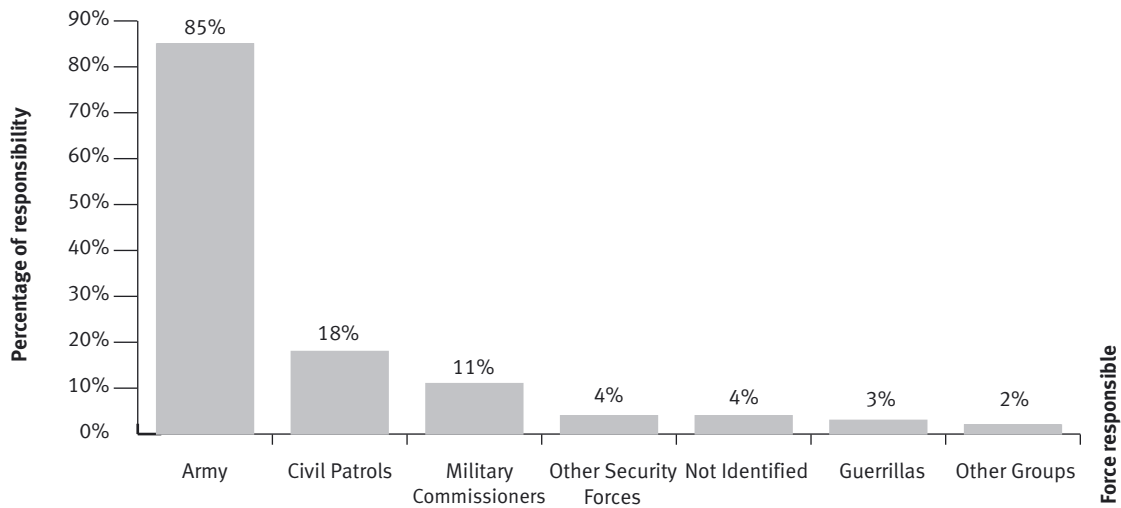
11 Ibid.

The death toll that the CEH was able to document represents only a fraction of the violence and devastation that took place during Guatemala's 36-year civil war. Indeed, the CEH itself noted that by combining its own data with the results of other studies of political violence in the country, it could reasonably be assumed that the total number killed or 'disappeared' in the civil war was in excess of 200 000 persons.<sup>12</sup>



12 See n. 10 above.

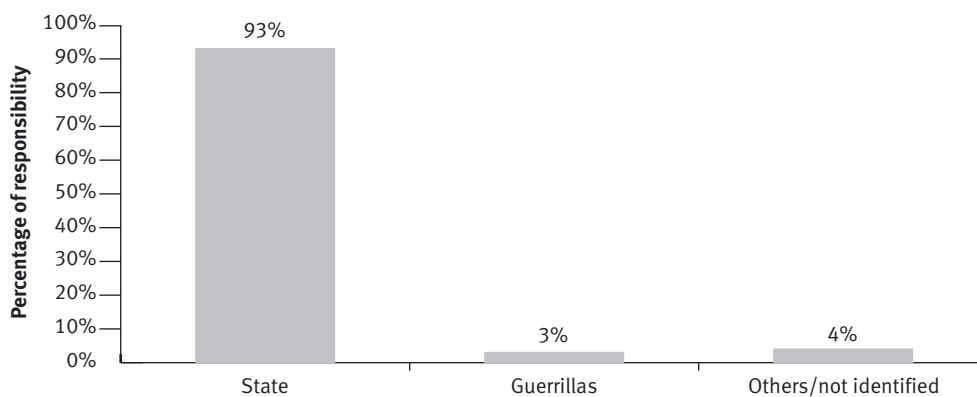
**Forces responsible for human rights violations and acts of violations** Guatemala (1962-1996)



The columns indicate the percentage of responsibility by different groups, whether acting alone or in conjunction with other forces, with regard to the total number of human rights violations and acts of violence committed. Consequently, the “Army” category accounts not only for the violations committed by this force when acting alone, but also for those committed in conjunction with Civil Patrols, military commissioners, death squads or other members of State security forces. In the same way, the “Civil Patrol” category records the violations committed by its members, acting alone or together with another force. This logic holds true for all of the categories, therefore the sum total of the percentages is greater than 100.

source: CEH database

**Responsibility for human rights violations and acts of violations** Guatemala (1962-1996)



The categorisation of group responsibility yields the following data: 93% rests with agents of the State, including in this category the Army, security forces, Civil Patrols, military commissioners and death squads; 3% rests with the guerrillas; the remaining 4% rests with other unidentified armed groups, civilian elements and other public officials.

source: CEH database

Source: Patrick Ball, Paul Kobrak & Herbert F. Spirer, *State Violence in Guatemala, 1960-1996: A Quantitative Analysis* (Washington, DC: The American Association for the Advancement of Science (AAAS), 1999).



COHRE Fact-Finding Team viewing a monument commemorating the Río Negro massacres

## Facing the facts of the Chixoy massacres

*“The land that now lies underneath the water is vast ... but the land that has been given to us now is much less and it is not good land, because it does not produce anything. There are no trees, there is no water, the people cannot cultivate.”*

*“They promised us a change of life, better living conditions. But the truth is that today we are worse off.”*

— Survivors of the Río Negro massacres

The facts of the forced eviction and displacement at Río Negro, including the massacres that were an integral part of the Government of Guatemala’s brutal policy, have been well documented by several human rights organisations both within and outside Guatemala.<sup>13</sup>

<sup>13</sup> For example, survivors have published their own accounts of the massacres and forced eviction, and provided accounts to COHRE, Rights Action, Witness for Peace, Amnesty International and other human rights organisations. Furthermore, the mass graves resulting from the massacres have been unearthed and forensic evidence collected by the Guatemalan Forensic Anthropology Team, the *Equipo* (now: *Fundación de Antropología Forense de Guatemala*, EAFG (now FAFG, see <http://www.fafg.org>).

The facts presented below represent a summary of the detailed reports on the massacres that have been produced by Rights Action, Witness for Peace, and the International Rivers Network. COHRE encourages readers to consult these publications for further information (see ‘Bibliography’).

The planning of the Chixoy Dam Project dates back to the early 1970s, long before the villagers of Río Negro first became aware of their pending displacement. The Government of Guatemala began construction of the Chixoy Hydroelectric Dam in 1975, in what it argued was an effort to bring cheap and abundantly available electricity to the county. Ironically, the Government also claimed that an objective of the Project’s resettlement component was “an improvement of the living conditions of the population in the serviced area of the project.”<sup>14</sup> The Chixoy Dam was raised to block the natural path of the Río Negro river in Baja Verapaz, central Guatemala. The Project was financed in part by the Inter-American Development Bank (IDB) and the World Bank, which provided initial loans of US\$ 105 million and US\$ 72 million, respectively.<sup>15</sup> Indeed, the Project would not have been undertaken but for the involvement of the IDB and the World Bank. The then State-owned National Institute of Electrification (*Instituto Nacional de Electrificación*, INDE) was responsible for administering the funds, coordinating the Project, and building the Chixoy Dam itself.<sup>16</sup>

From the start of the Project, INDE failed to consult the people that lived along the Río Negro, despite the fact that the completed Chixoy Dam would flood a 31-mile stretch of the river valley, leaving many of their communities and homes under water. Not until 1977, almost *two years* after construction began, did INDE officials fly by helicopter into the small village also named Río Negro to inform residents that they would have to abandon their homes and lands because these were soon to be flooded. INDE promised that they would be given new homes and lands in compensation for their loss. At first, the villagers, already under duress due to repeated threats from military units, reluctantly considered abandoning their homes and lands at Río Negro. INDE’s promises soon proved to be deceptive, however, as villagers learned shortly thereafter that the resettlement site allocated to them was grossly inadequate. With cramped, poorly constructed houses and infertile land, conditions there were far worse than their already meagre living situation at Río Negro. Even at the time of writing this report, the resettlement site is still just an urban slum, known as Pacux, behind a military base on the edge of the town of Rabinal.

In order to displace the Río Negro community, the Guatemalan authorities began to aggressively target its residents. First, INDE officials demanded that they hand over their land titles,

14 Government of Guatemala, Project Report, *Chixoy River – Pueblo Viejo Hydroelectric Project* (Dec. 1975). Furthermore, a footnote indicates that the World Bank loan contract with INDE, the State-owned National Institute of Electrification, (BIRF-1605/GU) includes a clause obligating INDE to provide the relocated persons with houses and services of better quality than they previously had. As this provision was covered by the World Bank contract, the IDB loan contracts with INDE did not need to include such a clause.

15 Corruption and technical problems ultimately raised the cost of the 300-megawatt dam from US\$ 340 million to almost US\$ 1 billion.

16 In 1982, pursuant to Guatemala’s National Plan for Security and Development (*Plan Nacional de Seguridad y Desarrollo*), INDE was placed under military control. At that time, INDE’s Board of Directors was replaced entirely by military officers, as were some of the technical personnel. Prior to 1982, INDE’s Board had been made up of civilian administrators, who reported to the military Government.



promising to return them promptly.<sup>17</sup> Months later, when the community requested that the titles be returned, INDE officials claimed that they had never received them.<sup>18</sup> In March 1980, members of the Mobile Military Police (*Policia Militar Ambulante*), based at the Chixoy Dam site and contracted by the Project, shot seven people in Río Negro. The villagers chased the police away and one officer, according to the people of Río Negro, accidentally drowned in the Chixoy River. However, INDE and the Guatemalan Army accused the villagers of murdering the police officer and supporting the country's guerrilla movement. Three months later, in July 1980, two representatives of the Río Negro community agreed to a request from INDE to come to the Chixoy Dam site to present their *Libros de Actas*, the community's only other documentary proof of their title to their land, as well as the resettlement and cash payment agreements it had signed with INDE. Their mutilated bodies were found a week later, and the documents have never been recovered.

It is important to note that throughout this period, the IDB and the World Bank exercised direct supervision over the Chixoy Dam Project. This supervision included regular site visits, ostensibly to ensure that the Project was being implemented in a sound and lawful manner.

In February 1982, after reaching an impasse in negotiations with INDE, 73 women and men from Río Negro were ordered by the local military commander to report to Xococ, a village upstream from the reservoir zone. Only one of the women returned home to Río Negro – the remaining 72 men and women were subjected to torture, including the rape of the women, and then all were murdered by members of Xococ's Civil Defence Patrol (*Patrulla de Autodefensa Civil*, PAC), one of the notorious paramilitary units established by the Guatemalan military. On 13 March 1982, ten soldiers and 25 PAC members arrived in Río Negro, rounded up the remaining women and children and marched them to a hill above the village, where many were subjected to torture, including rape.<sup>19</sup> Seventy of the women and 107 children were then brutally murdered. Most of the women were strangled, or hacked to death with machetes. Many of the children had their heads smashed against rocks or trees until they too were dead. Only two women managed to escape, becoming some of the few surviving eye-witnesses of the Chixoy massacres. Eighteen of the children survived because they were taken back to Xococ, only to be enslaved by the very PAC members who had murdered their families. Those who have subsequently escaped have also testified to the horrific abuses of that day.

Two months later, on 14 May 1982, a further eighty-two people from Río Negro were massacred at the nearby village of Los Encuentros. Fifteen of the victims were taken away by helicopter and never seen again. Eye-witnesses testify that the perpetrators were Government soldiers and members of the Xococ PAC who arrived in a truck owned by *Codifa*, a company contracted by INDE for the Chixoy Dam Project.

Finally, in September 1982, 35 orphaned children from Río Negro were among 92 people machine-gunned and burned to death in another village near the Chixoy Dam. In effect, members of the Guatemalan Army and the PACs had forcibly evicted the people of Río Negro

17 Witness for Peace (n. 6 above).

18 Ibid.

19 Thinking that only they themselves would be targeted, the men of Río Negro hid in the hills around the village. Unarmed *campesinos*, they witnessed the massacre of the women and children, but were powerless to stop it.

through a series of four massacres, trying to exterminate each and every member of the community. Broken, terrorised and grieving, the survivors of the community fled their homes and went into hiding. Filling of the reservoir began soon after this final massacre.<sup>20</sup> Over the next ten years, the survivors trickled into the grossly inadequate resettlement site of Pacux, a so-called ‘Model Village’ situated behind a military base on the edge of the town of Rabinal.<sup>21</sup>

Once such human rights violations began to occur, INDE, along with the IDB and the World Bank in their respective supervisory roles, were effectively put on notice that paramilitary and Government agents were actively carrying out atrocities in order to clear the way for the Chixoy Dam, often with funding and equipment from the Project itself.

In this period, for the construction of the Chixoy Dam, the Inter-American Development Bank (IDB) loaned Guatemala US\$ 105 million in 1975 and a further US\$ 70 million in 1981. The World Bank loaned US\$ 72 million for the Chixoy Dam in 1978 and another US\$ 45 million in 1985 – the second instalment being paid *after* the massacres had occurred. At the very least, the gross negligence shown by the two Banks in the Chixoy Dam case highlights the role of international financial institutions in fostering a climate of impunity for human rights crimes committed in Guatemala. The facts of the case underscore how two powerful international actors turned a blind eye to, and actually profited from, that country’s brutal history of repression. The extent to which the parties involved were unjustly enriched is an issue which needs to be fully investigated by an independent tribunal. However, it is clear that the violent tactics employed did serve to ‘minimise’ the economic project costs associated with the adequate relocation and rehabilitation of the displaced communities.

To this day, many villagers believe INDE encouraged the violence so that INDE officials could pocket compensation payments due to the villagers. The two Banks which financed and directly supervised the Chixoy Dam Project had an obligation to show due diligence with regard to the implementation of the Project, especially because Guatemala’s appalling human rights record throughout the 1970s and 1980s was well-known. The facts of the Chixoy Dam case, as is discussed in detail in the following sections, illustrate how the two Banks violated their respective obligations.

20 According to the Inter-American Commission: “... The major case of a secret cemetery investigated during this period occurred in the village of Río Negro, Rabinal, Alta Verapaz. In 1982 this village was inhabited by 600 persons, most of whom were murdered. A few were able to hide in the mountains. The waters of the new Chixoy reservoir covered the abandoned huts. The excavations which were performed on the order of the justice of the peace by the EAFG [Guatemalan Forensic Anthropology Team, *Equipo* (now: *Fundación de Antropología Forense de Guatemala* (now FAFG))] discovered the cadavers of 170 persons, among them 90 children and 50 women. This finding was one of the 19 mass slaughters that occurred in the Rabinal area between 1980 and 1983 which took a toll of more than 4,000 dead. This number was 17 per cent of the population living in the municipality during that time. According to local people, the Río Negro massacres began because the construction in 1981 of the Chixoy hydroelectric plant by the National Electrification Administration (INDE) required the people living in that area to move. These persons did not want to leave and they had the support of the Peasant Unity Committee (CUC). That Río Negro village, which was called a “guerrilla focal point,” was the victim of five massacres by army forces and the civil patrols which were being organized during that time. Charges made by survivors state that in one case, the patrol members abducted mothers and children from the village and then offered some of the children the choice of not dying with their mothers by going to work for them. Some 15 children decided to save their lives and were held in servitude for a decade [sic, actually 2-3 years] by the murderers of their parents. (...)” Inter-American Commission on Human Rights, *Annual Report 1993*, Ch. IV: ‘Status of Human Rights in Several Countries: Guatemala’ (Sect. VII on ‘the right to judicial guarantees’), OEA/Ser.L/V/II.85 (2003).

21 For years, survivors of Río Negro were frequently beaten or raped or both by military personnel as they walked past the military base to Pacux, and the community was continually harassed by soldiers stationed at the base.





COHRE and Rights Action Fact-Finding Team examining documents of the El Naranjo community

## The Case of El Naranjo

*“What affects us the most today is that we are very stretched and life here is different than what it used to be, because we used to have our liberty, we did not have to buy firewood, we did not have to pay for electricity, we did not have to pay for water. We didn’t have any problems because we had water. We were able to gather firewood, too; all of that we had. And now, if we don’t have money and if there is nowhere to work, nowhere to earn an income, how are we going to survive?”*

*“INDE and the Government used the army to hurt our brothers and sisters in Rio Negro ... the Government used the army to clean the banks of the River.”*

Many other communities along the Río Negro were displaced as well, but most, if not all, moved away reluctantly and under duress. For example, the community of Chicruz, once located upriver from Río Negro, reluctantly agreed to an unjust and unfair compensation package after hearing about the massacres of their neighbours at Río Negro. Indeed, members of the community testified that the Guatemalan Army was used to ‘clean’ the region of its human population. After being evicted in 1982 and finally relocated to the so-called ‘Model Village’ of El Naranjo on the outskirts of Culbulco in 1984, the Chicruz community has continued to live in poverty and to this day continues to fight for just and fair compensation, especially access to productive land.

Community leaders report that no consultation or negotiation took place during the displacement process. Rather, the community was offered an inadequate compensation package which, due to the threat of massacres, they reluctantly accepted.

The compensation package included payment as follows:

- Inadequate housing on barren land near the distant village of Culbulco
- Q50 per 1.5 acres of land
- Q3 per mango tree
- Q1.5 per orange tree (at a time when one orange was worth Q1.25)

Testimony of displaced community members, July 2003

(The community of El Naranjo, along with other displaced communities, is campaigning together with the Río Negro survivors in efforts to get due compensation and reparations).

Inadequate housing at  
the Pacux resettlement site



## The reparations issue

The survivors of the Río Negro massacres have received only meagre compensation from the Government of Guatemala, and today they continue to live in extreme poverty, a situation exacerbated by the heavy burden of the trauma that they and their loved ones have endured. Both the Inter-American Development Bank (IDB) and the World Bank have acknowledged the tragedy of the Chixoy massacres, and both are aware of the conditions in which the survivors continue to live, yet neither Bank has assumed any responsibility for reparations to the survivors.

COHRE is convinced that under international human rights laws and principles both the Inter-American Development Bank and the World Bank are obligated to provide reparations to the Río Negro survivors for the human rights abuses suffered by themselves and their families. The IDB and the World Bank often talk self-righteously about ‘the rule of law’ and ‘good governance’. If they really believe in these principles, they should support justice for the victims of past negligent and reckless mismanagement and abuses – including massacres – that occurred in the context of, and indeed on account of, projects they funded, supervised and controlled. In the following sections, this report outlines the relevant liability and compensation issues involved in the Chixoy Dam case.

## 1.1 The legal framework for reparations

It should be noted, first and foremost, that under international human rights law, ‘compensation’ is generally understood to mean the amount of money necessary to restore the injured party to his/her former position, or the monetary equivalent of a loss sustained. As such, compensation is the narrowest interpretation of ‘legal damages’. The term ‘reparations’, on the other hand, implies a broader principle of justice: that is, that *both* pecuniary (for example, monetary compensation) and non-pecuniary damages are appropriate in cases of human rights abuse. Thus, adequate reparation of harm resulting from violation of an international human rights obligation consists of *full* restitution (*restitutio in integrum*). This means, ideally, the restoration of the prior situation, or, if this is actually impracticable, just and fair compensation instead. There must be reparation of *all* consequences of the violation, which requires indemnification not only for pecuniary but also non-pecuniary damages, including emotional harm. Punitive damages against the violator may also be considered part of just and fair reparations.

In order to develop the case that the survivors of the Río Negro massacres deserve full reparations, it is important to underscore the international legal framework that already exists in the area of reparations for human rights violations. While reparations for human rights violations are clearly a moral imperative in the sense of treating others with compassion and dignity, the right to reparations must also be seen as a *legal* right, and thereby as an essential element of attaining justice for victims.

### 1.1.1 Domestic standards

It should be noted that the State of Guatemala itself has yet to implement a comprehensive legal and political programme that adequately reflects the rights of victims of human rights violations to reparations. In November 2002, the then Guatemalan President, Alfonso Portillo, submitted to the Guatemalan Congress a law which would establish the National Reparations Programme for victims of human rights violations that had occurred during the armed conflict. However, this Programme has yet to fully materialise. This initiative was the direct result of the establishment, in 1999, of the high-level Multi-Institutional Body for Peace and Concord (*Instancia Multi-institucional por la Paz y la Concordia*), which was given the task of drafting a National Reparations Programme in order to address the needs of Guatemalans negatively affected by the country’s 36-year civil war. This body was supported by the United Nations Development Programme (UNDP), and its recommendations have been endorsed by the Inter-American Commission on Human Rights.<sup>22</sup> It was created on the basis of the prior recommendation of Guatemala’s Commission for Historical Clarification (CEH), which had called for the country to “urgently” set up a programme to provide reparations to the victims of human rights violations and violence associated with the country’s armed civil conflict.

The draft National Reparations Programme was formally presented to President Portillo with the aim of ensuring that the Guatemalan Congress adopt legislation to create a special com-

22 Inter-American Commission on Human Rights, *Fifth report on the Human Rights Situation in Guatemala*, Ch. I, ‘the situation of human rights since the signing of the accord for a firm and lasting peace’, OEA/Ser.L/V/II.111, doc. 21 rev. (2001).

mission responsible for implementing the Programme. The commission was to consist of representatives of the Congress, the Supreme Court, the Human Rights Ombudsman's office and victims' organisations, as well as representatives of human rights, women's and Maya ethnic organisations. It was proposed that those eligible for reparations should include persons affected either "directly or indirectly, individually or collectively, by human rights violations."

The proposed US\$ 396 million, 11-year National Reparations Programme included a number of provisional reparations strategies that were designed to benefit those communities who had suffered most during the armed civil conflict. For example, economic compensation was to be paid to the over one million Guatemalans who had been displaced by the conflict, and Government funds were to be earmarked for locating and exhuming the bodies of those killed in massacres. The Programme also included support for community development, the establishment of medical and mental health facilities, land restitution and the formalisation of land titles, as well as measures to honour and remember the victims of the conflict, including the dedication of 25 February as a national day of commemoration.

Regrettably, however, the Government of Guatemala has only just begun to implement the National Reparations Programme,<sup>23</sup> and according to the Inter-American Commission on Human Rights, the "establishment of these mechanisms has been subject to extended delay."<sup>24</sup> However, the Government has been swift in providing a financial package to former members of the Civil Defence Patrols (PACs) for 'services rendered', though many suspect that this was yet another Government ploy designed to divide the rural indigenous population.

Testimony from Río Negro survivors indicates that they consider the National Reparations Programme as currently proposed to be grossly inadequate as a means of remedying the human rights violations that occurred on account of the Chixoy Dam Project. Only some of the violations suffered by the Río Negro community and others affected by the Chixoy Dam are within the scope of the National Reparations Programme. Furthermore, this report concludes that any reparations that might come out of the Programme are distinct from any reparations that COHRE and Rights Action have determined are due from the Inter-American Development Bank and the World Bank, as the Programme applies only to national actors.

### **1.1.2 Regional standards**

The American Convention on Human Rights is the foremost regional human rights treaty within the Americas. Adopted by the Organization of American States in 1969, the American Convention established clear human rights obligations for States Parties. The American Convention also established a regional human rights monitoring and enforcement structure, whereby the Inter-American Commission on Human Rights became the primary organ within the Americas system for monitoring compliance with the Convention by States Parties. The Convention also provided for the creation of a separate Inter-American Court of Human

23 On a positive note, 25 Feb. has been declared the National Day of Dignity for Victims of Armed Conflict in Guatemala.

24 Inter-American Commission on Human Rights (n. 22 above).

Rights,<sup>25</sup> which was established as an autonomous judicial institution whose purpose was to interpret and apply the American Convention on Human Rights.<sup>26</sup>

Guatemala ratified the American Convention on Human Rights on 25 May 1978, and accepted the jurisdiction of the Inter-American Court on 9 March 1987.

Article 63(1) of the American Convention on Human Rights states that:

*If the [Inter-American] Court [of Human Rights] finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his [or her] 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.*<sup>27</sup>

In addition, Article 10 of the American Convention recognises the right to compensation in the event that a person “... has been sentenced by a final judgment through a miscarriage of justice.”<sup>28</sup>

Indeed, in 2001, the Inter-American Commission on Human Rights released a special report on the human rights situation in Guatemala in which it reaffirmed that:

*[the Guatemalan] authorities have the duty to assist such persons [displaced persons] in recovering goods or property lost through displacement [that is, restitution], or where that is not possible, to assist in obtaining compensation or reparation.*<sup>29</sup>

Also on the issue of reparations, the Inter-American Court of Human Rights itself has reaffirmed that:

*[i]t is a principle of international law, which jurisprudence has considered ‘even a general concept of law’, that every violation of an international obligation which results in harm creates a duty to make adequate reparation.*<sup>30</sup>

*The landmark judgment in the Velásquez Rodríguez case first laid out the type of reparations and compensation that may be awarded by the Inter-American Court of Human Rights,<sup>31</sup> and it was in connection with this case that the Court first presented criteria for*

25 *The Creation of the Inter-American Commission on Human Rights, its Original Statute and the Extension of the Commission’s Powers*, <http://www.cidh.oas.org/Básicos/basic1.htm#C>

26 For more information on the Inter-American human rights system, see Inter-American Commission on Human Rights, <http://www.cidh.oas.org/DefaultE.htm>, and Inter-American Court of Human Rights, <http://www.corteidh.or.cr/index-ingles.html>

27 The American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force 18 July 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.LV/II.82 doc.6 rev.1 at p. 25 (1992).

28 *Ibid.*

29 Inter-American Commission on Human Rights (n. 21 above).

30 *Velásquez Rodríguez Case, Compensatory Damages*, (Art. 63(1), American Convention on Human Rights), Judgment of 21 July 1989, Inter-Am. Ct. H.R. (Ser. C) No. 7 [1989].

31 *Velásquez Rodríguez Case, Interpretation of Compensatory Damages* (Art. 67, American Convention on Human Rights), Judgment of 17 Aug. 1990, Inter-Am. Ct. H.R. (Ser. C) No. 9 [1990].

*the granting of compensation, calling for these criteria to be applied flexibly in order to “arrive at a prudent estimate of the damages, given the circumstances of each case.”*<sup>32</sup> *Through its consideration of reparations for human rights violations, the Court has acknowledged a preference for restitution, but has held that compensation shall be considered in cases where restitution is not possible.*<sup>33</sup>

The Court has also found that compensation must be given in an amount sufficient to remedy the *entire scope* of the adverse consequences resulting from the human rights violations that took place. Therefore, the Court may also award moral damages based on the amount of suffering incurred by the victim and her/his family, and the egregiousness of conduct of the State in question. In the *Velásquez Rodríguez* case, for example, the Court considered the psychological impact suffered by the family of the victim, and held that the “disappearance of Manfredo Velásquez produced harmful psychological impacts among his immediate family which should be indemnified as moral damages.”<sup>34</sup> The Court specifically noted that:

*[t]he compensation due victims or their families under Article 63(1) of the Convention must attempt to provide restitutio in integrum for the damages caused by the measure or situation that constituted a violation of human rights. The desired aim is full restitution for the injury suffered. This is something that is unfortunately often impossible to achieve, given the irreversible nature of the damages suffered .... Under such circumstances, it is appropriate to fix the payment of ‘fair compensation’ in sufficiently broad terms in order to compensate, to the extent possible, for the loss suffered.*<sup>35</sup>

We return to the *Velásquez-Rodríguez* case in our discussion in Subsection 1.3, ‘Assessing damages and loss’. For the time being, however, we merely note that reparations strategies have been successfully implemented within the Americas region in order to redress past human rights atrocities, and that governments – but not other actors as yet – have been held legally accountable in this regard. Indeed, other actors, such as the two Banks, have to date enjoyed outright impunity for their decisions and actions in violation of human rights.

### 1.1.3 International standards

International legal and normative provisions recognising the right to a remedy for victims of violations of international human rights and humanitarian law are contained in numerous international instruments, in particular in: Article 8 of the Universal Declaration of Human Rights;<sup>36</sup> Article 2 of the International Covenant on Civil and Political Rights;<sup>37</sup> Article 6 of the

32 *Velásquez Rodríguez Case* (n. 30 above). See also Dinah Shelton (1994) ‘The Jurisprudence of the Inter-American Court of Human Rights’, *The American University Journal of International Law & Policy*, Vol. 10, pp. 333-372.

33 *Ibid.*

34 *Ibid.*

35 *Velásquez Rodríguez Case*, (n. 31 above).

36 Art. 8 of the Universal Declaration of Human Rights states: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [or her] by the constitution or by law.”

37 Art. 2(3) of the International Covenant on Civil and Political Rights states: “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his [or her] right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.”



International Convention on the Elimination of All Forms of Racial Discrimination;<sup>38</sup> Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>39</sup> and Article 39 of the Convention on the Rights of the Child.<sup>40</sup>

Based upon this body of law, and in order to adequately reflect the evolving set of international principles with regard to substantive and procedural justice, the United Nations has developed the Draft United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (hereinafter ‘Basic Principles’, see Annex C for the full text). The Basic Principles provide an important starting point from which to explore the issue of reparations in the Chixoy Dam case from the perspective of international human rights law. According to the Basic Principles, remedies for violations of international human rights and humanitarian law include the victim’s right to:

- a) *Access justice;*
- b) *Reparation for harm suffered; and*
- c) *Access the factual information concerning the violations.*

In addition to individual access to justice, the Basic Principles stipulate that adequate provisions should be made allowing groups of victims to present collective claims for reparation and to receive reparation collectively, and that “[r]eparation should be proportional to the gravity of the violations and the harm suffered.”

The United Nations Commission on Human Rights has also reaffirmed that pursuant to internationally recognised human rights principles, victims of grave violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation.<sup>41</sup> The UN Commission on Human Rights has similarly reiterated the importance of addressing the question of restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms in a systematic and thorough way at the national and international levels.<sup>42</sup>

38 Art. 6 of the International Convention on the Elimination of All Forms of Racial Discrimination states: “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his [or her] human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

39 Art. 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: “1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his [or her] dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.”

40 Art. 39 of the Convention on the Rights of the Child states: “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

41 UN Commission on Human Rights resolution 2000/41, *The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms*, UN Doc. E/CN.4/2000/RES/41 (2000).

42 Ibid.

In the context of reparations, it should be noted that the victims at Río Negro actually suffered multiple gross violations of human rights. Torture and massacre are grievous violations that obviously merit reparations in the broadest sense. However, beyond these violations of personal integrity rights, it should not be overlooked that the survivors of the Río Negro massacres were also forcibly evicted from their homes and lands and that they have yet to receive adequate compensation for these very tangible losses. Under international human rights law, forced eviction is itself recognised as constituting “a gross violation of human rights”.<sup>43</sup>

Forced evictions involve the involuntary displacement of persons, families and groups from their homes and communities, and are usually characterised or accompanied by: (1) a relation to specific decisions, legislation or policies of States or the failure of States to intervene to halt evictions by non-state actors; (2) an element of force or coercion; and (3) an element of planning and formulation prior to being carried out. In its General Comment No. 7, the UN Committee on Economic, Social and Cultural Rights states that “forced evictions are *prima facie* incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights].”<sup>44</sup>

Because the Chixoy Dam case involved forced evictions in the context of a development project, additional international human rights standards are relevant, most notably The Comprehensive Human Rights Guidelines on Development-Based Displacement (hereinafter ‘Comprehensive Guidelines’, see Annex B for the full text).<sup>45</sup> The Comprehensive Guidelines note that:

*[a]ll persons subjected to any forced eviction not in full accordance with the present Guidelines, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognised in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.*<sup>46</sup>

The Comprehensive Guidelines also state that, in situations where return to one’s original home is not possible, “[a]ll persons, groups and communities have the right to suitable resettlement which includes the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable.” Similarly, that “affected persons, groups and communities provide their full and informed consent as regards the relocation site. The State shall provide all necessary amenities and services and economic opportunities.”

43 UN Commission on Human Rights resolution 1993/77, *Forced eviction*, UN Doc. E/CN.4/1993RES/77; see also UN Committee on Economic, Social and Cultural Rights, General Comment No. 7 (Art. 11(1) of the Covenant) *Forced evictions* (May 1997).

44 Guatemala ratified the International Covenant on Economic, Social and Cultural Rights on 19 May 1988; see also UN Committee on Economic, Social and Cultural Rights, General Comment No. 7 (Art. 11(1) of the Covenant) *Forced evictions* (May 1997).

45 The UN Commission on Human Rights, at its 51st session, in its resolution 1995/29 of 24 Aug. 1995, requested the UN Secretary-General to convene an expert seminar on the practice of forced eviction and the relationship of this practice to internationally recognised human rights with a view to developing comprehensive human rights guidelines on development-based displacement; see also UN Sub-Commission on the Promotion and Protection of Human Rights (formerly the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities), *Report of the Secretary-General on the Expert Seminar on the Practice of Forced Evictions*, UN Doc. E/CN.4/Sub.2/1997/7 (1997).

46 *Ibid.*; see also Annex B.





Children of Río Negro

## 1.2 Determining the potential recipients of reparations

Clearly, the survivors of the Río Negro community have a legal right to reparations under both regional and international human rights law. Yet, in order to effectively implement a comprehensive reparations programme for the surviving members of the Río Negro community and the family members of victims of the Chixoy massacres, two questions must be addressed:

1. Which persons are entitled to receive reparations?
2. What constitutes adequate reparations in this case?

This subsection addresses the first question by developing a framework for determining the potential recipients of reparations. The second question is addressed in Subsections 1.3 and 1.4, which clarify how to assess damages and loss in this case, as well how non-pecuniary and punitive damages should be applied.

In Subsection 1.1.3, ‘International standards’, we noted that the UN Basic Principles (*see* Annex C for the full text) reaffirm that victims of violations of international human rights and humanitarian law have a legal right to reparations under international law. The Basic Principles also provide a useful framework for defining who constitutes a ‘victim’:

*A person is ‘a victim’ where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights. A ‘victim’ may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.*<sup>47</sup>

<sup>47</sup> Draft United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, para. V; *see* Annex C.

Accordingly, the following persons are entitled to reparations for the human rights violations that occurred in Río Negro and other similarly affected communities:

1. Community members and their families who were forcibly evicted from their homes and lands on account of the Chixoy Dam's construction;
2. Survivors and witnesses of the Río Negro massacres and any other violence that is directly attributable to the construction of the Chixoy Dam; and,
3. Immediate family and other dependants of those killed during the Río Negro massacres and any other violence that is directly attributable to the construction of the Chixoy Dam.

### **1.3 Assessing damages and loss**

Because the human rights violations in the Chixoy Dam case were multiple, it is important to first identify all of the violations that occurred. With this as the basis, one must then begin the task of linking specific violations to persons who are entitled to reparations for specific harms suffered.

Under international human rights laws and standards, the following rights were violated in this case: the right to life; the right to judicial protection; the right to personal liberty and security; the right to be free from torture and other forms of cruel or degrading treatment or punishment; the right to be free from slavery and other forms of forced servitude; the right to property; the right to adequate housing; the right to be free from forced eviction; the right to an effective remedy; the right to an adequate standard of living; and the right to privacy and inviolability of the home.

From consideration of this case, there emerge at least five different categories of direct damages and loss which need to be addressed and repaired:

**1) The loss of tangible property, including homes, lands and personal and communal belongings that were lost during the forced eviction of the community** (due to violations of the right to judicial protection; the right to personal liberty and security; the right to be free from torture and other forms of cruel or degrading treatment or punishment; the right to property; the right to adequate housing; the right to be free from forced eviction; the right to an effective remedy; the right to an adequate standard of living; and the right to privacy and inviolability of the home).

In order to provide adequate reparations for the loss of property, it is essential first to provide a monetary estimate of the value of *all real property* (housing, land, communal property, etc.) and personal property lost at that time. This necessitates an investigation by independent experts, whose responsibility it would be to provide a monetary estimate of the damages. Once this figure has been obtained and has been found to be fair (through an independent judicial process, if necessary), the compensation owed to victims should be similarly adjusted so as to adequately compensate for the loss of quantifiable interest earnings as well.



COHRE and Rights Action  
Fact-Finding Team meeting with  
the Río Negro community

2) **The loss of livelihood and the deterioration of community living conditions due to the provision of an inadequate resettlement site** (due to violations of the right to judicial protection; the right to adequate housing; the right to an effective remedy; and the right to an adequate standard of living).

The question of the loss of livelihood and the deterioration of living conditions entails a real loss, in economic terms, of one's earning potential and economic status. Because the community at Río Negro, like the other communities affected by the Chixoy Dam, was largely agricultural and thereby dependent on the fertile land and fishing in the locality, the resettlement to an inferior site destroyed the community's livelihood and self-sufficient economy. Therefore, in order to determine the amount of monetary compensation due for this category of damages, it is necessary first to determine this loss in monetary terms. Again, this necessitates an investigation by independent experts, whose responsibility it would be to provide a monetary estimate of the damages. Any such estimate should be adjusted so as to adequately compensate for the loss of potential interest earnings as well.

3) **The violations implicit in the massacres themselves, including extrajudicial killing, kidnapping for purposes of forced servitude, and torture including rape** (due to violations of the right to life; the right to judicial protection; the right to personal liberty and security; the right to be free from torture and other forms of cruel or degrading treatment or punishment; the right to be free from slavery and other forms of forced servitude; and the right to privacy and inviolability of the home).

Human rights tribunals, including the Inter-American Commission on Human Rights, are well placed to determine the monetary damages associated with the above types of human rights violations. Importantly, damages for such violations are inheritable and thus damages for violations against those massacred are legally due their heirs.

4) **The economic loss to households and families incurred as a result of the loss of lives and torture during the massacres** (due to violations of the right to life; the right to judicial protection; the

right to personal liberty and security; the right to be free from torture and other forms of cruel or degrading treatment or punishment; and the right to privacy and inviolability of the home).

Damages for the loss of earning capacity or other economic contribution to family and community are due the survivors, as are damages for loss of consortium.<sup>48</sup>

#### **1.4 Non-pecuniary and punitive damages**

Survivors of the massacres at Río Negro are also owed for the emotional damage and harm suffered by victims and their families due to all of the above violations. Non-pecuniary damages for pain and suffering cannot be ignored in the broader discussion of reparations strategies and are necessary in any successful attempt to ‘make the victim whole’. International legal norms recognise the right to non-pecuniary damages in cases of severe human rights violations, for example in cases of violations of the right to life. Non-pecuniary damages should take into account the emotional, social, familial and cultural loss experienced by the families, as well as by the community as a whole. Certainly, non-pecuniary damages – unlike other forms of restitution – are not meant to ‘restore’ the original situation. Indeed, many of the abuses suffered by the Río Negro community, and others affected by the raising of the Chixoy Dam, can never fully be put right. Nonetheless, non-pecuniary damages are one way for non-material loss to be recognised, and they are an important way for courts to recognise the very human implications of human rights violations. Non-pecuniary damages are essential to designing a holistic reparations strategy which is just and humane, and which recognises the essential human dignity of victims.

Punitive damages are also useful, but are not necessarily meant to be restorative in the original sense. Rather, punitive damages are meant to penalise those responsible for human rights abuse, and to serve as a deterrent towards future abuse. In this case, punitive damages are very important, and should be levied against all those agencies (both national and international) that were directly involved in the negligent and reckless mismanagement of the Chixoy Dam Project. They are important because they will contribute to compelling all actors involved, as well as those in similar situations, to abide by human rights standards in all their future activities.

<sup>48</sup> Consortium entails conjugal fellowship of spouses, as well as the right of each to the company, society, co-operation, affection, and aid of the other.



Children at the Pacux  
resettlement site

## 2

# The liability issue

## 2.1 The legal framework for liability

Although the UN Basic Principles (see Annex C for the full text) were drafted with the human rights obligations of States in mind, they do note that:

*[i]n cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim. [Emphasis added.]*

The Basic Principles also note that:

*[i]n the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavour to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. [Emphasis added.]*

This point reinforces the notion that States are not necessarily the only culprits when it comes to human rights violations and that other actors should be held to account when they them-



selves perpetrate, or are suspected of complicity in, human rights violations. Indeed, a narrow nation-state focus would have the absurd result of creating and allowing for impunity of States that violate human rights through policies and practices adopted collectively by the inter-governmental organisations of which they are members. In the Chixoy Dam case, multiple actors were involved in the tragic events at Río Negro. As mentioned above (see, in particular, the section entitled ‘Facing the facts of the Chixoy massacres’), the Chixoy Dam Project was financed, supervised and controlled by the Inter-American Development Bank and the World Bank, which provided initial loans of US\$ 105 million and US\$ 72 million, respectively. INDE (*Instituto Nacional de Electrificación*) was responsible for administering the funds, coordinating the Project and building the Chixoy Dam itself. During the period in question, INDE was solely owned by the Government of Guatemala and run by Guatemalan Army officers.

It should be noted that several transnational corporations also benefited unjustly from the abuses associated with the Chixoy Dam Project. This report, however, is not investigating their pending and overdue debts to the Río Negro survivors, but hopes that other human rights advocates might undertake such an investigation.

Establishing the legal liability of those multiple actors is a complicated process which should ultimately involve the review of the Chixoy Dam case, either by national courts, the Inter-American Commission on Human Rights or a truly independent international commission. So far, only a handful of individual Civil Defence Patrol (PAC) members have been brought to trial for their involvement in the Río Negro massacres. This is an unsatisfactory approach, as it does not address the issue of culpability on the part of those who conceived of and planned the massacres, nor does it hold accountable those agencies that were overseeing the development of the Chixoy Dam Project and unjustly benefited from the violations. Thus, the issue of continuing impunity for the human rights crimes committed at Río Negro remains largely unresolved.

Legal liability is a central and well-defined legal principle which recognises that those individuals, groups, organisations or agencies who perpetrate crimes are culpable under the law, and may be held legally responsible for those acts in either criminal or civil courts, or both. Indeed, it is a fundamental principal of law that victims have access to judicial remedy.<sup>49</sup> Under certain circumstances, for example in civil law cases, the perpetrators may also be found to owe reparations directly to those victimised by their actions. In order to establish legal liability, the following four elements must be proven:

- a) there was a *duty* to act, or refrain from acting, in a certain way on the part of an individual or agency;
- b) that *duty was breached* by the duty-holder;
- c) someone was *injured* in conjunction with that action or in-action; and
- d) there was *causation* between the act or omission and the injury.

<sup>49</sup> See, for example, Art. 25 of the American Convention on Human Rights, which states:

“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court of tribunal for the protection against acts that violate his [ or her] 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.”

In order to establish legal liability, it is not necessary to prove intent. Even if the injury or harm was not intentional, the duty-holder remains legally responsible for the injury, for example due to negligence or recklessness.

## 2.2 Establishing the liability of the Government of Guatemala

INDE, as the Government agency responsible for executing and administering the Chixoy Dam Project was, quite obviously, directly responsible for the Project's implementation. As a Government agency, INDE also had a duty to uphold the human rights of the Río Negro residents and members of all other communities affected by the Chixoy Dam's construction. By 1982, the Government of Guatemala was already a party to the American Convention on Human Rights,<sup>50</sup> and was thus legally bound to uphold, *inter alia*, the right to be free from discrimination (Article 1), the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), the right to privacy including protection from arbitrary or abusive interference with the home and the right to protection from such interference (Article 11), the right to property (Article 21), the right to equal protection (Article 24), the right to judicial protection (Article 25) and the economic, social and cultural rights implied by the standards in the OAS Charter, including the right to adequate housing, including the prohibition on forced eviction (Article 26 and, *inter alia*, OAS Charter Article 34(k)).

INDE, and by extension the Government of Guatemala, is legally liable for the Chixoy massacres, as they were directly responsible for the implementation of the Chixoy Dam Project. Indeed, soldiers responsible for the massacres were in the employ of the Project. INDE's management and administrative role, which it shared with the Inter-American Development Bank and the World Bank, implies a duty – that is, a legal responsibility – to ensure that the rights of those residents to be displaced by the Chixoy Dam Project were not violated. INDE, as a Government agency, was in 1982 legally bound to respect and ensure all of the rights articulated in and protected by the American Convention on Human Rights. INDE breached this duty, as is evidenced in the mismanagement of the Chixoy Dam Project and the *repeated* abuse and murder or forced displacement of affected residents, and thus the Government of Guatemala violated its legal obligations under, *inter alia*, the American Convention on Human Rights.

At the time of the massacres, the Government of Guatemala was a military one. The General Manager of INDE was an Army General and corruption was rife within the agency.<sup>51</sup> INDE repeatedly tried to avoid spending on any Project components that would not directly enrich

50 Guatemala ratified the American Convention on Human Rights on 25 May 1978, and, pursuant to Art. 1 of the Convention, became legally obligated “to respect the rights and freedoms recognized [in the American Convention] 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.” In 1987, the Government of Guatemala accepted the jurisdiction of the Inter-American Court of Human Rights, but “with the reservation that cases in which the competence of the Court is recognized are exclusively those that shall have taken place after the date that this declaration is presented to the Secretary General of the Organization of American States.” This reservation may preclude review by the Inter-American Court of Human Rights of general human rights violations prior to 1987. However, with regard to ongoing violations associated with the present case, for example the ongoing violation of the rights guaranteed by Arts. 25 and 26 of the American Convention on Human Rights, the Court does have jurisdiction.

51 Interview with Rights Action; see also Witness for Peace (n. 6 above).

its management. This avoidance strategy including several attempts to have the relocation expenses paid by other Government agencies, including the Ministry of Agriculture, even though parts of the IDB and World Bank loans were specifically allocated to INDE for relocation expenses.<sup>52</sup> Furthermore, the IDB and the World Bank failed to act in order to address this corruption and continued to ignore the violation of the human rights of those residing in what was to become the Chixoy reservoir basin.

The Government of Guatemala has tried to argue that the atrocities against civilians during the country's most violent periods – in the 1980s – were committed by paramilitary organisations, such as the Civil Defence Patrols (PACs) in this case, who were not officially agents of the Government. Human rights organisations have uncovered strong ties, however, between the highest Government authorities and these clandestine groups. Amnesty International has noted:

*During the conflict, which shook Guatemala over a period of more than thirty years, the [civil defence] patrols served as civilian adjuncts to the Guatemalan army. They were formed at military behest and operated under military orders.*<sup>53</sup>

Indeed, the PAC members that participated in the Río Negro massacres were commanded and accompanied by Guatemalan soldiers. The cooperation between the Guatemalan military and the PACs was known as early as 1981, when the Inter-American Commission on Human Rights itself recognised the relationship of complicity between the Government and the paramilitary groups that operated outside the law:

*The Commission has been receiving on a regular and steady basis over the last four years several accusations, testimonies, documents and reports which accuse the governmental authorities and security forces of innumerable acts which involve extremely serious and systematic violations of the right to life. ... Such accusations, documents, testimonies and reports have led the Commission to the **unmistakable conclusion** that in Guatemala de [sic] almost daily extrajudicial executions of thousands of persons or the extrajudicial arrests which later result in missing persons are due to the action, in repeated instances, of the legally constituted security forces or to the paramilitary groups of civilians **who act with the knowledge and generally with the close cooperation of the government authorities.***<sup>54</sup>

52 William L. Partridge, *Comparative Analysis of Bid Experience with Resettlement, Based on Evaluations of the Arenal and Chixoy Projects*, paper produced pursuant to a consultancy agreement with the IDB (Dec. 1983).

53 Amnesty International, *Guatemala: The Civil Defense Patrols Re-Emerge* (Sept. 2002).

54 Inter-American Commission on Human Rights, *Report of the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser.L/V/II.53 doc. 21 rev. 2 (13 Oct. 1981). [Emphasis added.]



The report by the Guatemalan Commission for Historical Clarification (CEH) reiterated these findings, concluding that:

*Those acts which are directly attributable to the State include those perpetrated by its public servants and state agencies. Additionally, the State holds direct responsibility for the actions of civilians to whom it delegated, de jure or de facto, authority to act on its behalf, or with its consent, acquiescence or knowledge. This includes military commissioners who were by law, agents of military authority; Civil [Defence] Patrol members, insofar as the military authorities organised, directed or ordered them or had knowledge of their actions ... .*

*“That day, the soldiers and the patrollers entered, they came at about midday, they entered by truck. She [the sister of this witness] stayed in the house with my son and I went to take a bath in the river. The soldiers and the patrollers came, they threw incendiary bombs, they brought in grenades. I was only wearing my underwear and I stayed the night in the forest. ... I said to myself that I cannot leave here because I am seeing the women, that they are being raped by the soldiers and the patrollers. ... And then, when they finally stopped the raping, then the children who were as young as 2 years or 7 months, were screaming and screaming ‘mama, mama, mama, where are you?’ I wanted to cry.”*

— A survivor of the Los Encuentros massacre

As early as 1980, members of the Río Negro community were being murdered by security forces, including members of the Guatemalan Army and the Mobile Military Police (*Policía Militar Ambulante*), both kinds of forces being in the employ of the Chixoy Dam Project at that time. Eye-witness accounts of the 14 May 1982 massacre, in which 84 Río Negro residents were killed by Government soldiers and Xococ PAC members at Los Encuentros, note that a short time before the massacre, the assassins stopped at the INDE office in Pueblo Viejo, after which they were driven in an INDE truck to Los Encuentros to commit the massacre.<sup>55</sup> It should be noted that, at that time, INDE was headed by a Guatemalan Army General and that its policies were an integral part of the overall Government policy to militarise the economy. Once such human rights violations began to occur, INDE, along with the IDB and the World Bank in their respective supervisory roles, were effectively put on notice that Government and paramilitary agents were actively carrying out atrocities in order to clear the way for the Chixoy Dam.

55 Witness for Peace (n. 6 above).

Even if, for the sake of argument, representatives of INDE had not explicitly authorised the massacres which took place in 1982, and even if they had been unaware that the massacres were to take place, they made *no attempt whatsoever* to protect the residents from violence. INDE, as well as IDB and World Bank Project Officers, could not have been ignorant of the fact that Río Negro residents were being targeted with violence. At a time when the Government was committing widespread atrocities in the countryside, this knowledge alone should have alarmed INDE, as the overseeing agency responsible for the implementation of the Chixoy Dam Project, and compelled it to take immediate action. INDE, however, took no action to protect the residents. Neither did INDE make any attempt to communicate that military officials, soldiers and PAC members would be held responsible for their repressive tactics. Such inaction in the face of known human rights violations implies that INDE itself may well have orchestrated, or at least knowingly condoned, the massacres and other human rights violations that occurred during the planning and construction of the Chixoy Dam.

In fact, the massacres that took place in 1982 were a culmination of years of violent repression. This repression was instigated in an effort to make community residents leave the soon-to-be flooded site and accept a relocation package that would have greatly diminished their standard of living, which was by all accounts already very low. As mentioned above, INDE had all the warning signs that the affected communities were being actively targeted with violence, and INDE was legally obligated as an organ of the Government of Guatemala to ensure the safety of residents and to manage the Chixoy Dam Project in such a way as to ensure the rights of community members. This duty was breached by INDE, and thus by the Government of Guatemala. INDE, and by extension the Government of Guatemala, was either a knowing accomplice in the massacres, or, at best, acted with reckless disregard by turning a blind eye to the violence suffered by the community, effectively sending the message that Guatemalan security forces and PAC members could act with impunity.

As we have seen, the Government of Guatemala had a legal obligation in 1982, under the American Convention on Human Rights, to ensure and protect the rights of residents of Río Negro and other communities to be affected by the construction of the Chixoy Dam. As INDE was an official Government agency, this obligation clearly extended to it. INDE breached this obligation, either through active collusion, reckless disregard, or gross negligence, as evidenced by the repeated violence perpetrated against members of the affected communities. This violence started as early as the mid-1970s, culminating in 1982 with the four Río Negro massacres. These abuses were well-known. Even the Inter-American Commission on Human Rights, in 1981, documented the previous year's violence against the Río Negro community, noting that it had occurred in the context of the Chixoy Dam's construction.

## Río Negro deaths

*“Río Negro is a village in the municipality of Pueblo Viejo in the Department of Alta Verapáz. Construction of the Chixoy Hydroelectric Complex is under way in that municipality. This will serve as an energy source for the entire region, principally for exploitation of the northern transversal strip, which contains the most important copper and nickel deposits exploited, as well as the oil deposits thus far unexploited. According to information received by the Inter-American Commission on Human Rights [IACHR], on March 4, 1980, several army contingents arrived in the village of Río Negro. They were carrying three inhabitants of the municipality whom they had captured on the road and whom they accused as being ‘subversives’. Upon arriving at the village, the arrested persons began to shout so that the people in the town would know they were in the hands of the army. A crowd gathered around the vehicles carrying the troops. Some asked them to release the campesinos, who were known at that place, others asked them not to take them away, not to hit them and to think of their families. Upon seeing that the people were gathering, the soldiers machine gunned the crowd, which resulted in six dead, including two women, and 13 wounded.”<sup>56</sup>*

— Inter-American Commission on Human Rights (IACHR),  
Report on the Situation of Human Rights in the Republic of Guatemala,  
13 October 1981

The case of INDE clearly fulfils the first two elements necessary to establish legal liability, namely that: (a) INDE as an official agency of the Government of Guatemala had a *duty* to act, or refrain from acting, in accordance with the provisions of the American Convention on Human Rights; and (b) that *duty was breached* by the duty-holder, in this case INDE and by extension the Government of Guatemala.

The final two elements, that (c) someone was *injured* in conjunction with that action or inaction, and (d) there was *causation* between the act or omission and the injury, are also important to substantiate. Certainly, the Río Negro community suffered extensive and grave injuries. These included: loss of life; physical, mental and sexual torture; forced displacement; loss of property and personal belongings; deteriorating living conditions for survivors; continued harassment; and impunity for the perpetrators. Indeed, many of these injuries are still being borne by the survivors. The fact that these horrific violations occurred is indisputable. The fact that they occurred in conjunction with the construction of the Chixoy Dam is equally indisputable.

56 Witness for Peace (n. 6 above)

Finally, the element of causation demands that there be a *direct causal relationship* between the injury (in this case the violations suffered by the Río Negro community and other affected residents) and the breach of the duty-holder (in this case INDE's failure to manage the Chixoy Dam Project in compliance with the Government of Guatemala's obligations under the American Convention in Human Rights). In other words, *but for* INDE's action (or inaction) and the ongoing funding of the IDB and the World Bank, the Río Negro community would not have suffered as it did, when it did. Again, INDE, and by extension the Government of Guatemala, was either a knowing accomplice in the massacres (as evidenced by extensive human rights research documenting the close relationship between the Government of Guatemala and paramilitary organisations such as the PACs), or, at best, acted with reckless disregard by turning a blind eye to the violence perpetrated against the Río Negro community as early as 1980. If the latter was the case, this effectively sent a message to members of the Guatemalan Army and the PACs that they could act with impunity. In either case, INDE breached its duty under the American Convention on Human Rights to *protect* and *ensure* the rights of affected residents. It should also be noted that by ignoring the violence, INDE stood to directly benefit from the human rights violations suffered by the Río Negro community. The massacre, forced eviction and displacement of the Río Negro community meant that INDE did not have to relocate or provide just and fair compensation to the residents, and as such INDE was unjustly enriched by these human rights violations.

The violations suffered by the Río Negro community were directly related to the raising of the Chixoy Dam. While other communities in Guatemala certainly suffered violence that was not associated with the Chixoy Dam Project, in this case *the timing and escalation of violence* coupled with the *explicit pressure and threats* levied against the Río Negro community to leave their lands, strongly suggest that the need to clear the Chixoy Dam reservoir basin was the major rationale behind the repression experienced by this particular community.

In either case, the Government of Guatemala is legally liable for effectively *causing* the injuries suffered by the Río Negro community, either through active collusion with the killers or through reckless mismanagement and implied complicity. Indeed, in this respect it is not necessary to prove that INDE (or the Government of Guatemala) actually orchestrated the killings. Intent is not a necessary element to prove legal liability. Rather, to establish INDE's legal liability in this case, it is sufficient to demonstrate the agency's *failure to ensure the human rights* of the Río Negro community, through its *failure to protect* it from the violence with which it was targeted, especially when there were ample warning signs at an early stage.

## 2.3 Establishing the liability of the Inter-American Development Bank and the World Bank

*“International agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant [on Economic, Social and Cultural Rights], or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account.”*

— UN Committee on Economic, Social and Cultural Rights, General Comment No. 2

The roles of the Inter-American Development Bank (IDB) and the World Bank are also important to consider when addressing the legal liability issues involved in the Chixoy Dam case. As noted above, both Banks continued to provide loans for the Chixoy Dam Project throughout the population displacement phase. Again, the World Bank’s second loan instalment to the Government of Guatemala actually occurred in 1985 – *after* the massacres and forced displacement took place. Neither the IDB nor the World Bank were mere providers of funds, however, because both were responsible for planning and supervision throughout the Project. Indeed, both Banks worked with and through the Government of Guatemala throughout the planning and construction phases of the Project and were directly responsible for supervising the Project and ensuring that it was undertaken in a sound and lawful manner. Arguably, both Banks benefited from, and indeed were unjustly enriched by, the ongoing violence, as the massacres and forced displacement expedited the construction of the dam and reduced relocation and rehabilitation costs.

As is discussed below in Subsections 2.3.1 and 2.3.2, the responsibility of the governments that comprise the Boards of Executive Directors of the Inter-American Development Bank and the World Bank is in proportion to their respective voting power. That power, in turn, is directly linked to the amount of funds that the governments invest in the Banks.

In order to address the liability of both these international financial institutions, we must address each separately, as each is structured in its own unique way.

### 2.3.1 The Inter-American Development Bank

The Inter-American Development Bank (IDB) has established basic guidelines with regard to how all Bank projects are implemented. According to the IDB, the actions performed by the Bank during project execution are intended to:<sup>57</sup>

- Ensure that projects are executed in such a way as to attain the planned objectives.
- Ensure that the approved financial resources are used in accordance with the covenants of the respective financing agreement and with the Bank's policies, rules, and procedures.
- Verify compliance by borrowers/beneficiaries/executing agencies with the contractual covenants and general rules established by the Bank.
- Advise borrowers/beneficiaries/executing agencies regarding the solution of problems that arise during project execution, so that projects will have the expected impact on national development.
- Maintain an effective and efficient information system on loan operations.

In addition, under the current system, once a project is completed, the IDB's Evaluation Office (EVO) is responsible for performing independent, systematic evaluations of completed projects and informing the Bank and the borrowing country of its findings. The reports produced by the EVO replace the reports produced under the former evaluation system: operations evaluation reports (OERs), project performance reviews (PPRs), and sector summaries. According to the IDB's own policies, the evaluation system is meant to be a *participative process* that must involve interested parties, so as to generate added value that meets the needs of the borrowers and the Bank.<sup>58</sup>

In terms of its structure, the IDB is a multi-lateral lending agency, with voting power on the Bank's Boards of Governors and Executive Directors based on a country's subscription to the IDB's ordinary capital. Currently, the division of subscriptions is approximately as follows: Latin America and the Caribbean, 50 percent;<sup>59</sup> United States, 30 percent; Japan, 5 percent; Canada, 4 percent; and other non-borrowing members, 11 percent.

The highest authority of the Bank is vested in the Board of Governors, composed of one Governor and an Alternate Governor appointed by each member country. Governors are usually Ministers of Finance, Presidents of Central Banks or other officials. The Board holds an annual meeting to review the Bank's operations and to make major policy decisions. The Board of Governors delegates many of its powers to the Board of Executive Directors. The IDB's 14-member Board of Executive Directors is responsible for conducting Bank operations and for approving projects proposed by the President of the Bank. The President of the IDB is elected by the Board of Governors to a five-year term and conducts the day-to-day business of the institution along with the Executive Vice-President.

57 Inter-American Development Bank, *OP-304 Operational Policies* (2003), <http://www.iadb.org/cont/poli/OP-304E.htm>

58 Inter-American Development Bank, *OP-305 Ex-Post Evaluation of Operations* (2003) [emphasis in original], <http://www.iadb.org/cont/poli/OP-305E.htm>

59 The Bank's Charter ensures the position of majority stockholder for the borrowing member countries as a group. There are currently 26 borrowing member countries, all in Latin America and the Caribbean.



The Charter of the Inter-American Development Bank contains many immunity clauses<sup>60</sup> that are intended to set up a virtual minefield of procedural obstacles to any legal efforts to hold the IDB accountable for its actions. However, these clauses do not apply to violations of human rights. For example, Article XI, Section 3 of the Charter (on status, immunities and privileges) states that:

*Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.*

This clause does not preclude legal action against the Bank itself as an organisation. With regard to individual immunity, however, Article XI, Section 8 of the Charter states that:

*All governors, executive directors, alternates, officers, and employees of the Bank shall have the following privileges and immunities: (a) Immunity from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity.*

Crucially, Section 1, on the *scope* of Article XI, states that:

*To enable the Bank to fulfill its purpose and the functions with which it is entrusted, the status, immunities, and privileges set forth in this article shall be accorded to the Bank in the territories of each member. [Emphasis added.]*

This particular wording, and indeed the very inclusion of Section 1, actually serves to limit the scope of Article XI by implying that immunity shall be provided to the *extent necessary* to enable the Bank to fulfil its stated objectives. Of course, human rights violations *must* lie outside the scope of the purpose and function of the IDB. Article XI, therefore, cannot be interpreted as meaning that the Bank, and in particular its Board of Executive Directors, can act with complete impunity. As the privileges and immunities of international organisations are limited solely to the purposes and objectives of the organisation, they are known as ‘functional privileges and immunities’, and, though modelled after those of States, differ from them to some extent, both in conception and content.<sup>61</sup> Unlike States, international organisations are not ‘sovereign’ and draw on no history or tradition of sovereignty and sovereign immunity.<sup>62</sup> In any event, courts have consistently held that such broad immunity clauses are unconscionable and thus null and void.

The language of Article XI, Section 1 therefore provides a means of redress to victims seeking to hold the IDB accountable for its role in human rights abuses. As we have already noted, on the Bank’s own admission, the actions performed by the Bank during project execution are intended to, *inter alia*, “ensure that projects are executed in such a way as to attain the planned objectives.” Clearly, a project’s official ‘planned objectives’ could not conceivably include human rights violations. Even if such violations would somehow expedite the realisa-

60 Inter-American Development Bank, *Agreement Establishing the Inter-American Development Bank*, <http://www.iadb.org/leg/documents/convenio/english.pdf>

61 See, ‘Restatement of Foreign Relations Law’, American Law Institute (1987).

62 Ibid.

tion of a project, as a means of achieving this result they would not be in keeping with the Bank's own stated ethos. Therefore, Article XI, Section 1 effectively limits the scope of the Bank's immunity clauses so as *not to cover* gross negligence, reckless disregard, or intentional acts which result in human rights atrocities. Immunity, therefore, should only be applied in the narrow sense; that is, with regard to the Bank's efforts to fulfil its own stated purposes within its own stated ethical constraints. Because human rights violations fall outside of this framework, there can be no immunity. This conclusion is wholly consistent with standard legal norms on the application of legal immunity. For example, immunity cannot be used as a defence in situations where there is a demonstrable criminal intent, nor in situations of gross negligence or reckless disregard.<sup>63</sup>

Putting the immunity issues aside for the time being, the issue of legal liability remains. The Inter-American Development Bank has not, to date, publicly acknowledged any responsibility for the massacres and other human rights violations at Río Negro. In fact, one is hard pressed to find any public statements or documents by the Bank which have anything to do with the Chixoy Dam Project at all. The only admission they have made relates to sedimentary build-up, which has impeded the Dam's function, with a note that the Bank is now taking steps to prevent further erosion of the surrounding soil.<sup>64</sup> Strikingly, whereas the IDB did carry out a follow-up study related to sedimentary build-up in the reservoir basin, at the time of writing this report it has not yet studied what happened to all the people forcibly displaced from that basin.

By the IDB's own admission with regard to how it implements, or should implement, its development projects, the Bank works to ensure that the project's goals are met and, in order to meet this goal, also takes on a supervisory role. The Bank seeks information from partner organisations, such as INDE in the Chixoy Dam case, and also "advise[s] borrowers/beneficiaries/executing agencies regarding the solution of problems that arise during project execution." Furthermore, in this case the IDB undertook this role through, *inter alia*, periodic site visits to the area affected by the massacres and forced displacement.

In order to establish the IDB's legal liability, we must again address the following questions:

- a) Was there a *duty* to act, or refrain from acting, in a certain way on the part of the IDB?
- b) Was that *duty breached* by the IDB?
- c) Was someone *injured* in conjunction with that action or inaction?
- d) Was there *causation* between the act or omission and the injury?

Consistent with the IDB's own stated organisational policies, not to mention its international human rights obligations, the Bank has a duty to implement its development projects in a way which does not result in the violation of human rights. While the Bank's role is to "fulfill its purpose and the functions with which it is entrusted", this purpose cannot be legitimately seen to be in any way concomitant with human rights abuses such as forced eviction,

63 In most cases, immunity from civil liability can only be applied in cases which *do not* involve a criminal act, gross negligence, recklessness, or wilful or wanton misconduct.

64 Inter-American Development Bank, *Proyecto hídrico genera cambios* (2000), <http://www.iadb.org/idbamerica/Archive/stories/2000/esp/c200j3.htm>

extrajudicial execution and torture. Under customary international human rights law, the IDB, as an international agency made up of nation-states, has a duty to refrain from violating the right to life and the right to the security of the person in the course of its work, as these are considered to be *jus cogens* principles under international human rights law.

Given the atrocities that occurred at Río Negro, the conclusion is inescapable that the IDB was, at best, grossly negligent in failing to fulfil its responsibility to ensure that the Chixoy Dam Project was carried out in a responsible manner. Black's Law Dictionary defines gross negligence as "The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another"<sup>65</sup> and defines gross neglect of duty as a "type of nonfeasance or failure to attend one's duties, either public or private". Indeed, the facts indicate that the IDB conducted its affairs with regard to the Chixoy Dam Project with reckless disregard for the human rights of the Chixoy community.<sup>66</sup>

At best, the IDB failed in its own organisational role of providing adequate supervision of the Chixoy Dam Project. Even a minimum of supervision would necessarily entail consultation with the communities to be displaced, as well as close monitoring of the methods used to relocate and rehabilitate them. Again, the repression suffered by the Río Negro community did not spontaneously arise in 1982 when the massacres occurred; rather, it was typical of a long-established pattern of hostilities against the community. Indeed, as early as 1980, such abuses were documented by the Inter-American Commission on Human Rights<sup>67</sup> and were generally known.<sup>68</sup> There can therefore be no excuse for the IDB to have been unaware, as it claims, of the abuses that were occurring in the context of the Chixoy Dam's construction. Yet, there is no evidence whatsoever that the Bank intervened in any way on behalf of the affected communities. Such gross negligence and reckless disregard constitutes a breach of the Bank's fundamental duty to ensure that its projects are carried out in a way which does not result in grave human rights violations.

The fact that the injuries suffered by the community were associated with the Chixoy Dam's construction is addressed in detail above. This leaves the issue of causation, of directly linking the IDB's gross negligence and reckless disregard to the injuries suffered by the affected communities. It is important to note that the IDB has been largely unwilling to disclose its internal documents on the Chixoy Dam Project, information which would help clarify what exactly was known by Bank officials at the time. Nonetheless, from information readily available at that time we can infer that the Bank either knew, or should have known, about the violent repression of the Río Negro community.

65 *Black's Law Dictionary*, Abridged Sixth Edition (St. Paul: West Publishing Co., 1991).

66 *Black's Law Dictionary* (n. 65 above) defines 'reckless disregard' as:

"...with knowledge of existing conditions, the voluntary refraining from doing a proper or prudent act when such act or failure to act evinces an entire abandonment of any care, and heedless indifference to results which may follow and the reckless taking of chance of ...[events] happening without intent that any occur."

67 See Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in the Republic of Guatemala*, OEA/Ser. L/V/II.53, doc. 21 rev. 2 (13 Oct. 1981), which explicitly discusses massacres at Río Negro in the context of the construction of the Chixoy Hydroelectric Dam.

68 See n. 8 above.

Given that the appalling human rights situation in Guatemala and the patterns of abuse suffered by Río Negro residents and other similarly affected communities were well-known at the time, it is reasonable to presume that Bank officials either knew or should have known about what was going on in relation to the implementation of the Chixoy Dam Project. Indeed, notes from an IDB Project Manager disclose that the Bank failed to comprehensively inspect the construction site and reservoir basin due to violence in the area. Although aware of this violence associated with the Project's implementation, the Bank took no responsibility with regard to it, and effectively turned a blind eye to the mounting vulnerability of the Chixoy communities. This gross negligence and reckless disregard on the part of the IDB, whether purposeful or not, inevitably sent a message to the perpetrators of the abuses that the communities could be 'dealt with' with impunity.

The IDB, even by the standards of its own stated procedures and policies, failed in its role to effectively supervise the Chixoy Dam Project. The IDB continues to refuse to learn from the Chixoy experience, and has in no sense owned up to its role in the atrocities suffered by the displaced communities. The Bank has even failed to effectively evaluate the Project. By the Bank's own accounts, "the evaluation system is meant to be a *participative process* that must involve interested parties." Yet, no IDB official has ever consulted with the displaced former residents of Río Negro or those organisations that are concerned on their behalf, and the Bank has offered no compensation whatsoever to the surviving victims or the families of those massacred.

Although funding agencies including the IDB may not actually have had 'a finger on the trigger', as it were, and may not have directly carried out the atrocities, the Bank nonetheless had a duty to ensure that the implementation of projects does not result in human rights abuses. In the Chixoy Dam case, the Bank failed miserably to fulfil this obligation. Had the Bank taken a different approach, had the Bank used its considerable pressuring power to intervene, had the Bank met its duty to supervise the Project as its own policies demand, the massacres would probably have been averted and the murdering hands that struck mercilessly at Río Negro would probably have been stayed.

### **2.3.1.1 The role of other governments in the IDB**

Finally, with respect to the liability of other governments, all the States that make up the IDB have human rights obligations, both under the United Nations system and under the Organization of American States. These States cannot ignore or violate their respective international human rights obligations simply by organising themselves into the IDB, or by using it as an agent to carry out policies or practices in violation of these obligations. Therefore, all Member States of the IDB, in particular those governments that are represented on the Board of Executive Directors, have violated their respective obligations under human rights law to respect, ensure, protect and fulfil the human rights of the Río Negro community.

### 2.3.2 The World Bank

*“In my judgement, they know perfectly well ... they must have seen the reports on the accounting and how the project was being managed. Of course, they had a representative here in Guatemala whose job it was to supervise the project and to verify whether, in reality, the work was being carried out.”*

— A survivor of the Rio Negro massacres

*“[The Chixoy Dam Project] wasn’t supervised in a sound manner, but what can you do about that now?”*

— World Bank Social Development Specialist, July 2003

Among the stated values of the World Bank are “honesty, integrity, and commitment”.<sup>69</sup> The World Bank Group consists of five closely associated institutions, one of which, the International Bank for Reconstruction and Development (World Bank), was responsible for directly funding the Chixoy Dam Project.<sup>70</sup> The World Bank was established in 1945, and, according to its own Mission Statement, “aims to reduce poverty in middle-income and creditworthy poorer countries by promoting sustainable development, through loans, guarantees, and non-lending – including analytical and advisory – services.”<sup>71</sup>

In many ways, the arguments relating to the legal liability of the World Bank in the Chixoy Dam case are very similar to those made in Subsection 2.3.1 above with regard to the Inter-American Development Bank.

Firstly, as an international lending agency, the World Bank had a duty to ensure that the project was implemented in such a way that human rights were not violated. Indeed, this would seem to be entirely in keeping with the Bank’s own stated policy and mission. In addition, the World Bank’s own documentation acknowledges its direct supervisory role. In its Staff Appraisal Report of 15 June 1978, the World Bank noted that some 1 500 persons would have to be removed from the Chixoy reservoir basin and that:

*[t]he Bank obtained assurances from Government and INDE that a program will be implemented to compensate adequately and, if necessary, resettle, those residents (about 1 500)*

69 World Bank, *Mission Statement* (2003), <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/o,,contentMDK:20040565~menuPK:34563~pagePK:34542~piPK:36600~theSitePK:29708,00.html>

70 The term ‘World Bank Group’ encompasses all five of the following institutions: 1) The International Bank for Reconstruction and Development (IBRD); 2) The International Development Association (IDA); 3) The International Finance Corporation (IFC); 4) The Multilateral Investment Guarantee Agency (MIGA); and 5) The International Centre for Settlement of Investment Disputes (ICSID). The more specific term ‘World Bank’ refers to only two of the five agencies, the IBRD and IDA.

71 <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/o,,contentMDK:20040580~menuPK:34588~pagePK:34542~piPK:36600~theSitePK:29708,00.html>

*of the area to be flooded by the reservoir whose living and working conditions have been adversely affected by such flooding.*

In the same Staff Appraisal Report, the World Bank also noted that:

*INDE will prepare such a program and present it for Bank review by December 31, 1978.*<sup>72</sup>

Even though it had such a strict supervisory role, the World Bank, tragically and unlawfully, did nothing after the Government of Guatemala had begun forcibly evicting the Río Negro community through a series of brutal massacres.

Secondly, the World Bank breached this supervisory duty by ignoring the human rights violations that were occurring in the context of the Chixoy Dam's construction, as evidenced by its unquestioning and ongoing financial support for the Chixoy Dam Project, even when there was a great deal of evidence that brutal and criminal implementation strategies were being carried out by the Guatemalan authorities. If anything, the World Bank was even more culpable than the IDB in that it actually granted its second loan instalment to the Government of Guatemala in 1985 – *after* the massacres had taken place. This action clearly raises the threshold of legal liability, from gross negligence to reckless disregard.<sup>73</sup> Certainly, not to have known at that time about the violence and repression at Río Negro would have required an extraordinary and sustained dedication to ignorance on the part of World Bank officials. In all likelihood, World Bank officials were all too aware of the situation. Indeed, in an admission against interest, a World Bank Social Development Specialist based in Guatemala City told a COHRE fact-finding mission team in July 2003: “[The Chixoy Dam Project] wasn't supervised in a sound manner, but what can you do about that now?”<sup>74</sup> Witness for Peace has aptly observed:

*According to the individuals interviewed in the Chixoy region – priests, church workers, a journalist, and a construction worker who worked on the Chixoy project from 1977 to 1982 – everyone who worked on the project and virtually everyone in the region knew about the violence associated with the project, particularly the violence at Río Negro. World Bank documents indicate that Bank personnel worked in supervisory capacities at the Chixoy site for up to three months each year from 1979 to 1991, including 1982. In 1984, the Bank even hired an “expert on resettlement policy to assist in the supervision function” of resettlement. In light of the testimonies, it is reasonable to assume that World Bank staff – especially project supervisors – knew about the violence against Río Negro as early as 1982.*<sup>75</sup>

Thirdly, as we have already seen, residents of Río Negro and other communities located in the Chixoy reservoir basin suffered gross human rights violations that clearly occurred within the context of the Chixoy Dam Project. Fourthly, the inaction of the World Bank was directly related to the violence that the Río Negro community experienced over a period of *several years*. Had the World Bank used its considerable pressuring power to intervene, the outcome

<sup>72</sup> World Bank, *Staff Appraisal Report: Guatemala – Chixoy Power Project*, Report No. 1709h-GU (15 June 1978), para. 4.18, pp. 25-26.

<sup>73</sup> See n. 66 above.

<sup>74</sup> COHRE fact-finding mission team interview with Mario Marraquin Rivera, World Bank Social Development Specialist, July 2003.

<sup>75</sup> Witness for Peace (n. 6 above).



would in all probability have been quite different. The Bank should have intervened by clearly communicating its expectations to the Government of Guatemala, thereby sending an unequivocal message that the violence associated with the implementation of the Chixoy Dam Project was totally unacceptable. Undoubtedly, the last thing that the Government of Guatemala would have wanted at the time was to jeopardise the Bank's funding. Yet, the World Bank did not intervene as required, and by all accounts the intensity of violence only increased. The abuses committed by members of the Guatemalan security forces and the Civil Defence Patrols (PACs) began tentatively, with harassment of limited numbers of persons. Later, these abusive tactics shifted to strategically targeted 'disappearances' and killings. By 1982, the violence had culminated in horrific massacres in which scores of persons were tortured and killed. And what was the message the perpetrators received from all the funding and administrative agencies involved in the Chixoy Dam Project? The silence of complicity — effectively a green light to proceed. As the Guatemalan authorities ratcheted up the violence, the reaction from the World Bank was stunning in its absence.

The World Bank's Articles of Agreement contain many immunity clauses similar to those discussed in Subsection 2.3.1 above in relation to the Inter-American Development Bank, and the legal concept of 'functional privileges and immunities' also discussed there applies equally to the World Bank. Indeed, in most cases, the language is virtually identical. Article VII on 'Status, Immunities and Privileges' states in Section 1 (on 'Purposes of the Article') that:

*To enable the Bank to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territories of each member.*

Article VII, Section 8 (on 'Immunities and Privileges of Officers and Employees') provides that:

*All governors, executive directors, alternates, officers and employees of the Bank (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity ... .*

However, Article VII, Section 3 (on 'Position of the Bank with Regard to Judicial Process') notes that:

*Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.*

This clause allows for legal action against the World Bank in the Chixoy Dam case to be considered. Indeed, to do otherwise would be to create and maintain an environment of impunity for the World Bank and its Member States.

The 2001 World Bank Group Strategic Framework states that:

*Finally, an effort is underway to improve the Bank Group's organisational culture. Our internal culture needs to become more aligned with the poverty-focused, client-oriented, and accountable institution that we aspire to be.*<sup>76</sup>

In order to reflect these goals in a meaningful way that extends beyond mere rhetoric to the actual conduct of the World Bank, this institution must take responsibility for its failure to effectively administer and oversee the Chixoy Dam Project, and should immediately take steps to address the outstanding reparation issues associated with the Chixoy massacres.

As to specific legal obligations, as a Specialised Agency of the United Nations (UN Charter), the World Bank is obligated not to defeat purposes of the UN Charter. For example, the World Bank must work to further the objectives of the UN Charter, and obviously must not undermine those objectives.<sup>77</sup> This requirement is laid out in Article 59 of the UN Charter, which stipulates that “the creation of any new specialised agencies require[s] accomplishment of the purposes set forth in Article 55.”<sup>78</sup> The purposes and objectives articulated in Article 55 include, *inter alia*, the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all.”<sup>79</sup>

If the World Bank had undertaken its supervisory role in a proper manner, it would have or should have known that INDE, its partner in the Chixoy Dam Project, was forcibly evicting the Río Negro community through the most brutal of means. By not intervening and by continuing to financially support INDE, the World Bank, along with its Member States, has undeniable complicity in those human rights violations and has violated the legal obligations enshrined in the UN Charter to promote universal respect for, and observance of, human rights.

### **2.3.2.1 The role of other governments in the World Bank**

Finally, in similar fashion to the IDB as discussed in Subsection 2.3.1, and specifically Subsection 2.3.1.1, all the States that make up the World Bank have human rights obligations. These States cannot ignore or violate their respective international human rights obligations simply by organising themselves into the World Bank, or by using it as an agent to carry out policies or practices in violation of these obligations. Therefore, all Member States of the World Bank, in particular those represented on the Board of Executive Directors, have violated their respective obligations under human rights law to respect, ensure, protect and fulfil the human rights of the Río Negro community.

Unfortunately, it appears to be the rule rather than the exception that such entities enjoy impunity for their human rights violations. States simply violate their respective human rights obligations by forming corporations or inter-governmental organisations that they then use as

<sup>76</sup> World Bank Group, *World Bank Group Strategic Framework* (24 Jan. 2001), <http://siteresources.worldbank.org/EXTABOUTUS/Resources/strategic.pdf>

<sup>77</sup> See, for example, Mac Darrow, *Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law*, (Oxford: Hart Publishing, 2003), pp. 127-133.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Charter of the United Nations*, Art. 55(c), adopted 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force 24 Oct. 1945.

State agents to carry out policies and practices in violation of their respective international and domestic legal obligations. This self-bestowed impunity is further entrenched when such entities attempt to impede the victims of those violations from accessing remedies such as those provided by international and regional human rights forums, including the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the various United Nations treaty-monitoring bodies.

## 2.4 Joint and several liability

There are at least five ‘actors’ who must be held responsible for their involvement in the Chixoy Dam case.

- The members of the Guatemalan Army and Civil Defence Patrols (PAC) who were directly responsible for the massacres;
- The Government of Guatemala, in particular INDE;
- The Inter-American Development Bank;
- The World Bank; and,
- The Governments represented on the Boards of Executive Directors of the two Banks.

Firstly, those persons directly responsible for the atrocities at Río Negro must be held responsible. These include the perpetrators themselves, those who orchestrated the massacres, and others within the relevant command structure who approved or otherwise helped to implement the actual plans and policies in question. Secondly, the Government of Guatemala, and in particular INDE, must be held responsible for its role in the atrocities. INDE, as the Government agency directly responsible for implementing the Chixoy Dam Project, bears a special responsibility for the horrific events that occurred at Río Negro. Indeed, on the grounds that it failed to take steps to protect the community from the escalating violence, and that it unjustly benefited from the massacres, INDE should be found legally liable for its reckless disregard of the rights of the affected residents. Thirdly, the Inter-American Development Bank should be found grossly negligent in this case, due to its inattention to the human rights situation and its failure to intervene in the Project. Fourthly, the World Bank should be found legally liable, *both* for gross negligence and for reckless disregard of the rights of the residents of Río Negro. Although its position was similar to that of the IDB, the fact that the World Bank gave the Government of Guatemala a second loan instalment *after* the massacres occurred is inexcusable and clearly falls, at best, within the definition of reckless conduct.<sup>80</sup> Finally, the donor and decision-making Member States of the IDB and the World Bank, and in particular those governments that are represented on their respective Boards of Executive Directors, should be held accountable for the human rights violations carried out through their agency relationships with the two Banks.

80 *Black’s Law Dictionary* (n. 65 above) defines ‘reckless’ as:

“Not recking; careless, heedless, inattentive; indifferent to consequences. According to circumstances it may mean desperately heedless, wanton or willful, or it may mean only careless, inattentive, or negligent. For conduct to be ‘reckless’ it must be such as to evince disregard of, or indifference to, consequences, under circumstances involving danger to life or safety to others, although no harm was intended.”

In cases where multiple perpetrators are involved, joint and several liability<sup>81</sup> refers to shared liability incurred by multiple and joint perpetrators *that allows enforcement of the entire judgment against any one of the perpetrators*. In this context, it is critical to note that the primary goal of restitution under international human rights law is to ‘make the victim whole.’ Certainly, all of the actors discussed above share a degree of legal liability for the atrocities committed at Río Negro. The survivors of that community are entitled to reparation, including restitution and compensation, which takes into account all of the losses incurred by the community. A just and fair remedy should include pecuniary and non-pecuniary damages, as discussed in Section 1, ‘The reparations issue’. The decision as to which agency, or which actors, must provide those reparations to those injured by their conduct is ultimately a matter for the courts. The exact proportion of the damages which each agency should pay is also a matter for the courts to consider. Yet, within a framework of joint and several liability, courts have the option to enforce the *entire judgment* against *any one* of the perpetrators. That is, one agency can be made to pay for the total amount of reparations owed.

81 ‘Joint liability’ refers to liability which is shared; ‘several liability’ refers to liability assumed or imposed on an entity separate from others.



Women at the Pacux resettlement site



## Strategies for justice

Impunity for human rights violations is enjoyed by a host of global actors. Thus, political action is one of the more important tools for holding such entities, including the Inter-American Development Bank and the World Bank, accountable.

### 3.1 Pressuring for accountability: political campaign strategies

Political strategies are essential for the success of any international human rights campaign. Although the ultimate goal of the Chixoy Reparations Campaign is to secure a *legal* remedy for the affected communities, this is also a critical moment for *political* advocacy. Perhaps the most immediate need at this moment is to maintain the momentum already gained through the collaboration in the Chixoy Dam case of international human rights organisations including COHRE, Rights Action, the International Rivers Network, Witness for Peace, the Committee to Reform the World Bank and Amnesty International. Raising the international profile of the atrocities that occurred at Río Negro is an ongoing task that demands sustained and coordinated collaborative action.

Many avenues for political advocacy can be explored. In particular, advocacy strategies should be targeted at the Government of Guatemala, the Inter-American Development Bank and the World Bank. In order to maximise the effectiveness of a long-term advocacy strategy, it is useful to consider the desired outcome of the action, and to have a good sense of which

stake-holders are likely to have the most influence over a given situation. In most cases, it is advisable to construct a multi-pronged advocacy approach that will simultaneously raise awareness and target influential actors at multiple levels. For example, strategies that may be utilised in this case include letter-writing campaigns, public demonstrations, and targeted media outreach.

### 3.2 Utilising national judicial mechanisms

In order to secure legal redress for the victims of the Chixoy human rights violations, legal avenues must also be explored. Guatemalan law theoretically provides a legal framework within which to pursue such a case, or series of cases. Article 2 of the Constitution of Guatemala guarantees the rights to life, liberty, justice, security, peace and integral development. Article 29 guarantees the right of free access to the courts. Article 46 establishes the primacy of treaties ratified by Guatemala in the sphere of human rights over provisions of internal law. One potential strategy, therefore, is to present one or multiple legal petitions against INDE, the IDB and the World Bank within the Guatemalan Courts.

One argument for pursuing a domestic legal strategy is the jurisdictional authority of the Guatemalan Courts to consider such a complex set of cases, wherein the legal liability of both national and international agencies is considered. The capacity of the Guatemalan Courts to address the legal liability of INDE in this case, as INDE was a Government institution at the time of the Chixoy Dam's construction and at the time of the Río Negro massacres, is clearly established under Chapter IV of the Guatemalan Constitution. In addition, the competency of the Guatemalan Courts to consider the legal liability of the Inter-American Development Bank and the World Bank is recognised under the Charter of the Inter-American Development Bank (Article XI, Section 3) and the Articles of Agreement of the World Bank (Article VII, Section 3), respectively.

Unfortunately, however, the Guatemalan Courts have repeatedly abrogated their duty to protect the rights of and provide remedies to Guatemalan citizens, especially in cases where the accused perpetrator or defendant is affiliated with the Guatemalan State. Indeed, in a recent report on the situation of human rights in Guatemala, the Inter-American Commission on Human Rights noted that:

*... a number of profound systemic deficiencies continue to subvert justice, and have yet to be effectively addressed. These include serious problems in the systems and procedures for delivering justice, as well as the paralyzing effect of attempts to coerce those involved in the pursuit and administration of justice through threats and corruption. Given the central role of the judiciary in safeguarding all individual rights, the challenge of redressing these problems is both urgent and paramount.<sup>82</sup>*

82 Inter-American Commission on Human Rights, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. IV, 'The Administration of Justice', OEA/Ser.L/V/II.111 doc. 21 rev. (6 Apr. 2001).



In summary, the Commission pointed out that:

*... the principal characteristic of the current situation remains the persistence of impunity in many cases of human rights violations ...*<sup>83</sup>

In addition, the Inter-American Commission has expressed concern over widespread threats and attacks, which also serve to erode the right to judicial review. The Commission has noted that threats and attacks affect all manner of cases, from human rights violations, through organised and common crime, to land and other civil disputes. Indeed, the Commission has noted that:

*[o]ne effort to analyze this situation documented 158 incidents of threats and acts of intimidation against judges, prosecutors, lawyers and users of the system reported in the media between 1996 and mid-1999, and tracked 70 such reports between January and June of 2000. The study indicated that judges and prosecutors were among those most frequently targeted. Judges of first instance and justices of the peace may in some ways be most vulnerable, but judges at all levels have complained about threats and security concerns. Victims, family members pursuing justice and witnesses have also been targeted with some regularity. The nature of the acts of intimidation ranges from threats and death threats against those directly involved in judicial proceedings and their families, to harassment, aggression, the sending of a package bomb, and in the most extreme cases, murder.*<sup>84</sup>

Indeed, survivors of the Río Negro community have, at various times, been targeted with death threats and other harassment, particularly when seeking justice for the violations of their human rights.<sup>85</sup>

Therefore, at this time, it is highly doubtful that the Guatemalan Courts could address, with the necessary degree of integrity, impartiality and freedom from external pressure and subversion, the serious allegations and political controversies raised by the Chixoy Dam case. Indeed, impunity for human rights violations is the norm in Guatemala. In light of the shortcomings and even potential dangers, it is more desirable, and perhaps the only option, to appeal directly to regional and international human rights mechanisms for redress. The preferability of such an appeal is also supported by the fact that the human rights violations in Guatemala are not simply domestic phenomena, but, as noted in Sections 1 and 2, are also attributable to international complicity such as that of the Government of the United States as well as that of the Inter-American Development Bank and the World Bank and the various States that make up these entities.

83 Ibid.

84 Ibid.

85 For example, Rights Action has issued numerous Urgent Actions regarding threats to survivors of the Río Negro community; see <http://www.rightsaction.org>

### 3.3 Utilising international judicial and quasi-judicial mechanisms

International advocacy strategies are an effective way to draw the international community's attention to violations suffered by local communities and to their subsequent plight. International advocacy can also be useful in pressuring States, inter-governmental organisations and non-State actors, which generally evade international scrutiny, to comply with international human rights standards.

#### 3.3.1 The Inter-American Human Rights System

The Inter-American Commission on Human Rights (IACHR) is one mechanism that may be accessed in order to seek legal redress in the Chixoy Dam case. Guatemala ratified the American Convention on Human Rights on 25 May 1978; a significant fact in that the Guatemalan State had legally binding international human rights obligations at the time that the Río Negro massacres occurred. Although in most cases so far the Commission has considered petitions alleging that human rights violations were committed by State agents, such as in cases of State-sponsored killings or torture, the Commission may also process cases where it is asserted that a State failed to act to prevent a violation of human rights or failed to carry out proper follow-up after a violation. Such follow-up would include the investigation and prosecution of those responsible, as well as the payment of compensation to the victims.

With respect to the Inter-American Development Bank and the World Bank, the Commission should examine allegations of human rights violations perpetrated by those Member States that are also members of the Organization of American States. Indeed, as the pre-eminent human rights monitoring and enforcement body in the Inter-American Human Rights System, the Commission has a duty to ensure that OAS Member States abide by their respective human rights obligations, even for acts they carry out collectively through the agency of the two Banks. Again, failure to abide by such obligations would create and maintain an environment of impunity for governments acting in concert to violate human rights in the Americas.

The Inter-American Commission on Human Rights would critically assess the following aspects of any petition brought to it:

#### a. Competence

In order for the Commission to consider a given petition, the following jurisdictional elements must be satisfied:

- The Commission has *ratione materiae* competence to examine the instant petition because it alleges violations of rights protected in the American Convention.
- The Commission has *ratione personae* competence to take up the petition because the nature, both of the petitioners, and of the alleged victim, meets the requirements mentioned, respectively, in Articles 44 and 1(2) of the American Convention on Human Rights.

- The Commission has *ratione temporis* competence to examine the petition inasmuch as the duty to respect and ensure the rights recognised in the American Convention was in force for the State at the time when the violations alleged in the petition are said to have occurred.
- Finally, the Commission has *ratione loci* competence to take up the instant petition because it claims violations of rights that allegedly took place in the jurisdiction of the accused State.

#### **b. Admissibility**

In addition, in order for the Inter-American Commission to consider a given petition, the following admissibility criteria must also be satisfied:

##### *Domestic remedies:*

Among other things, the petition must show that the victim has exhausted all means of remedying the situation within the domestic legal system. If domestic remedies have *not* been exhausted, however, the petition must show that the victim tried to exhaust domestic remedies, but failed because: 1) those remedies do not provide for adequate due process; 2) effective access to those remedies was denied, or; 3) there has been undue delay in the decision on those remedies.

##### *Timeliness:*

Under Article 46(1)(b) of the American Convention, the general rule is that a petition must be lodged within a period of six months “from the date on which the party alleging violation of his rights was notified of the final judgment.” According to Article 32(2) of the Rules of Procedure of the Commission, the time period provided for in Article 46(1)(b) does not apply in cases where exceptions to the requirement of prior exhaustion of domestic remedies are applicable (see previous paragraph).

##### *Duplication of Proceedings:*

In order for the Commission to consider a given petition, the subject matter of the petition must not be pending in another international proceeding, and must not have been previously considered, either by the Commission or by another international organisation (in accordance with Articles 46(1)(c) and 47(d) of the American Convention).

##### *Nature of the Alleged Violations:*

The Commission can only consider allegations made by petitioners regarding violations of the rights recognised in the American Convention (and/or the American Declaration on the Rights and Duties of Man).

#### **c. Potential outcomes**

If the petition fulfils the procedural requirements set forth in the Rules of Procedure of the Commission,<sup>86</sup> the Commission then moves to decide upon the merits of the case. At this stage, a petition may be found inadmissible if the Commission believes that it lacks the proper jurisdiction to consider the matter before it, or if the Commission decides that no violation of human rights occurred.

<sup>86</sup> <http://www.cidh.oas.org/Básicos/Basic Documents/enbas10.htm>

If the case both complies with the procedural requirements of the Commission, *and* is found admissible based upon the merits of the case, the Commission officially opens the case and a number is assigned. Thereafter, the pertinent sections of the petition are sent to the government of the State in question, along with a request for relevant information. During the processing of the case, each party is asked to comment on the responses of the other party. The Commission may also choose to carry out its own investigations, conducting on-site visits, requesting specific information from the parties, etc. The Commission may also hold a hearing during the processing of the case, at which both parties are required to be present and where they are asked to set forth their legal and factual arguments. In almost every case, the Commission will also offer to assist the parties in negotiating a friendly settlement, if they so desire.

When the parties involved have finished presenting documentation to the Commission, and once the Commission decides that it has sufficient information, the processing of a case is completed. The Commission will then prepare a report in which it presents its conclusions and, usually, makes recommendations to the State in question. This report is *not*, at this time, released to the general public. Rather, the Commission gives the State a period of time within which to resolve the situation and to comply with its recommendations.

When this time period expires, the Commission reviews the case to decide whether the State in question has taken effective steps to comply with its recommendations. If the Commission believes that the State has effectively ignored its recommendations, it has two options. The first option is that the Commission may prepare a second report, which is generally similar to the initial report and also usually contains conclusions and recommendations. In this case, the State is given a further period of time in which to resolve the situation and to comply with the Commission's recommendations. When this second time period granted to the State expires, the Commission will usually publish its report, although the Convention allows the Commission to decide to do otherwise. The second option is that, rather than preparing a second report for publication, the Commission may decide to take the case to the Inter-American Court of Human Rights.

**d. The Inter-American Court of Human Rights**

If the Commission wishes to take the case to the Inter-American Court, it must do so within three months of the date on which it transmits its initial report to the State in question. The initial report of the Commission will be attached to the application to the Court. The petitioners, the Commission and an agent of the State in question may appear in proceedings before the Court. The decision as to whether a case should be submitted to the Court or published should be made on the basis of the best interests of human rights, in the Commission's judgement.

In the Chixoy Dam case, however, with respect to the Government of Guatemala, the jurisdiction of the Court only applies to violations which occurred *after 1987*, the year in which Guatemala officially recognised the competence of the Court. Therefore, the Court may not be able to consider the events which occurred in the early 1980s. Notably, however, the Court could consider *ongoing violations* of the American Convention in the Chixoy Dam case, for example, a violation of Article 25 of the Convention which recognises the right to judicial remedies, and thereby consider all of the violations at issue.

In its contentious function, the Court considers cases brought before it in which it is alleged that a State Party to the Convention has violated specific articles of that Convention. In this regard, the Court only reviews cases brought either by a State Party or by the Inter-American Commission on Human Rights. Individuals or organisations lack standing to take a case directly to the Court, but do have standing before the Court if the Commission transmits the case. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court can rule that the injured party be ensured the enjoyment of the right or freedom that was violated. The Court may also rule, if appropriate, that reparations be made to the injured party.

### **3.3.2 International mechanisms**

There are also various international human rights mechanisms that may be utilised with respect to the Chixoy Dam case. The Government of Guatemala is a State Party to multiple human rights treaties at the international level, and as such is obligated to report periodically to various United Nations treaty-monitoring bodies. In particular, the Government of Guatemala must report periodically to the following Committees:

#### **The United Nations Committee on Economic, Social and Cultural Rights**

The United Nations Committee on Economic, Social and Cultural Rights (CESCR) monitors State Party compliance with the International Covenant on Economic, Social and Cultural Rights. The CESCR is appropriate to the Chixoy Dam case, as it has held that the practice of forced eviction violates the Covenant, and that the present living conditions resulting from the forced eviction of the Río Negro community violate several economic, social and cultural rights. *Guatemala's second periodic report was submitted in March 2002, and was considered by the Committee in November 2003. (See Annex A for COHRE's written submission to the Committee).*

#### **The United Nations Human Rights Committee**

The Human Rights Committee was established to monitor the implementation of the International Covenant on Civil and Political Rights and of the Protocols to the Covenant, within the territory of States Parties. The Human Rights Committee has the authority to consider many aspects of the forced eviction of the Río Negro community, including the violations of the rights to life and freedom from torture, as well as the prohibition on the unlawful interference with the home. *Guatemala's third periodic report is due in August 2005.*

#### **The United Nations Committee on the Elimination of Racial Discrimination**

The Committee on the Elimination of Racial Discrimination (CERD) is the monitoring body established under the International Convention on the Elimination of All Forms of Racial Discrimination. CERD is an appropriate body to consider the Chixoy Dam case as the facts include the element of racial discrimination, specifically against the Mayan population. *Guatemala's tenth periodic report to CERD has been overdue since 2002.*

After reviewing Guatemala's periodic report, each of the Committees listed above will issue a set of 'concluding observations', including their findings as regards the State's level of compliance with its obligations under the relevant Covenant or Convention. In order to influence this process, non-governmental organisations such as COHRE may submit parallel or 'shadow' reports to the Committees in order to offer alternative information to that provided

by the State Party reports, which typically seek to put the most positive face on a State's human rights performance. Parallel reports are useful, in particular, because they may help shape the content of the Committee's concluding observations. For example, concluding observations may provide:

- A finding of fact that the government in question has violated the relevant treaty;
- A recommendation urging that the government in question adopt new legislation, for example, legislation regarding the national reparations programme;
- An recommendation to the government in question to take steps to remedy past human rights abuses;
- Encouragement from the Committee that the government in question use local input when taking a particular decision likely to affect local communities;
- A recommendation that the government in question provide specific services, policies, and institutions.

The Committees may also recognise all the violations that occurred at Río Negro, including those attributable to the roles of the IDB and the World Bank in the financing and mismanagement of the Chixoy Dam Project.





Girl from Río Negro near second massacre site



## Conclusions

1. The Government of Guatemala, with the complicity of the Inter-American Development Bank and the World Bank, unlawfully forcibly evicted the community of Río Negro in 1982. Methods used to carry out the forced eviction included a series of massacres resulting in the deaths of an estimated 440 residents of the community.
2. The present grossly inadequate living conditions of the Río Negro survivors and their family members are a direct result of, *inter alia*, the displacement of the Río Negro community and the failure on the part of the Government of Guatemala, the Inter-American Development Bank and the World Bank to provide just and fair compensation to the survivors, including adequate alternative housing as required by, *inter alia*, General Comment No. 7 of the United Nations Committee on Economic, Social and Cultural Rights.

3. The Government of Guatemala was the sole owner of the National Institute of Electrification (*Instituto Nacional de Electrificación*, INDE) at the time of the construction of the Chixoy Dam and the forced eviction of the Río Negro community.
4. The Government of Guatemala is liable for the human rights violations against the Río Negro community and consequently has a legal obligation to provide full reparations, including just and fair compensation, to the survivors of Río Negro.
5. The Government of Guatemala has an obligation to ensure that the Inter-American Development Bank and the World Bank fully implement the relocation component of the Chixoy Dam Project, including the provision of adequate alternative housing and just and fair compensation for lost housing, land and crops.
6. The Inter-American Development Bank and the World Bank planned, funded and supervised the implementation of the Chixoy Dam Project, which entailed clearing the Dam's reservoir basin of its human population.
7. Given their comprehensive roles in the Chixoy Dam Project; including instigating, planning, funding, managing and supervising the Project; and the information readily available at the time, the Inter-American Development Bank and the World Bank knew or should have known that the Government of Guatemala was violating human rights in order to depopulate the reservoir basin.
8. The World Bank continued to fund the Project after the series of massacres had been implemented by the Government of Guatemala and after this had become a well-known fact. Additionally, both banks continued to fund the Project after the massacre of seven persons by security officers in the employ of the Project.
9. The Inter-American Development Bank and the World Bank are also liable for the human rights violations against the Río Negro community and consequently have legal obligations to provide full reparations, including just and fair compensation, to the survivors of Río Negro.
10. The Inter-American Development Bank and the World Bank, including their respective constituent Member States, were unjustly enriched by the forced eviction of the Río Negro community. The violent tactics employed ultimately served to 'minimise' the economic costs associated with their relocation and rehabilitation of those displaced.
11. As a Specialised Agency of the United Nations, the World Bank is legally obligated not to defeat the purposes of the UN Charter. Consequently, the World Bank must work to further the objectives of the UN Charter and must not undermine those objectives. Pursuant to the UN Charter, those objectives include, *inter alia*, the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all."<sup>87</sup>

87 *Charter of the United Nations*, Art. 55(c), (n. 79 above).

12. All the States that make up the IDB and the World Bank have human rights obligations. These States cannot ignore or violate their respective international human rights obligations simply by organising themselves into the IDB and the World Bank, or by using these Banks as agents to carry out policies or practices in violation of these obligations. Therefore, all Member States of the IDB and the World Bank, in particular those represented on their Boards of Executive Directors, have violated their respective obligations under the Covenant to respect, ensure, protect and fulfil the rights of the Río Negro community.
13. Unfortunately, impunity for human rights violations is the norm in the world today as States increasingly violate their respective human rights obligations through the formation of corporations or organisations that then are used as agents of those States to carry out egregious policies and practices. Such impunity is further entrenched when victims of those violations are prevented from availing themselves of remedies such as those provided by domestic, regional or international judicial or quasi-judicial tribunals.
14. The Government of Guatemala, the Inter-American Development Bank and the World Bank are jointly and severally liable for the human rights violations that occurred in the context of the planning, funding, construction and supervision of the Chixoy Dam Project.



Girls at Río Negro



## Recommendations

### 5.1 To the Government of Guatemala

1. The Government of Guatemala should provide full reparations, including just and fair compensation, to the Río Negro survivors and other communities negatively affected by the implementation of the Chixoy Dam Project. These reparations are to be determined in full consultation with the survivors and others similarly affected, as well as a group of non-governmental organisations to be selected by them.
2. The Government of Guatemala should ensure that the Inter-American Development Bank and the World Bank fully implement, and thus fully complete, the relocation component of the Chixoy Dam Project, including the provision of adequate alternative housing and just and fair compensation for, *inter alia*, lost housing, land, crops and other property in full consultation with the Río Negro survivors and other communities also negatively affected by the implementation of the Chixoy Dam Project.

3. The Government of Guatemala should bring to justice all those responsible for human rights violations, including forced eviction, displacement, killing and torture, against Río Negro and other communities similarly impacted by the implementation of the Chixoy Dam Project.

## **5.2 To the Inter-American Development Bank**

1. The Inter-American Development Bank should provide funding for an independent and impartial international investigation of the Chixoy Dam Project, covering the IDB's role with respect to each and all of the human rights violations that occurred in the context of the Project.
2. The Inter-American Development Bank should ensure that all current and future projects in which it is (to be) involved are free from human rights violations.
3. The Inter-American Development Bank must abide by its legal obligation to provide full reparations, including just and fair compensation, to the survivors of Río Negro, and to other communities also negatively affected by the implementation of the Chixoy Dam Project.

## **5.3 To the World Bank**

1. The World Bank should provide funding for an independent and impartial international investigation of the Chixoy Dam Project, covering the World Bank's role with respect to each and all of the human rights violations that occurred in the context of the Project.
2. The World Bank should ensure that all current and future projects in which it is (to be) involved are free from human rights violations.
3. The World Bank must abide by its legal obligation to provide full reparations, including just and fair compensation, to the survivors of Río Negro, and to other communities also negatively affected by the implementation of the Chixoy Dam Project.

## **5.4 To the international community**

1. The international community, and in particular the United Nations and/or Organization of American States, should establish a special impartial and independent international commission to investigate the Chixoy Dam Project, assess liability for human rights violations that occurred in the context of the Project, and determine appropriate reparations for the Río Negro community and others negatively affected by the implementation of the Chixoy Dam Project. The participants on the commission should include, *inter alia*, survivors of the Río Negro community and of other communities also negatively affected by the implementation of the Chixoy Dam Project, the Centre on Housing Rights and Evictions, Rights Action, the Inter-American Development Bank and the World Bank.

2. The United Nations should affirm that, as a Specialised Agency of the United Nations, the World Bank is legally obligated not to defeat the purposes of the Charter of the United Nations, including the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all.”
3. The United Nations and the Organization of American States should affirm that all the States that make up the Inter-American Development Bank and the World Bank have human rights obligations, and that these States cannot ignore or violate their respective international human rights obligations simply by organising themselves into the IDB and the World Bank, or by using these Banks as agents to carry out policies or practices in violation of these obligations.

## **5.5 To human rights organisations and advocates**

1. Human rights organisations who wish to contribute to the Chixoy Dam Reparations Campaign should contact the Centre on Housing Rights Eviction at [litigation@cohre.org](mailto:litigation@cohre.org) and Rights Action at [info@rightsaction.org](mailto:info@rightsaction.org)
2. Human rights organisations and advocates should fully investigate the role of the governments that are represented on the Boards of Executive Directors of the Inter-American Development Bank and the World Bank with respect to their international human rights obligations in the context of the Chixoy Dam Project and similar projects.
3. Human rights organisations and advocates should fully investigate the role of the Government of the United States in the human rights abuses, including genocide, in Guatemala.
4. Human rights organisations and advocates should fully investigate the role of transnational corporations in the planning and construction of the Chixoy Dam, including in particular complicity in and unjust enrichment from the human rights violations that occurred in the context of that planning and construction.



# Bibliography

The Advocacy Project, (2000), 'Río Negro's Fight for Reparations: the Massacre that won't go Away.'

Amnesty International, (2002), 'Guatemala: The Lethal Legacy of Impunity,' London: Amnesty International.

Amnesty International (4 Sept. 2002) 'Guatemala: The Civil Defense Patrols Re-Emerge,' London: Amnesty International.

Center for International Environmental Law, (1999), 'Comments on Draft OP/BP 4.12: Involuntary Resettlement.'

Chen, C., (1999), 'The Chixoy Dam Case,' World Commission on Dams.

Colajacomo, J., (1999), 'The Chixoy Dam: The Maya Achi' Genocide. The Story of Forced Resettlement,' Italy: Reform the World Bank Campaign.

Comisión Interamericana de Derechos Humanos, (1981), 'Informe Sobre la Situación de los Derechos Humanos en la República de Guatemala,' Washington DC: Organización de los Estados Americanos.

Inter-American Commission on Human Rights (2001), 'Fifth report on the Human Rights Situation in Guatemala,' Chapter I on the situation of human rights since the signing of the accord for a firm and lasting peace, OEA/Ser.L/V/II.111, doc. 21 rev.

Inter-American Development Bank (2003) 'OP-305 Ex-Post Evaluation of Operations.'

Inter-American Development Bank, 'Agreement Establishing the Inter-American Development Bank.'

Inter-American Development Bank, (2000), 'Watershed Project Produces Change.'

International Rivers Network, (1997), 'Guatemala Dam Massacre Acknowledged by Bank,' World Rivers Review, Vol. 12, No. 1.

International Rivers Network and Witness for Peace, (9 May 1996), 'NGOs Demand World Bank Investigation into 1980s Massacres at Guatemalan Dam Report Reveals 376 Murdered After Resisting Eviction,' press release.

Report of the Commission for Historical Clarification, (1999) 'Guatemala: Memory of Silence.'

Rights Action, 'Chixoy Dam Reparations Campaign.'

School of the Americas Watch, 'The Río Negro Massacre & the World Bank: The Chixoy Dam Reparations Campaign'

*Velásquez Rodríguez Case, Compensatory Damages, (Article 63(1) American Convention on Human Rights), Judgment of 21 July 1989, Inter-Am. Ct. H.R. (Ser. C) No. 7 (1989).*

*Velásquez Rodríguez Case, Interpretation of Compensatory Damages (Article 67 American Convention on Human Rights), Judgment of 17 August 1990, Inter-Am. Ct. H.R. (Ser. C) No. 9 (1990).*

Witness for Peace, (1996), 'A People Damned: The Impact of the World Bank Chixoy Hydroelectric Project in Guatemala.'

Witness for Peace, (1996), 'Still a People Damned: Holding the World Bank Accountable.'

The Working Group on Multilateral Institution Accountability, Graduate Policy Workshop: Human Rights and Non-State Actors, Woodrow Wilson School, Princeton University, 'The Chixoy Dam and the Massacres as Río Negro, Agua Fria and Los Encuentros: A Report on Multilateral Financial Institution Accountability.'

World Bank, (2003), 'Mission Statement.'

World Bank, (2000), 'Violent Conflict and the Transformation of Social Capital: Lessons from Cambodia, Rwanda, Guatemala, and Somalia.'

World Bank Group, (24 Jan. 2001), 'World Bank Group Strategic Framework.'

# Annexes

## Annex A

### COHRE Submission to the UN Committee on Economic, Social and Cultural Rights

Written Submission of the Centre on Housing Rights and Evictions (COHRE)  
to the Committee on Economic, Social and Cultural Rights  
at its 31st Session (November 2003)

#### I. Introduction

1. The following report is respectively submitted to the Committee on Economic, Social and Cultural Rights (Committee) in order to provide additional information in the context of the Committee's consideration of the second periodic report of the Government of Guatemala.
2. This report addresses the unresolved housing rights violations suffered by the Río Negro community over the past twenty years. While many of these violations initially occurred prior to 19 May 1988, the date the Government of Guatemala ratified the Covenant on Economic, Social and Cultural Rights (Covenant), they entail many ongoing violations and events over the past twenty years which have detrimentally affected the full realization of the right to adequate housing, both presently and continually since 19 May 1988.

#### II. Historical Context

3. For scores of generations, the Maya-Achi community of Río Negro was situated along the banks of the Chixoy River, a remote valley north in the Baja Verapaz department of Guatemala. In the early 1980s, however, the community was forcibly evicted, by means of a series of brutal massacres, and displaced to the distant town of Rabinal.
4. Prior to displacement, the Río Negro community lived a relatively peaceful existence on the rich land adjacent to the river. The rich soil near Río Negro allowed for sufficient crops of maize as well as mango, banana and other fruit producing trees. The river provided ample fish as a source of protein. The community lived a subsistence lifestyle and required little income from outside sources. Whatever income was needed was easily derived from selling firewood, crops and straw mats at market.
5. In the mid-1970s the Government of Guatemala began a partnership with the World Bank and the Inter-American Development Bank in order to construct the Pueblo Viejo-Quixal Hydroelectric Project (Chixoy Dam). The first phases of the construction project involved the displacement of those communities living in the reservoir basin, including the village of Río Negro.
6. The Government began construction of the Chixoy Hydroelectric Dam in 1975, in what the Government called an effort to bring cheap and available electricity to the county. Ironically, the Government also claimed that an objective of the resettlement component of the project was to be "an improvement of the living conditions of the population in the serviced area of

the project,” rather than a mere compensatory payment for damages.<sup>88</sup> The Dam was raised along a stretch of land blocking the natural path of the Río Negro in Baja Verapaz, in central Guatemala.

7. The project was financed in part by the World Bank and the Inter-American Development Bank (IDB), which provided initial loans of US\$ 72 million and US\$ 105 million, respectively.<sup>89</sup> Indeed, the project would not have been undertaken but for the involvement of the World Bank and the IDB. The then State-owned National Institute of Electrification or INDE (*Instituto Nacional de Electrificación*) was responsible for the administration of the funds, the coordination of the project, and the building of the Chixoy Dam itself.

8. INDE, however, did not consult the people that lived along the Río Negro, despite the fact that the construction of the dam would flood 31 miles of the river valley, leaving many of their homes underwater. It was only in 1977, almost *two years* after project construction began, that INDE officials flew by helicopter into the small village, of Río Negro, to inform residents that they would need to abandon their homes and lands because they would soon to be flooded. At first, after INDE promised that they would be given new homes and lands in compensation for their loss, the villagers, under duress due to prior threats of violence, reluctantly considered to leave behind their homes and lands at Río Negro. INDE’s promises would soon prove to be deceptive, however, as villagers learned shortly thereafter that the resettlement site which was to be provided them was in fact grossly inadequate, with conditions far worse than their living situation at Río Negro. By early 1980, the community of Río Negro actively resisted INDE’s efforts to relocate them to the cramped, inadequate houses and poor land at the resettlement site. Consequently, villagers began to be aggressively targeted by the Guatemalan army, which was in the employ of INDE, itself part of the militarised Government of Guatemala and controlled by an Army General.

9. INDE officials requested the Río Negro community to turn over their land titles, promising to return them promptly.<sup>90</sup> Months later, when the community requested that the titles be returned, INDE officials claimed they never received them.<sup>91</sup> In March 1980, members of the *Policia Militar Ambulante* (Mobile Military Police) based at the Dam site and contracted by the project shot seven people in Río Negro. The villagers chased the police away and one officer, according to the people of Río Negro, drowned in the Chixoy River. INDE and the Guatemalan army, however, accused the villagers of murdering the police officer and of being supporters of the country’s guerrilla movement. Three months later, in July 1980, two representatives from the Río Negro community agreed to a request from INDE to come to the Chixoy Dam site to present their *Libros de Actas*, the community’s only other documentation of the title to their land as well as the resettlement and cash payment agreements it had signed with INDE. Their mutilated bodies were found a week later, and the documents have never been found.

88 Government of Guatemala, *Project Report: Chixoy River – Pueblo Viejo Hydroelectric Project* (Dec. 1975). Furthermore, a footnote indicates that the World Bank contract with INDE (BIRF-1605/GU) includes a clause obligating INDE to provide houses and services for the relocates of better quality than those they enjoyed previously. For this reason, the loan contracts between IDB and INDE did not include such a clause.

89 Corruption and technical problems ultimately raised the cost of the 300-megawatt dam from \$340 million to almost \$1 billion.

90 Witness for Peace, *A People Dammed: The Impact of the World Bank Chixoy Hydroelectric Project in Guatemala*, (Washington, DC: Witness for Peace, 1996).

91 Ibid.

10. In February 1982, after reaching the impasse in negotiations with the Government, 73 women and men from Río Negro were ordered by the local military commander to report to Xococ, a village upstream from the reservoir zone which had a history of land conflicts and hostility with Río Negro. Only one woman out of the 73 villagers returned to Río Negro - the rest were tortured, including raped, and then murdered by Xococ's Civil Defence Patrol (PAC), one of the notorious paramilitary units established by the Guatemalan military. On 13 March 1982, ten soldiers and 25 patrollers arrived in Río Negro, rounded up the remaining women and children and marched them to a hill above the village where many were tortured, including raped. Seventy of the women and 107 children were then brutally murdered, with most of the women dying of strangulation or hacked to death with machetes. As for the children, the perpetrators smashed their heads against rocks or trees until they died. Only two women managed to escape. Eighteen of the children survived because they were taken back to Xococ where they were enslaved by the very patrollers who had murdered their families.

11. Two months later, on 14 May 1982, 82 more people from Río Negro were massacred at the nearby village of Los Encuentros. Fifteen of the victims were taken away by helicopter and never seen again. Witnesses testify that the perpetrators were government soldiers and members of the Xococ PAC who arrived in an a truck owned by *Codifa*, a company under contract of the Chixoy Dam project and funded by the Banks.

12. Finally, in September 1982, 35 orphaned children from Río Negro were among 92 people machine gunned and burned to death in another village near the dam. Broken, terrorized and grieving, the survivors of the community were then forcibly evicted from their homes, uprooted from their lands, and moved to a grossly inadequate resettlement site. Filling of the reservoir began soon after this final massacre.

### **III. Present Conditions of the Survivors of Río Negro**

13. The survivors of Río Negro have lived in extreme poverty since their displacement; a situation which is direct result of, *inter alia*, the forced eviction and forced displacement of their community in the early 1980s.

14. Most of the survivors were relocated to the "Model Village" of Pacux, established by the Government behind a military base near the town of Rabinal. In July 2003, COHRE visited Pacux, which is really nothing more than an urban slum and the residents live in extreme poverty without adequate food, housing, water, health care or educational opportunities. Over the years, members of the community have been beaten and raped by soldiers at the military base situated at the entrance of their community. In order to escape this ordeal, thirteen families have returned to the site of Río Negro and have built homes on the hillsides above their former village, which is now under water. These families seek out a subsistence life on the steep hillsides above the reservoir. While they are free from the abuse of the soldiers, however, they live in a greater degree of poverty than do their counter-parts at Pacux.

15. The alternative housing provided by the Government of Guatemala at Pacux, and funded by the World Bank and Inter-American Development Bank, lacks adequate availability of services and infrastructure as required pursuant to General Comment No. 4. While the original village of Río Negro provided free water and energy, in the form of firewood, for cooking and

Typical housing at Pacux, the “Model Village” to which the Río Negro community was relocated.



heating, the community at Pacux must pay for these essential goods and services. As there are few employment opportunities, and no resources available off the land itself, they are unable to acquire adequate and sufficient water and fuel.

16. Río Negro also provided rich agricultural land and fishing, while Pacux is a crowded urban slum with little access to decent agricultural land and no access to fishing, which was one of the main sources of protein for the community.

17. Furthermore, despite an ethnographic study by Dr. Gaitán Sánchez of housing traditionally used by the Maya-Achi, none of the appropriate housing designs were considered. Indeed, in contravention of Art. 11(1) as informed by General Comment No. 4, Pacux housing lacks adequate habitability. The houses were originally constructed without separate kitchens, which the Maya-Achi indigenous population require, and were entirely constructed of milled lumber which was prone to rot and decay.<sup>92</sup> The housing lacks foundations which contributed to their deterioration due to rot. Additionally, no latrines were constructed.<sup>93</sup>

18. The contractors were subsequently forced to provide kitchens and latrines as well as concrete blocks at the bases of the walls. The kitchens, however, have no doors and therefore cannot be used for food storage. The latrines are without foundations and many have been undermined by erosion. The houses are crowded together on 5 x 10 metre lots. No space is provided for the construction of additions, often necessary to accommodate family growth.

92 William L. Partridge, *Comparative Analysis of Bid Experience with Resettlement, Based on Evaluations of the Arenal and Chixoy Projects*, paper produced pursuant to a consultancy agreement with the Inter-American Development Bank (Dec. 1983).

93 Ibid.



#### **IV. On-Going and Present Violations Directly Attributable to Past Intentional Actions of the Government of Guatemala**

19. It is important to keep in mind that the Río Negro community enjoyed *higher* living standards prior to being forcibly evicted and forcibly displaced by the Government of Guatemala, and that the intentional, direct and calculated action of the Government of Guatemala to forcibly evict and displace the Río Negro survivors had a substantial impact on the present inadequate conditions in which they now are forced to live.

20. Although the Government of Guatemala's failure to *respect* and *protect* the rights of the Río Negro survivors to be free from forced eviction occurred prior to its ratifying the Covenant, it has failed to *fulfil* their rights under the Covenant, including the right to adequate housing, subsequent to becoming a State Party to the Covenant.

21. While the *fulfilment* of the right to adequate housing is generally an obligation which is to be progressively realised, the progressive realisation clause should not apply in this specific case, as the extreme poverty, including inadequate housing conditions, from which the Río Negro survivors presently suffer is the direct result of unlawful actions taken by the Government of Guatemala, with the complicity of the World Bank and Inter-American Development Bank (see below for more information on the issue of liability). In other words, the present conditions in which the Río Negro survivors live is not due to a lack of State resources, but from the State Party's intentional, direct and calculated violations of their human rights beginning in the 1980s, and therefore a lack of resources can not be accepted as an excuse for the extreme poverty in which the Río Negro survivors presently live. This conclusion is particularly relevant given that adequate resources should have been and should be forthcoming from the World Bank and the Inter-American Development Bank.

22. Consequently, as the progressive realisation clause is inapplicable in this specific case, the present living conditions of the Río Negro survivors thus amounts to a present and ongoing violation by the Government of Guatemala of, *inter alia*, Article 11(1) of the Covenant.

#### **V. Liability of the Government of Guatemala**

23. The Government of Guatemala was the sole owner of the Instituto Nacional de Electrificación (INDE), the State Electricity Institute, until October 1997, when the company was privatised and sold off as three separate companies with INDE as a holding company.

24. The INDE wanted the land on which the Río Negro community was situated as it was in the area to be flooded by the reservoir resulting from the construction of the Chixoy hydroelectric power dam (Chixoy Dam). The Chixoy Dam was included in the Government's development plan for the Transversal del Norte zone, where, incidentally, many of the generals in the Guatemalan military owned property.

#### **VI. Liability of the World Bank and Inter-American Development Bank**

25. The roles of the World Bank and of the Inter-American Development Bank are also important to consider when addressing the legal liability issues involved in the Chixoy case. As noted above, the World Bank and Inter-American Development Bank (IDB) both continued to provide loans for the Chixoy Dam throughout the displacement phase of the project. Indeed,

the World Bank's second loan instalment to the Government of Guatemala actually occurred in 1985 - after the massacres and forced displacement took place.

26. First, as organs of the United Nations and the Organization of American States, respectively, the World Bank and the IDB are obligated not to defeat the purposes of those bodies. For instance, the World Bank and the IDB must work to further the objectives of the UN Charter and the Charter of the OAS, respectively, and of course must not undermine those objectives. With respect to the UN Charter, those objectives include, *inter alia*, the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all.”<sup>94</sup> Similarly, the Charter of the Organization of American States reaffirms these United Nations “principles and purposes” and states as a purpose of the Organization the “consolidation ... of a system of individual liberty and social justice based on respect for the essential rights of man (sic).”<sup>95</sup>

27. Second, the States that make up the World Bank and IDB all have human rights obligations. These States can not ignore, or indeed violate, these obligations simply by organising themselves into the Banks or by using the Banks as agents to carry out policies that violate their respective international human rights obligations. Therefore, each Member-State of the World Bank, and in particular those making up the Executive Directors, have violated their respective obligations under the Covenant to respect, protect and fulfil the rights of the Río Negro community.

28. Indeed, impunity for human rights violations by such entities unfortunately is the norm, as States simply violate their respective human rights obligations through the formation of corporations or inter-governmental organisations that then are used as agents of those States to carry out policy that violates their respective international and domestic legal obligations.. And that impunity is further entrenched when victims of those violations can not avail themselves to remedies such as those provided by the Committee on Economic, Social and Cultural Rights.

## VII. Conclusions

29. The Government of Guatemala, with the complicity of the World Bank and the Inter-American Development Bank, unlawfully forcibly evicted the community of Río Negro in 1982. Methods used to carry out the forced eviction included a series of massacres resulting in the deaths of an estimated 440 residents of the community.

30. Given their supervisory role in the Chixoy Dam Project, the World Bank and the Inter-American Development Bank knew or should have known that the Government of Guatemala was violating human rights in order to depopulate the reservoir basin.

<sup>94</sup> *Charter of the United Nations*, Art. 55(c), (n. 79 above).

<sup>95</sup> *Charter of the Organization of American States*, Preamble, 119 U.N.T.S. 3, entered into force 13 Dec. 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, entered into force 27 Feb. 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, entered into force 16 Nov. 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, entered into force 25 Sept. 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, entered into force 29 Jan. 1996.

31. The present living conditions are a direct result of, inter alia, the displacement of the Río Negro community and the failure of the Government of Guatemala, the World Bank and the Inter-American Development Bank to provide just and fair compensation to the Río Negro survivors including alternative adequate housing as required by General Comment No. 7.

32. The Government of Guatemala has an obligation to seek further funding from the World Bank and the Inter-American Development Bank in order to fully implement the relocation component of the Chixoy Dam Project, including the provision of alternative adequate housing and just and fair compensation for lost housing, land and crops.

### **VIII. Recommendations**

33. The Government of Guatemala should provide just and fair compensation to the survivors of Río Negro, to be determined in full consultation with the survivors.

34. The Government of Guatemala should seek further funding from the World Bank and the Inter-American Development Bank in order to fully implement, and thus fully complete, the relocation component of the Chixoy Dam Project, including the provision of alternative adequate housing and just and fair compensation for, inter alia, lost housing, land, crops and other property in full consultation with the Río Negro survivors.

35. The Government of Guatemala should bring those responsible for the forced eviction, displacement, massacres and other human rights violations of the Río Negro community to justice.

*25 September 2003*

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COHRE*

## Annex B

### Comprehensive Human Rights Guidelines on Development-Based Displacement

Adopted by the Expert Seminar on the Practice of Forced Evictions  
Geneva, Switzerland, 11-13 June 1997

#### Preamble

*Recalling* the human rights standards established pursuant to the International Bill of Human Rights,

*Whereas* many international treaties, resolutions, decisions, general comments, judgments and other texts have recognized and reaffirmed that forced evictions constitute violations of a wide range of internationally recognized human rights,

*Recalling* Economic and Social Council decision 1996/290, Commission on Human Rights Resolution 1993/77, and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1996/27,

*Reaffirming* that under international law every State has the obligation to respect and ensure respect for human rights and humanitarian law, including obligations to prevent violations, to investigate violations, to take appropriate action against violators, and to afford remedies and reparation to victims,

*Reaffirming* that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

*Whereas* the Vienna Declaration and Plan of Action stipulated that while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgment of internationally recognized human rights,

*Recognizing* the widespread nature of the practice of forced evictions and that when forced evictions are carried out this can occur in a variety of contexts including but not limited to conflicts over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes or macro-urban projects, unbridled speculation in land, and the holding of major international events such as the Olympic Games,

*Conscious* that forced evictions intensify social conflict and inequality and invariably affect the poorest, most socially, economically, and vulnerable sectors of society, specifically women, children, and indigenous peoples,

*Conscious* also of guidelines developed by international financial and other institutions on involuntary displacement and resettlement,

*Resolved* to protect human rights and prevent violations due to the practice of forced evictions,

## **Section One: Background Issues**

### Scope and Nature of the Guidelines

1. The present Guidelines address the human rights implications of the practice of forced evictions associated with development-based displacement in urban and rural areas. The Guidelines reflect and are consistent with international human rights law and international humanitarian law and should be subject to the widest possible application.
2. Having due regard to all relevant definitions of the practice of forced evictions under international human rights provisions and instruments, the present Guidelines apply to instances of forced evictions in which there are acts and/or omissions involving the coerced and involuntary removal of individuals, groups and communities from their homes and/or lands and common property resources they occupy or are dependent upon, thus eliminating or limiting the possibility of an individual, group or community residing or working in a particular dwelling, residence or place.
3. While there are many similarities between the practice of forced evictions and internal displacement, population transfer, mass expulsions, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary movement of people from their homes, lands and communities, forced evictions constitute a distinct practice under international law. Persons, groups and communities subjected to or threatened with forced evictions form, therefore, a distinct group under international human rights law.
4. Forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances and in full accordance with the present Guidelines and relevant provisions of international human rights law.

## **Section Two: General Obligations**

5. While forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a variety of distinct actors, responsibility for forced evictions under international law, ultimately, is held by States. This does not, however, relieve other entities from obligations in this regard, in particular occupying powers, international financial and other institutions or organizations, transnational corporations and individual third parties, including public and private landlords or land owners.
6. States should apply appropriate civil or criminal penalties against any person or entity, within its jurisdiction, whether public or private, who carries out any forced evictions, not in full conformity with applicable law and the present Guidelines.
7. States should object, through the appropriate international legal mechanisms, to the carrying out of forced evictions in other States when such forced evictions are not in

full conformity with the present Guidelines and relevant provisions of international human rights law.

8. States should ensure that international organizations in which they are represented refrain from sponsoring or implementing any project, programme or policy which may involve the carrying out of forced evictions not in full conformity with international law and the present Guidelines.

### **Section Three: Preventative Obligations**

#### The Obligation of Maximum Effective Protection

9. States should secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection against the practice of forced evictions for all persons under their jurisdiction. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups. These obligations are of an immediate nature and are not qualified by resource-related considerations.
10. States should refrain from introducing any deliberately retrogressive measures with respect to de jure or de facto protection against forced evictions.
11. States should ensure that adequate and effective legal or other appropriate remedies are available to any persons claiming that his/her right of protection against forced evictions has been violated or is under threat of violation.
12. States should ensure that eviction impact assessments are carried out prior to the initiation of any project which could result in development-based displacement, with a view to fully securing the human rights of all potentially affected persons, groups and communities.
13. The Obligation to Prevent Homelessness
14. States should ensure that no persons, groups or communities are rendered homeless or are exposed to the violation of any other human rights as a consequence of a forced eviction.
15. The Obligation to Adopt Appropriate Measures of Law and Policy
16. States should carry out comprehensive reviews of relevant national legislation with a view to ensuring the compatibility of such legislation with the norms contained in the present Guidelines and other relevant international human rights provisions. In this regard, special measures shall be taken to ensure that no forms of discrimination, statutory or otherwise, are applied in relation to property rights, housing rights and access to resources.
17. States should adopt appropriate legislation and policies to ensure the protection of individuals, groups and communities from forced eviction, having due regard to their best interests. States are encouraged to adopt constitutional provisions in this regard.

#### The Obligation to Explore All Possible Alternatives

18. States should fully explore all possible alternatives to any act involving forced eviction. In this regard, all affected persons, including women, children and indigenous peoples shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives. In the event that agreement cannot be reached on the proposed alternative by the affected



persons, groups and communities and the entity proposing the forced eviction in question, an independent body, such as a court of law, tribunal, or ombudsman may be called upon.

#### The Obligation to Expropriate Only as a Last Resort

19. States should refrain, to the maximum possible extent, from compulsorily acquiring housing or land, unless such acts are legitimate and necessary and designed to facilitate the enjoyment of human rights through, for instance, measures of land reform or redistribution. If, as a last resort, States consider themselves compelled to undertake proceedings of expropriation or compulsory acquisition, such action shall be: (a) determined and envisaged by law and norms regarding forced eviction, in so far as these are consistent internationally recognized human rights; (b) solely for the purpose of protecting the general welfare in a democratic society; (c) reasonable and proportional and (d) in accordance with the present Guidelines.

### **Section Four: The Rights of All Persons**

#### Integrity of the Home

20. All persons have the right to adequate housing which includes, inter alia, the integrity of the home and access to and protection of common property resources. The home and its occupants shall be protected against any acts of violence, threats of violence or other forms of harassment, in particular as they relate to women and children. The home and its occupants shall further be protected against any arbitrary or unlawful interference with privacy or respect of the home.

#### Assurances of Security of Tenure

21. All persons have a right to security of tenure which provides sufficient legal protection from forced eviction from one's home or land.
22. The present Guidelines shall apply to all persons, groups and communities irrespective of their tenure status.

### **Section Five: Legal Remedies**

23. All persons threatened with forced eviction, notwithstanding the rationale or legal basis thereof, have the right to:
  - a) a fair hearing before a competent, impartial and independent court or tribunal
  - b) legal counsel, and where necessary, sufficient legal aid
  - c) effective remedies
24. States should adopt legislative measures prohibiting any forced evictions without a court order. The court shall consider all relevant circumstances of affected persons, groups and communities and any decision be in full accordance with principles of equality and justice and internationally recognized human rights.
25. All persons have a right to appeal any judicial or other decisions affecting their rights as established pursuant to the present Guidelines, to the highest national judicial authority.

### Compensation

26. All persons subjected to any forced eviction not in full accordance with the present Guidelines, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.

### Restitution and Return

27. All persons, groups and communities subjected to forced evictions have the right to, but shall not be forced to return to their homes, lands or places of origin.

### Resettlements

28. In full cognizance of the contents of the present Guidelines there may be instances in which, in the public interest, or where the safety, health or enjoyment of human rights so demands, particular persons, groups and communities may be subject to resettlement. Such resettlement must occur in a just and equitable manner and in full accordance with law of general application.
29. All persons, groups and communities have the right to suitable resettlement which includes the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable.
30. In determining the compatibility of resettlement with the present Guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:
  - a) No resettlement shall take place until such a time that a full resettlement policy consistent with the present Guidelines and internationally recognized human rights is in place.
  - b) Resettlement must ensure equal rights to women, children and indigenous populations and other vulnerable groups including the right to property ownership and access to resources. Resettlement policies should include programmes designed for women with respect to education, health, family welfare and employment opportunities.
  - c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any costs associated therewith, including all resettlement costs.
  - d) No affected persons, groups or communities, shall suffer detriment as far as their human rights are concerned nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction.
  - e) That affected persons, groups and communities provide their full and informed consent as regards the relocation site. The State shall provide all necessary amenities and services and economic opportunities.
  - f) Sufficient information shall be provided to affected persons, groups and communities concerning all State projects as well as to the planning and implementation processes relating to the resettlement concerned, including information concerning the purpose to which the eviction dwelling or site is to be put and the persons, groups or communities who will benefit from the evicted site. Particular attention must be given to ensure that

indigenous peoples, ethnic minorities, the landless, women and children are represented and included in this process.

- g) The entire resettlement process should be carried out in full consultation and participation with the affected persons, groups and communities. States should take into account in particular all alternate plans proposed by the affected persons, groups and communities.
- h) If after a full and fair public hearing, it is found that there is a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least ninety (90) days notice prior to the date of the resettlement; and
- i) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

### **Section Six: Monitoring**

- 31. The United Nations High Commissioner for Human Rights and other United Nations human rights institutions should seek by all possible means to secure full compliance with the present Guidelines.

### **Section Seven: Savings**

#### Savings Clause

- 32. The provisions contained within the present Guidelines are without prejudice to the provisions of any other international instrument or national law which ensures the enjoyment of all human rights as they relate to the practice of forced evictions.

## Annex C

### **Draft United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law<sup>96</sup>**

The Commission on Human Rights,

*Pursuant* to Commission on Human Rights resolution 1999/33 of 26 April 1999, entitled “The right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms”, in which the Commission took note with appreciation of the note of the Secretary-General (E/CN.4/1999/53) submitted in compliance with resolution 1998/43 of 17 April 1998 and the report of the independent expert (E/CN.4/1999/65),

*Recalling* resolution 1989/13 of 31 August 1989 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in which the Sub-Commission decided to entrust Mr. Theo van Boven with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, which was contained in Mr. Van Boven’s final report (E/CN.4/Sub.2/1993/8) and which resulted in draft basic principles and guidelines (E/CN.4/1997/104, annex), and resolution 1994/35 of 4 March 1994 of the Commission on Human Rights in which the Commission regarded the proposed basic principles and guidelines contained in the study of the Special Rapporteur as a useful basis for giving priority to the question of restitution, compensation and rehabilitation,

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights and humanitarian law found in numerous international instruments, in particular the Universal Declaration of Human Rights at article 8, the International Covenant on Civil and Political Rights at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at article 11, and the Convention on the Rights of the Child at article 39,

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular the African Charter on Human and Peoples’ Rights at article 7, the American Convention on Human Rights at article 25, and the European Convention for the Protection of Human Rights and Fundamental Freedoms at article 13,

*Recalling* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and resolution 40/34 of 29 November 1985 by which the General Assembly adopted the text recommended by the Congress,

<sup>96</sup> See M. Cherif Bassiouni, *The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, UN Doc. E/CN.4/2000/62 (18 Jan. 2000).

*Reaffirming* the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

*Recalling* resolution 1989/57 of 24 May 1989 of the Economic and Social Council, entitled “Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, as well as Council resolution 1990/22 of 24 May 1990, entitled “Victims of crime and abuse of power”,

*Noting* that in resolution 827 (1993) of 25 May 1993 in which it adopted the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Security Council decided that “the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law”,

*Noting with satisfaction* the adoption of the Rome Statute of the International Criminal Court on 17 July 1998 which obliges the Court to “establish principles relating to reparation to, or in respect of, victims, including restitution, compensation and rehabilitation” and obliges the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims, and mandates the Court “to protect the safety, physical and psychological well-being, dignity and privacy of victims” and to permit the participation of victims at all “stages of the proceedings determined to be appropriate by the Court”,

*Recognizing* that, in honouring the victims’ right to benefit from remedies and reparation, the international community keeps faith and human solidarity with victims, survivors and future human generations, and reaffirms the international legal principles of accountability, justice and the rule of law,

*Convinced* that, in adopting a victim-oriented point of departure, the community, at local, national and international levels, affirms its human solidarity and compassion with victims of violations of international human rights and humanitarian law as well as with humanity at large,

*Decides* to adopt the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law as follows:

## **I. OBLIGATION TO RESPECT, ENSURE RESPECT FOR AND ENFORCE INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW**

Every State has the obligation to respect, ensure respect for and enforce international human rights and humanitarian law norms that are, *inter alia*:

- a) Contained in treaties to which it is a State party;
- b) Found in customary international law; or
- c) Incorporated in its domestic law.

To that end, if they have not already done so, States shall ensure that domestic law is consistent with international legal obligations by:

- d) Incorporating norms of international human rights and humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
- e) Adopting appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
- f) Making available adequate, effective and prompt reparation as defined below; and
- g) Ensuring, in the case that there is a difference between national and international norms, that the norm that provides the greatest degree of protection is applied.

## **II. SCOPE OF THE OBLIGATION**

The obligation to respect, ensure respect for and enforce international human rights and humanitarian law includes, *inter alia*, a State's duty to:

- a) Take appropriate legal and administrative measures to prevent violations;
- b) Investigate violations and, where appropriate, take action against the violator in accordance with domestic and international law;
- c) Provide victims with equal and effective access to justice irrespective of who may be the ultimate bearer of responsibility for the violation;
- d) Afford appropriate remedies to victims; and
- e) Provide for or facilitate reparation to victims.

## **III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW**

Violations of international human rights and humanitarian law norms that constitute crimes under international law carry the duty to prosecute persons alleged to have committed these violations, to punish perpetrators adjudged to have committed these violations, and to cooperate with and assist States and appropriate international judicial organs in the investigation and prosecution of these violations.

To that end, States shall incorporate within their domestic law appropriate provisions providing for universal jurisdiction over crimes under international law and appropriate legislation to facilitate extradition or surrender of offenders to other States and to international judicial bodies and to provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to and protection of victims and witnesses.



#### **IV. STATUTES OF LIMITATIONS**

Statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law norms that constitute crimes under international law.

Statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict the ability of a victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law norms.

#### **V. VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW**

A person is “a victim” where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights. A “victim” may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.

A person’s status as “a victim” should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.

#### **VI. TREATMENT OF VICTIMS**

Victims should be treated by the State and, where applicable, by intergovernmental and non-governmental organizations and private enterprises with compassion and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety and privacy as well as that of their families. The State should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation.

#### **VII. VICTIMS’ RIGHT TO A REMEDY**

Remedies for violations of international human rights and humanitarian law include the victim’s right to:

- a) Access justice;
- b) Reparation for harm suffered; and
- c) Access the factual information concerning the violations.

## **VIII. VICTIMS' RIGHT TO ACCESS JUSTICE**

A victim's right of access to justice includes all available judicial, administrative, or other public processes under existing domestic laws as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

- a) Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;
- b) Take measures to minimize the inconvenience to victims, protect their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;
- c) Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.

## **IX. VICTIMS' RIGHT TO REPARATION**

Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.

In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.

In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim.

In the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavour to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. To that end, States should endeavour to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.

A State shall enforce its domestic judgements for reparation against private individuals or entities responsible for the violations. States shall endeavour to enforce valid foreign judgements for reparation against private individuals or entities responsible for the violations.

In cases where the State or Government under whose authority the violation occurred is no longer in existence, the State or Government successor in title should provide reparation to the victims.

## **X. FORMS OF REPARATION**

In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.

Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as:

- a) Physical or mental harm, including pain, suffering and emotional distress;
- b) Lost opportunities, including education;
- c) Material damages and loss of earnings, including loss of earning potential;
- d) Harm to reputation or dignity; and
- e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

Rehabilitation should include medical and psychological care as well as legal and social services.

Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following:

- a) Cessation of continuing violations;
- b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;
- c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;
- d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;
- e) Apology, including public acknowledgement of the facts and acceptance of responsibility;

- f) Judicial or administrative sanctions against persons responsible for the violations;
- g) Commemorations and tributes to the victims;
- h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;
- i) Preventing the recurrence of violations by such means as:
  - Ensuring effective civilian control of military and security forces;
  - Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces ;
  - Strengthening the independence of the judiciary;
  - Protecting persons in the legal, media and other related professions and human rights defenders;
  - Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials;
  - Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;
  - Creating mechanisms for monitoring conflict resolution and preventive intervention.

## **XI. PUBLIC ACCESS TO INFORMATION**

States should develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these principles and guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.

## **XII. NON-DISCRIMINATION AMONG VICTIMS**

The application and interpretation of these principles and guidelines must be consistent with internationally recognized human rights law and be without any adverse distinction founded on grounds such as race, colour, gender, sexual orientation, age, language, religion, political or religious belief, national, ethnic or social origin, wealth, birth, family or other status, or disability.

## Annex D

### UN Committee on Economic, Social and Cultural Rights, General Comment No. 7 on Forced Evictions

#### GENERAL COMMENT 7

*The right to adequate housing (art. 11.1 of the Covenant):  
forced evictions*

*(Sixteenth session, 1997)*

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are *prima facie* incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.
2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to “undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made”.<sup>1/</sup> In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the “fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them” was recognized.<sup>2/</sup> Agenda 21 stated that “people should be protected by law against unfair eviction from their homes or land”.<sup>3/</sup> In the Habitat Agenda Governments committed themselves to “protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided”.<sup>4/</sup> The Commission on Human Rights has also indicated that “forced evictions are a gross violation of human rights”.<sup>5/</sup> However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.
3. The use of the term “forced evictions” is, in some respects, problematic. This

1/ Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May - 11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).

2/ Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.

3/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Vol. I (A/CONF.151/26/Rev.1(vol.I)), annex II, Agenda 21, chap. 7.9 (b).

4/ Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).

5/ Commission on Human Rights resolution 1993/77, para. 1.

expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticized the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions”, primarily since all suggested alternatives also suffer from many such defects. The term “forced evictions” as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.
5. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be “determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society”.
6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.
7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.
8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced



evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.
10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.
11. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.
12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of

- private property as these relate to the practice of forced eviction.
13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted”.
  14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person’s home can only take place “in cases envisaged by the law”. The Committee observed that the law “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”. The Committee also indicated that “relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted”.
  15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
  16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.
  17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, *inter alia*, that “international agencies should scrupulously avoid involvement in projects

which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account”.<sup>6/</sup>

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that “while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights” (Part I, para. 10).
19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the “number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction”, (b) “legislation concerning the rights of tenants to security of tenure, to protection from eviction” and (c) “legislation prohibiting any form of eviction”.<sup>7/</sup>
20. Information is also sought as to “measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) ‘beautiful city’ campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites”.<sup>8/</sup> However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.
21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

6/ E/1990/23, annex III, paras. 6 and 8 (d).

7/ E/C.12/1999/8, annex IV.

8/ Ibid.

The Centre on Housing Rights and Evictions (COHRE), in partnership with Rights Action, undertook an extensive fact-finding mission to Guatemala in July 2003. This COHRE report is one result of that fact-finding mission and addresses the issue of reparations for the forced eviction and displacement of Maya Achi communities in Guatemala, specifically in the context of the construction of the Pueblo Viejo-Quixal Hydroelectric Project (Chixoy Dam). Between 1980 and 1982, an estimated 440 persons of the Río Negro community were brutally murdered in a series of massacres, the principal means used to forcibly evict the community in order to make way for the Chixoy Dam Reservoir. Prior to the massacres, a large number of residents had peacefully resisted displacement from their village.

Both the Inter-American Development Bank (IDB) and the World Bank provided funding for and supervised the Chixoy Dam Project. The Chixoy Dam case clearly highlights the complicity of international financial institutions, including the IDB and the World Bank, in the brutal and unlawful displacement of indigenous communities from their lands in Guatemala. Although the international community has, to a limited extent, repudiated the Government of Guatemala for the mass killings, 'disappearances', torture and mass displacements which occurred at the hands of the State during the 1961-1996 civil war, few have raised their voice with regard to the role of international financial actors in perpetuating, or failing to stop, such bloodshed and other grave abuse of human rights. This report redresses that disparity in concluding that liability lies with, and reparations are due from, not only the Government of Guatemala but these international financial institutions as well.

COHRE is an independent, international, non-governmental human rights organisation with its International Secretariat based in Geneva, Switzerland. COHRE undertakes a wide variety of activities supporting the full realisation of housing rights for everyone, everywhere. In this regard, COHRE actively campaigns against and opposes forced evictions wherever they occur or are planned and works in all regions of the world toward the realisation of the right to adequate housing.

The COHRE ESC Rights Litigation Programme, based in the U.S., provides legal advice to, and undertakes economic, social and cultural rights litigation in support of, victims of human rights violations and locally-based lawyers and organisations.

The COHRE Americas Programme, based in Porto Alegre, Brazil, is responsible for COHRE's activities in the Western Hemisphere, including monitoring the status of housing rights, conducting trainings and other educational projects, and assisting locally-based organisations and individuals who seek to enforce their housing rights.



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