

P-894-04, Guatemala

Sobrevivientes de la Comunidad de Río Negro y otras comunidades similares en
Guatemala

(The Chixoy Dam Case)

Brief in Support of the Appeal Petition filed on December 7, 2011

May 8, 2012

Introduction

1. The Global Initiative for Economic, Social and Cultural Rights, Rights Action and the International Human Rights Clinic at Western New England University School of Law respectfully submit the following brief to the Inter-American Commission on Human Rights in support of the appeal filed in the above referenced case.
2. This brief supports the following conclusions:
 - Member States of the World Bank and the Inter-American Development Bank (IDB) are proper parties in the review of their conduct in developing and administering the bank's policy in the present case.6
 - The Commission has jurisdiction to review the conduct of the World Bank and IDB in the present circumstances. 14

The petition satisfies the admissibility requirements of the Inter-American Commission on Human Rights

A. The Claims Meet the Exhaustion Requirements of Article 31 of the Rules of Procedure of the Commission

3. Article 31 of the Rules of Procedure of the Inter-American Commission on Human Rights stipulates that the Commission will only proceed on a petition where domestic remedies have been exhausted. "This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework. When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted is excused."¹ Remedies under domestic law will be deemed exhausted if "the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them."²

4. The Commission's jurisprudence has stressed the affirmative duty on States under Article 1 to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms."³ "The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction."⁴

5. As referenced in ¶ 11 of the Appeal Petition, the Commission squarely addressed the application of Article 31 in *Plan de Sanchez v. Guatemala*. *Plan de Sanchez* involved a massacre by the Guatemalan military in July 1982 against an indigenous community located near Rio Negro. The Guatemalan government challenged the petition's admissibility, claiming the petitioners had failed to exhaust domestic remedies. After reviewing the efficacy and impartiality of Guatemala's justice system, the Commission held that Guatemala had prevented the petitioners "from invoking domestic remedies for a period of years due to the fear which affected them and the general community."⁵ The Commission further stated:

The rule of exhaustion does not require the invocation of remedies where this would place the physical integrity of the petitioner at risk, or where this offers no possibility of success. In addition to the information in the record, Commission reports from the period under study document the vulnerability of populations in rural areas to human rights abuses, and the resulting climate of insecurity, and further indicate that, at the time of the events denounced, the judiciary "had been stripped of its independence, autonomy and impartiality."⁶

¹ *Plan de Sanchez v. Guatemala*, Report No. 31/99, Case 11.763 ¶ 24 (11 March 1999).

² Convention, art. 46.

³ *Advisory Opinion on the Exceptions to the Exhaustion of Local Remedies*, OC 11/90 ¶ 34.

⁴ *Velasquez Rodriguez*, IACHR No 4. (1988).

⁵ *Id.* at ¶ 27.

⁶ *Plan de Sanchez* at ¶ 27.

The lack of domestic remedies in Guatemala, where the violations occurred, include lack of domestic remedies to hold Member States of the World Bank and Inter-American Development Bank accountable for their complicity in human rights violations in the context of the Chixoy Dam project.

6. An examination of the U.S. State Department's Human Rights Reports for Guatemala in 1999 and 2004 indicates that the human rights situation in Guatemala remains largely unchanged since *Plan de Sanchez*. In 1999, the Report begins its evaluation of the judiciary with the following:

The Constitution provides for an independent judiciary; however, the judicial system often fails to provide fair trials due to inefficiency, corruption, insufficient personnel or funds, and intimidation of judges, prosecutors, and witnesses.⁷

The U.S. State Department further found that "Death threats and intimidation of the judiciary were commonplace in most cases involving human rights violations, particularly where the defendants were current or former members of the military, military commissioners, or PAC's."⁸

7. In 2004, the Report begins its evaluation of the judiciary with the following:

The Constitution provides for an independent judiciary; however, the judicial system often fails to provide fair trials due to inefficiency, corruption, insufficient personnel or funds, and intimidation of judges, prosecutors, and witnesses.⁹

The report goes on:

Judges and prosecutors continued to receive threats designed to influence pending decisions or to punish past decisions. Death threats and intimidation of the judiciary were common in cases involving human rights violations. Witnesses often were too intimidated to testify. Plaintiffs, witnesses, prosecutors, and jurists involved in high-profile cases against members of the military or police reported threats, intimidation, and surveillance. Those involved in government corruption cases also were targeted.

8. The Civil Self-Defense Patrols, who were responsible for atrocities in the 1980s, remain effectively immune from prosecution and politically influential in Guatemala. In its 2004 report, the IACHR "observed with concern the threats made by former Patrol leaders against human rights organizations that have publicly expressed their opposition to payment for services rendered that they have been negotiating with the National Government. The Commission [understood] that these threats have also been extended to the Human Rights Ombudsman and the Constitutional Court."¹⁰ MINUGUA came to the same conclusion in its final

⁷ 1999 Country Reports on Human Rights Practices Released by the Bureau of Democracy, Human Rights, and Labor, Guatemala. U.S. Department of State, February 25, 2000.

⁸ *Id.*

⁹ 2004 Country Reports on Human Rights Practices Released by the Bureau of Democracy, Human Rights, and Labor, Guatemala. U.S. Department of State, February 28, 2005.

¹⁰ Annual Report of the Inter-American Commission on Human Rights 2004,

report.¹¹

9. The threats and intimidation against the Rio Negro and other dam-harmed communities continues today. The U.S. State Department Report notes that “Witnesses to the 1982 Rio Negro massacre and lawyers on the case received numerous threats in the months leading up to the October 19 opening of the trial for six former PACs.”¹² In October 2004, judicial proceedings ostensibly began against six low-level PAC members accused of participation in the Rio Negro massacre. The proceedings have languished since that time and there is no indication that they will begin in earnest any time soon, nor will they investigate the conduct of those who ordered and planned the murders.

10. In 2004, Amnesty International launched an urgent action to protest Guatemala’s crackdown against Rio Negro activists.¹³ Amnesty reports that following a peaceful protest at the Chixoy Dam, which came to an end following an agreement between the parties to begin negotiations regarding compensation owed from the Chixoy Dam displacements, Guatemala brought criminal charges against nine leaders of the indigenous communities. Amnesty names a number of activists charged or under criminal investigation, including Daniel Pascual, a political leader and supporter of the Rio Negro and other dam-harmed communities, who did not participate in the Dam protest.

11. As noted at ¶13 of the Appeal petition, other instances of threats and intimidation against members of the Rio Negro and other Dam-harmed communities and their supporters have forced these individuals to flee Guatemala for periods of time.

12. In February 2005, the Guatemalan Constitutional Court enjoined the domestic proceedings in the *Dos Erres* case, including the detention orders against the military perpetrators. In a piece run by the Toronto Star, “Lawyer Julio Cintron, who has defended military officials in other criminal cases, said the decision could serve as a precedent for at least five other cases involving victims of alleged massacres.”¹⁴ During this same period, violence against human rights workers spiked, prompting Amnesty International to send a formal memorandum to the Guatemalan government stating, “The beginning of 2005 witnessed a renewed attack from clandestine groups and organised crime aimed at intimidating and hindering the work of human rights defenders. Twenty-six human rights defenders were reportedly threatened or attacked between 1 January and 25 February 2005.”¹⁵

13. Other states have recently recognized the lack of adequate domestic remedies in Guatemala. As recently as October 2005, the Spanish Constitutional Court granted universal jurisdiction over genocide claims from Guatemala’s civil war.¹⁶ A Federal District Court in Massachusetts equally granted universal jurisdiction over the claims

OEA/Ser.L/V/II.122, Doc. 5 rev. 1, February 23, 2005, at ¶54.

¹¹ MINUGUA’s (U.N. Verification Mission) 9th and Final Report on Fulfillment of the Peace Accords in Guatemala, August 30, 2004, at ¶35.

¹² U.S. State Department Report 2004.

¹³ Amnesty International, Guatemala: Human rights defenders at risk. AMR 34/019/2004.

¹⁴ THE TORONTO STAR, A13 (February 3, 2005).

¹⁵ Amnesty Memo 4/20/2005.

¹⁶ Tribunal Constitucional de España, Sala Segunda, Sentencia 237/2005 de septiembre de 2005.

of Guatemalans who had been tortured, kidnapped and endured the murder of family members by government forces. U.S. federal courts are equally bound by an exhaustion requirement and in taking jurisdiction, the Court held that it is generally not required when foreign remedies are unobtainable, ineffective, inadequate or obviously futile.¹⁷

14. A review of the public record leaves no doubt that there is still no safe and impartial mechanism where victims of the government's past crimes, and the inhabitants of Rio Negro and other Dam-harmed communities in particular, can obtain remedy including remedies against the Member States of the World Bank and Inter-American Development Bank that were complicit in human rights violations in the context of the Chixoy Dam. Although MINUGUA's Final Report notes that progress has been made towards establishing democratic institutions in Guatemala, there has still only been limited success in consolidating the rule of law and overcoming impunity.¹⁸ The progress made by Guatemala politically does not mean that it has met its affirmative duty to ensure adequate remedies under Article 1(1) of the Convention.¹⁹

B. The Claims meet the Timeliness Requirements of Article 32 of the Commission's Rules of Procedure

15. Article 32 of the Rules of Procedure of the Inter-American Commission on Human Rights requires, when an exception or exceptions to the general rule of exhaustion of domestic remedies applies, that the petition be submitted to the Inter-American Commission on Human Rights in a reasonable period of time, as determined by the Commission.

16. Since their brutal forced eviction, the survivors of the Río Negro community have been living in extreme poverty with little access to advocates or counsel willing or able to assist them with bringing claims before the Inter-American Commission on Human Rights. Timeliness must be viewed in the context of the extreme poverty experienced by the dispersed survivors due to their forced eviction, the continuing climate of fear and intimidation that the above noted human rights reports have demonstrated remains a constant feature of Guatemala today, as well as the ongoing human rights violations against the Rio Negro and other dam-harmed communities.

17. The facts set out in the appeal demonstrate that the survivors of Rio Negro have not unreasonably delayed in filing this petition with the Commission. The poverty and repression which followed the forced eviction from Rio Negro prevented these communities from taking the steps necessary to bring this claim forward. Outside assistance was unavailable until the mid-1990s when the crimes at Rio Negro were uncovered by independent journalists and survivors were encouraged to seek reparation for their losses. Furthermore, access to legal counsel was significantly limited until 2002.

18. It was not until 2003 that the Centre on Housing Rights and Evictions, at the

¹⁷ *Xuncax v. Gramajo*, 886 F. Supp. 162, 178 (D. Mass. 1995).

¹⁸ MINUGUA Report at ¶26

¹⁹ *Advisory Opinion on the Exceptions to the Exhaustion of Local Remedies*, OC 11/90 ¶ 34; See also *Velasquez Rodriguez*, IACHR No 4. (1988).

request of Rights Action, another non-governmental organization working in support of the Río Negro community, was able to begin its investigation into the facts of this Petition. With those facts now verified by COHRE and Rights Action, the community of Río Negro is finally able to safely petition the Inter-American Commission.

19. Timeliness must be viewed in the context of the significant poverty experienced by the dispersed survivors, the continuing climate of fear and intimidation that the above noted human rights reports have demonstrated remains a constant feature of Guatemala today, as well as the ongoing human rights violations against the Río Negro and other dam-harmed communities. Under these circumstances, it cannot be said that filing the petition in August 2004 demonstrated an unreasonable delay.

20. Based on the forgoing circumstances, and in particular the direct and intentional action of the Government of Guatemala to stifle the community's search for justice at the domestic level, the length of time that has elapsed since the forced eviction of the Río Negro community to the time of the submission of this Petition is reasonable.

Member States of the World Bank and the IDB are proper parties in the review of their conduct in developing and administering the bank's policy in the present case.

A. The Human Rights Obligations of OAS States can apply Extraterritorially

21. Extraterritorial obligations can be supported by the language of the Charter of the United Nations, and this language can be used to support the application of extraterritorial obligations in all other treaties. Article 55 states in relevant part:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: 1 3. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.²⁰

22. Article 56 requires that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."²¹

23. Furthermore, these articles take precedent over any other international instruments, including bilateral, agreements. Article 103 of the Charter of the United Nations states:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement (such as instruments creating the World Bank and the

²⁰ Charter of the United Nations, Art. 55, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* 24 October 1945.

²¹ *Id.* at Art. 56.

Inter-American Development Bank), their obligations under the present Charter shall prevail.²²

24. The International Law Commission has adopted Articles on Responsibility of States for Internationally Wrongful Acts. These articles are based on international law and international law jurisprudence. The Articles do not recognize a condition related to jurisdiction, but rather whether an act that violates international law can be attributed to a State.²³

25. The Articles also recognize that there may be shared responsibility for an internationally wrongful act, in other words while the State in which an internationally wrongful act occurs may also be liable and held accountable for that act, other States that have contributed to that internationally wrongful act share responsibility and consequently can be held accountable. Specifically, Article 16, which is based on customary international law, states that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.²⁴

26. Furthermore, the Articles on Responsibility of States for Internationally Wrongful Acts address violations of preemptory norms, which include the gross violations of human rights that occurred during implementation of the Chixoy Dam project. Article 40 considers serious breaches of preemptory norms as those that involve "a gross or systematic failure by the responsible State to fulfill the obligation"²⁵ in question. And Article 41 addresses consequences for such serious breaches, including cooperating "to bring to an end through lawful means any serious breach within the meaning of Article 40"²⁶ and mandates that "no State shall recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation."²⁷

27. The jurisprudence of the Commission also recognizes that human rights obligations under the Convention and the Declaration extend beyond the territory of each State. In *Coard et. al. v. United States*,²⁸ the Commission accepted a claim against the United States for the human rights violations resulting from its invasion of Grenada. The Commission stated, "Given that the individual rights inhere simply by virtue of a person's humanity, each American State is obliged to uphold the protected rights of any person subject to its jurisdiction." The Commission held that the phrase

²² *Id.* at Art. 103.

²³ *See*, International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 1, 2 and 3 (adopted by the ILC in 2001).

²⁴ *Id.* at Art. 16.

²⁵ *Id.* at Art. 40.

²⁶ *Id.* at Art. 40.

²⁷ *Id.* at Art. 41(2).

²⁸ Case 10.951, Report No. 109/99, September 29, 1999.

“subject to its jurisdiction” may, under given circumstances, refer to conduct with an extraterritorial locus where the person concerned is present in the territory of one state, but subject to the control of another state – usually through the acts of the latter’s agents abroad.”

28. The notion of “control” has been broadly interpreted in subsequent cases. In *Alejandro v. Cuba*,²⁹ the Commission held Cuba responsible under the Declaration for shooting down a civilian aircraft outside its airspace. The Commission did so, despite the fact that there was no previous relationship between the Cuban State and the victims, and no control over them prior to the shooting.

29. Similarly, extra-territorial application of inter-American human rights law was addressed in the admissibility decision in *Saldaño v. Argentina*. There the Commission asserted that:

The Commission does not believe, however, that the term “jurisdiction” in the sense of Article 1(1) is limited to or merely coextensive with national territory. Rather, the Commission is of the view that a state party to the American Convention may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state’s own territory.³⁰

30. Member States sitting on the Board of Directors of the World Bank and the IDB exercise a significant level of control over the individuals affected by their projects. These projects often require the displacement and relocation of individuals and communities. In granting funds for these projects, and determining with which governments it is willing to work, the boards of directors of the development banks set the terms and conditions under which each project takes place, and thus exercise direct control over what will befall these communities.

31. The World Bank itself acknowledged in its 1982 Operational Manual Statement (“OMS”) 2.34 on Tribal Peoples and Bank-Financed Projects that protective measures were necessary to ensure the human rights of indigenous peoples affected by its projects. In OMS 2.34 the World Bank stated:

Unless special measures are adopted, tribal people are more likely to be harmed than helped by development projects that are intended for beneficiaries other than themselves. Therefore, whenever tribal peoples may be affected, the design of projects should include measures or components necessary to safeguard their interests, and, whenever feasible, to enhance their well-being.³¹

As a general policy, the Bank will not assist development projects that knowingly involve encroachment on traditional territories being used

²⁹ Case 11.589, Report No. 86/99, September 29, 1999.

³⁰ Inter-American Commission on Human Rights, *Saldaño v. Argentina*, Report No. 38/99 (11 May 1999).

³¹ “Tribal Peoples in Bank-Financed Projects,” Operational Manual Statement 2.34, February 1982, ¶ 4.

or occupied by indigenous peoples unless adequate safeguards are provided.³²

32. The military dictatorship that ruled Guatemala was a notorious human rights violator. In its 1981 Special Report, the IACHR testified to the "massive deaths of Campesinos and Indians" that had taken place at the hands of the dictatorship.³³ The Report even details the first stages of the massacres in Rio Negro that took place in March of 1980. Given these particulars, it strains all credulity to insist that Member States should not have been on notice that they had a controlling stake in the lives of these individuals.

33. Even if the Commission finds that the Member States did not exercise control over the victims of Rio Negro massacres, the Member States, nonetheless, had a separate obligation to *respect* the human rights of individuals outside their jurisdiction. Article 1(1) of the Convention creates two distinct obligations on States Parties:

The State Parties to this convention undertake to respect the rights and freedoms recognized herein *and* to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination...

The first obligation "to respect the rights and freedoms recognized herein," is a negative obligation to refrain from interfering with the enumerated rights of the Convention. Its plain meaning binds Parties in all their conduct, regardless of whether it affects individuals inside or outside their jurisdiction. This can be distinguished from the second obligation created by article 1(1), which is a positive obligation to establish institutions to ensure all persons the free and full exercise of those rights and freedoms.³⁴

34. Likewise, nothing in the Declaration, which applies to states that have not ratified the Convention, limits the obligations of states to respect human rights to their domestic territory.

B. Member States remain responsible for their human rights obligations when operating through International Organizations

35. State action through international organizations has an increasingly profound impact on the human rights of individuals outside their territory. Member States' obligations do not change simply if they pass their conduct through the formalities of an international organization.³⁵ A "state cannot by delegation (even if this be genuine)

³² OMS 2.34, ¶ 5.

³³ Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.53, doc. 21 rev. 2, October 13, 1981.

³⁴ *Velasquez Rodriguez*, at ¶ 169; see also S. Davidson, *The Inter-American Human Rights System*, (Dartmouth Publishing 1997) at 37.

³⁵ See Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Right, Specifically 8. Definition of extraterritorial obligations. For the purposes of these Principles, extraterritorial obligations encompass: a) obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory; and b) obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through

avoid responsibilities for breaches of its duties under international law.³⁶ Nor can States evade their obligations under customary law and general principles of law by creating an international organization that would not be bound by the legal limits imposed upon its Member States. International authorities have repeatedly held that Member States remain responsible for their human rights obligations when operating in an international organization.

36. In *Richard Waite and Terry Kennedy v. Germany*, the European Court of Human Rights held Germany responsible for acts of the European Space Agency that violated Germany's obligations under the European Convention on Human Rights. Specifically, the Court held that Germany's human rights obligations continued to apply regardless of whether the acts in question were attributed to the European Space Agency. The European Court stated, "It would be incompatible with the purpose and object of the Convention if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution."³⁷

37. Moreover, General Comment No. 8 of the United Nations Committee on Economic, Social and Cultural Rights, released in December of 1997, addressed the obligation of Members of the United Nations Security Council to take steps to ensure that economic sanctions imposed by the United Nations did not infringe on the obligations held by the Members of the Security Council under the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration on Human Rights.³⁸ In establishing that the obligations of Member States to the Covenant continued to apply to actions taken on their behalf by the UN, the Committee stated that the Member States of the Security Council were responsible to ensure that:

First, [the rights under the Covenant] must be taken fully into account when designing an appropriate sanctions regime.

Second, effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that

international cooperation, to realize human rights universally; and Obligation to avoid causing harm States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct: and Obligations of States as members of international organisations As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State. available at http://oppenheimer.mcgill.ca/IMG/pdf/Maastricht_20ETO_20Principles_20-20FINAL.pdf.

³⁶ Ian Brownlie, "State responsibility: the problem of delegation" in *Volkerrecht zishen normativen Anspruch und politischer Realitat*, Gintehr K. et al eds. 300-01 (1994).

³⁷ *Richard Waite and Terry Kennedy v. Germany*, nos. 26083/94 & 28934/95, ECHR (1999), ¶ 67.

³⁸ The relationship between economic sanctions and respect for economic, social and cultural rights: 12/12/97. E/C. 12/1997/8 CESCR General Comment 8, ¶ 11.

sanctions are in force.

Third, the external entity has an obligation to take steps, individually and through international assistance and cooperation, especially economic and technical in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.³⁹

No less a duty to anticipate the human rights impacts of collective action through international organizations should apply in the Americas.

38. The Maastricht Principles on extra-territorial obligations recognized in Principle 15 that:

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.⁴⁰

39. Furthermore, the International Law Association (ILA) recently published a comprehensive report on the accountability of international organizations.⁴¹ Expressive of the consensus of leading publicists, the 2004 ILA Report explains that Member States of an organ of an international organization, such as the Board of Directors, maintain a fundamental obligation to exercise due diligence in reviewing the acts of that organization:

Member States as members of an organ of an [international organization] and agents of an [international organization] have a fundamental obligation to ensure the lawfulness of actions and decisions.

Members of an [international organization] have a duty to exercise adequate supervision of the IO, i.e. to ensure that it is operating in a responsible manner so as to protect not only their own interest but also that of third parties.⁴²

The ILA goes on to note that membership of an [international organization] does not

³⁹ *Id.* ¶¶ 12-14.

⁴⁰ Maastricht Principles on extra-territorial obligations in the area of economic, social and cultural rights, Principle 15 (adopted by international human rights experts on 28 September 2011). The Maastricht Principles are a restatement of existing conventional and customary international law in the area of extra-territorial obligations as examined in the Commentary to the Maastricht Principles.

⁴¹ International Law Association Berlin Conference (2004), *Accountability of International Organizations*. Found in *International Organizations Law Review* 1: 221-293, 2004. Available at http://www.ila-hq.org/html/layout_committee.htm.

⁴² ILA Report at 240.

suspend or terminate the responsibility of any State for continuing compliance with rules of international law applicable to that state.⁴³

40. Member States' human rights obligations are independent of those held by Guatemala, the World Bank and the IDB, and must be addressed at present regardless of whether the Commission accepts the petition against Guatemala or the banks.

41. The Tilburg Guiding Principles on the World Bank, IMF and Human Rights recognizes member states responsibility as being universal and concerning all state and non-state actors whose activities may affect people's lives. The fifth Tilburg principle states that the primary responsibility remains with the State: States cannot delegate human rights obligations to, for instance, international institutions and relieve themselves of these obligations. As international legal persons, the World Bank and IMF have international legal obligations to take full responsibility for human rights respect in situations where the institutions' own projects, policies or programmes negatively impact or undermine the enjoyment of human rights.⁴⁴

42. By way of contrast with the case of the failed International Tin Council (ITC),⁴⁵ that held that the Member States did not take on concurrent or subsidiary obligations for the contractual obligations undertaken by the ITC, the Member States in the present case have obligations under the Convention and the Declaration independent of their obligations as members of the development banks. Thus, the issue in this case is not whether the Member States took on new obligations by virtue of their membership in international organizations. This case deals only with the responsibility of Member States to continue to respect their independent and pre-existing obligations when acting collectively through international organizations.⁴⁶

43. Recognizing a State's due diligence obligations will not impede the independent functioning of the World Bank or the IDB, nor will it place an undue burden or absolute responsibility on Member States. Such a step would only require States on the Board of Directors to take reasonable steps and establish mechanisms that ensure that projects funded by the Bank do not result in human rights atrocities.⁴⁷

⁴³ ILA Report at 245.

⁴⁴ The Guiding Principles are published as part of the book *World Bank, IMF and Human Rights*, Willem van Genugten, Paul Hunt and Susan Mathews, (eds), Nijmegen: Wolf Legal Publishers, 2003, ISBN 9058500535, 255 p., p.247-255. Available online at <http://www1.umn.edu/humanrts/instate/Tilburg%20Guiding%20Principles%5B1%5D.pdf>.

⁴⁵ In the ITC case, entities to whom the bankrupt ITC had financial obligations failed in their attempt to hold the Member States liable in the British Courts.

⁴⁶ See Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Right, specifically 15. Obligations of States as members of international organisations As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State; and 16. Obligations of international organizations The present Principles apply to States without excluding their applicability to the human rights obligations of international organisations under, inter alia, general international law and international agreements to which they are parties.; http://oppenheimer.mcgill.ca/IMG/pdf/Maastricht_20ETO_20Principles_20-_20FINAL.pdf.

⁴⁷ See Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Right, specifically 14. Impact assessment and prevention States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws,

44. The World Bank and IDB had every opportunity to prevent these human rights atrocities by simply heeding evidence and warnings of the human rights violations occurring at that time in Guatemala generally, and this region specifically. In addition, funding continued even after numerous site visits to Rio Negro, during which it would have been impossible for World Bank officials to claim ignorance.⁴⁸

45. The creation of the World Bank Inspection Panel and the Independent Investigation Mechanism at the IDB in 1994 demonstrates the ease with which protections could have been put in place in the case of the Chixoy Dam. They also provide an avenue of potential redress to victims of human rights violations from current bank projects. However, because these mechanisms do not have retroactive jurisdiction, they are unavailable to the victims of the Rio Negro massacre.⁴⁹

policies and practices on the enjoyment of economic, social and cultural rights. The results of the assessment must be made public. The assessment must also be undertaken to inform the measures that States must adopt to prevent violations or ensure their cessation as well as to ensure effective remedies; and 41. Reporting and monitoring States must cooperate with international and regional human rights mechanisms, including periodic reporting and inquiry procedures of treaty bodies and mechanisms of the UN Human Rights Council, and peer review mechanisms, on the implementation of their extraterritorial obligations in relation to economic, social and cultural rights, and redress instances of non-compliance as identified by these mechanisms. See at Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Right;

http://oppenheimer.mcgill.ca/IMG/pdf/Maastricht_20ETO_20Principles_20-_20FINAL.pdf

⁴⁸ See Draft Articles 12 and 29 on the Responsibility of International Organizations, adopted by the International Law Commission at its sixty-third session, in 2011, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/66/10, para. 87) Specifically, Article 12: Extension in the time of the breach of an international obligation states that: 2.) The breach of an international obligation by an act of an international organization having a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.

3.) The breach of an international obligation requiring an international organization to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation; and

Article 29: Continued Duty of Performance. The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible international organization to perform the obligation breached.

⁴⁹ See Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, specifically 37. General obligation to provide effective remedy. States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim. To give effect to this obligation, States should:

- a) seek cooperation and assistance from other concerned States where necessary to ensure a remedy;
- b) ensure remedies are available for groups as well as individuals;
- c) ensure the participation of victims in the determination of appropriate remedies;
- d) ensure access to remedies, both judicial and non-judicial, at the national and international levels; and
- e) accept the right of individual complaints and develop judicial remedies at the international level.

38. Effective remedies and reparation. Remedies, to be effective, must be capable of leading to a prompt, thorough and impartial investigation; cessation of the violation if it is ongoing; and adequate reparation, including, as necessary, restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. To avoid irreparable harm, interim measures must be available and States must respect the indication of interim measures by a competent judicial or quasi-judicial body. Victims have the right to truth about the facts and circumstances surrounding the violations, which should also be disclosed to the public, provided that it causes no further harm to the victim.;

The Commission has jurisdiction to review the conduct of the World Bank and IDB in the present circumstances

A. The World Bank and the IDB have obligations under International Law.

46. The ICJ recognized that international organizations have legal personality under international law when it held that the United Nations had the capacity to bring a claim on its own behalf against Israel.⁵⁰ International legal personality entails international responsibility for wrongful acts. The ICJ has equally stated that international organizations are subjects of international law, and as such, are bound by any obligations incumbent upon them under general rules of international law.⁵¹

47. Where an institution has an international legal personality distinct from its member States and it has functions which usually give rise to state responsibility, then it is in principle reasonable to impute responsibility to the organization for wrongful acts attributed to it.⁵² For instance, it is recognized that international organizations are responsible under international law even where national courts may be limited by jurisdictional immunity usually granted to such organizations, as an affirmative grant of immunity is a distinct legal question from that of responsibility.⁵³

B. The Commission can take jurisdiction over the World Bank and IDB

48. Nothing in the Convention nor in the Statute of the Inter-American Commission on Human Rights prohibits the Commission from taking jurisdiction over international organizations. In fact, certain provisions specifically recognize that it may be necessary to take such jurisdiction in order to effectively accomplish the Commission's objectives. Article 29, for example, explicitly states that nothing in the Convention shall be interpreted as permitting any *State Party, group, or person* to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.⁵⁴

49. A growing body of *opinio juris*, carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it,⁵⁵ demonstrates that independent entities, sponsored or created by the government to execute governmental functions, are as accountable for governmental obligations as the government would be had it acted directly. The Commission's jurisdiction over the World Bank and the IDB is a necessary consequence of the Member States having vested those institutions with governmental functions, and thus

http://oppenheimer.mcgill.ca/IMG/pdf/Maastricht_20ETO_20Principles_20-_20FINAL.pdf.

⁵⁰ *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion 1949 I.C.J. 174

⁵¹ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 73 at pg. 90

⁵² Ian Brownlie, *Principles of Public International Law*, (4th ed. Clarendon Press, Oxford 1990) at 668.

⁵³ Phillippe Sands and Pierre Kélin, *Bowett's Law of International Institutions*, (5th ed. Sweet & Maxwell, London 2001) at ¶15-094.

⁵⁴ Convention Article 29. (emphasis added).

⁵⁵ *North Sea Continental Shelf Cases*, I.C.J. Reports (1969) 4, at ¶ 77; see also Article 38(1)(d) of the ICJ Statute; Brownlie 1990 at 22.

obligations, within the Americas.

50. Perhaps the clearest statement of this principle comes from the United States Supreme Court in *Lebron v. Nat'l R.R. Passenger Corp.*⁵⁶ The Court explained that the proposition:

that Government-created and controlled corporations are (for many purposes at least) part of the Government itself has a strong basis, not merely in past practice and understanding, but in reason itself. It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form.⁵⁷

Pursuant to a company policy, the National Rail Road Passenger Corp. had refused to post a political advertisement. The First Amendment to the United States Constitution merely states, "Congress shall make no law ... abridging the freedom of speech." The Supreme Court held "where, as here, the Government creates a corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation, the corporation is part of the Government for purposes of the First Amendment."⁵⁸

51. In Canada, the Charter of Rights and Freedoms explicitly limits its application to "legislatures and governments."⁵⁹ Even explicit language as this, however, has yielded when the non-state activity is inextricable from State action:

[T]he Charter applies to private entities in so far as they act in furtherance of a specific governmental program or policy. In these circumstances, while it is a private actor that actually implements the program, it is government that retains responsibility for it. The rationale for this principle is readily apparent. Just as governments are not permitted to escape Charter scrutiny by entering into commercial contracts or other "private" arrangements, they should not be allowed to evade their constitutional responsibilities by delegating the implementation of their policies and programs to private entities.⁶⁰

52. Thus, despite the strict burden for imposing Charter obligations on private entities, "[i]f the act is truly 'governmental' in nature -- for example, the implementation of a specific statutory scheme or a government program -- *the entity performing it* will be subject to review under the Charter."⁶¹

53. In Europe, the European Court of Human Rights (ECHR) only has jurisdiction to review "applications from any person, non-governmental organisation

⁵⁶ *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374 (1995).

⁵⁷ *Lebron*, 513 U.S. at 398.

⁵⁸ *Lebron*, 513 U.S. at 399.

⁵⁹ Canadian Charter of Rights and Freedoms, enacted as Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11, which came into force on April 17, 1982, ¶ 32(1).

⁶⁰ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, 1997 CanLII 327 (S.C.C.) ¶ 42.

⁶¹ *Id.* at ¶ 44 (emphasis added).

or group of individuals.⁶² The ECHR therefore cannot hear a petition from one part of a government against another and accordingly does not allow applications from entities that, while not strictly part of the government, fulfill governmental functions.⁶³ In its definitive statement of what constituted such a "governmental organization," the ECHR held in *Radio France*:

[T]he category of "governmental organization" includes legal entities which participate in the exercise of governmental powers or run a public service under government control. In order to determine whether any given legal person other than a territorial authority falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities.⁶⁴

There is therefore international consensus that when governments empower organizations to fulfill governmental purposes, especially when they themselves retain a controlling stake in the organizations' operations, that such governmental organizations must play by the same rules as the government.

54. All of the *Radio France* criteria apply to both the World Bank and the IDB and their conduct in the Chixoy Dam construction. Like train services, hospitals and radio stations, they have separate legal personality and a significant amount of independence, but they are created, funded and controlled by governments for a public purpose. As the World Bank itself states, it provides loans for public infrastructure development projects with the "mission of global poverty reduction and the improvement of living standards," an undeniably public purpose.⁶⁵

55. Although the allegations in the petition against the World Bank and the IDB have yet to be proven, they are of such gravity that it is incumbent upon this Commission, when nothing precludes it, to interpret its jurisdiction as protecting the Convention's enumerated rights and those "inherent in the human personality." This is especially so because of the very limited class into which the petitioners here fall. The World Bank Inspection Panel and IDB Independent Inspection Mechanism provide recourse to individuals affected by current bank projects. These recourse mechanisms, however, were not created until 1994 and cannot review claims retroactively,⁶⁶ thereby excluding the Rio Negro and other dam-harmed communities. The petitioners here therefore are left in a legal black hole, unable to bring their claims domestically, because of the immunity granted these organizations by domestic legislation, and shut out of the review mechanism currently available to all others

⁶² The European Convention on Human Rights, Rome, November 4, 1950 at art. 34.

⁶³ See *Assanidze v. Georgia*, no. 76976/01 ECHR 2004, *Rothenthurm Commune v. Switzerland*, no. 13252/87, Commission decision of 14 December 1988, Decisions and Reports (DR) 59, p. 251; *Municipal Section of Antilly v. France* (dec.), no. 45129/98, ECHR 1999-VIII; *Ayuntamiento de Mula v. Spain* (dec.), no. 55346/00, ECHR 2001-I; and *Danderyds Kommun v. Sweden* (dec.), no. 52559/99, 7 June 2001.

⁶⁴ *Radio France and others v. France*, no. 53984/00, ECHR 2003 ¶ 26.

⁶⁵ www.worldbank.org

⁶⁶ See World Bank Inspection Panel, Panel Operating Procedures § I(2)(c); Inter-American Development Bank, InterAmerican Development Bank Independent Inspection Mechanism Policy § 1.5(d).

through the organizations themselves.

56. The ILA's 2004 Report states that "No situation should arise where an [international organization] would not be accountable to some authority for an act that might be deemed to be illegal."⁶⁷ The declaratory and investigative nature of the Commission's function provides an appropriate method for reviewing the actions of these governmental organizations, where no other is available. The Commission has no power to seize the assets and therefore the concerns motivating their immunity from domestic courts are absent. The Commission is in a unique position to provide clarity as to the human rights responsibilities of these organizations and the types of precautions necessary to ensure the protection of human rights in the Americas.

C. The World Bank and IDB are obligated to take reasonable precautions to prevent their projects from resulting in human rights violations

57. This Commission's evaluation will be fatally incomplete without due consideration of the World Bank and IDB's responsibility for the atrocities committed at Rio Negro. The standard under the Convention is whether an actor "failed to comply with its obligations to *prevent* and punish" human rights violations in the Americas.⁶⁸ Under EU law as well, international organizations likewise incur legal responsibility for failing to exercise due diligence in the conduct of their activities.⁶⁹ No less a burden should apply to international organizations in the Americas acting on behalf of member states.

58. The petition sets out serious allegations against Guatemalan death squads, whose actions are inextricable from those of the World Bank and the IDB. The funding, the timetables, the logistics and operational planning of the Chixoy Dam construction were the necessary and sufficient conditions for the extermination of hundreds of people. The petition alleges the World Bank and IDB had "direct supervisory roles over the Chixoy Dam project. These roles included on-going site visits in order to ensure that the project was implemented in a sound and lawful manner."⁷⁰ In ¶¶ 57-60, the appeal details considerable supervision and, in the IDB's own words, "effective and efficient information system on loan operations."⁷¹

59. As noted above in ¶ 69 of the appeal petition, the World Bank itself saw the need for special precautions to avoid human rights violations against indigenous groups. Despite this and the Inter-American Commission's 1981 report publicizing gross human rights violations by the military dictatorship in Guatemala against indigenous groups, which by this time was infamous, the petition indicates the banks took no such precautions.⁷²

60. The petition alleges willful blindness to foreseeable criminality. Such conduct

⁶⁷ ILA Report at 254.

⁶⁸ *Bámaca Velásquez Case*, Inter-American Court of Human Rights, Judgment (2000).

⁶⁹ *Fresh Marine Company SA v. Commission of European Communities*, Judgment of the Court of First Instance, 24 October 2000, Case T-178/98, paras. 61 and 82.

⁷⁰ Petition at ¶ 29.

⁷¹ Petition at ¶ 48, quoting the Inter-American Development Bank, *OP-304 Operational Policies* (2003).

⁷² See ¶ 22 above.

would even meet the higher burden for criminal collaboration that is well established under both domestic and international law. The Appeals Chamber for the International Criminal Tribunal for the Former Yugoslavia, in a passage very germane to this case, held that international *criminal* liability attaches when there is:

a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose. ¹ Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk.⁷³

Equally, Walther Funk was held *criminally* liable for crimes against humanity because he either knew what was being received or was deliberately closing his eyes to what was being done in his administration of Reichsbank.⁷⁴ The International Law Commission's draft articles on the responsibility of International Organizations support efforts to hold the World Bank and Inter American Development Bank accountable for the harms caused by their actions.⁷⁵

61. Given that domestic courts and the EU have interpreted the obligations of governments to be equally operative on organizations acting on behalf of governments, and given the fact that nothing precludes the Commission from equally doing so, the Commission should take jurisdiction over the World Bank and the IDB in the present case. The World Bank and IDB's conduct in failing to prevent or punish the human rights violations that took place, when they knew they could and should have done so, is worthy of the Commission's consideration.

III. IDENTITIES OF INDIVIDUAL PETITIONERS

62. This Petition is on behalf of the survivors of the Río Negro community of Baja Verapaz as well as those persons forcibly displaced from other communities due to the construction of the Chixoy Dam. These communities include Aldea Chirramos, Cubulco, Baja Verapaz; Aldea Chitomax, Culbulco, Baja Verapaz; Aldea Chicruz, Cubulco, Baja Verapaz; Caserio Guaynep, Aldea Chicruz, Culbulco, 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,

⁷³ *Prosecutor v. Tadic*, IT-94-1-A (1999).

⁷⁴ The Trial of German Major War Criminals Sitting at Nuremberg, Germany: Judgments, 103 (1946); *see also* the judgment against Albert Speer, *id.* at 124; U.S.A. v. Pohl, et al., NMT Case 4 (1947).

⁷⁵ Please see draft article 14 on the Responsibility of International Organizations. **Article 14:** Aid or assistance in the commission of an internationally wrongful act: An international organization which aids or assists a state or another international organization in the commission of an internationally wrongful act by the state or the latter organization is internationally responsible for doing so if: (a) the former organization does so with knowledge of the circumstances of the internationally wrongful act;

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.

63. While it is impracticable to identify all individuals whose human rights were violations in the context of the Chixoy Dam project, the following have been identified.

Survivors of the Río Negro forced eviction include:

Carlos Chen
Jesús Tecú Osorio

Dominga Sic Ruiz (aka Denese Joy Becker)

Surviving next-of-kin of massacre victims include:

Carlos Chen

Jesús Tecú Osorio

Dominga Sic Ruiz (aka Denese Joy Becker)

MORE TO BE SENT SEPARATELY AT A LATER DATE

35. Massacre Victims of Río Negro Massacre include:

Children Massacred in Río Negro on 13 March 1982

Enriqueta Chen Iboy

Antonio Chen Iboy

Alberta Iboy Sanchez

Juan Iboy Sanchez

Huwaldo Iboy Sanchez

Ishmail Iboy Sanchez

Cesario Osorio Iboy

Silberia Osorio Iboy

Irima Osorio Iboy

Santiago Iboy Osorio
Ermilio Sic Chen
Gilberto Sic Chen
Micaela Osorio Osorio
Ermilio Perez Osorio
Adelia Osorio Iboy
Tuana Iboy Sanchez
Paulina Chen Tecu
Santa Eduarda Chen Chen
Felisa Tum Osorio
Dorotea Sanchez Osorio
Juan Chen Tecu
Catarino Chen Tecu
Marcelo Tecu Osorio
Anastacio Tecu Osorio
Jaime Tecu Osorio
Maria Tum Osorio
Arribal Tum Osorio
Alfredo Sanchez Sic
Mario Sanchez Sic
Miguel Angel Perez Chen
Carmelina Cuxum Lajuj
Maria Salome Cuxum Sanchez
Maria Chen Sanchez
Martin Lajuj Sanchez

Matilde Osorio Chen
Armulfo Osorio Chen
Venedicto Osorio Chen
Pablo Osorio Sanchez
Bacilio Osorio Sanchez
Nicolas Osorio Sanchez
Santo Sanchez Lopez
Francisco Sanchez Lopez
Herlinda Lajuj Iboy
Ricardo Chen Osorio
Margarita Chen Tecu
Siriaca Chen Tecu
Saleima Tecu Osorio
Dominga Tecu Osorio
Tornaja Tecu Osorio
Anastacia Tecu Sanchez
Cristina Tecu Sanchez
Patrocinio Tecu Deleón
Estefana Tecu Deleón
Jesus Tecu Deleón
Juliana Uscap Chen
Jabier Chen Uscap
José Chen Uscap
Ortencia Uscap Teletor
Jesusa Sanchez Perez

Candelaria Perez Osorio

Demitrio Osorio Oboy

Maria Tereza Osorio Iboy

Petronila Osorio Iboy

Anastacia Osorio Iboy

Marcela Osorio Iboy

Viunta Tecu Sanchez

Gregorio Chen Sanchez

Eulalia Chen Osorio

Delfina Chen Osorio

Andelez Chen Osorio

Rosendo Sic Ruís

Tomasa Osorio Chen

Irina Cahuec Osorio

Juana Osorio Sanchez

Elena Osorio Chen

Luiz Osorio Chen

Magdalena Osorio Chen

Joaquina Osorio Mendosa

Lucia Osorio Mendosa

Arcadio Sanchez Gonsalez

Reginaldo Sanchez Gonsalez

Celestina Sanchez Gonsalez

Victoria Osorio Sic

Francisco Sic Sanchez

Pablo Sic Sanchez
Silberia Sic Sanchez
Nareisa Chen Osorio
Leocadio Tun Sanchez
Euseleio Chen Lopez
Frnacisco Sanchez Lopez
Adelia Osorio Iboy
Emiliana Osorio Alvarado
Juan Osorio Alvarado
Evaristo Alvarado
Gavina Chen Osorio
Pablo Chen Ismalej
Bonifacio Lopes Osorio
Francisco Iboy Sic
Silberia Iboy Sic
Micaela Osorio Osorio
Raymanda Sanchez Sanchez
Hector Lopes Osorio
Crispina Tecu Chen
Juana Tum Sanchez
Anastacia Cuxum Lajuj
Juana Cuxum Lajuj
Tomas Cuxum Lajuj
Women Massacred in Rio Negro on 13 March 1982
Paulina Iboy Osorio

Dominga Sanchez Chen
Dorotea Osorio Chen
Marcela Iboy Osorio
Juliana Osorio Osorio
Juana Iboy Osorio
Guillerma Osorio Chen
Nasaria Tum Sanchez
Luisa Osorio Sanchez
Vicenta Iboy Chen
Narcisa Chen Chen
Francisca Sanchez Chen
Catalina Iboy Sanchez
Demetria Osorio Laju
Pualina Chen Tecu
Francisca Sanchez Chen
Petronila Chen Sanchez
Gregoria Alvarado Gonzalez
Siriaca Osorio Osorio
Tranquilina Osorio Chen
Maria del Rosario Osorio Chen
Juana Tecu Osorio
Juana Tum Sanchez
Pedrina Osorio Perez
Tomasita Osorio Chen
Gavina Sic Siana

Vicenta Chen
Juana Osorio Chen
Vicenta Lajuj Chen
Clementina Osorio
Toribia Cuxum Osorio
Inesa Sanchez Iboy
Lucia Sanchez Iboy
Maria Chen Sanchez
Margarita Sanchez
Alejandra Osorio Chen
Rosa Sanchez Osorio
Tomasa Lopez Ixpata
Dominga Iboy Chen
Margarita Chen Tecu
Dominga Iboy Chen
Juana Osorio Chen
Angela Sanchez Chen
Iginia Chen Ixpata
Margarita Chen Uscap
Eugenia Iboy Osorio
Eligio Iboy Osorio
Carmela Osorio Osorio
Juana Perez
Paula Perez
Juana Nicha Sanchez Perez

Bernarda Chen Osorio

Euselia Cahuec

Juliana Iboy Sanchez

Narcisa Osorio Lopez

Eulalia Chen Osorio

Justa Osorio Sic

. Baleriana Sic

Magdalena Ruiz

Marta Julia Chen Osorio

Felipa Osorio Chen

Isabela Osorio Chen

Juliana Chen Iboy

Pedrina Gonzalez Tecu

Julia Sanchez Chen

Manuela Chen Osorio

Maria Dolores Iboy Osorio

Isabela Sanchez Chen

Andrea Iboy Uscap

Matilde Osorio Chen

Survivors of the forced eviction of similarly situated communities will be sent at a later date.

65. The Global Initiative For Economic, Social and Cultural Rights, Rights Action and the International Human Rights Clinic at Western New England University School of Law reserve the right to add additional victims to the above lists.

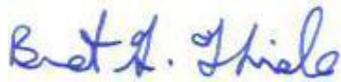
66. Finally, with respect to the World Bank and the Inter-American Development Bank, the Petition is not against the banks themselves, but against those States that had decision-making power within the banks *and* had human rights obligations under either the American Convention on Human Rights or the American Declaration on the

Rights and Duties of Man. Therefore, these claims should be admissible under Article 44 of the American Convention and Articles 19 and 20 of the Statute of the Inter-American Commission on Human Rights.

Conclusion

67. This brief supports the legal adequacy of the claims raised in the petition and subsequent appeal, and the Commission should accept the petition as admissible against all the World Bank and the Inter-American Development Bank so that it may hear the petition on the merits.

Respectfully submitted,



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7. The Trial of German Major War Criminals Sitting at Nuremberg, Germany: Judgments (1946), excerpt of page 103 et seq.
8. Tribunal Constitucional de España, Sala Segunda, Sentencia 237/2005 de septiembre de 2005.
9. *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995)