

**Appeal Submitted by**  
**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,**  
**on behalf of the Survivors of the**  
**Río Negro community and similar Chixoy Dam harmed communities**  
**in the Chixoy river basin, Guatemala (Petitioners)**

Report No. \_\_\_\_\_  
Case \_\_\_\_\_

*Sobrevivientes de la Comunidad de Río Negro y otras comunidades similares en*  
*Guatemala, P-894-04, Guatemala*

*Guatemala: The Chixoy Dam Case*

**I. 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, all of which are international human rights non-governmental organizations, respectfully submit this Petition to support the formal Appeal filed on 27 September 2011 of the decision reported 12 June 2009, whereby the Secretariat of the IACHR summarily rejected the admissibility of the above-noted case because it ostensibly failed to satisfy the requirements of Art. 26 of the Rules of Procedure of the Commission, and other applicable instruments. This appeal is limited to the IAHCR's decision with respect to the Member States of the Inter-American Development Bank (IDB) and the Member States of International Bank for Reconstruction and Development (World Bank)<sup>1</sup> which have human rights obligations under human rights instruments of the Organization of American States,

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<sup>1</sup> The "World Bank" is made up of five closely related institutions, one of which is the International Bank for Reconstruction and Development which funded and supervised the Chixoy Dam project in part. For purposes of this Petition, the International Bank for Reconstruction and Development is referred to as the "World Bank."

and the Government of the United States for both its direct support of the Government of Guatemala and its role as the principal decision-maker on both the World Bank and the IDB with respect to the Chixoy Dam project.<sup>2</sup>

2. This Petition addresses issues related to the illegal forced eviction and other violations of the human rights of the community of Río Negro, Baja Verapaz, Guatemala, violations that began in 1970s and continue to the present. This Petition is also applicable to the illegal and/or forced displacements – and related human rights violations - of other communities due to the construction of the Chixoy Dam. These communities include, not exclusively, 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, 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. All these forced and/or illegal evictions, and other human rights violations occurred in the context of the funding, planning and construction of the Pueblo Viejo-Quixal Hydroelectric Project (Chixoy Dam).

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<sup>2</sup> This Petition does not address the liability of the State of Guatemala because various Petitioners and the State have reached a settlement agreement related to state responsibility for the human rights abuses associated with the Chixoy Dam. Because this agreement has not been implemented, and no reparations have been paid, Petitioners (on behalf of all interested parties) expressly reserve the right to renew claims against the State through re-submission, appeal, or any other available mechanism to seek redress of their grievances.

3. This Petition also asserts violations by those Directors on the Boards of Executive Directors of the World Bank and the IDB which have legal obligations under the American Convention on Human Rights or the American Declaration on the Rights and Duties of Man or both, especially those Directors enjoying a disproportionate amount of voting power (over five per cent) and in particular the Government of the United States of America which held a key role in the decision-making bodies of both the World Bank and the IDB at the time of the Chixoy Dam project.<sup>3</sup>

4. In this regard, with respect to Directors that are also State Parties to the American Convention on Human Rights, this Petition asserts violations of, *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 his or her 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 as read in concert with, *inter alia*, OAS Charter Article 34(k)).

5. In this regard, with respect to Directors that are not State Parties to the American Convention on Human Rights, this Petition asserts violations of the American Declaration on the Rights and Duties of Man, and in particular the right to life (Article I), the right to

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<sup>3</sup> The Directors on the Executive Board of Directors consist of delegations of member governments. In 1983, the following governments had voting power exceeding five percent on the Board of Executive Directors of the World Bank: United States of America (19.2%); United Kingdom (6.15%); West Germany (5.97); Japan (5.03); and France (5.03%). In 1983, the following governments had voting power exceeding five percent on the Board of Executive Directors of the IDB: United States of America (35.0%); Brazil (12.12%), Argentina (10.59%); Mexico (7.80%); and Venezuela (5.68%).

equality before the law (Article II), the right to protection of the law against abusive attacks upon his or her private and family life (Article V), the right to protection for one's family (Article VI), the right to special protection for women during pregnancy and the nursing period and of all children (Article VII), the right to inviolability of his or her home (Article IX), the right to preservation of his or her health through sanitary and social measures relating to food, clothing, housing and medical care (Article XI), the right to resort to the courts to ensure respect for his or her legal rights (Article XVIII), the right to property (Article XXIII) and the right to submit respectful petitions to any competent authority (Article XXIV).

6. The International Law Commission's Draft Articles on the Responsibility of International Organizations support efforts to hold the World Bank and IDB, as well as its Member States, accountable for the harms caused by their actions.<sup>4</sup> Furthermore, the Maastricht Principles on Extra-Territorial Obligations support the principle that States are obligated to abide by their respective human rights obligations for decisions and activities undertaken as members of inter-governmental organizations.<sup>5</sup>

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<sup>4</sup> Please 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

The World Bank and IDB had every opportunity to foresee and significantly prevent these human rights atrocities by 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 and other dam-affected communities, during which it would have been impossible for IDB and World Bank officials to claim ignorance. Accordingly, this article should be applied retroactively because although the funding was authorized years ago, the harm is ongoing.

**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.

<sup>5</sup> Maastricht Principles on Extra-Territorial Obligations in the area of Economic, Social and Cultural Rights,

## II. ADMISSIBILITY

7. This case is admissible before the Inter-American Commission on Human Rights as (a) it is not pending before any other international, inter-government proceedings; (b) domestic remedies do not afford due process; access to domestic remedies has been hindered; and there has been unwarranted delay with respect to domestic remedies; and (c) the Petition has been filed within a reasonable time period given the conditions in Guatemala and the on-going nature of the violations.

8. Article 46 of the American Convention on Human Rights and Article 33 of the Rules of Procedure of the Inter-American Commission on Human Rights (Inter-American Commission) state that the Inter-American Commission shall not consider a petition if its subject matter: (a) is pending settlement pursuant to another procedure before an international government organization of which Guatemala is a member; or (b) essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which Guatemala is a member.

9. This Petition has been submitted solely to the Inter-American Commission. The issues raised in this Petition are not pending before nor have they already been examined by the Inter-American Commission or any other international inter-governmental organization. The work of the United Nations “Truth Commission” (Commission for Historical Clarification) does not implicate the admissibility requirements of Article 33 of the Rules of Procedure of the Inter-American Commission.<sup>6</sup>

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adopted on 28 September 2011 by experts in international law and human rights.

<sup>6</sup> Inter-American Commission on Human Rights, *Plan de Sánchez Massacre case v. Guatemala*, ruling on admissibility, Report No. 31/99, Case 11.763 (11 March 1999).

10. Article 46 of the American Convention on Human Rights and Article 31 of the Rules of Procedure of the Inter-American Commission on Human Rights generally require that remedies of the domestic legal system be exhausted. Article 31, however, provides three exceptions to this general rule. The general rule of exhaustion of domestic remedies shall not apply when: (a) the domestic legislation of Guatemala does not afford due process of law for protection of the right or rights that have been violated; (b) the petitioner has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) there has been unwarranted delay in rendering a final judgment under domestic remedies.

11. The *Plan de Sánchez Massacre*<sup>7</sup> case dealt with similar admissibility issues and provides authoritative guidance with respect to the present Petition. Indeed, the massacres of the Plan de Sánchez and Río Negro communities occurred in the same geographical region, near the town of Rabinal in Department of Baja Verapaz, and during the same period of time, in 1982.

12. The Petitioners have been denied access to the remedies under domestic law and have been prevented from exhausting them. Indeed, when members of the Río Negro community, and the other dam-harmed communities, have attempted to assert themselves and to advocate for justice and/or reparations, they have been met with death threats and imprisonment on trumped up criminal charges and also by indifference and silence by which the Government of Guatemala seeks to silence and/or ignore them. These means have

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<sup>7</sup> See Inter-American Commission on Human Rights, *Plan de Sánchez Massacre case v. Guatemala*, ruling on admissibility, *id.*; Inter-American Court of Human Rights, *Plan de Sánchez massacre case v. Guatemala*, Report No. 31/99, Case 11.763 (29 April 2004).

created a climate of fear and utter hopelessness that have resulted in the dam-harmed communities being unable to seek domestic remedies.

13. In 2003, members of the Río Negro community had to temporarily flee Guatemala in fear for their lives. Since the signing of the “Peace Accords”, in 1996, human rights advocates leading these efforts for justice and reparations have often received threats and/or been attacked. Additionally, after bringing a case against three low-level Civil Patrollers who participated in the Río Negro massacres as “material authors,” a Río Negro survivor testified:

It has been extremely difficult because we all live side by side, victims and perpetrators, and everyone knows who the witnesses are. We have received many threats throughout, some direct, some anonymous; some threatened to kill us once Ríos Montt was back in power. When we arrived at the courtroom for the trial, the patrollers who were not being tried threatened us.<sup>8</sup>

This situation of threat has not substantially changed. Whereas ex-General Ríos Montt was the most powerful politician in Guatemala through the late 1990s and early-mid 2000s, when efforts seriously began to seek justice and reparations for the Chixoy Dam harms and violations, another ex-General – Otto Pérez Molina – has now become the most powerful politician in the country, raising the same concerns and fears amongst the general population in Guatemala, particularly for those people and communities that seek justice and reparations for harms and violations of the past.

14. In the only completed case in which the domestic courts have examined some of the violence that occurred in the area in the early 1980s, the case have focused solely on low-

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<sup>8</sup> Interview with Mr. Carlos Chen, Río Negro survivor (28 September 2000).

level actors (often referred to as “material authors”) rather than the intellectual authors and financiers of those human rights violations.<sup>9</sup> Furthermore, one other case involving slightly more senior perpetrators is still open with no resolution forthcoming.<sup>10</sup> Thus, these rare cases are not only ineffective at providing the Chixoy Dam harmed communities with a just, fair and comprehensive remedy for the human rights violations they have suffered, but continue to be farcical on account of undue delay.

15. Finally, the World Bank and the IDB, and thereby their respective Member States, require States to enact legislation granting them immunity from domestic prosecution.

16. Article 46 of the American Convention on Human Rights and Article 32 of the Rules of Procedure of the Inter-American Commission on Human Rights require, 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.

17. Since their forced evictions and other human rights violations, the survivors of the Chixoy dam harmed communities – particularly that of Rio Negro – 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.

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

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<sup>9</sup> On 30 November 1998, three low-level Civil Patrollers were sentenced to prison after being convicted of participating in the Río Negro massacres. This is the only case which has resulted in any perpetrators being brought to justice

<sup>10</sup> The Río Negro community has sought to hold Captain José Antonio González Solares, who at the time was commander of the Rabinal military base; Erick Ponce, who was commander of the Cobán military base; Lieutenant Colonel Julio Otzoy Colaj; and Benedicto Lucas García, who was the military chief of staff at the time; accountable, though this case is not being undertaken in a timely or realistic manner by the Guatemalan authorities.

the request of Rights Action, another non-governmental organization working in support of the Río Negro community, and other dam harmed communities, was able to begin its investigation into the facts of this Petition (see Addendum 2). With those facts now verified by COHRE and Rights Action, the community of Río Negro and others were finally able to safely petition the Inter-American Commission in 2005. However, after four years of consideration before the Inter-American Commission, and after two requests for briefs on admissibility in early 2006 and on 22 March, 2007, which were provided on 17 May 2006 and 7 April 2007, respectively, the Secretariat of the Inter-American Commission summarily rejected the Petition on 12 June 2009 on the grounds that it ostensibly failed to meet admissibility requirements. Two requests from Petitioners on 18 June 2009 and 22 July 2009 asking for specific information regarding what admissibility criteria was determined to be lacking were never responded to by the Inter-American Commission.

19. Based on the forgoing circumstances, and in particular the direct and intentional action of the Government of Guatemala to stifle the communities' search for justice and remedy at the domestic level, the length of time that has elapsed since the forced evictions and other human rights violations of the Chixoy Dam harmed communities to the time of the submission of this Petition is reasonable.

20. Additionally, many of the human rights violations that began prior to and during the forced evictions are ongoing to this day, including violations of Article 21 (right to property); Article 25 (right to judicial protection); and Article 26 (right to adequate housing) of the American Convention on Human Rights and Article XI (the right to preservation of his or her health through sanitary and social measures relating to food, clothing, housing and medical care), Article XVIII (the right to resort to the courts to ensure respect for his or her

legal rights), Article XXIII (the right to property) and Article XXIV (the right to submit respectful petitions to any competent authority) of the American Declaration on the Rights and Duties of Man.

21. With respect to the violation of the right to adequate housing, as guaranteed in Article 26 of the American Convention, please refer to Addendum 1 which is fully incorporated into this Petition by reference. Also note that the current housing conditions of the Río Negro community – and most of the dam harmed communities - are a direct result of their forced eviction and are in and of themselves in violation of the right to adequate housing as elaborated upon in General Comment No. 4 of the Committee on Economic, Social and Cultural Rights (see Addendum 3).<sup>11</sup>

### **III. FACTS OF THE CHIXOY DAM CASE**

22. The Chixoy case highlights the complicity of international financial institutions (IFIs), including the World Bank and the IDB, in the brutal removal of indigenous communities from their lands in Guatemala. While the Government of Guatemala has, to some small degree, been repudiated by the international community for the mass killings, disappearance, torture and mass displacement and injury which occurred at the hands of the State during the civil war (and which indeed continue to occur in Guatemala), few have challenged the role of international actors in perpetuating the bloodshed, and to date victims have not been able to hold such actors accountable.

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<sup>11</sup> The Government of Guatemala ratified the International Convention on Economic, Social and Cultural Rights on 19 August 1988 and thereby became legally bound to respect, protect and fulfill, *inter alia*, the right to adequate housing.

23. The facts of the forced eviction and displacement of Río Negro and the other dam harmed communities, including the Rio Negro massacres by which the Government of Guatemala implemented its brutal policy of displacement from the Chixoy Dam reservoir basin, have been well-documented by various human rights organizations both within and outside Guatemala.<sup>12</sup>

24. The planning of the Chixoy Dam goes back to the early 1970s, long before the villages of the Chixoy river basin were 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 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.”<sup>13</sup> The Chixoy Dam was raised along a stretch of land blocking the natural path of the Río Negro river in Baja Verapaz, in central Guatemala. The project was financed in large 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>14</sup> Indeed, the project would not have been undertaken but for the involvement of the World Bank and the IDB. It is also important to note that the then State-owned National Institute of Electrification or INDE (*Instituto Nacional de Electrificación*) – an entity that itself was an

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<sup>12</sup> For instance, survivors have published accounts of the massacres and forced eviction as well as 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. See Addenda for further information.

<sup>13</sup> Government of Guatemala, Project Report: Chixoy River – Pueblo Viejo Hydroelectric Project (December 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.

<sup>14</sup> Corruption and technical problems ultimately raised the cost of the 300-megawatt dam from \$340 million to almost \$1 billion.

extension of Guatemala's military regime – was responsible for the administration of the funds and the coordination of the project.

25. The Government of the United States, as the principal decision-maker in the two Banks, was instrumental in securing funding of the Chixoy Dam project. Indeed, evidence suggests that the Chixoy Dam funding was one means by which the Government of the United States circumvented its public denial of funds to the Government of Guatemala from 1977 to 1981, when successive military regimes were planning and carrying out widespread State repression against their own civilian population.<sup>15</sup>

26. From the beginning of the project, INDE failed to consult with the communities that resided along the Río Negro, in the Chixoy Dam basin, despite the fact that the construction of the dam would flood 31 miles of the river valley, leaving many of their communities and homes under water, and that such consultation was required by the right to adequate housing as enshrined in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights and Article 26 of the American Convention on Human Rights as elaborated upon by General Comment No. 7.<sup>16</sup> 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 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 leaving behind their

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<sup>15</sup> See testimony of Shelton H. David to the U.S. House of Representatives, Subcommittee on International Development Institutions and Finance, Committee on Banking, Finance and Urban Affairs, Environmental Impact of Multilateral Development Bank-Funded Project, 29 June 1983.

<sup>16</sup> General Comment No. 7 requires “genuine consultation with those affected” by plans for eviction. See Addendum 3.

homes and lands at Río Negro. INDE's promises soon proved to be deceptive, however, as villagers learned shortly thereafter that the intended resettlement site was in fact grossly inadequate. At the resettlement site, villagers faced conditions far worse than their existing situation at Río Negro, with cramped, poorly constructed houses and infertile land. Today, the resettlement site continues to be nothing more than an urban slum, known as Pacux, located behind a military base on the edge of the town of Rabinal. Indeed, the UN Truth Commission found that the "living conditions in Pacux were precarious and that the land was not adequate for their subsistence agriculture."<sup>17</sup>

27. INDE increasingly became threatening, at least once stating: "If you abandon your land peacefully we will be happy. If you do not, the government can use all its power to remove you from your land using various methods."<sup>18</sup> An INDE Legal Officer also stated that "to be able to get them out, it was necessary to use force and will. Those that wanted to negotiate were negotiated with and those that did not, force was used with them."<sup>19</sup> The UN Truth Commission also found: "INDE still has not complied with the promise to give equal or better lands to the" Río Negro community and that the lands remain un-titled and un-regulated.<sup>20</sup>

28. In order to displace the community, the Guatemalan authorities began to aggressively target the residents of Río Negro with violence, threats and intimidation. INDE officials requested that the Río Negro community turn over their land titles, promising to

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<sup>17</sup> Report of the Commission for Historical Clarification, *Guatemala: Memory of Silence, Exemplary Case Number 10: The Massacres and Elimination of the Río Negro Community*, Chapter VI, Illustrative Cases – Annex 1, p. 48 (Guatemala: CEH, 1999) (see Addendum 6).

<sup>18</sup> Testimony of a survivor of the Río Negro massacres (2003).

<sup>19</sup> Report of the Commission for Historical Clarification, *Guatemala: Memory of Silence, Exemplary Case Number 10: The Massacres and Elimination of the Río Negro Community*, Chapter VI, Illustrative Cases – Annex 1, p. 45 (Guatemala: CEH, 1999) (see Addendum 6).

<sup>20</sup> *Id.*

return them promptly.<sup>21</sup> Months later, when the community requested that the titles be returned, INDE officials claimed they never received them.<sup>22</sup> In March 1980, members of the *Policia Militar Ambulante* (Mobile Military Police), based at the Chixoy Dam site and contracted to provide security for the project shot seven people in Río Negro. The villagers chased the police away and according to the people of Río Negro, while fleeing one officer drowned in the Río Negro. INDE and the Guatemalan army, however, accused the villagers of murdering the police officer and of providing support to 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 the community had signed with INDE. The mutilated bodies were found a week later, and the documents have never been recovered.

29. Throughout this period, 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.

30. In February 1982, after reaching an impasse in discussions with the militarized 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 woman out of the 73 villagers returned to Río Negro – the rest were subjected to torture, including rape, and then murdered by Xococ's Civil Defence Patrol, or PAC, one of the notorious paramilitary

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<sup>21</sup> Witness for Peace, *A People Dammed: The Impact of the World Bank Chixoy Hydroelectric Project in Guatemala*, Washington, DC: Witness for Peace (1996).

<sup>22</sup> *Id.*

units established by the Guatemalan military.<sup>23</sup> On 13 March 1982, ten soldiers and 25 PAC 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 rape.<sup>24</sup> Seventy of the women and 107 children were then brutally murdered, with most of the women dying of strangulation or being 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, and became some of the few witnesses able to recount the details of the massacre. Eighteen of the children survived because they were taken back to Xococ where they were enslaved by the very PAC patrollers who had killed their families. Those who have since escaped have also testified to the unspeakable abuses of that day.

31. 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 a truck owned by *Codifa*, a company under contract of INDE for the Chixoy Dam project.

32. 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. In effect, the Guatemalan Army and PACs had forcibly evicted the people of Río Negro through a series

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<sup>23</sup> The Commission on Historical Clarification found that the Xococ PAC was “armed, trained and guided by the [Guatemalan] Army” and were “sent from then forth in confrontation with the Río Negro inhabitants.” Report of the Commission for Historical Clarification, *Guatemala: Memory of Silence, Exemplary Case Number 10: The Massacres and Elimination of the Río Negro Community*, Chapter VI, Illustrative Cases – Annex 1, p. 46 (Guatemala: CEH, 1999) (see Addendum 6). The Commission on Historical Clarification also concluded that the human rights violations against the Río Negro community were undertaken by “the Guatemalan Army with the Xococ PAC” and that the Río Negro “case demonstrate[s] the intention of the head of the Army to fully or partially destroy said community, independent of the motivations of the authors, which makes this an act of genocide.” *Id.* at pp. 48 – 49.

<sup>24</sup> Thinking that only the men of Río Negro would be targeted, the men hid in the hills around Río Negro. The men of Río Negro, unarmed *campesinos*, witnessed this massacre but could do nothing to stop it.

of four massacres and other forms of violence and intimidation, trying to quiet resistance and exterminate each and every member of the community. Indeed, the Commission on Historical Clarification concluded that the human rights violations against the Río Negro community were undertaken by “the Guatemalan Army with the Xococ PAC” and that the Río Negro “case demonstrate[s] the intention of the head of the Army to fully or partially destroy said community, independent of the motivations of the authors, which makes this an act of genocide.”<sup>25</sup>

33. Broken, terrorized and grieving, the survivors of the community fled their homes and went into hiding. The reservoir was filled soon after this final massacre.<sup>26</sup> The Río Negro massacres sent a clear and direct warning to the other Dam affected communities, none of which protested being evicted (wholly or partially) after the Río Negro massacres. Over the next ten years, the Río Negro survivors began trickling in to the grossly inadequate

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<sup>25</sup> Report of the Commission for Historical Clarification, *Guatemala: Memory of Silence, Exemplary Case Number 10: The Massacres and Elimination of the Río Negro Community*, Chapter VI, Illustrative Cases – Annex 1, pp. 48 - 49 (Guatemala: CEH, 1999) (see Addendum 6).

<sup>26</sup> 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, Baja 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 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, Chapter IV: Status of Human Rights in Several Countries: Guatemala (Section VII. on the right to judicial guarantees)*, OEA/Ser.L/V/II.85.

resettlement site of Pacux, a so-called “Model Village” situated behind a military base on the edge of the town of Rabinal.<sup>27</sup>

34. Once such human rights violations began to occur, INDE, along with the World Bank and IDB in their respective supervisory roles, were effectively put on notice and thereby ought to have known that government agents, including paramilitary forces, were actively carrying out atrocities in order to forcibly evict civilians in order to clear the way for construction of the Chixoy Dam, often with funding and equipment (such as vehicles) from the project itself.

35. Throughout this period, the IDB loaned Guatemala US\$105 million to build the Chixoy Dam 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, with the second installment paid *after* the massacres had occurred. At the very least, the gross negligence and reckless disregard shown by the two Banks in the Chixoy case highlights the role of international financial institutions in fostering a climate of impunity for human rights crimes committed in Guatemala and underscores how powerful international actors ignored and profited from that country’s brutal history of repression. Indeed, all parties behind the project were unjustly enriched due to these atrocities and their actions or inaction exhibited a reckless disregard for the human rights of the Chixoy Dam communities.<sup>28</sup> The International Law Commission’s Draft Articles on the Responsibility of International

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<sup>27</sup> For years, survivors of Río Negro were frequently beaten or raped or both by military personal as they walked past the military base to Pacux, and the community was continually harassed by soldiers stationed at the base.

<sup>28</sup> Black’s Law Dictionary explains “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.” Black’s Law Dictionary, Abridged Sixth Edition, St. Paul: West Publishing Co., 1991.

Organizations support efforts to hold the World Bank and IDB accountable for the harms caused by their actions.<sup>29</sup>

36. Indeed, it appears that INDE encouraged the violence so that their officials could pocket compensation payments due to the villagers. The two Banks which financed and directly supervised the project had an obligation to show due diligence with regard to the implementation of the project, especially given Guatemala's well-known human rights record throughout the 1970s and 1980s.

37. Finally, during the summer months of 2004, the now privatized INDE intentionally cut off electricity and, thereby potable water, to the community of Pacux. As of 18 August 2004, the Pacux community had been without electricity and potable water for seven to eight

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<sup>29</sup> Please See Draft Articles 13, 14 and 23 on the Responsibility of International Organizations, *supra* note 4, which hold:

**Article 13** Breach consisting of a composite act:

1. The breach of an international obligation by an international organization through a series of actions and omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.
2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

**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; and

**Article 23** Force majeure, does not excuse the conduct of the WB and IDB:

- 1) The wrongfulness of an act of an international organization not in conformity with an international obligation of that organization is precluded if the act is due to force majeure, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the organization, making it materially impossible in the circumstances to perform the obligation.

However,

2. Paragraph 1 does not apply if:

- (a) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the organization invoking it; or
- (b) the organization has assumed the risk of that situation occurring.

Because the atrocities committed in the implementation of the dam project were foreseeable, widely reported and avoidable, the World Bank and IDB cannot escape responsibility.

weeks. This cutoff of essential infrastructure is due in part to the fact that since INDE was privatized, the resettlement office had closed and INDE refused to honor any entitlement agreed upon between INDE and the affected communities unless the communities provided written proof that such an entitlement existed. As massacres occurred before compensation terms were finalized and community records of compensation promises disappeared with their leaders and community members, residents of Pacux lack the documents necessary to satisfy INDE. Furthermore, the closure of the resettlement office has resulted in a lack of complaint mechanism for resettled communities, thereby leaving them with no local remedy.

#### **IV. LEGAL LIABILITY OF THE INTER-AMERICAN DEVELOPMENT BANK**

##### **A. Jurisdiction**

**The Inter-American Commission on Human Rights has jurisdiction over the governments that are members of the Organization of American States and over the Board of Executive Directors of the Inter-American Development Bank (IDB), and in particular the Government of the United States of America.**

38. 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>30</sup> United States, 30 percent; Japan, 5 percent; Canada, 4 percent; and other non-borrowing members, 11 percent.

39. The highest authority of the IDB 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 IDB's operations and to make major policy decisions.

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<sup>30</sup> 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 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.

40. The following governments were States Parties to the American Convention on Human Rights and enjoyed disproportionate voting power (over five per cent) on the Board of Executive Directors of the IDB at the time of the events at issue in this Petition: Mexico (7.8%) and Venezuela (5.68%).

41. The following governments were not States Parties to the American Convention on Human Rights, but bound by the American Declaration on the Rights and Duties of Man, and enjoyed disproportionate voting power (over five per cent) on the Board of Executive Directors of the IDB at the time of the events at issue in this Petition: United States of America (35%), Brazil (12.12%) and Argentina (10.59%).

#### **B. Legal Liability of the Inter-American Development Bank**

**The governments that are members of the Organization of American States and on the Board of Executive Directors of the IDB, and in particular the Government of the United States of America, are legally liable for the human rights violations perpetrated against the Río Negro community, and other harmed communities, in the context of the Chixoy Dam project.**

42. In its General Comment No. 2, the Committee on Economic, Social and Cultural Rights stated:

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.<sup>31</sup>

43. Additionally, the international community has reminded “all international financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, to take fully into account ... the obligations under international human rights and humanitarian law on the practice of forced eviction.”<sup>32</sup>

44. The International Law Commission (ILC) has addressed the issue of the international responsibility of States for the internationally wrongful act of an international organization. The ILC, in draft articles on the Responsibility of International Organizations, states in Article 1 that the articles apply to the international responsibility of States for the internationally wrongful act of an international organization.<sup>33</sup> Furthermore, the provisionally adopted Article 4 states, *inter alia*, that an internationally wrongful act has occurred “when conduct consisting of an action or omission: (a) is attributable to the

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<sup>31</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 2 on international technical assistance measures (Art. 22 of the Covenant) (Forth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 45 (1994).

<sup>32</sup> Commission on Human Rights resolution 2004/28, UN Doc. E/CN.4/RES/2004/28 (2004).

<sup>33</sup> Please See Draft Article 1 on the Responsibility of International Organizations, *supra* note 4.

**Article 1** Scope of the present draft articles

1. The present draft articles apply to the international responsibility of an international organization for an internationally wrongful act.
2. The present draft articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

international organizations under international law; and (b) constitutes a breach of an international obligation.”<sup>34</sup>

45. The Maastricht Principles on Extra-Territorial Obligations reaffirm the obligations enunciated in the International Law Commissions draft articles and are relevant to both the IAB and the World Bank. Regarding State responsibility, Maastricht Principle 11 states that:

State responsibility is engaged as a result of conduct attributable to a State, acting separately or jointly with other States or entities, that constitutes a breach of its international human rights obligations whether within its territory or extraterritorially.<sup>35</sup>

Regarding obligations of States as members of international organisations, Maastricht Principle 15 states 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.<sup>36</sup>

46. States that make up the IDB all have human rights obligations. These States should not be able to ignore, or indeed violate these obligations simply by organizing themselves into the IDB or by using the Bank as an agent to carry out policies or practices that violate their respective international human rights obligations. Therefore, each Member-State on the Board of Executive Directors of the IDB has violated its human rights legal obligations,

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<sup>34</sup> Please See Draft Article 4 on the Responsibility of International Organizations, *supra* note 4.

<sup>35</sup> Maastricht Principles on Extra-Territorial Obligations in the area of Economic, Social and Cultural Rights, Principle 11, *supra* note 5.

<sup>36</sup> *Id.* at Principle 15.

as guaranteed by the American Convention of Human Rights or the American Declaration on the Rights and Duties of Man or both, to respect, protect and fulfill the human rights of the Chixoy Dam harmed communities.

47. Indeed, impunity for human rights violations by such entities unfortunately seems to be the rule, as States are in a position to violate their respective human rights obligations through the formation of corporations or inter-governmental organizations that then are used as agents of those States to carry out policies and practices that violate their respective international and domestic legal obligations. That impunity is further entrenched when attempts are made to block victims of those violations from accessing remedies provided by international and regional human rights fora such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

48. The IDB has established basic guidelines with regard to how all IDB projects are implemented. According to the IDB, the actions it performs during project execution are intended to:<sup>37</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;

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<sup>37</sup> Inter-American Development Bank, OP-304 Operational Policies (2003), available on-line at: <<http://www.iadb.org/cont/poli/OP-304E.htm>>.

- 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; and
- Maintain an effective and efficient information system on loan operations.

49. Additionally, 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 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>38</sup>

50. While the Charter of the IDB contains immunity clauses,<sup>39</sup> these clauses do not apply to violations of human rights obligations.<sup>40</sup> Article XI of the Charter (on status, immunities and privileges) states in Section 3 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 organization. With regards to individual immunity, however, Section 8 of

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<sup>38</sup> Inter-American Development Bank, OP-305 Ex-Post Evaluation of Operations (2003), emphasis in original, available on-line at: <<http://www.iadb.org/cont/poli/OP-305E.htm>>.

<sup>39</sup> IDB, Agreement Establishing the Inter-American Development Bank, available on-line at: <<http://www.iadb.org/leg/documents/convenio/english.pdf>>.

<sup>40</sup> Please See Draft Article 32 on the Responsibility of International Organizations, *supra* note 4, **Article 32** states, in relevant part, that:

1) The responsible international organization may not rely on its own rules as justification for failure to comply with its obligations under this part.

Article XI 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.”

51. It is crucial to note that Section 1 of Article XI outlines the section’s scope: “*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 inclusion of Section 1 itself, serves to limit the scope of Article XI by implying that immunity shall be provided to the *extent necessary* to enable the Bank to fulfill its stated objectives. Indeed, human rights violations *must* lie outside the scope of the purpose and function of the IDB. Article XI, therefore, cannot be interpreted to mean that the Bank, and in particular the Board of Executive Directors, can act with complete impunity. Indeed, because they are limited solely to the purposes and objectives of the agency, the privileges and immunities of international organizations are known as “functional privileges and immunities,” and, though modeled after those of states, differ from them in some measure, both in conception and content.<sup>41</sup> Unlike states, international organizations are not “sovereign” and draw on no history of sovereignty and no tradition of sovereign immunity.<sup>42</sup> Furthermore, in any event, courts have consistently held that such broad immunity clauses are unconscionable and thus null and void.

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<sup>41</sup> See, Restatement of Foreign Relations Law, American Law Institute (1987).

<sup>42</sup> *Id.*

52. The language of Section 1 of Article XI therefore provides a means of redress to victims seeking to hold the IDB accountable for its role in human rights violations. Based on the IDB's own admission, the actions performed by it during project execution are intended to, *inter alia*, "ensure that projects are executed in such a way as to attain the planned objectives." Clearly, the project's "planned objectives" would not include human rights violations. Even if these violations would somehow expedite the realization of a project, the means by which to achieve this result would not be in keeping with the IDB's own stated ethos. Therefore, Section 1 of Article XI effectively limits the scope of the IDB's immunity clauses so as *not to cover* gross negligence, reckless disregard, or intentional acts which result in human rights violations. Immunity, therefore, should only be applied in the narrow sense; that is, with regard to the IDB's efforts to fulfill its own stated purposes. Since human rights violations fall outside of this framework, immunity does not apply. This conclusion is wholly consistent with standard legal norms on the application of legal immunity. For example, immunity cannot be used as a defense in situations where there is a demonstrable criminal intent, nor in situations of gross negligence or reckless disregard.<sup>43</sup>

53. The IDB 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 IDB related to the Chixoy Dam project at all. The only admission the IDB made relates to the sedimentary build up which has impeded the dam's function, noting that the agency is now taking steps to prevent further erosion of the surrounding soil.<sup>44</sup> However, by the IDB's own admissions with regard to how they

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<sup>43</sup> Under well-established principles of law, civil liability immunity protection can only be applied in cases that *do not* involve a criminal act, gross negligence, recklessness, or willful or wanton misconduct.

<sup>44</sup> IDB, Proyecto hídrico genera cambios (2000), available on-line at: <<http://www.iadb.org/idbamerica/Archive/stories/2000/esp/c200j3.htm>>.

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

54. In order to establish legal liability with respect to the IDB, Petitioners must address the following questions:

- a) Was there was 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 in-action?; and
- d) Was there *causation* between the act or omission and the injury?

55. Consistent with the IDB's own stated organizational policies and its international human rights obligations, the IDB has a duty to implement its development projects in a manner that does not result in the violation of human rights. While the IDB'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, torture and extra-judicial execution.

56. Based on the atrocities that occurred at Río Negro, it seems clear that the IDB was at a minimum grossly negligent in meeting its responsibility to ensure that the Chixoy 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>45</sup> Gross neglect is defined 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>46</sup>

57. The IDB failed to supervise adequately the Chixoy project. Such supervision, at a minimum, would entail genuine consultation with the communities to be displaced as well as monitoring the methods used to relocate and rehabilitate the effected population. Indeed, genuine consultation with the affected communities is required by General Comment No. 7 on forced evictions. Again, the repression suffered by the Río Negro community did not arise suddenly in 1982 when the massacres occurred, but rather represented a pattern of engagement with the community that was established early on. As early as 1980, these abuses were documented by the Inter-American Commission on Human Rights<sup>47</sup> and were generally known at the time.<sup>48</sup> There is no excuse for the IDB to be unaware of the abuses

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<sup>45</sup> Black’s Law Dictionary, Abridged Sixth Edition, St. Paul: West Publishing Co., 1991.

<sup>46</sup> Black’s Law Dictionary explains “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.” Black’s Law Dictionary, Abridged Sixth Edition, St. Paul: West Publishing Co., 1991.

<sup>47</sup> 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 October 1981), which expressly discusses massacres at Río Negro in the context of the construction of the Chixoy Hydro-electric dam.

<sup>48</sup> The United Nations, the media and non-governmental organisations such as Amnesty International were reporting widely on these gross violations of human rights in Guatemala during the late 1970s and early 1980s. For instance, 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. Additionally, 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, e.g., UNGA Res. 37/184 adopted 17 December 1982 and CHR Res. 1982/31 adopted 11 March 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 expressing “deep concern at the serious violations of human rights reported to take place in Guatemala, particularly those reports of widespread repression, killing and

that were occurring in conjunction with the Chixoy Dam's construction. Yet, no evidence suggests that the Bank intervened in any way on behalf of affected communities. This degree of 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 that does not result in grave human rights violations.

58. The fact that the injuries suffered by the community were associated with the Chixoy Dam's construction was a point addressed in detail above. This leaves Petitioners with the issue of causation, 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 project, information which would help clarify what exactly was known by Bank officials at the time. Nonetheless, Petitioners can infer from information readily available at the time that the Bank either knew, or should have known, about the violent repression of the Río Negro community.

59. Given the well-known human rights situation in Guatemala at the time and the widely known patterns of abuse suffered by the Río Negro community and other similarly affected communities in the context of the Chixoy Dam project, it is reasonable to presume that Bank officials knew or should have known about what was going on with respect to the implementation of their project. Indeed, notes from a project manager disclose that the IDB failed to comprehensively inspect the construction site and reservoir basin due to its documented concern about the violence in the area. The Bank, however, took no responsibility with regards to the violence associated with the project's implementation, and

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massive displacement of rural and indigenous populations"; see also, *e.g.*, 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").

effectively ignored the mounting vulnerability of the community. This gross negligence and reckless disregard on the part of the IDB, whether purposeful or not, inevitably sent a message that the community could be “dealt with” with impunity.<sup>49</sup>

60. The IDB, even under its own stated procedures and policies, failed in its role to effectively supervise the Chixoy project. The IDB continues to refuse to learn from the Chixoy experience, and has not owned up in any way 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 consulted with the victims at Río Negro and no compensation has been offered to the surviving victims.

61. While funding agencies such as the IDB may not be direct perpetrators of human rights violations, the IDB nonetheless had a duty to ensure that the implementation of projects does not result in human rights abuses. In the Chixoy case, the IDB failed miserably to comply with this obligation. Had the IDB taken a different approach, had it intervened, had it fulfilled its obligation to supervise the project as its own policies and human rights obligations require, the massacres likely would have been averted and the brutal forced eviction of the community of Río Negro – let alone illegal forced evictions (partial and complete) of other communities - likely would have never materialized.

## **V. LEGAL LIABILITY OF THE WORLD BANK**

### **A. Jurisdiction**

**The Inter-American Commission on Human Rights has jurisdiction over the governments that are members of the Organization of American States and on the**

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<sup>49</sup> Please See ILC Draft Articles 14 and 23 on the Responsibility of International Organizations, *supra* note 4.

**Board of Executive Directors of the World Bank, and in particular the Government of the United States of America.**

62. Among the stated values of the World Bank are “honesty, integrity, and commitment.”<sup>50</sup> The World Bank Group consists of five closely associated institutions, one of which, the International Bank for Reconstruction and Development, was responsible for directly funding and supervising implementation of the Chixoy Hydroelectric Dam project.<sup>51</sup> The World Bank was established in 1945, and according to the World Bank’s mission it “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>52</sup> The Board of Executive Directors (the Board) is the decision-making body of the World Bank, and responsible for day-to-day activities of the World Bank. The voting power, however, is not equal and certain States enjoy disproportionate power on the Board.

63. At the time of the events referred to in this Petition, none of the governments comprising the World Bank governance structure had both a significant voting share (more than five percent) of the Board of Executive Directors and the obligations conferred by ratifying the American Convention on Human Rights. The Government of the United States, however, controlled the largest voting block with 19.2 per cent of the voting power

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<sup>50</sup> World Bank, Mission Statement (2003), available on-line at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040565~menuPK:34563~pagePK:34542~piPK:36600~theSitePK:29708,00.html>

<sup>51</sup> 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 term “World Bank,” however, refers specifically to only two of the five agencies, the IBRD and IDA.

<sup>52</sup> Please see: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040580~menuPK:34588~pagePK:34542~piPK:36600~theSitePK:29708,00.html>.

on the Board of Executive Directors of the World Bank and is also bound by the American Declaration on the Rights and Duties of Man.

## **B. Legal Liability of the World Bank**

**The governments that are members of the Organization of American States and on the Board of Executive Directors of the World Bank, and in particular the Government of the United States of America, are legally liable for the human rights violations perpetrated against the Río Negro community, and other nearby communities, in the context of the Chixoy Dam project.**

64. In its General Comment No. 2, the Committee on Economic, Social and Cultural Rights stated:

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.<sup>53</sup>

65. Additionally, the international community has reminded “all international financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, to take fully into account ... the obligations under international human rights and humanitarian law on the practice of forced eviction.”<sup>54</sup>

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<sup>53</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 2 on international technical assistance measures (Art. 22 of the Covenant) (Forth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 45 (1994).

<sup>54</sup> Commission on Human Rights resolution 2004/28, UN Doc. E/CN.4/RES/2004/28 (2004).

66. Like the IDB, States that make up the World Bank all have human rights obligations. These States cannot ignore, or indeed violate, these obligations simply by organizing themselves into the World Bank or by using the Bank as an agent to carry out policies and practices that violate their respective international human rights obligations. Therefore, each Member-State on the Board of Executive Directors of the World Bank with human rights obligations under the Inter-American system has violated its respective human rights legal obligations, as guaranteed by the American Convention of Human Rights or the American Declaration on the Rights and Duties of Man or both, to respect, protect and fulfill the human rights of the Río Negro community and the other Dam harmed communities.

67. Indeed, impunity for human rights violations by such entities unfortunately seems to be the rule, as States simply violate their respective human rights obligations through the formation of corporations or inter-governmental organizations that then are used as agents of those States to carry out policies and practices that violate their respective international and domestic legal obligations. And that impunity is further entrenched when attempts are made to block victims of those violations from accessing remedies such as those provided by international and regional human rights fora such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

68. As a Specialized Agency of the United Nations, the World Bank is obligated not to defeat the purposes of the Charter of the United Nations (UN Charter). Additionally, the World Bank must work to further the objectives of the UN Charter, and of course must not undermine those objectives.<sup>55</sup> This requirement is laid out in Article 59 of the Charter, which mandates that “the creation of any new specialized agencies require[s]

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<sup>55</sup> See, e.g., Mac Darrow, Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law, pp. 127-133, Oxford: Hart Publishing, 2003.

accomplishment of the purposes set forth in Article 55.”<sup>56</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>57</sup> Furthermore, Article 103 of the UN Charter makes clear that “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, their obligations under the present Charter shall prevail.”<sup>58</sup> The World Bank knew 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 and in particular its Board of Executive Directors, is complicit in those human rights violations and violated the legal obligations enshrined in the Charter of the United Nations to promote universal respect for, and observance of, human rights.

69. Furthermore, in many ways the arguments regarding the legal liability of the World Bank in this case are very similar to those made above with regard to the IDB. First, as a lending agency, the World Bank had a duty to ensure that the project was implemented in such a way that did not result in the violation of human rights. Indeed, this would be entirely in keeping with the Bank’s own stated policy and mission. Additionally, 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

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<sup>56</sup> *Id.*

<sup>57</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 October 1945. Other human rights obligations are enshrined in Article 1 and Article 56 of the UN Charter, and these too are binding upon all Member States of the United Nations. Article 1(3) states that the “purposes and principles” of the United Nations is “to achieve international co-operation in ... promoting and encouraging respect for human rights and for fundamental freedoms for all...” While Article 56 states that “all Members pledge themselves to take joint and separate action ... for the achievement of the purposes set forth in Article 55.”

<sup>58</sup> Charter of the United Nations, Art. 103, *adopted* 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* 24 October 1945.

removed from the reservoir basis and that “the 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) of the area to be flooded by the reservoir whose living and working conditions have been adversely affected by such flooding” and that “INDE will prepare such a program and present it for Bank review by December 31, 1978.”<sup>59</sup> Even with such a strict supervisory role, the World Bank, regrettably and unlawfully, did nothing after the Government of Guatemala began to forcibly evict the Río Negro community through a series of brutal massacres.

70. Second, the World Bank breached its obligation by ignoring the human rights violations which occurred in the context of the dam’s construction, as evidenced by unquestioning continued financial support for the Chixoy project, even when all evidence pointed to brutal and criminal implementation strategies. If anything, the World Bank was even more culpable than the IDB in that it actually granted its second loan installment to the Government of Guatemala in 1985 – *after* the massacres had been carried out. This action clearly raises the threshold of legal liability, from gross negligence to reckless disregard.<sup>60</sup> Certainly, to be unaware at that time about the violence and repression at Río Negro would have required an extraordinary amount of dedicated ignorance on the part of World Bank officials. In all likelihood, World Bank officials were, in fact, 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 team in July 2003: “[The Chixoy Dam

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<sup>59</sup> World Bank, Staff Appraisal Report: Guatemala – Chixoy Power Project, pp. 25-26, para. 4.18, Report No. 1709h-GU (June 15, 1978).

<sup>60</sup> Black’s Law Dictionary explains “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.” Black’s Law Dictionary, Abridged Sixth Edition, St. Paul: West Publishing Co., 1991.

project] wasn't supervised in a sound manner, but what can you do about that now?"<sup>61</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>62</sup>

71. Third, as discussed above, residents of the Río Negro community, and other similarly situated communities, suffered gross human rights violations – violations which occurred within the context of the Chixoy Dam project. Fourth, the inaction of the World Bank was directly related to the violence inflicted on the community over the course of *several years*. Had the World Bank intervened it is likely that the outcome would have been much different. Such intervention should have included clearly communicating the expectations of the World Bank and thereby sending an unequivocal message to the Government of Guatemala that the violence associated with the implementation of the Chixoy project was simply unacceptable. Certainly, jeopardizing the Bank's funding is probably something that the Government of Guatemala would have studiously avoided at the time. Yet, the World Bank did not intervene, as it was required to, and by all accounts the intensity of violence

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<sup>61</sup> Interview with COHRE Fact-Finding Team (July 2003).

<sup>62</sup> 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). Also, Please See ILC Draft Articles 14 and 23 on the Responsibility of International Organizations, *supra* note 4.

only increased. The abuses committed by the PACs and the Guatemalan security forces began tentatively, with harassment. Later, these abusive tactics shifted to targeted “disappearances” and killings. By 1982, the violence culminated in massacres in which hundreds of persons were tortured and killed. What was the message the perpetrators received from all of the funding and administrative agencies involved in the Chixoy project? Silence. As the Guatemalan authorities ratcheted up the violence, the complicity of the World Bank and IDB was deafening.

72. The Articles of Agreement of the World Bank provide many of the same immunity clauses as those discussed above in relation to the IDB, and the legal concept of “functional privileges and immunities” applies equally to the World Bank. In fact, in most cases, the language is virtually identical. Article VII on Status, Immunities and Privileges states in its Section 1 (on “Purposes of the Article”) that “To enable the Bank to fulfill 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.” 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, 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 final clause allows for legal action against the World Bank in the present case to be considered, and the issue of damages is explicitly addressed in various ILC

provisions<sup>63</sup> Indeed, to do otherwise would create and maintain an environment of impunity for the World Bank and its Member States.<sup>64</sup>

73. Finally, the application of the International Law Commission's draft Articles on the Responsibility of International Organizations and the Maastricht Principles on Extra-Territorial Obligations discussed above apply as well to the World Bank.

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<sup>63</sup> Please see ILC Draft Articles 31, 34, 35, 36, 37 and 40 on the Responsibilities of International Organizations, *supra* note 4, addressing available remedies, specifically:

**Article 31** Reparation

1. The responsible international organization is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of an international organization.

**Article 34** Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this Chapter.

**Article 35** Restitution

An international organization responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- . (a) is not materially impossible;
- . (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

**Article 36** Compensation

1. The international organization responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

**Article 37** Satisfaction

1. The international organization responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.
2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.
3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible international organization.

**Article 38** Interest

1. Interest on any principal sum due under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

**Article 40** Ensuring the fulfilment of the obligation to make reparation

1. The responsible international organization shall take all appropriate measures in accordance with its rules to ensure that its members provide it with the means for effectively fulfilling its obligations under this Chapter.

<sup>64</sup> Please See ILC Draft Article 32 on the Responsibility of International Organizations, *supra* note 4.

## VI. Legal Liability of the Government of the United States

74. The Government of the United States is legally bound to respect, protect and fulfill the rights enshrined in the American Declaration on the Rights and Duties of Man,<sup>65</sup> and the Inter-American Commission on Human Rights is competent to determine the allegations against the United States pursuant to Article 20 of the Statute of the Inter-American Commission on Human Rights and Article 23 of the Rules of Procedure of the Inter-American Commission on Human Rights, which establish that for all those Member States of the Organization of American States that have not ratified the American Convention on Human Rights, the Commission may examine petitions submitted to it and other information available and make determination with respect to those States' obligations under the American Declaration on the Rights and Duties of Man.<sup>66</sup>

75. As the principal member of Boards of Executive Directors of the IDB and the World Bank, essentially with veto power over all decisions of both entities, the Government of the United States is particularly liable for the human rights violations against the Río Negro community, and other dam harmed communities.<sup>67</sup> Indeed, the Government of the United States is the only permanent Executive Director on the Board of Executive Directors of the World Bank and the only member with over five per cent voting power with legal obligations under the Inter-American human rights system. As such, it was principally responsible for decision-making on both Boards with respect to the Chixoy Dam project.

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<sup>65</sup> See, e.g., Inter-American Court of Human Rights, Advisory Opinion OC-10/89 (14 July 1989); see also *Baby Boy case*, Commission on Human Rights Case 2141, Inter-Am. C.H.R. 25/OEA/Ser.L/V./II.54/doc. 9 rev. 1 (1981).

<sup>66</sup> Statute of the Inter-American Commission on Human Rights, Article 20, approved by Resolution No. 447 taken by the General Assembly of the OAS at its ninth regular session, held in La Paz, Bolivia, October 1979; Rules of Procedure of the Inter-American Commission on Human Rights, Article 23, adopted by the Commission at its 109<sup>th</sup> Special Session held from 4 to 8 December 2000.

<sup>67</sup> The Government of the United States enjoys a unique status in the IDB and the World Bank as it has enough votes in either body to essentially veto any action by the Executive Directors of the respective Banks.

76. Likewise, the Government of the United States is the only permanent Director on the Board of Executive Directors of the IDB, and during the time of the Chixoy Dam Project forced eviction it enjoyed 35 per cent voting power, which, again, essentially gave it sole veto power over IDB projects.

77. Furthermore, part of the U.S. Government's rationale for World Bank and IDB funding of the Chixoy Dam was to divert money to the Government of Guatemala for its ruthless counter-insurgency campaign.<sup>68</sup> In 1977, the Carter Administration, at least publicly, cut off funding to the Government of Guatemala due to its abhorrent human rights record. Soon after, however, the U.S. arranged for the Chixoy project funding in an effort, *inter alia*, to indirectly and covertly fund the Guatemalan Government. The Government of the United States continued to approve World Bank funding to Guatemala, including a 1978 loan in the amount of \$72 million for the Chixoy Dam project, along with other decision-making States. Indeed, analysts have determined that these funds went not only to construct the Chixoy Dam, but to provide covert support for the military policies of the Government of Guatemala. For instance, anthropologist Shelton H. David testified to the U.S. Congress that:

... it appears as if hydroelectric development in Guatemala was related to the modernization of the Guatemala Army and its concern to turn the northern lowlands into a vast cattle ranching, petroleum, mining, and timber frontier.

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<sup>68</sup> See Witness for Peace, A People Dammed: The Impact of the World Bank Chixoy Hydroelectric Project in Guatemala, at pages 4 – 8, Washington, D.C.: WFP, 1996; *see also* Testimony of Shelton H. David to the U.S. House of Representatives, Subcommittee on International Development Institutions and Finance, Committee on Banking, Finance and Urban Affairs, Environmental Impact of Multilateral Development Bank-Funded Project, 29 June 1983.

By carrying out this frontier-development program, with international assistance, the Guatemalan Army hopes to consolidate its own political and economic power.<sup>69</sup>

78. Furthermore, the general complicity of the Government of the United States in Guatemala's brutal counter-insurgency campaign is well documented.<sup>70</sup> By 1981, the Government of the United States discarded its pretense of concern about human rights in Guatemala. In 1982, the Reagan Administration supported the regime of General Efraín Ríos Montt, despite a United Nations resolution condemning that regime for human rights atrocities. By 1985, the U.S. financing of the regime, including its abusive and unlawful policies and tactics, rose to US\$100 million.<sup>71</sup>

79. With such support and funding, both for the Chixoy project specifically and for the Government of Guatemala's military campaign, both directly and indirectly through the World Bank and IDB, the Government of the United States has violated the human rights of the Río Negro community and similarly situated communities. In particular, the Government of the United States has violated Article I (right to life, liberty and personal security); Article II (right to equality before the law); Article V (right to protection of private and family life); Article VI (right to a family and to protection thereof); Article VII (right to special protection for all women during pregnancy and the nursing period and for all children); Article IX (right to inviolability of the home); Article XVIII (the right to resort to

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<sup>69</sup> U.S. House of Representatives: Subcommittee on International Development Institutions and Finance; Committee on Banking, Finance and Urban Affairs. Environmental Impact of Multilateral Development Bank-Funded Project; 29 June 1983.

<sup>70</sup> See, e.g., *id.*; Report of the Commission for Historical Clarification, Guatemala: Memory of Silence, (Guatemala: CEH, 1999) (see Addendum 6); Piero Gleijeses, Shattered Hope, Princeton: Princeton University Press, (1992); William Blum, Killing Hope: U.S. Military and CIA Interventions Since WWII, in particular chapter 37: Guatemala 1962 to 1980s: A Less Publicized "Final Solution", Monroe, ME: Common Courage Press (1995).

<sup>71</sup> Tom Barry and Deb Preusch, The Central America Fact Book, New York: Grove Press, 1986.

the courts to ensure respect for his or her legal rights), and Article XXIII (right to property) of the American Declaration on the Rights and Duties of Man.

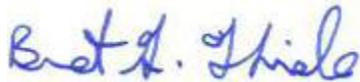
## VII. DAMAGES

80. Petitioners respectfully reserve the right to address the issue of damages in a supplemental brief to the Commission.

## VIII. CONCLUSION

81. Petitioners request that the Inter-American Commission on Human Rights hold the World Bank, the IDB and the Government of the United States jointly and severally liable for the human rights violations suffered by the Río Negro community and similarly situated communities from the Chixoy Dam reservoir basin as laid out in the forgoing Petition.

Respectfully submitted,



7 December 2011

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Bret Thiele, Attorney at Law & Co-Executive Director  
Global Initiative for Economic, Social and Cultural Rights  
8 N. 2nd Avenue E., Suite 208  
Duluth, MN, 55802 USA  
[Bret@globalinitiative-escr.org](mailto:Bret@globalinitiative-escr.org)

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Date

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Grahame Russell, Co-director  
Rights Action  
Box 50887  
Washington DC, 20091, USA  
Box 552, 351 Queen St. E  
Toronto ON, M5A-1T8, Canada  
[info@rightsaction.org](mailto:info@rightsaction.org)

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Date

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Lauren Carasik, Attorney at Law & Director  
International Human Rights Clinic

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Date

Western New England University School of Law  
1215 Wilbraham Road  
Springfield, MA, 01119 USA  
(413) 782-1504  
[lcarasik@law.wne.edu](mailto:lcarasik@law.wne.edu)