



The Rio Negro Massacres v. Guatemala

Country: Guatemala

Region: Americas

Year: 2012

Court: Inter-American Court of Human Rights

Health Topics: Child and adolescent health, Diet and nutrition, Health care and health services, Health information, Health systems and financing, Hospitals, Poverty, Violence, Water, sanitation and hygiene

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Freedom of religion, Right to bodily integrity, Right to development, Right to due process/fair trial, Right to family life, Right to liberty and security of person, Right to life, Right to privacy, Rights to the benefits of culture

Facts

This case deals with the destruction of the Mayan community of Río Negro by a series of massacres perpetrated by the Guatemalan army and members of the civil self-defence patrols in 1980 and 1982 which, according to the IACmHR, included the persecution and elimination of members of the Mayan community, subsequent violations directed against the survivors, and the failure to investigate these events. The IACmHR indicated that the facts include, among others, those of forced disappearances, forced displacement, violations of personal integrity of the next of kin and survivors, the destruction of the community's social fabric, the failure to identify the persons executed and disappeared, the consequent failure to bury them in keeping with Mayan traditions, the impossibility of survivors to return to their lands, the lack of protection of children and discrimination. The massacres at issue were only some of the massacres that occurred from 1962 through 1996 during which Guatemala's state agents allegedly directed a "scorched earth" policy against the Mayan people. While survivors of some of the massacres at issue in this case were resettled by the government in 1983 in the Pacux settlement located behind a military garrison, the violence allegedly continued there, in that people were interrogated, detained for days without food, threatened, obliged to do forced labor, tortured, disappeared, raped and murdered, and, as a result, their previous customs were lost. The IACmHR filed this case due to an alleged denial of justice ever since the acts were perpetrated, and the subsequent impunity that persisted to the date of this case.

The IACmHR asked the IACtHR to declare that Guatemala violated Articles 3, 4, 5, 6, 7, 8, 11, 12, 16, 17, 19, 21, 22, 24 and 25 of the ACHR, in relation to the general obligation to respect and ensure human rights established in Article 1(1) of the ACHR, to the detriment of the members of the Río Negro community. In addition, the IACmHR asked the IACtHR to declare that Guatemala had failed to comply with Article I of the Convention on Forced Disappearance of Persons; Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

Guatemala, in its answering brief, acknowledged its international responsibility for many of the alleged violations but opposed international responsibility for many others on grounds that the IACtHR lacked temporal jurisdiction to rule on all the violations because the violations occurred from 1980 to 1982 before Guatemala had accepted the IACtHR's contentious jurisdiction and because the violations did not persist and were not of a continuing nature. The IACtHR generally accepted Guatemala's acknowledgment and admitted Guatemala's preliminary objection concerning the lack of temporal competence of the IACtHR to examine the human rights violations that occurred before Guatemala had recognised the temporal competence of the IACtHR. Considering the gravity of the alleged facts and of the violations, the IACtHR proceeded to make an extensive and detailed determination of the facts and then made corresponding rulings.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

(1) Guatemala violated Articles 3, 4(1), 5(1), 5(2) and 7(1) of the Convention, in relation to Article 1(1), and failed to comply with Article I(a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of 17 victims who disappeared after they were taken away in a helicopter during one of the

massacres;

(2) Guatemala violated Article 19 of the American Convention, in relation to Article 1(1) thereof, with respect to a child who disappeared after being taken away in the same helicopter during the Los Encuentros massacre;

(3) Guatemala violated Articles 5(1), 11(1) and 11(2) of the Convention, in relation to Article 1(1), to the detriment of a child who was raped more than once during the massacres because, among other things, rape is an extremely traumatic experience that leaves the victim physically and emotionally humiliated and is difficult to overcome with the passage of time;

(4) Guatemala violated Article 5(1) of the Convention, in relation to Articles 6, 17 and 1(1), to the detriment of a child who was over 18 years of age when Guatemala accepted the Court's competence, and who was one of a group of children who survived the massacres and who were taken away from Río Negro during the Pacoxom massacre and forced to work in the homes of members of the civil self-defence patrols;

(5) Guatemala violated Article 5(1) of the Convention, in relation to Articles 6, 17, 19 and 1(1), to the detriment of many other of these children who were under 18 years of age when Guatemala acknowledged the Court's competence because, among other things, the ill-treatment left physical and emotional scars on the victims and adversely affected the victims' mental integrity, the consequences of which remained through the date of the holding;

(6) Guatemala violated Article 5(1) of the Convention, in relation to Articles 12(1) and 1(1), to the detriment of the members of the community of Río Negro who live in the Pacux settlement because, among other things, the inadequate living conditions of the members of a community and their general state of abandonment causes suffering that necessarily affects the mental and moral integrity of its members;

(7) Guatemala violated Article 22(1) of the Convention, in relation to Article 1(1), to the detriment of the survivors of the Río Negro massacres who live in the Pacux settlement because, among other things, the living conditions in Pacux have not allowed its inhabitants to return to their traditional economic activities and their basic needs are not being fully met;

(8) Guatemala violated Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1), and failed to comply with Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, and Article 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, to the detriment of the victims in this case, because, among other things, Guatemala failed to properly investigate, pursue, capture, prosecute and punish those responsible for the massacres and Guatemala has a grave problem with regard to the impunity that prevails in relation to the systematic human rights violations that took place during the armed conflict;

(9) Guatemala violated Article 5(1) of the Convention, in relation to Article 1(1), to the detriment of survivors of the Río Negro massacres because, among other things, the surviving victims experienced profound suffering and anguish as a result of Guatemala's "scorched earth" policy aimed at the total destruction of community;

(10) Guatemala did not violate Article 16 of the Convention, even though Guatemala acknowledged its responsibility for the violation of this right, because the community of Río Negro cannot be implicitly equated to be an "association";

(11) the judgment constitutes per se a form of reparation;

(12) Guatemala must investigate, promptly, seriously and effectively the facts that gave rise to the violations in order to prosecute and, eventually, punish those presumably responsible;

(13) Guatemala must conduct an effective search for the whereabouts of the victims who were forcibly disappeared, draw up a meticulous plan to search for the members of the Río Negro community who were forcibly disappeared, find, exhume and identify the persons presumably executed, determine the cause of death and possible prior injuries, and create a genetic information bank;

(14) Guatemala must make various specified publications;

- (15) Guatemala must hold a public act of acknowledgement of international responsibility for the facts of the case;
- (16) Guatemala must put in place specified infrastructure and provide specified basic services in favour of the members of the community of RÁ-o Negro who reside in the Pacux settlement;
- (17) Guatemala must design and implement a project to rescue the Maya AchÃ- culture;
- (18) Guatemala must provide medical and psychological treatment to the victims in the case;
- (19) Guatemala must pay (a) \$30,000 for each victim of forced disappearance, (b) \$15,000 for certain surviving victims of the massacres listed in the judgment, (c) an additional \$10,000 for each survivor who is a member of the family of the victims of forced disappearance declared in the judgment, (d) an additional \$10,000 for each survivor who was a victim of acts of slavery and involuntary servitude, (e) \$15,000 to a survivor, in addition to \$10,000 that corresponds to her being a survivor of the massacres, who was a victim of rape and also of acts of slavery and involuntary servitude, and (f) \$50,000 for costs and expenses;
- (20) Guatemala must establish an appropriate mechanism to ensure that other members of the community of RÁ-o Negro may subsequently be considered victims of any of the human rights violations declared in the judgment, and receive individual and collective reparations such as those ordered in the judgment;
- (21) Guatemala must, within one year of notification of the judgment, provide the Court with a report on the measures adopted to comply with it;
- (22) the Court will monitor full compliance with the judgment, in exercise of its attributes and in compliance with its obligations under the Convention, and will consider the case concluded when Guatemala has complied fully with all its terms.

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Decision Excerpts

"The Court establishes that Guatemala must implement,.... following consultation with the victims or their representatives, and irrespective of the other public works included in the national budget for the Pacux settlement or for the region where it is located, the following measures: (a) the improvement of the Pacux health center by the provision of permanent human resources qualified to provide physical, psychological and dental health care, medicines and equipped ambulances; (b) the design and implementation of food security and nutrition programs, The State must implement this program within five years of notification of this Judgment." Para. 284.

"Therefore, in order to contribute to the reparation of this harm, the Court orders that the State provide, free of charge and immediately, to the victims who so wish, and following their informed consent, medical and psychological treatment for as long as necessary, including the supply of medicines, also free of charge. The medical and psychological treatment must be provided by State institutions and personnel. Based on the representativesâ€™™ request, this medical and psychological care may be provided by the healers of the Maya AchÃ- community, in keeping with their own health practices and using traditional medicines; accordingly, the State must reach an agreement with the representatives on the way in which this reparation will be executed." Para 289.

"The judges and organs related to the administration of justice at all levels are obliged to monitor ex officio that domestic law is in accordance with the human rights treaties to which the State is a Party, evidently within the framework of their respective competences and the corresponding procedural regulations. In this task, the judges and organs related to the administration of justice, such as the Public Prosecution Service, must take into account not only the American Convention and other inter-American instruments, but also the interpretation of them made by the Inter-American Court." Para. 262.

