

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF DECEMBER 1, 2011
CASE OF CHITAY NECH ET AL. v. GUATEMALA
MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment of preliminary objections, merits, reparations and costs (hereinafter “the Judgment”) issued by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) on May 25, 2010, whereby, *inter alia*, it ruled that the State must:

12. [...] manage efficiently, with due diligence and within a reasonable time period, the investigation and, if [applicable], the criminal [proceedings that may arise] in relation [to] the detention and [subsequent] forced disappearance of Florencio Chitay Nech, to determine the corresponding criminal [liabilities] and effectively apply the punishment[s] and consequences [provided for] by the law, under the terms of paragraphs 232 to 237 of the [...] Judgment[;]

13. [...] continue with the effective search for Florencio Chitay Nech, [under] the terms of paragraphs 239 to 241 of the [...] Judgment[;]

14. [...] publish, [only] once[,], in the Official Gazette[...], Chapter I; and paragraphs 19, 20, and 21 of Chapter III[;] paragraphs 64, 67, 68, 70 to 72, 74[...] to 76, 79, 88, 89, 91, 93, 99 to 103, 108, 110, 113, 116, 117, and [121] of Chapter VIII; paragraphs 126 to 129, 133, 134, 138, 140, 141, 143, 144, 146 to 148, 150, 151, 161 to 163, 166, 167, 170, and 171 of Chapter IX; paragraphs 177, 186, 194, 195, 197 to 200, 204, 207, 209 of Chapter X; paragraphs 225 and 226 of Chapter XI[;] paragraphs 229, 235, 237, 240, 241, 244, 245, 248, 251, 256 of Chapter XII; all of them including the names of each chapter and the corresponding section -without the corresponding footnotes-, as well as the operative paragraphs of the Judgment[, and in another newspaper of national circulation, the official summary of the Judgment issued by the Court.] The State must [broadcast this] official summary via radio each first Sunday of the month on at least four occasion[s]. The foregoing[...] should be carried out in Spanish and in Mayan *kaqchikel*. In addition, the State must publi[sh] the entire Judgment on the [its] official web site [...], [under] the terms of paragraph[s] 244 and 245 of [this] Judgment[;]

15. [...] carry out a public act of [acknowledgement] of responsibility in relation to the facts of the present case and apology in memory of Florencio Chitay Nech, in which reference must be made to the human rights violations declared in the [...] Judgment, in the presence of high ranking State officials and the next of kin of Mr. Chitay Nech. [This] act must be carried out in Spanish and in Mayan *kaqchikel*, [under] the terms of paragraph 248 of the [...] Judgment[;]

16. [...] place a commemorative plaque [bearing the name of Florencio Chitay Nech,] that makes reference to his activities,, in San Martín Jilotepeque, Chimaltenango, [under] the terms of paragraphs 250 and 251 of the [...] Judgment[;]

17. [...] offer [free] psychological and[medical] attention [...] [in Guatemala] to the victims declared in the [...] Judgment [whom] request it, [...]in an [immediate,] adequate[,] and effective manner, [and for the time necessary,] through specialized public health institutions, [under] the terms of paragraphs 255 and 256 of the same [,and]

18. [...] pay the [amounts established] in paragraphs 266, 272, 278, and 289 of the [...] Judgment, as compensation for pecuniary and non-pecuniary damages and the reimbursement of the costs and expenses, as [applicable], within a time period of one year, beginning from the notification of the [...] Judgment, [under] the terms of paragraphs 265 and 266, 269 to 272, 275 to 278, and 284 to 289 [thereof].

2. The briefs of the Republic of Guatemala (hereinafter “the State” or “Guatemala”) of August 12 and November 4 and 25, 2011, whereby it submitted information regarding the monitoring of compliance with the Judgment.

3. The briefs of the victims’ representatives (hereinafter “the representatives”) of September 12 and November 4, 21, and 30, 2011, whereby they presented their observations on the State’s reports.

4. The briefs of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) of October 4 and November 24 and 30, 2011, whereby it submitted its observations regarding the State reports.

CONSIDERING THAT:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. Guatemala has been a State Party to the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) since May 25, 1978, and that it recognized the Court’s contentious jurisdiction on March 9, 1987.

3. In conformity with Article 67 of the American Convention, the Court’s judgments shall be fully and promptly complied with by the State. In addition, Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” Therefore, States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.¹

4. The obligation to comply with the rulings of the Court corresponds to a basic principle of law on the international responsibility of the State, supported by international jurisprudence, according to which the States must comply with their international conventional obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and pursuant to Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for reasons of domestic law, neglect pre-established international

¹ Cf. *Case of Baena Ricardo et al. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Monitoring Compliance with Judgment. Order of the Court of August 30, 2011, Considering clause three, and *Case of the Yean and Bosico Girls v. The Dominican Republic*. Monitoring Compliance with Judgment. Order of the Court of October 10, 2011, Considering clauses three and four.

responsibility.² The conventional obligations of the States Parties bind all powers and organs of the State.³

5. The States Parties to the Convention must ensure compliance with treaty provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive norms of human rights treaties (*i.e.* those dealing with provisions on protected rights), but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. These obligations should be interpreted and enforced in a manner that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.⁴

6. The States Parties to the Convention that have recognized the contentious jurisdiction of the Court must comply with the obligations established by the Court. This obligation includes the State's duty to report to the Court the measures adopted to comply with that ordered by the Court in its rulings. Timely observance of the State's obligation to report to the Court how it is complying with each of the operative paragraphs ordered is essential to assess the status of compliance of the Judgment as a whole.⁵

A) Investigate in an efficient and diligent manner, within a reasonable term, the facts of the case, and punish those responsible for the violations committed against the victims (operative paragraph twelve of the Judgment)

7. In its report of August 12, 2011, the State indicated that in order to coordinate the actions to investigate the case, it created "a Committee to promote advances with the participation of the representatives of the Public Prosecutor's Office, the *Fundación de Antropología Forense de Guatemala* [(hereinafter "FAFG")], the next of kin of Mr. Florencio Chitay Nech [(hereinafter "Mr. Chitay")], and the [*Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos* (hereinafter "COPREDEH")], in which periodic meetings have been programmed.

8. The representatives observed that the case "is in the [...] documentary research stage." They added that "the committee established at COPREDEH has held three meetings to report on progress, however, it [has been] minimal." Finally, they added that "[t]hey are

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra* note 1, Considering clause four, and *Case of the Yean and Bosico Girls v. The Dominican Republic* *supra* note 1, Considering clause five.

³ Cf. *Case of Castillo Petruzzi et al. v. Perú*. Monitoring Compliance with Judgment. Order of the Court of July 1, 2011, Considering clause four; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra* note 1, Considering clause four, and *Case of the Yean and Bosico Girls v. The Dominican Republic*, *supra* note 1, Considering clause five.

⁴ Cf. *Case of Ivcher Bronstein v. Perú. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra* note 1, Considering clause five, and *Case of the Yean and Bosico Girls v. The Dominican Republic* *supra* note 1, Considering clause six.

⁵ Cf. *Case of Barrios Altos v. Perú*. Monitoring Compliance with Judgment. Order of the Court of September 22, 2005, Considering clause seven; *Case of Yamata v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Court of June 30, 2011, Considering clause six, and *Case of "Las Dos Erres" Massacre v. Guatemala*. Monitoring Compliance with Judgment. Order of the Court of July 6, 2011, Considering clause six.

aware that visits are being made to the next of kin and friends of Mr. Chitay, for the carrying out of the appropriate investigations by the prosecutors of the Public Prosecutor's office."

9. The Commission highlighted "the fundamental importance of adopting the measures necessary to advance the investigation of this particular case in order to clarify the facts" in relation to the disappearance of Mr. Chitay, determine responsibility, and apply the corresponding punishments. In consideration of that expressed by the parties, the Commission "awaits updated and detailed information on the steps taken by the State to ensure the progress of the criminal proceedings and of the search for the victim's remains."

10. In accordance with the above, the Court makes note of the information provided on the steps taken by the State to investigate the facts of the present case. The Court deems it essential for the State to continue providing updated information on the steps or measures taken to determine the criminal liabilities, and to effectively apply the punishments and legal consequences provided for by the law, in relation to the violations committed against Mr. Chitay in the present case (*supra* Having Seen 1).

B) Continue the effective search to find Florencio Chitay Nech (operative paragraph thirteen)

11. The State reported that "the FAFG is analyzing the DNA samples provided by the next of kin of Mr. Chitay, in order to later compare them with samples found in the foundation's existing records."

12. The representatives did not provide updated observations regarding this operative paragraph; they only stated that before the issuing of the Judgment, the next of kin of Mr. Chitay went to the FAFG to give DNA samples, and that on two occasions the personnel of that institution have commented on the progress of the search for victims of the internal conflict..

13. The Commission recalls that the obligation to perform investigations on the facts that led to the violations is related to the State's duty to prevent and combat impunity. Furthermore, the Commission deems it necessary for the State to provide updated and detailed information regarding the search for the victim's remains.

14. Considering the above, the Court deems it necessary for the State to continue reporting, in conformity with that established in the Judgment, on the measures implemented to find Mr. Chitay, in order to comply with operative paragraph thirteen of the Judgment.

C) To publish, once, in the Official Gazette the pertinent parts of the Judgment. Furthermore, to disseminate the official summary of the Judgment in another newspaper of national circulation and a radio broadcast, performed in Spanish and in Mayan Kaqchikel. In addition, to publish the entire Judgment in the State's official web site (operative paragraph fourteen of the Judgment)

15. The State indicated that "[o]n August 29, 2010, the Judgment was published in full on the State's official [w]eb site." It added that on November 24, 2010, it published the pertinent parts of the Judgment, as ordered by the Court, in "*El Periódico*" journal and noted that "[t]his was also published in the Official Gazette on December 23, 2010." In

addition, it indicated that "on July 3, 2011, it performed the first broadcast of the summary of the Judgment in Spanish and in *Kaqchikel* through the *Federación Guatemalteca de Escuela Radiofónicas* –FGER-, which has coverage in the entire department of Chimaltenango."

16. In the communication of November 4, 2011, the State expressed that it had completed radio broadcasts on July 3, August 7, September 4, and October 2, 2011, through *Radio Cultural y Educativa* 1000 AM, *Cadena Radial* "FGER," from 10:00 to 10:30 a.m. In addition, the State indicated that two additional broadcasts have been scheduled for November 6 and December 4, 2011. Subsequently, in its communication of November 25, 2011, the State reported that the November 6, 2011 broadcast had been aired. However, Mr. Chitay's next of kin were not able to hear this broadcast, as they were unable to tune in to the appropriate frequency. Regarding the broadcast scheduled for December 4, 2011, Mr. Chitay's next of kin have indicated that they will be abroad on that date; COPREDEH is thus considering the possibility of airing the broadcast in January 2012.

17. The representatives observed, on September 12, 2011, that the next of kin were not notified of the publication of the Judgment on the State's official web site. Nevertheless, they were made aware of its publication by other relatives. With respect to the publication of the pertinent parts of the Judgment in "*El Periódico*" newspaper on November 24, 2010, the representatives expressed that they were informed of that publication, and also received copies of it; regarding the publication of the same in the Official Gazette on December 23, 2010, they noted that it was not until the month of February that they were informed the publication had taken place. Furthermore, the representatives indicated that they were not aware of a translation of the Judgment to the Mayan *Kaqchiquel* language. They reported subsequently that they had been given the contents of the translation in the month of October, as well as a compact disc containing those contents.

18. On the matter of the radio broadcast of the summary of the Judgment, the representatives expressed that on several occasions they have been notified of the State's hiring of a radio station. However, given the station's lack of coverage and that its direct frequency in San Martín is unknown, the Chitay family has not been able to hear the broadcast to date, despite their having organized in order to monitor the broadcast. In their observations of November 30, 2011, the representatives reiterated that Mr. Chitay's next of kin have not been able to hear the broadcasts aired on July 3, August 7, September 4, and October 2, 2011. With regard to the broadcast of November 6, 2011, Mr. Chitay's next of kin indicated that, despite organizing themselves with the aim of hearing it aired, they were still unable to do so. This situation was reported to COPREDEH. The next of kin of Mr. Chitay recognized the efforts made by COPREDEH authorities, and pointed out that though the broadcast air on several more occasions via the contracted station, this station lacks the necessary signal range and coverage. For this reason, they would be interested in revisiting the idea suggested by representatives of COPREDEH, of airing the broadcast via another station (*Radio La Chimalteca* 101.5 FM), which was recommended by the Chitay family and has coverage in the department of Chimaltenango. Finally, they indicated that they would continue to make demands until the broadcast is aired at least at the departmental level.

19. The Commission values the steps taken by the State to complete the radio broadcasts, as well as the submission of the compact disc containing the official summary of the Judgment. Nonetheless, it considers it essential that the State "inform the representatives of all actions performed under the framework of compliance with the [J]udgment, as they are the ones directly interested in full compliance therewith." In addition, the Commission expressed that the information provided thus far does not indicate

that the transmission of the radio broadcasts were carried out by a station with broad coverage. Finally, the Commission acknowledged that the State is considering a new date for the next broadcast.

20. According to the information provided by the parties, the State complied with the full publication of the Judgment on its web site on August 29, 2010. Furthermore, on November 24, 2010, it published the official summary of the Judgment in "*El Periódico*," and on December 23, 2010, it published the pertinent parts of the Judgment ordered by the Court in Guatemala's Official Gazette, "*Diario de Centro América*."

21. With regard to the radio transmission of the official summary of the Judgment in Spanish and Mayan *Kaqchikel* (*supra* Having Seen 1), the State reports that it has completed the radio broadcasts of July 3, August 7, September 4, October 2, and November 6, 2011, via *Radio Cultural y Educativa* 1000 AM. Nonetheless, according Mr. Chitay's next of kin, they have been unable to hear these broadcasts due to the radio station's lack of coverage. Given the information reported by the parties, and the fact that the final broadcast offered by the State –which may be aired from early January 2012- has not taken place, the Court will refrain from making a decision regarding the state of compliance with this operative paragraph until the completion of the State's additional broadcast and the receipt of the observations of the representatives and the Commission. Accordingly, the Court requires the State to remit the appropriate information, and if possible, provide documentation or other means of confirming the airing of this broadcast.

22. Considering the above, the Court deems that the State has partially complied with operative paragraph fourteen of the Judgment (*supra* Having Seen 1).

D) Carry out a public act of acknowledgement of responsibility and apology in memory of Florencio Chitay Nech (operative paragraph fifteen of the Judgment)

23. The State reported that "it has not been able to find a space in the agenda of the highest authorities of the country" to hold the aforementioned public act.

24. The representatives expressed that "[i]t has not been possible to confirm the participation of one of the highest authorities of the State, for the purpose of complying with this operative paragraph."

25. Regarding this matter, the Commission indicated that it is essential to coordinate for the prompt and effective completion of the public act of acknowledgment of responsibility; therefore it waits for the State to promptly comply with this operative paragraph.

26. In conformity with operative paragraph fifteen of the Judgment, the Court recognizes that the public act of acknowledgement of international responsibility and apology in memory of Mr. Chitay should be performed according to the arrangements laid down by the State and the next of kin of Mr. Chitay Nech and/or his representatives. However, this Court deems that, to date, the State has not complied with this obligation (*supra* Having Seen 1). Based on the above, the Court deems it essential for the State to take all the steps necessary for -and conducive to- performing this public act as soon as possible. In order to monitor compliance with this obligation, the Court requests the State to submit clear, accurate, and detailed information on: a) the steps taken and to be taken to comply with this obligation, and b) the scheduled or tentative dates of the act, agreed upon by the parties.

E) Place a commemorative plaque with the name of Florencio Chitay Nech in San Martín Jilotepeque, Chimaltenango (operative paragraph sixteen of the Judgment)

27. The State reported that on April 12, 2011, it performed the unveiling of the commemorative plaque in memory of Mr. Chitay, in the Municipality of San Martín Jilotepeque, department of Chimaltenango. In addition, the school of Caserío Semetabaj, village of Quimal, of the same municipality and department, was named "Florencio Chitay Nech."

28. The representatives confirmed that, on April 12, 2011, the two commemorative activities in memory of Mr. Chitay did in fact take place, with the participation of the municipal authorities, COPREDEH, the next of kin of the victim, and guests.

29. The Commission expressed that it acknowledges that the State has complied with this obligation.

30. In conformity with that expressed by the parties, the Court deems that the State has complied with that ordered in operative paragraph sixteen of the Judgment, with regard to the placement of a commemorative plaque in Mr. Chitay's name. In addition, it appreciates the fact that, without having been ordered to do so in the Judgment, the State renamed the school of Caserío Semetabaj "Florencio Chitay Nech." Consequently, the court deems that the State has complied with operative paragraph sixteen of the Judgment (*supra* Having Seen 1).

F) Offer free and immediate medical and psychological attention, in an adequate and effective manner, to the victims declared in the Judgment (operative paragraph seventeen of the Judgment)

31. The State expressed that it has requested the next of kin of Mr. Chitay to indicate who among them requires medical and psychological assistance, and that to date they have not replied with this information.

32. The representatives observed that there have not been significant advances with regard to the instant operative paragraph, and that compliance with this point has not been programmed. They added that although most of the family is abroad, this does not mean that the next of kin of Mr. Chitay that are in Guatemala do not require medical and psychological attention.

33. The Commission indicated that it was waiting to receive information regarding the proffering of medical and psychological attention, as well as the steps taken by the parties to comply with this obligation.

34. In accordance with that indicated by the parties, the Court does not possess sufficient evidence to deem the obligations of this operative point fulfilled. Consequently, the Court considers it necessary for the State to: a) perform the necessary actions to provide medical and psychological attention to the victims declared in the Judgment that are in Guatemala and that require it (*supra* Having Seen 1), and b) report the measures adopted to comply with this operative paragraph (*supra* Having Seen 1). Similarly, the next of kin of Mr. Chitay shall provide the necessary information and cooperation to facilitate the implementation of this measure ordered in the Judgment. The aim of the above measures

being the prompt assessment of the state of compliance with operative paragraph seventeen.

G) Pay the amounts established for pecuniary and non-pecuniary damages, and reimbursement of costs and expenses (operative paragraph eighteen of the Judgment)

35. The State reported that on March 23, 2011, it performed the payment for pecuniary and non-pecuniary damages to Mr. Pedro Chitay Rodríguez, who received, in his name and on behalf of his brothers, the total amount established in the Judgment.

36. The representatives indicated that they have received the corresponding payment in compliance with operative paragraph eighteen of the Judgment.

37. The Commission did not make observations regarding this operative paragraph.

38. In conformity with that expressed by the parties, the Court deems that the State has performed the payment of the compensation for pecuniary and non-pecuniary damages, as well as the payment of costs and expenses. Consequently, it considers that the State has complied with operative paragraph eighteen of the Judgment (*supra* Having Seen 1).

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 67, and 68(1) of the American Convention on Human Rights, Articles 24 and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. In conformity with that established in this Order, the State has complied with:
 - a) publishing in the Official Gazette the pertinent parts of the Judgment, and in another newspaper of national circulation the official summary of the Judgment, as well as the full publication of the Judgment in the State's official website (*operative paragraph fourteen of the Judgment*);
 - b) placing a commemorative plaque in the name of Florencio Chitay Nech in San Martín Jilotepeque, Chimaltenango (*operative paragraph sixteen of the Judgment*), and
 - c) paying the amounts established for pecuniary and non-pecuniary damages, and reimbursement of costs and expenses (*operative paragraph eighteen of the Judgment*).

2. In monitoring full compliance with the Judgment issued in this case, and after analyzing the information provided by the State, the Commission, and the representatives, the Court shall continue proceedings to monitor compliance with the Judgment for the operative paragraphs pending in the present case, namely:

a) to manage the investigation efficiently, with due diligence, and within a reasonable time period, and, if applicable, the criminal proceedings in relation to the detention and subsequent forced disappearance of Florencio Chitay Nech; to determine the corresponding criminal liabilities; and effectively apply the punishments and consequences provided for by the law (*operative paragraph twelve of the Judgment*);

b) to continue with the effective search for Florencio Chitay Nech (*operative paragraph thirteen*);

c) to perform the radio broadcast of the official summary of the Judgment on the first Sunday of the month, for at least four months. The above shall be performed in Spanish and in Mayan *Kaqchikel* (*operative paragraph fourteen of the Judgment*);

d) to carry out a public act of acknowledgement of responsibility and apology in memory of Florencio Chitay Nech (*operative paragraph fifteen of the Judgment*), and

e) to offer free medical and psychological attention in Guatemala, in an immediate, adequate, and effective manner, to the victims declared in the Judgment (*operative paragraph seventeen of the Judgment*).

AND DECIDES:

1. To require the State to adopt all measures necessary to promptly and effectively comply with the operative paragraphs pending compliance, in conformity with Article 68(1) of the American Convention on Human Rights.

2. To request that the State submit to the Inter-American Court of Human Rights, on March 30, 2012, a complete and detailed report indicating all measures adopted to comply with the reparations ordered by this Court that are pending compliance, and specifically, to refer to the information requested by the Court, according to that established in Considering paragraphs 10, 14, 21, 25, and 34 of this Order.

3. To request that the victim's representatives and the Inter-American Commission on Human Rights submit their observations on the State's report mentioned in the previous operative paragraph, within four and six weeks respectively, as of the date of receipt of said report.

4. To continue monitoring the operative paragraphs pending compliance with the Judgment on preliminary objections, merits, reparations and costs of May 25, 2010.

5. To request that the Court's Secretariat provide notice of the instant Order to the Republic of Guatemala, the Inter-American Commission on Human Rights, and the victims or their representatives.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary