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Title/Style of Cause: Pedro Garcia Chuc v. Guatemala
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Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated: 27 October 2005
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I. SUMMARY

1. On April 2, 1991 the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "IACHR") received a petition filed against the State of Guatemala (hereinafter the "Guatemalan State" or "Guatemala") for violation of the right to life of Pedro José García Chuc.

2. The petition was submitted by the family of the victim and was one of a total of 46 petitions received by the Commission in 1990 and 1991 that alleged violation by the Republic of Guatemala of human rights enshrined in the American Convention on Human Rights (hereinafter "the Convention") to the detriment of 71 men, women, and children, including Mr. Pedro García Chuc. In each case, the petitioners held that the victims had been extrajudicially executed by members of the security forces of the Guatemala State or persons linked to those forces. Following initial processing of said cases, the Commission decided to combine and process them together, in accordance with Article 40 of its then-Regulations.[FN1]

[FN1] The following cases were joined: 10.586, 10.609, 10.610, 10.611, 10.612, 10.614, 10.618, 10.622, 10.653, 10.657, 10.658, 10.660, 10.667, 10.687, 10.692, 10.714, 10.725, 10.730, 10.731, 10.747, 10.755, 10.759, 10.763, 10.764, 10.777, 10.780, 10.782, 10.784, 10.785, 10.787, 10.788, 10.789, 10.852, 10.855, 10.858, 10.861, 10.869, 10.872, 10.873, 10.875, 10.891, 10.903, 10.920, 10.922, 10.935, 10.936.

3. On February 24, 2000, the Commission transmitted to the Guatemalan State and the petitioners Report No. 05/00, in which it found that the State of Guatemala had violated Articles 4, 5, 7, 8, 19, and 25 of the American Convention on Human Rights and breached its obligation under Article 1(1) to respect and ensure the rights recognized in the Convention. In this connection, the IACHR recommended that the State of Guatemala:

1. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and related violations in the cases of the victims named in section VII, and to punish the persons responsible pursuant to Guatemalan law;

2. Adopt the measures necessary for the family members of the victims identified in paragraph 289 to receive adequate and timely reparation for the violations established herein.

4. The Commission granted the State one month to implement the foregoing recommendations. On March 3, 2000, at a hearing on “The General Situation of Human Rights in Guatemala”, during the 106th Regular Session of the IACHR, the representatives of the Guatemalan State said that they wished to sign an agreement or commitment to implement the recommendations made by the IACHR in Report 05/00.

5. On April 13, 2000, the Commission received from the Guatemalan State its formal commitment to implement the recommendations contained in Report 05/00. The Guatemala State made a formal declaration in which it recognized its international responsibility stemming from noncompliance with Article 1(1) of the American Convention; acknowledged that the facts described in Report No. 05/00 of the Commission occurred; and undertook to provide compensation to the families of the victims, on the basis of the principles and criteria established in the inter-American system of human rights. Furthermore, the State undertook to initiate investigations of the facts and, insofar as possible, to bring legal proceedings against those responsible. Finally, the State undertook to report every four months to the Commission on progress made in complying with its obligations.

6. Report 39/00, which included Report 05/00 and the formal commitment of the State of Guatemala, was published on April 13, 2000.

7. In order to ensure implementation of the State’s obligations and commitments contained in IACHR Report 39/00, the State and the petitioners signed an Implementation Agreement dated February 18, 2005. Subsequently, on July 19, 2005, the State and the petitioners signed an Agreement on Compensation in the presence of Commission Member Susana Villarán.

8. In this report, the Commission transcribes the contents of both documents, ratifies the terms of the agreement, and urges the State to implement the recommendations formulated by the IACHR in Report 39/00 on this case.

II. FACTS

9. Pedro García Chuc was born on February 9, 1945,[FN2] in the village of Argueta, Sololá Department. He was the son of José Anastasio García and María Encarnación Chuc and the oldest of 12 siblings. The García Chuc family are farmers and carpenters. Pedro García Chuc

married Ms. Ricarda Catarina Yax Tiu, with whom he had 12 children. When he was 16, Mr. García Chuc was able to attend night school, which enabled him to learn to read and write. He was an active member of his community and engaged in a variety of activities -sporting, religious and social- to further community development.[FN3] His family describes him as a straightforward, honest, hardworking, courageous man, who did not shrink from struggle and always told the truth.

[FN2] Given the profile of Mr. García Chuc, at the follow-up meeting on friendly settlement held in Guatemala City on July 19, 2005, in the presence of Commission Member Susana Villarán, the parties requested the inclusion of a biographical reference in the instant report.

[FN3] The activities in which Mr. García Chuc engaged included the following: Secretary of the Board of Directors of Cooperativa Agropecuaria San Juan Argueta, RL; Chair of the Agricultural Committee of Cooperativa Agropecuaria San Juan Argueta, RL; Assistant Secretary of the Office of the Mayor of Argueta, 1972; Treasurer of the Water Committee for eight years; Member of the Parents Committee of Escuela Nacional Mixta, Colonia María Tecun; Chair of the Management Board of Cooperativa Agropecuaria San Juan Argueta, RL, 1991.

10. In the early hours of March 5, 1991, several members of the State security forces detained Mr. Pedro García Chuc at kilometer 135 of the Occidente road in the municipality of Sololá, in Sololá Department. Two days later, Mr. Pedro García Chuc's corpse, which presented several bullet wounds, was found in the same spot where he was detained. It is assumed that the extrajudicial execution was due to his activities as President of the Cooperativa San Juan Argueta R.L., as well as his active participation in efforts to secure benefits for his community.

III. PROCESSING BY THE COMMISSION

11. On April 2, 1991, the Commission received a petition lodged by the family of Pedro García Chuc. On April 10, 1991, the Commission forwarded the petition to the State and initiated its processing in accordance with the rules of the IACHR.

12. Having completed the necessary processing, the Commission examined together a series of 46 petitions that concerned allegations of extrajudicial execution of persons by the security forces or persons linked to them. The Commission took into account the common nature and time frame of the petitions in question, which included the petition on Pedro José García Chuc. Pursuant to Article 40 of its then-Regulations, the Commission decided to join the cases and process them together.

13. On November 11, 2001, the family of Pedro García Chuc appointed the Human Rights Legal Action Center (CALDH in Spanish) as their legal representative to follow up on the recommendations of the Commission and the undertakings of the State.

14. On February 24, 2000, the Commission adopted Report 05/00 in accordance with Article 50 of the American Convention. In that report it determined that the Republic of Guatemala bore international responsibility for the alleged arbitrary execution of the victims and attendant

violation of the rights to life, judicial protection, and a fair trial, together with other rights enshrined in the American Convention. The text of Report No. 05/00 was transmitted to the Guatemalan State and petitioners, in accordance with Article 51 (2) of the American Convention; at the same time, the Commission gave the State one month to implement the recommendations.

15. On March 3, 2000, at a hearing on “The General Situation of Human Rights in Guatemala”, during the 106th Regular Session of the IACHR, the representatives of the Guatemalan State said that they wished to sign an agreement or commitment to implement the recommendations issued by the IACHR in the aforesaid report. On April 13, 2000, the Commission published Report 39/00, in accordance with Article 51 of the Convention, in which the State issued a formal declaration that it would implement the recommendations of the IACHR. The Guatemalan State acknowledged that the facts described in Report No. 5/00 occurred and undertook to again take up the recommendations contained in that report; to promote domestic legal proceedings so that the circumstances surrounding those facts might be ascertained; and, if appropriate, to take the necessary corrective measures to compensate the victims or, in their absence, their family members.

16. In order to ensure implementation of the State’s obligations and commitments contained in Report 39/00 issued by the Commission, the State and the petitioners signed an Implementation Agreement dated February 18, 2005.

17. Subsequent to the Implementation Agreement, on July 19, 2005, the State and the petitioners signed an Agreement on Financial Compensation in the presence of Commission Member Susana Villarán, the contents of which are detailed hereinbelow.

18. On July 27, 2005, the Commission received from the State of Guatemala a report on the Agreement on Implementation of Recommendations, in which the State says that it has requested the Office of the Attorney-General for information on the existence of a proceeding in the case of Pedro García Chuc and the status of the investigation. They further report that on July 15, 2005, a public ceremony was held in the Department of Sololá to recognize the international responsibility of the State in the case of Pedro García Chuc. Presiding over the ceremony was Dr. Frank La Rue Lewy, Chair of the Presidential Commission on Coordination of Executive Policy concerning Human Rights (COPREDEH), who, in the name of the President and Vice President of the Republic, recognized the international responsibility of the State for the Extrajudicial Execution of Pedro García Chuc, and presented a letter addressed to the family signed by the Vice President of the Republic. In that way, the State complied with the agreement insofar as a public apology is concerned. The State informed that it also met its commitment as regards recovery of the victim’s memory with the preparation and placement of a plaque in recognition of the work of Mr. García Chuc in his community. The plaque was unveiled on July 15, 2005, at the main entrance of Colonia María Tecun, in Sololá.

19. On August 15, 2005, the report of the State was transmitted to the petitioners, who submitted their observations on September 6, 2005.

IV. COMMITMENTS SIGNED BY THE PARTIES

20. The Implementation Agreement signed by the parties on February 18, 2004, provides:

AGREEMENT ON IMPLEMENTATION OF RECOMMENDATIONS. CASE 10.855. PEDRO JOSE GARCÍA CHUC[FN4]

[FN4] The agreement was signed in Guatemala City on February 8, 2005. For the State: Frank William La Rue Lewy, Chair of the Presidential Committee on Human Rights (COPREDEH); for the petitioners: Fernando Arturo López Antillón, Legal Director, CALDH.

I. BACKGROUND

Facts

On March 5, 1991, several armed men, allegedly connected with the State security forces detained Mr. Pedro García Chuc (the “victim”) at kilometer 135 of the Occidente road in the municipality of Sololá, Sololá Department. Two days later, the victim’s corpse, which presented several bullet wounds, was found in the same spot where he was detained. The victim was the Chairman of Cooperativa San Juan Argueta R.L. The alleged facts were reported to the appropriate authorities.

Processing by the Inter-American Commission on Human Rights

On April 2, 1991, the victim’s family lodged a petition with the Inter-American Commission on Human Rights (the “Commission”).

On February 24, 2000, the Commission issued Report No. 05/00 under Article 50 of the American Convention on Human Rights (the “Convention”), in which it determined the responsibility of the State of Guatemala for violation of the victim’s human rights enshrined at Articles 1 (1) (obligation to ensure rights); 4 (right to life); 7 (right to personal liberty), and 8 and 25 (right to a fair trial and judicial protection). In that report, the Commission made the following recommendations to the State of Guatemala:

- Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and related violations in the cases of the victims named in section VII, and to punish the persons responsible pursuant to Guatemalan law;
- Adopt the measures necessary for the family members of the victims to receive adequate and timely reparation for the violations established herein.

On April 13, 2000, the Commission issued Report No. 39/00 under Article 51 of the Convention. In that report the State issued a formal declaration (“State Declaration”) dated April 13, 2000, in which it:

- Recognized its institutional responsibility stemming from noncompliance with Article 1 (1) of the American Convention;

- Acknowledged that the facts described in Report No. 05/00 of the Commission occurred;
- Undertook to provide compensation to the family of the victim on the basis of the principles and criteria established in the inter-American system of human rights;
- Undertook to initiate investigations of the facts and, insofar as possible, to bring civil, criminal, and administrative proceedings against those responsible;
- Undertook to report every four months to the Commission on progress made in complying with the obligations adopted in the State Declaration.

On November 11, 2001, the family of the victim appointed the Human Rights Legal Action Center (CALDH) as their legal representative to follow up on the recommendations of the Commission and the undertakings of the State.

The parties decide to sign the instant Agreement in order to ensure compliance with the State's obligations and commitments contained in the State Declaration, formalize the obligations of the State with respect to compliance with IACHR Report 39/00, and establish a process for their implementation.

II. PERSONS APPEARING AND WILL OF THE PARTIES

Appearing for the State of Guatemala: the Chair of the Presidential Commission on Coordination of Executive Policy concerning Human Rights (COPREDEH), Frank William Rafael La Rue Lewy; and for the other party, as Legal Advisor to the petitioners: Fernando López Antillón, Legal Director of the Program on Justice and Reconciliation of CALDH.

The object of appearing is to sign the instant Implementation Agreement in case 10.855, on the basis of respect for the human rights recognized in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and other instruments applicable to the instant case.

III. RECOGNITION OF THE RESPONSIBILITY OF THE STATE

On the instructions of the President of the Republic of Guatemala, the representative of COPREDEH, in the name of the State of Guatemala and before the Commission, recognizes, without prejudice to the liability of individuals to criminal prosecution, the international responsibility of the State:

- For violation of the right to life enshrined in Article 4 of the Convention to the detriment of Mr. Pedro García Chuc;
- For violation of the right to personal liberty recognized in Article 7 of the Convention to the detriment of Mr. Pedro García Chuc; and
- For violation of the right to a fair trial and judicial protection set down in Articles 8 and 25 of the Convention, to the detriment of Mr. Pedro García Chuc.

IV. COMPLIANCE WITH REPORT 39/00

- A. Investigation, prosecution and punishment of the persons responsible

- The State undertakes to carry out a complete, impartial, and effective investigation to identify the persons who violated the human rights of the victim, including any members of judicial agencies who might have failed to meet their obligations, and to impose punishments, as appropriate, pursuant to our laws.
- In this framework, COPREDEH will encourage the Office of the Attorney General take the necessary measures to ensure a responsible investigation on the part of the State.
- The State undertakes to provide CALDH and the Commission with periodic reports on the aforementioned investigation process.

B. Reparations

1. Financial compensation

- a. The State recognizes that it has a duty to provide reparation and pay just compensation to the petitioners in accordance with the guidelines set forth in domestic and international law.
- b. The State undertakes to reach an agreement with the petitioners on the amount and timing of payment of financial compensation before the end of first quarter 2005.
- c. The Parties undertake to meet within a month after the signing of the instant agreement in Guatemala to discuss the issue of financial compensation and to set a timetable for compliance with paragraph (b) above.

2. Public apology

- a. The State undertakes to make public its recognition of its institutional responsibility for violation of the human rights of the victim and to make a public apology to his family in a declaration made either by the President of the Republic, or by the Vice President of the Republic or the Chair of COPREDEH, in a public ceremony to be held in Guatemala City (the "Public Ceremony").
- b. The parties agree that the Public Ceremony shall be held within six months after the date of this agreement.
- c. The parties undertake to reach an agreement on the place, date and time of the Public Ceremony within two months after the date of this agreement.
- d. The State undertakes to publicize the Public Ceremony through the efforts of the COPREDEH Information and Press Department in the media.

3. Recovery of the victim's memory

In recognition of the diverse activities of Mr. García Chuc on behalf of his community, the State pledges to make and place a plaque in memory of the victim, the contents and site of which shall be determined with the beneficiaries.

V. DEADLINES

The deadlines contained in the instant agreement may be extended by mutual consent of the parties if it is determined that there is just cause or in situations of force majeure or acts of God.

VI. LEGAL BASIS

This Agreement is signed on the basis of Articles 1, 2, 3, 44, 46, 183(a), and the fundamental principles set down in the Constitution of the Republic of Guatemala and the Peace Agreements signed by the Government of Guatemala and the Guatemalan National Revolutionary Unit, as well as respect for the human rights recognized in Articles 1(1), 4, 5, 7, 8, 25, and 63(1) of the American Convention on Human Rights.

21. The Agreement on Financial Compensation signed by the parties provides:

AGREEMENT ON FINANCIAL COMPENSATION. CASE 10.855, PEDRO JOSÉ GARCÍA CHUC

I. BACKGROUND

On February 18, 2005, the Human Rights Legal Action Center (CALDH) and the State of Guatemala (hereinafter “the parties”), signed the Agreement on Implementation of Recommendations in Case No. 10.586, “PEDRO GARCÍA CHUC” (Implementation Agreement).

In Clause IV.B (1) (a) of the Implementation Agreement, the State recognized:

- a. “That it has a duty to provide reparation and pay just compensation to the petitioners in accordance with the guidelines set forth in domestic and international law.
- b. The State undertakes to reach an agreement with the petitioners on the amount and timing of payment of financial compensation before the end of first quarter 2005.
- c. The Parties undertake to meet within a month after the signing of the instant agreement in Guatemala to discuss the issue of financial compensation and to set a timetable for compliance with paragraph (b) above.”

In order to fulfill the foregoing clauses, the parties appear to sign the Agreement on Financial Compensation.

II. AMOUNTS

The State shall pay a total of one million, three hundred five thousand quetzals (Q. 1,135,000.00) distributed, by agreement with the beneficiaries, as follows:

To Mrs. Ricarda Catarina Yax Tiu, wife of Pedro García Chuc, the sum of one hundred twenty thousand quetzals only, (Q 120,000.00) for the death of her spouse.

To each of the 11 children of Mr. Pedro García Chuc, the sum of eighty thousand quetzals only (Q 80,000.00), for the death of their father, they being: Josefa Matilde; Héctor Anastasio; Walter René; María Rosario; Mario Rocaël; Alfredo Felipe; Alicia Juana; Lucy Carmelita; Eduardo Baltasar; Oliver Rodolfo, and Federico Juan, the last name of all of whom is García Yax.

To each of the siblings of Mr. Pedro García Chuc, the sum of twenty-seven thousand quetzals only (Q 27,000.00) for the death of their brother, they being: Ángel Antonio; Juliana Celedoña; Manuel Timoteo; Romeo Baltasar, and Anastasio Encarnación, the last name of all of whom is García Chuc.

III. DEADLINES

The State, through COPREDEH, undertakes to pay the full compensation amount by December 31, 2005.

IV. TECHNICAL TRAINING FOR THE GARCÍA YAX AND GARCÍA CHUC FAMILIES

The State, through COPREDEH, undertakes to provide technical training to the beneficiaries on the creation and workings of an association for investment of the fund to be paid in financial compensation. That training shall be imparted at the time and place agreed with the petitioners and ideally shall center on the workings of micro enterprises and small businesses.

V. INCORPORATION AND WORKINGS OF THE ASSOCIATION

The State, through COPREDEH, undertakes to grant the funds necessary to cover all professional fees incurred in the incorporation of the aforementioned association before a notary public and its entry in the Civil Register, as well as those of its legal representative.

The State, through COPREDEH, undertakes to take steps, preferably in the Department of Quetzaltenango, to locate and grant in usufruct a State-owned property for the functioning of the aforesaid association. However, should no State properties exist in said department, the same steps shall be taken to locate and grant a State-owned property in the Department of Sololá. Usufruct shall be granted for a period of twenty-five years, in accordance with the applicable laws.

VI. TAXES

The financial compensation shall not be liable for any existing or future tax, lien or levy.

Done in Guatemala City, on the nineteenth of July 2005.

Signed: Frank William Rafael La Rue Lewy, Chair of COOPREDEH; Mario Rocael García Yax, Representative of the petitioners; Susana Villarán, in representation of the Inter-American Commission on Human Rights.

V. CONCLUSIONS

22. The Inter-American Commission recognizes the will of the Guatemalan State to resolve this case through implementation of the recommendations made in Report 39/00.

23. The Commission recognizes the will of the State to comply with the agreement to offer a public apology by holding a public ceremony on July 15, 2005, in the Department of Sololá to recognize its international responsibility in the case of the extrajudicial execution of Pedro García Chuc.

24. The Commission acknowledges the efforts of the State to meet the undertaking to recover the memory of Pedro García Chuc by preparing and placing, on July 15, 2005, a plaque in recognition of the work of Mr. García Chuc in his community

25. The Commission recognizes the will of the Guatemalan State to sign an Agreement on Financial Compensation on July 19, 2005, including the amounts to be paid by the State by December 31, 2005; the commitment to provide technical training to the García Yax and García Chuc families; the commitment to grant the funds necessary to cover all professional fees incurred in the incorporation of the association for investment of the fund paid in financial compensation; and the commitment to take steps to locate and grant a State-owned property for the functioning of said association.

26. The Commission, in accordance with its powers under the Convention and its Rules of Procedure, will continue to follow-up on implementation of the recommendations contained in its report.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To take note of the terms of the commitment adopted by the State of Guatemala and accepted by the petitioners in this case.
2. To welcome with satisfaction the will demonstrated by the Government to implement the recommendations of the IACHR.
3. To urge the State to adopt the measures necessary to fulfill its outstanding commitments.
4. To continue to supervise implementation of the agreement reached by the parties and the recommendations made by the Commission.
5. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 27th day of October 2005. (Signed): Clare K. Roberts, Chair; Susana Villarán, First Vice Chair; Paulo Sérgio Pinheiro, Second Vice Chair; Commission Members: Evelio Fernández Arévalo, José Zalaquett, Freddy Gutiérrez, and Florentín Meléndez.