

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 22, 2013
CASE OF CHITAY NECH *ET AL.* v. GUATEMALA
MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "this Court") on May 25, 2010. The facts dealt with the forced disappearance, which occurred as of April 1, 1981, of the Mayan indigenous *Kaqchikel*, Mr. Florencio Chitay Nech, who served as Mayor of the Municipality of San Martín Jilotepeque. The Court found the State responsible for the forced disappearance of Florencio Chitay, given that he was deprived of his liberty in an unlawful manner by agents of the State or private citizens with the acquiescence of the State, and to this date, his whereabouts remain unknown. The foregoing took place in a systematic context of selective forced disappearances in Guatemala, directed, among others, against indigenous leaders, with the objective of dismantling all forms of political representation through the terror and thus, shattering the popular participation that was contrary to the State policy. Consequently, State violated the rights established in the Articles 7(1) (Right to Personal Liberty), 5(1) and 5(2) (Right to Personal Integrity), 4(1) (Right to Life), 3 (Right to Juridical Personality), and 23(1) (Right to Participate in Government) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in relation to the obligation to respect rights set forth in Article 1(1) of the same treaty, and in relation with Article I(a) of the Inter-American Convention on Forced Disappearance of Persons. Similarly, the Court declared that the State was responsible for the violation of the rights provided for in Articles 22 (Right of Freedom of Movement and Residence), 17 (Right to Protection of the Family), 19 (Rights of the Child), 8(1) (Right to a Fair Trial), 25(1) (Right to Judicial Protection), and 5(1) (Right to Personal Integrity) of the American Convention, in connection with Article 1(1) of this instrument, as well as for the noncompliance of the obligation enshrined in Article I(b) of the Inter-American Convention on the Forced Disappearance of Persons, to the detriment of the relatives of Mr. Chitay Nech.

2. The Order on Monitoring Compliance with the Judgment, issued by the Inter-American Court on December 1, 2011, in which it declared that it would continue proceedings to monitor compliance with the Judgment for the operative paragraphs pending in this 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 of the Judgment*);
- 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*).

3. The reports of the Republic of Guatemala (hereinafter "the State" or "Guatemala") regarding compliance with the Judgment, submitted on March 30, 2012 and June 4, 2013.

4. The briefs of the representatives of the victims (hereinafter "the representatives") dated January 6, May 12, and July 12, 2013, whereby they presented their observations on the reports of the State regarding compliance with the Judgment.

5. The briefs of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented on May 31, 2012 and July 26, 2013, whereby it submitted its observations regarding compliance with the Judgment.

6. The note of the Secretariat dated April 17, 2013, by which it encouraged the State to submit a report by no later than June 3, 2013, regarding its progress on compliance with the pending operative paragraphs in the case.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Guatemala has been a State Party to the American Convention on Human Rights since May 25, 1978, and it recognized the Court's contentious jurisdiction on March 9, 1987.

3. In conformity with the provisions of Article 67 of the American Convention, the State must promptly comply with the judgments of the Court in their entirety. Moreover, 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." To this end, the States must ensure the implementation at the domestic level of the Court's

decisions in its judgments.¹ The foregoing obligation includes the duty of the State to report to the Court on the measures adopted to comply with the rulings of the Court. The prompt implementation of the State's obligation to report to the Court on how each aspect ordered by the Court is being fulfilled is essential in order to assess the status of compliance with the Judgment as a whole.²

4. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of international responsibility of the State, supported by international case law, according to which, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its domestic law as justification for its failure to comply with its already established international responsibility.³ The treaty obligations of the States Parties are binding for all the powers and organs of the State.⁴

5. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.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)

6. In its report of March 30, 2012, the State indicated that the Prosecutor from the Human Rights Unit, in charge of the investigations in the case, reported that the *Unidad de Investigaciones Criminalísticas del Ministerio Público* [Criminal Investigations Unit of the Public Prosecutor's Office] conducted a series of interviews with persons and witnesses who might have seen the events that occurred. While the foregoing did not yield any positive results, it planned to conduct additional interviews. Additionally, it stated that it had not been able to obtain a statement from Estermerio Chitay Rodríguez, who witnessed the forced disappearance of his father, since he resides in the United States. Pursuant to the foregoing, the State reported that, during a meeting, the prosecutor in the case requested

¹ Cf. *Case of Baena Ricardo et al. V. Panamá. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, paras. 60 and 131, and *Case of Abril Alosilla et al. V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 3.

² Cf. *Case of Five Pensioners V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause 5, and *Case of Abril Alosilla, supra*, Considering clause 6.

³ 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, and *Case of Abril Alosilla, supra*, Considering clause 4.

⁴ Cf. *Case of Castillo Petruzzi et al. V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering clause 3, and *Case of Abril Alosilla, supra*, Considering clause 4.

⁵ Cf. *Case of Ivcher Bronstein V. Perú. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of Abril Alosilla, supra* Considering clause 5.

that the COPREDEH (*Comisión Presidencial de Derechos Humanos*) [Presidential Commission on Human Rights] undertake the expenses for a representative from the Public Prosecutor's Office to travel to the United States to interview Mr. Estermerio Chitay. On another note, the State noted that the prosecutor traveled to San Martín Jilotepeque to identify some of the military commissioners and that the next of kin of Chitay Nech were asked that, if they had such information, to provide the names of the military commissioners.

7. In its report dated June 4, 2013, the State pointed out that: a) at the time the facts took place, the crime of forced disappearance was not punishable under criminal law and thus, the facts could not fit into such criminal offense by virtue of the principle of legality; b) the crime of forced disappearance was codified by means of a decree that entered into force on July 3, 1996, that is, subsequent to the events that occurred, so, in any case, they should fit into the crime of kidnapping or of unlawful detention; c) the Constitutional Court of Guatemala acknowledged that the crime of forced disappearance is a crime of a permanent nature until the victim is released. The State indicated that "as such, it notes that, pursuant to Guatemalan legislation, the crime of forced disappearance is a crime of a permanent nature, and not of a continuing one, that threatens the liberty of a person. In this sense, the crimes of kidnapping and of unlawful detention are also considered permanent crimes, which is why, in this case, if any of them were committed prior to the classification of the crime of forced disappearance, it is not possible, within the legal framework, to apply the law retroactively and, consequently, change its classification to that of forced disappearance," and d) the resolution of the processes and remedies brought forth to determine whether or not to apply the Law on National Reconciliation is pending. Thus, until these are resolved, the investigation in this case cannot continue since, at present time, criminal responsibility for the crimes of unlawful detention and kidnapping is extinct."

8. The representatives noted that, in 2012, a meeting between the relatives of Mr. Chitay Nech and the representative from the Public Prosecutor's Office was held, in which minimal progress in the investigation was reported. They further noted that they had knowledge that the Public Prosecutor's Office was making visits to close acquaintances and relatives who knew Mr. Chitay to conduct the corresponding inquiries, but that such persons would not have given their names and that, moreover, "due to the [existing] conditions in the country, many of them would [have] conceal[ed] the facts." The representatives added that they are concerned about how little progress has been made in the case, and that the same will be stalled by decisions of the current government.

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. Furthermore, the Commission expressed its concern about the justification related to the possible application of the Law on National Reconciliation since conditioning the investigation on the decision of the domestic courts would imply the failure to comply with the obligation ordered by the Court and the risk of consolidation of a situation of impunity due to the possibility of the application of amnesty to an alleged serious violation of human rights. Lastly, the Commission noted that "it is necessary that the State provide information on the status of the investigation [...] taking into account that the applicable offense is the crime of forced disappearance," as was ordered by the Court in the Judgment.

10. The Court considers it important to highlight its findings set forth in paragraph 233 of the Judgment in this case, noting that "[t]he Tribunal observes that the report raised on March 2, 2009 was presented for the crime of forced disappearance, being that the facts of this case occurred prior to the codification of this crime in the Guatemalan Penal Code.

Given that the whereabouts of Florencio Chitay Nech continue to be unknown and the crime of forced disappearance has a permanent character, the Court f[ound] that pursuant to the principle of legality, the concept of forced disappearance constitutes the criminal codification applicable in the investigation, trial and eventual sanction of the facts committed in this case.”

11. In this respect, this Court has established in its consistent jurisprudence that forced disappearance constitutes a multiple violation of various rights protected by the Convention that is of a permanent or continuing nature. Due to its permanent nature, while the fate or whereabouts of the victim remains unknown, the forced disappearance continues in execution.⁶ In this regard, the Court reiterates that in this case, given the codification of the offense in the domestic criminal law of Guatemala in 1996, and given that the whereabouts of Mr. Chitay Nech have not been determined to date, the criminal conduct persists and therefore, the new law is applicable.⁷ Based on the foregoing, the Court considers that the application of the crime of forced disappearance in this case does not violate the principle of legality, nor does it imply a retroactive [ex post facto] application of a criminal law. Moreover, the Court has established in the case of *Tiu Tojin v. Guatemala* that, even in cases where criminal proceedings are pending for the commission of criminal offenses other than forced disappearance, in which an order for trial to commence has not been issued, if at the time the crime of forced disappearance goes into force, the execution of the crime continues, the new law is applicable.⁸

12. In regards to the Law on National Reconciliation (LRN) as a form of amnesty, this Court considers it necessary to remind the State that the Court has already ruled on this issue in its constant jurisprudence.⁹ In this sense, in paragraph 235(b) of the Judgment in this case, it stated that “the State must direct and conclude the investigations and pertinent proceedings in a reasonable time period, with the goal of establishing all the truth of the facts, with attention to the criteria indicated regarding the investigations in cases of forced disappearances removing all obstacles, *de facto* and *de jure*, that maintain this case in a state of impunity. In particular, [...]: b) [...] [t]he Court also reiterates that in consideration of the gravity of the facts, the State cannot apply laws of amnesty nor make arguments regarding the statute of limitations, retroactivity of the criminal law, *res judicata*, nor the principle of *non bis in idem*, or any other similar exception to their responsibility in order to excuse this obligation.”

⁶ Organization of American States, *Inter-American Convention on the Forced Disappearance of Persons*, adopted in the twenty-fourth period of ordinary sessions of the General Assembly, June 9, 1994, Article III. *Cf. Case of Blake V. Guatemala. Preliminary Objections*. Judgment of July 2, 1996. Series C No. 27, para. 39, and *Case of García and Family V. Guatemala. Merits, Reparations and Costs*. Judgment of November 29, 2012. Series C No. 258, para. 95.

⁷ *Cf. Case of Chitay Nech et al. V. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, paras. 214 and 233, *Case of Tiu Tojin V. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 87, and *Case of Gelman V. Uruguay. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of March 20, 2013, Considering clauses 53 and 100 to 101.

⁸ *Cf. Case of Tiu Tojin, supra*, paras. 79 and 87. The Court noted that “facts of [the] case started occurring before the definition of the crime of forced disappearance of persons[...]. Thus, the criminal proceedings were started for the crime of plagiarism or kidnapping, in force at that time. However, up to [that] date, the investigation has not offered results nor ha[d] the corresponding order for trial to commence been issued[...]. Since this is a crime of permanent execution, that it, its consummation is prolonged in time, if at the time the definition of the crime of forced disappearance of persons when into force in the domestic criminal law, the author maintains his criminal behavior, the new law is applicable.”

⁹ *Cf. Case of Barrios Altos V Perú. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41; *Case of the Massacre of Dos Erres V. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 129, and *Case of Gelman, supra*, Considering clauses 93 and 104.

13. Similarly, and in relation to the implementation of the LRN, the Court signaled in the *Case of the "Las Dos Erres" Massacre v. Guatemala* that "the eventual application of the amnesty provisions of the LRN in [the] case [of the massacre of 251 inhabitants of the community (*Parcelamiento*) of Las Dos Erres] would violate the obligations derived from the American Convention. Thus, the State ha[d] the duty to continue the criminal proceeding without major delays."¹⁰

14. In this regard, the Court observes that Article 8 of the Law on National Reconciliation¹¹, itself, establishes that "the extinction of criminal liability referred to in this law shall not apply to crimes of genocide, torture, and forced disappearance, as well as those crimes that are inalienable or that do not allow the extinction of criminal liability, in conformity with domestic law or the international treaties ratified by Guatemala." In view of this, it is necessary to remind the State that the LRN cannot be transformed into a hindrance or obstacle to continue with the investigations into the forced disappearance of Mr. Chitay Nech.

15. Accordingly, the Court appreciates the efforts undertaken by the State aimed at carrying out diligences in the investigation of the facts in this case. Nevertheless, taking into consideration the comments of the representatives and the Commission, the Court considers it essential to reiterate to the State to continue with the investigations initiated on March 2, 2009, taking into account that the crime of forced disappearance is the applicable criminal offense, in order to determined the criminal liabilities and effectively apply the sanctions and consequences provided by law, as well as to detail in its next report the progress of the investigation and the actions it has taken to identify, if applicable, the parties responsible for the criminal acts. Similarly, the Court reminds the State that it cannot rely on matters of domestic law to violate its international commitments, and the Judgment delivered in this case has the force of international *res judicata* and is binding in its entirety¹², which is why it shall ensure that the facts are investigated and that the LRN does not become an obstacle in continuing with the investigations.

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

16. The State indicated that it requested information from the *Fundación de Antropología Forense de Guatemala* [Forensic Anthropological Foundation of Guatemala] (FAFG for its

¹⁰ *Case of The Dos Erres Massacre, supra*, para. 131.

¹¹ Article 8 of the Decree Law no. 145-1996, National Reconciliation Law, December 27, 1996.

¹² *Cf. Case of Bámaca Velásquez V. Guatemala. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 18, 2010, Considering clauses 9, sections b) and c); 11; 12; 13; 34; 35; 36 and 40. In this order, it is noted that the Supreme Court of Guatemala declared "self-enforceability of the Judgment [in the Case of Bamaca Velazquez] issued by the Inter-American Court on November 25, 2000, and the annulment of the judgment of the Court of Retalhuleu [which declared the stay of proceedings of the investigations in relation to the disappearance of Mr. Bamaca Velasquez] and the judicial actions within the proceedings." Nevertheless, the Constitutional Court upon resolving the amparo which was filed by one of the beneficiaries of the stay of proceedings, granted the requested amparo in Light of the lack of an express order by the Inter-American Court in relation to the annulment of the stay and the lack of justification of the Supreme Court upon ordering said annulment, to the detriment of the right of defense of the petitioner. Therefore, the Constitutional Court left the order rendered by the Supreme Court suspended indefinitely, and subsequently was obligated to annul the order. In this regard, the Inter-American Court noted that specific orders are not necessary to overcome the obstacles that generate impunity and that the decision of the Supreme Court was rather, a way of complying with that which was ordered by the Court and a way of moving forward in an appropriate and diligent investigation of the case.

acronym in Spanish), which provided that it is moving forward with the recovery of remains in the Cemetery of La Verbena and the General Cemetery of Escuintla, in which there would be remains of persons who would have been close in age, sex, and date of disappearance of the victim. Such bone samples would be compared with the DNA samples provided by the family members of Mr. Chitay Nech, which were incorporated into the National Genetic Bank of Family Members and Victims of Forced Disappearances, in order to identify a match between the skeletal remains recovered and the samples provided by the relatives.

17. The representatives indicated that prior to the issuance of the Judgment, the next of kin of Mr. Chitay appeared before the FAFG to provide DNA samples, and that on two occasions, personnel from this institution discussed the progress in the search for the victims of the internal armed conflict, commenting that, so far, there have not been any major accomplishments. Furthermore, they noted that “up until now, the State of Guatemala has not undertaken greater efforts to search for and locate the remains of the victim, [and in turn, the State has laid] the responsibility on the FAFG, which is a foundation (NGO), as well as [on] the Chitay Rodríguez family.” The representatives stated that two of the brothers of the victims have traveled to Guatemala to leave their DNA samples with the FAFG.

18. The Commission recalled that the obligation to conduct investigations into the facts that generated the violations is linked to the duty of the State to prevent and combat impunity. Moreover, it considered it necessary that the State provide updated information, as the information already provided is from February of 2012.

19. On this point in particular, the Court stresses the importance of the fulfillment of this measure, because it provides the victims with moral satisfaction and allows the next of kin to close the mourning process they have been experiencing over the years.¹³ The Court observes that the information presented by the State is dated February 28, 2012 by virtue of the communications from the FAFG. That is, even though it has been more than one year since the last report provided by the FAFG, there is no updated information regarding the efforts to locate the remains of Mr. Chitay Nech. Based on the foregoing, the Court considers it imperative that the State adopt the measures required to locate Mr. Chitay, to comply with operative paragraph thirteen of the Judgment, and to report on the specific actions carried out in searching or locating him or, if applicable, his mortal remains, for which it must provide a work schedule implemented for this purpose.

C) Disseminate the official summary of the Judgment in a radio broadcast, on at least four occasions, performed in Spanish and in Mayan Kaqchikel (operative paragraph fourteen of the Judgment)

20. The State pointed out that since the representatives were unable to hear the radio broadcasts transmitted on July 3, August 7, September 4, October 2, and November 6, 2011 due to the lack of signal and coverage of the selected station (*Radio Cultural y Educativa* 1000 AM, *Cadena Radial “FGER”*) [Cultural and Education Radio 1000 AM, Radio Station “FGER”], the State made the necessary arrangements to use the services of another radio station. In this regard, the State indicated that the radio broadcast of the summary of the Judgment (Spanish, kaqchikel) was completed through the radio “Chimalteca 101.5 FM,”

¹³ Cf. *Case of the Dos Erres Massacre*, *supra*, para. 245, *Case of García and Family*, *supra*, para. 164, and *Case of Gómez Palomino V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering clause 13.

which has coverage in the entire department of Chimaltenango. Based on the foregoing, and with prior notice to the petitioners, the broadcasts were transmitted on March 4, April 1, May 6, and June 3, 2012, at 11:00 a.m. on the radio stations indicated.

21. In their brief of observations, the representatives stated that the transmission on March 4, 2014 was verified, but that they were unable to hear the transmission on April 1 because they were not informed about it until the night of March 31. They noted that the transmissions on May 6 and June 3 were verified, as they were in prior receipt of the scheduling of the broadcasts by the State.

22. The Commission appreciated the efforts made by the State to carry out the radio broadcasts. Nevertheless, it highlighted the comments of the representatives that some of these transmissions were carried out without the appropriate prior notice.

23. In accordance with the information provided by the parties, this Court considers that the State has complied with the dissemination of the official summary of the Judgment, on the first Sunday of the month, on at least four occasions. The representatives were notified prior to the transmissions, and the latter were heard in their majority. The Court appreciates the efforts of the State to have hired the services of a radio station with wider coverage in order to comply with the respective obligation derived from the Judgment. In consideration of the foregoing, the Court finds that the State has complied with operative paragraph fourteen of the Judgment.

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

24. The State reported that “the necessary steps are being taken to find space in the agendas of the pertinent authorities” to carry out the aforementioned public act.

25. The representatives stated that “it has not yet managed to confirm the participation of one of the highest authorities of the State, for purposes of compliance with this operative paragraph.” They indicated that the public event had been scheduled for April 3, 2012, but that it had to be postponed due to disagreements with State authorities. In their observations of July 12, 2013, the representatives noted that “in the present context and positioning of the current Government, [...] [they] prefer to suspend compliance with this point during this government.”

26. In this regard, the Commission signaled that coordination is essential for the prompt and effective implementation of the public act of acknowledgment of responsibility to achieve moral reparation and recovery of the historical memory of the victim. Moreover, it stressed that the State has offered the same justification since its reports in 2011.

27. The Court takes note of the request by the representatives regarding the suspension of the commitment of the public act of acknowledgment of responsibility on the part of the State and observes that such act, as reparation to the memory of Mr. Chitay Nech, should be carried out in accordance with the agreement between the State and his next of kin and/or representatives upon the modality of fulfillment of the public act of acknowledgement, as well as the specifics required, such as the place and the date on which

it shall be carried out.¹⁴ Nevertheless, this Court notes that, to date, the State has not yet complied with this obligation.

28. Meanwhile, the Court warns the representatives that the Court will not be able to monitor compliance with this measure if the victims do not cooperate with the State to carry out the public act of acknowledgment and responsibility.

29. Based on the foregoing, the Court urges the State and the next of kin and/or representatives to reach an agreement in order for the public act to take place as soon as possible. To this end, the Court considers it indispensable for the State to take all the steps necessary and conducive to perform this public act without further delay. In order to monitor compliance with this obligation, and in view of the fact that the State has not provided the information previously requested in the twenty-sixth Considering paragraph of the Order of December, 2011 (*supra* Having Seen clause 2), the Court reiterates to the State to submit clear, accurate, and detailed information regarding: a) the steps aimed at complying with this obligation, and b) the scheduling or tentative dates to celebrate the act as agreed upon with the representatives.

E) Offer free and immediate medical and psychological attention, in an adequate and effective manner, for however long it is necessary, to the victims declared in the Judgment (operative paragraph seventeen of the Judgment)

30. 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 it reiterated such request on March 7, 2012. Pursuant to this, the Ministry of Public Health and Social Welfare informed the State that on April 18, 2012, the Mental Health Program received via electronic scheduling, the names of the next of kin of Mr. Chitay who require assistance and a request that these persons be treated at the General Hospital San Juan de Dios in the city of Guatemala. As such, the appropriate personnel was designated to comply with this commitment, but that to date, it has not been able to establish communication with the petitioners since the only form of communication is via electronic correspondence.

31. The representatives noted that, during a meeting with a representative of the Ministry of Public Health and Social Welfare, support in the subject of psychology was discussed, which is why a proposal of psychological treatment was sent via electronic mail. However, the representatives reported that they were informed that care could not be provided at the times that they had proposed due to lack of staff during those hours. The representatives indicated that "they had hoped to accommodate to what the staff of the Ministry could offer; unfortunately, in the case of the brothers Chitay Rodriguez, this is nearly impossible as they had taken steps to request the respective permissions in their respective places of employments." Likewise, they stated that only psychological treatment had been discussed, but that it was also necessary to provide medical attention for sufferance from health problems.

32. The Commission indicated that the Court ordered the State to not only offer free psychological attention, but also medical care. Furthermore, it noted that in connection with the impossibility of the next of kin of Mr. Chitay to make it to the medical center due to conflicts with their work schedules, "the State has the obligation to guarantee and provide

¹⁴ Cf. *Case of Chitay Nech*, *supra*, para. 248.

all the material resources and conditions that allow the next of kin to have real access to health services, including, for example, business licenses.”

33. In accordance with the indications of the parties, the Court does not possess sufficient evidence to evaluate compliance with this operative point. Consequently, the Court considers it necessary to reiterate to the State the request in the Order of December of 2011 (*supra* Having Seen clause 2) to inform the Court about: a) the actions performed by the State to provide effective medical and psychological attention to the victims that are in Guatemala and that require it, and b) the schedule of medical and psychological care to the victims, as jointly agreed upon with them. Similarly, the next of kin of Mr. Chitay shall provide to the State the necessary information and cooperation to facilitate the implementation of this measure ordered in the Judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and, pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Article 30 of its Statute, and Articles 31(2) and 69 of its Rules of Procedure,

DECIDES TO:

1. In accordance with the pertinent considering paragraphs of the present Order, the State has fully complied with its obligations to:

a) disseminate the official summary of the Judgment in a radio broadcast, on at least four occasions, performed in Spanish and in Mayan *Kaqchikel* (*operative paragraph fourteen of the Judgment*).

2. The Court will maintain open the proceedings of monitoring compliance in relation to operative paragraphs 12, 13, 15, and 17 of the Judgment, regarding the obligations of the State to:

a) manage the investigation efficiently, with due diligence, and within a reasonable period of time, 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 law (*operative paragraph twelve of the Judgment*);

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

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

- d) 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*).
3. Require the State to adopt all measures necessary to promptly and effectively comply with the operative paragraphs pending compliance, indicated in the second operative paragraph, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
4. Require that, in order to continue monitoring the execution of the public act of acknowledgment of responsibility, the victims and their representatives cooperate with the State, in accordance with Considering paragraph 28 of the present Order.
5. Request that the State submit to the Inter-American Court of Human Rights, by no later than November 1, 2013, 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, in conformance to that established in Considering paragraphs 15, 19, 29, and 33 of the present Order. Subsequently, the State shall continue to inform the Court in this regard every three months.
6. Request that the representatives of the victims and the Inter-American Commission on Human Rights submit any observations they deem pertinent on the report of the State mentioned in the previous operative paragraph, within four and six weeks, respectively, as of the date of receipt of this report.
7. Continue monitoring compliance in relation to the operative paragraphs pending compliance with the Judgment on preliminary objections, merits, reparations and costs, of May 25, 2010.
8. Require the Secretariat of the Court to provide notice of the instant Order to the Republic of Guatemala, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary