

Chitay Nech et al. v. Guatemala

ABSTRACT¹

In 1981, armed men kidnapped the Mayan indigenous political leader Kaqchikel Florencio Chitay Nech. Mr. Chitay Nech's disappearance was never investigated, and those responsible had not been prosecuted by the date of the judgment, however, they were prosecuted 29 years after Mr. Chitay Nech's disappearance. His whereabouts remain unknown. The Court found that the State violated the American Convention on Human Rights and the American Convention on Forced Disappearance of Persons.

I. FACTS

A. Chronology of Events

November 21, 1980: A group of fifteen men, comprised of the Guatemalan military intelligence service members and civilians, kidnap Mr. Felipe Alvarez Tepaz, the first indigenous mayor of the Municipality of San Martin de Jilotepeque.² Mr. Alvarez Tepaz's family reports the crime to the police.³ Though the Court of Chimaltenango opens a case file, no subsequent investigation occurs.⁴ Over the following three months, three of Mr. Alvarez Tepaz's sons are also kidnapped.⁵

January 6, 1981: The second councilman of the Municipality of San Martin de Jilotepeque is also kidnapped.⁶ Mr. Florencio Chitay Nech, the first councilman of the Municipality, becomes deputy mayor of the

1. Amy Choe, Author; Grace Kim, Sascha Meisel, and Elise Cossart-Daly, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Chitay Nech v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.599, ¶ 62 (Apr. 17, 2009).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 63.

6. *Id.* ¶ 64.

district.⁷ He begins receiving death threats and his home is attacked several times.⁸ Finally, Mr. Chitay Nech and his family escape to Guatemala City and Mr. Chitay Nech finds work at a refrigerator repair shop to support his family.⁹

April 1, 1981: A group of armed men kidnap Mr. Chitay Nech when he is away from home buying firewood.¹⁰ Mr. Chitay Nech's then five-year-old son, who is with him during the incident, runs home.¹¹ His other sons immediately report the incident to the National Police but the police do not take any action.¹² Further, Mr. Chitay Nech's family look for his body in hospitals and morgues but cannot find him.¹³

In the following years, numerous members of Mr. Chitay Nech's family are either kidnapped or murdered.¹⁴

1999: Guatemala's Committee for Historical Clarification reports Mr. Chitay Nech's case as one of forced disappearance.¹⁵

October 12, 2004: Mr. Chitay Nech's son files a *habeas corpus* petition with the First Criminal Justice of the Peace in Guatemala City to compel the officials who detained his father to report why he was detained.

November 4, 2004: The Court finds the *habeas corpus* petition inadmissible because there is no evidence that Mr. Chitay Nech was detained.¹⁶

B. Other Relevant Facts

Guatemala went through a long period of serious internal armed conflict between 1954 and 1996.¹⁷ While much of the conflict follows

7. *Id.* ¶ 66.

8. *Id.*

9. *Id.* ¶¶ 69, 70.

10. *Id.* ¶ 72.

11. *Id.*

12. *Id.* ¶ 81.

13. *Id.*

14. *Id.* ¶ 77.

15. *Id.* ¶ 83.

16. *Id.* ¶ 85.

17. Chitay Nech v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 64 (May 25, 2010).

the patterns typical of Cold War proxy wars in the Americas — leftist insurgents, backed by rural population trying to unseat undemocratic or military-controlled right wing governments and land-owners who have their own paramilitary militias — the particular feature of Guatemala, which has a large indigenous, Mayan, population often disenfranchised and marginalized, has been the targeting of indigenous communities by the military and paramilitary.¹⁸

II. PROCEDURAL HISTORY

A. Before the Commission

March 2, 2005: Pedro Chitay Rodríguez, Alejandro Sanchez Garrido, Astrid Odete Escobedo Barrondo and the Azmitia Dorantes Comprehensive Development and Promotion Association submit a complaint to the Commission.¹⁹

February 27, 2007: The Commission adopts Admissibility Report No. 7/07 and finds Mr. Chitay Nechs' case admissible.²⁰

October 31, 2008: The Commission adopts Merits Report No. 90/08.²¹ The Commission holds that Guatemala violated Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), Article 17 (Rights of the Family), Article 19 (Rights of the Child), Article 23 (Right to Participate in Government) and Article 25 (Right to Judicial Protection) with respect to Article 1 of the Convention and Articles I (Obligation to Adopt Measures) and II (Definition of Forced Disappearance) of the Inter-American Convention on Forced Disappearance of Persons.²²

The Commission holds that Guatemala violated Article 7 (Right to Personal Liberty) because Mr. Chitay Nech was illegally detained by government agents and was kidnapped afterwards.²³ Similarly, Mr. Chitay Nech's forced disappearance constitutes a violation of

18. *Id.*

19. *Id.* ¶ 11.

20. Chitay Nech v. Guatemala, Admissibility Report No. 7/07, Inter-Am. Comm'n H.R., Case No. 12.599, ¶ 4 (Feb. 27, 2007).

21. Chitay Nech v. Guatemala, Petition to the Court, ¶ 26.

22. *Id.*

23. *Id.* ¶ 107.

Articles I (Obligation to Adopt Measures) and II (Definition of Forced Disappearance) of the Inter-American Convention on Forced Disappearance of Persons, which forbids governments from engaging in forced disappearance.²⁴

Furthermore, Guatemala subjected Mr. Chitay Nech and his next of kin human rights violations on the basis of Article 5 (Right to Humane Treatment), because government agents continuously persecuted Mr. Chitay Nech and finally kidnapped him in front of his son, harming Mr. Chitay Nech and his next of kin's mental and moral integrity.²⁵ The Commission also held that Guatemala violated Mr. Chitay Nech's Article 4 (Right to Life) rights because it is likely that he was killed during the forced disappearance.²⁶

Moreover, the Commission ruled that Guatemala violated Mr. Chitay Nech's Article 3 (Right to Juridical Personality) rights, as his right to any kind of judicial protection was forfeited when he was kidnapped.²⁷ Continuing its analysis, the Commission held that Guatemala violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) because the State did not start investigating Mr. Chitay Nech's case until 2009.²⁸ The Commission also concluded that Guatemala violated Article 17 (Rights of the Family), because Mr. Chitay Nech's family were constantly threatened and persecuted ever since Mr. Chitay Nech took on the role of the indigenous community's leader.²⁹ As for the pain Mr. Chitay Nech's then young son Estermerio Chitay Rodríguez suffered when seeing his father being abducted, the Commission ruled that Guatemala violated Article 19 (Rights of the Child).³⁰ Finally, the Commission ruled that Guatemala violated Article 23 (Right to Participate in Government), as the State intended to prevent Mr. Chitay Nech from participating in politics by subjecting him to forced disappearance.³¹

The Commission recommended that Guatemala promptly and effectively investigate facts surrounding Mr. Chitay Nech's kidnapping and prosecute those who are responsible for the crime.³²

The Commission also recommended Guatemala to accept

24. *Id.* ¶ 111.

25. *Id.* ¶¶ 121, 126.

26. *Id.* ¶ 133.

27. *Id.* ¶ 145.

28. *Id.* ¶ 157.

29. *Id.* ¶ 189.

30. *Id.* ¶ 195.

31. *Id.* ¶ 210.

32. *Id.* ¶ 27.

international liability for its acts.³³

B. Before the Court

April 17, 2009: The Commission submits the case to the Court after the State failed to adopt its recommendations.³⁴

May 15, 2009: The State receives notification of the Commission's submission to the Court and its right to appoint a judge *ad hoc*.³⁵

June 12, 2009: The State appointed María Eugenia Solís García Judge *ad hoc*.³⁶

1. Violations Alleged by Commission³⁷

To the detriment of Mr. Chitay Nech:

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 23 Right to Participate in Government

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects) of the American Convention

Article I (Obligation to Adopt Measures)

Article II (Definition of Forced Disappearance) of the Inter-American Convention on Forced Disappearance of Persons.

To the detriment of Mr. Chitay Nech and his children, Ms. Encarnación Chitay Rodríguez, Mr. Pedro Chitay Rodríguez, Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez, and Ms. María Rosaura Chitay Rodríguez:

33. *Id.*

34. Chitay Nech v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.599 (Apr. 17, 2009).

35. Chitay Nech v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, ¶ 7, n.3.

36. *Id.* ¶ 7, n.3.

37. Chitay Nech v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.599 (Apr. 17, 2009).

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) Obligation to Respect Rights

Article 2 (Domestic Legal Effects) of the American Convention.

To the detriment of Ms. Encarnación Chitay Rodríguez, Mr. Pedro Chitay Rodríguez, Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez, and Ms. María Rosaura Chitay Rodríguez, all children of Mr. Chitay Nech:

Article 5 (Right to Humane Treatment)

Article 17 (Rights of the Family)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Estermerio Chitay Rodríguez:

Article 19 (Rights of the Child)

in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims³⁸

Same Violations Alleged by Commission, plus:

To the detriment of Mr. Chitay Nech; Ms. Marta Rodríguez Quex, his wife; Ms. Amada Rodríguez Quex, his sister-in-law; and Ms. Encarnación Chitay Rodríguez, Mr. Pedro Chitay Rodríguez, Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez, and Ms. María Rosaura Chitay Rodríguez, all Mr. Chitay Nech's children:

38. Chitay Nech v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.599 (Apr. 17, 2009). Mr. Carlos María Pelayo Möller and Ms. Astrid Odete Escobedo Barrondo served as representatives of Mr. Chitay Nech, Ms. Marta Rodríguez Quex, Ms. Amada Rodríguez Quex, Mr. Encarnación Chitay Rodríguez, Mr. Pedro Chitay Rodríguez, Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez, and Ms. María Rosaura Chitay Rodríguez.

Article 21 (Right to Property)

Article 22 (Freedom of Movement and Residence)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects) of the American Convention.

To the detriment of Ms. Marta Rodríguez Quex, Ms. Amada Rodríguez Quex, Ms. Encarnación Chitay Rodríguez, Mr. Pedro Chitay Rodríguez, Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez, and Ms. María Rosaura Chitay Rodríguez:

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects) of the American Convention.

Article 5 Right to Humane Treatment

Article 17 Rights of the Family

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Eliseo Chitay Rodríguez and Ms. María Rosaura Chitay Rodríguez, children of Mr. Chitay Nech who were alive at the time of his disappearance in addition to Mr. Estermerio Chitay Rodríguez:

Article 19 (Rights of the Child)

in relation to:

Article 1 (Obligation to Respect Rights) of the American Convention.

October 19, 2009: The State files two preliminary objections.³⁹ First, the State argues that the petitioners failed to exhaust domestic remedies with regard to Article 21 (Right to Property) and 22 (Freedom of Movement and Residence). It claims that petitioners neither alleged those violations in its petition to the Commission nor did it make any

39. Chitay Nech v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 23.

reference to facts that point to the violations of those rights.⁴⁰ Further, the State argues that the petitioners never claimed that Mr. Chitay Nech lost land in the various proceedings before the case came to the Court.⁴¹ The State also argues that the petitioners' right to freedom of movement was not impeded at any time.⁴²

Second, the State argues that the Commission wrongly assumed that the State and the petitioners could no longer reach a friendly settlement when only the initial settlement negotiations failed.⁴³ Consequently, since the State is still open to friendly settlement, the State claims that the Court does not have jurisdiction over the Chitay Nech case because the case can be settled outside court.⁴⁴

In addition to the preliminary objections, the State acknowledged partially international liability with regard to Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 17 (Rights of the Family), Article 19 (Rights of the Child), and Article 23 (Right to Participate in Government) in relation to Article 1(1), as well as Articles I (Obligation to Adopt Measures) and II (Definition of Forced Disappearance) of the Inter-American Convention on Forced Disappearance of Persons.⁴⁵

May 25, 2010: The Court responds to the State's preliminary objections. The Court holds that Guatemala's Article 21 objection is admissible because petitioners never claimed that Mr. Chitay Nech lost his land or point to other relevant facts and thus could not have sought domestic remedies.⁴⁶ Regarding the petitioners' alleged failure to exhaust domestic remedies for Article 22, the Court rules that Guatemala's objection is inadmissible because the petitioners still presented facts that pertain to the Article 22 violation, even though they did not allege violation of that specific right.⁴⁷

Regarding the State's objection that the parties were not given an opportunity to reach a friendly settlement, the Court rules that the objection is inadmissible because reaching a friendly settlement is not obligatory and therefore does not affect the Court's jurisdiction.⁴⁸

40. *Id.*

41. *Id.*

42. *Id.* ¶ 33.

43. *Id.* ¶ 31.

44. *Id.* ¶ 35.

45. *Id.* ¶ 5.

46. *Id.* ¶ 29.

47. *Id.* ¶ 33.

48. *Id.* ¶ 39.

III. MERITS

A. *Composition of the Court*

Diego García-Sayán, President
Leonardo A. Franco, Vice-President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
María Eugenia Solís García, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

May 25, 2010: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁴⁹

The Court found unanimously that Guatemala had violated:

Article 7(1) (Right to Personal Liberty and Security), in relation to Article 1(1) of the Convention, to the detriment of Mr. Chitay Nech,⁵⁰ because:

Article 7 of the American Convention requires any restriction to personal liberty to take place according to legal procedures.⁵¹ Whenever it can be reasonably suspected that a person has been subject to forced disappearance and State officials have notice, the State has the duty to investigate in a serious and impartial manner.⁵² In the present case, State agents of the Guatemalan government or other individuals unlawfully detained Mr. Chitay Nech more than twenty-nine

49. Chitay Nech v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212 (May 25, 2010).

50. *Id.* “Declares” ¶ 4.

51. *Id.* ¶ 90.

52. *Id.* ¶ 92.

years ago and his whereabouts are still unknown.⁵³ Furthermore, the government authorities concealed his disappearance and did not seriously and effectively investigate the case over the years.⁵⁴

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) of the Convention, to the detriment of Mr. Chitay Nech,⁵⁵ because:

Forced disappearance represents cruel and inhumane treatment even if it is not possible to prove that an individual has been tortured or assassinated, as forced disappearance is often conducted secretly, with the purpose of erasing material evidence.⁵⁶ In fact, extended periods of isolation and lack of communication itself is inhumane treatment.⁵⁷ In this case, Mr. Chitay Nech has disappeared for twenty-nine years and there is strong reason to believe he was subject to forced disappearance.⁵⁸

Article 3 (Right to Juridical Personality), in relation to Article 1(1) of the Convention, to the detriment of Mr. Chitay Nech,⁵⁹ because:

Mr. Chitay Nech did not receive legal and institutional protection after his forced disappearance and was thus left completely vulnerable.⁶⁰ Even though the disappeared person cannot enjoy all of his rights, forced disappearance may still constitute a specific violation of right to juridical personality due to the gravity of the crime.⁶¹ When a person is subject to forced disappearance, that person loses the chance to exercise his rights, which is one of the gravest violations of human rights and thus constitutes a violation of right to recognition as a person before the law.⁶² While the Court had not interpreted forced disappearance cases in the context of violation of juridical personality, the Court had broadly interpreted Article II of the Inter-American

53. *Id.* ¶ 91.

54. *Id.* ¶ 93.

55. *Id.* "Declares" ¶ 4.

56. *Id.* ¶¶ 94, 95.

57. *Id.* ¶ 94.

58. *Id.* ¶ 91.

59. *Id.* "Declares" ¶ 4.

60. *Id.* ¶ 97.

61. *Id.* ¶ 98.

62. *Id.* ¶ 102.

Convention on the Forced Disappearance of Persons to mean that forced disappearance constitutes violation of juridical personality.⁶³ The violation of juridical personality is even more evident when the State intends to prevent the individual from seeking legal remedies and civil and political rights.⁶⁴

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) of the Convention, to the detriment of Mr. Chitay Nech,⁶⁵ because:

In cases of forced disappearance, the victim is vulnerable because many of his rights, including right to life, have been violated.⁶⁶ Accordingly, failure to investigate the case represents a violation of Article 4(1) in relation with Article 1(1) of the Convention.⁶⁷ After Mr. Chitay Nech disappeared, the Guatemalan government officials failed to investigate his case even though there was reason to believe that he was a victim of forced disappearance.⁶⁸ Therefore, the government's lack of investigation of Mr. Chitay Nech's case constitutes a violation of Article 4(1) (Prohibition of Arbitrary Deprivation of Life).⁶⁹

Article 23(1) (Right to Participate in Public Affairs), in relation to Article 1(1) of the Convention, to the detriment of Mr. Chitay Nech,⁷⁰ because:

The State violated Mr. Chitay Nech's right to exercise his political rights as established in the Convention. The State has the duty to ensure that people can enjoy political rights, which helps strengthen democracy and constitute fundamental means through which people can exercise human rights.⁷¹ In the present case, Guatemala conducted forced disappearance on Mr. Chitay Nech, a national political leader and mayor of his municipality, to suppress political movements that threatened the government's "National Security Doctrine."⁷² The

63. *Id.* ¶ 99.

64. *Id.* ¶ 100.

65. *Id.* "Declares" ¶ 4.

66. *Id.* ¶ 95.

67. *Id.* ¶ 96.

68. *Id.*

69. *Id.* ¶ 103.

70. *Id.* "Declares" ¶ 4

71. *Id.* ¶¶ 106, 107.

72. *Id.* ¶¶ 108, 110, 112

Doctrine regularly employed police forces to conduct forced disappearance on political leaders and Mr. Chitay Nech was also subject to this Doctrine.⁷³ After he was elected mayor, he received several threats and could not effectively exercise his public functions as a community leader.⁷⁴

Article I(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Mr. Chitay Nech,⁷⁵ because:

Guatemala's has the obligation not to practice forced disappearance according to the IACFDP, which it ratified in 2000.⁷⁶ Because Mr. Chitay Nech's forced disappearance continues to this date from before Guatemala ratified the IACFDP, Guatemala has violated the convention.

Article 22 (Freedom of Movement and Residence) and Article 17 (Rights of the Family) of the Convention, in relation to Article 1(1) of the Convention, to the detriment of Mr. Encarnación Chitay Rodríguez and Mr. Pedro Chitay Rodríguez,⁷⁷ because:

The State failed to guarantee the freedom of movement and provide means for safe return for Mr. Chitay Nech's next of kin, who had to escape their municipality.

Even though the representatives did not allege an Article 22 violation before the Commission, this did not constitute prejudice against the State because it had several chances to rebut the allegation afterwards.⁷⁸ The State only argued that the representatives did not exhaust domestic remedies.⁷⁹

Using the definition of "forcible displacement" in the Guiding Principles on Internal Displacements of the United States, the Court

73. *Id.* ¶¶ 109, 110.

74. *Id.* ¶ 110.

75. *Id.* "Declares" ¶ 4.

76. *Id.* ¶ 119.

77. *Id.* "Declares" ¶ 5.

78. *Id.* ¶ 138.

79. *Id.*

defines the scope of Article 22 of the Convention, which recognizes the right to freedom of movement.⁸⁰ According to the Guiding Principles, forcibly displaced persons are “persons or groups of persons that have been seen as forced or obligated to escape or run from their homes or their place of habitual residence, in particular as a result of or in order to avoid the effects of an armed conflict, of situations of generalized violence, of violations of human rights [...], and that have not crossed an internationally recognized State border.”⁸¹

Because internally displaced people are at high risk of suffering from multiple human rights violations, they might be de facto vulnerable.⁸² Also, when the State did not provide necessary guarantees to ensure freedom of movement, there might be a de facto violation of freedom of movement.⁸³ In the present case, Mr. Chitay Nech’s next of kin had to escape from their community to escape persecution under the Guatemalan “Doctrine of National Security” and could not return afterwards due to concerns about their safety.⁸⁴ Moreover, when the next of kin were forced to move, they also abandoned their land, to which Mayans have a fundamental connection, and lost their cultural identity.⁸⁵

Article 17 (Rights of the Family) of Convention, in relation to Article 1(1) of the Convention, to the detriment of Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez, and Ms. María Rosaura Chitay Rodríguez,⁸⁶ because:

Mr. Chitay Nech’s forced disappearance caused his family to disintegrate, violating the right to protect the family.⁸⁷ The Convention regards the family as a fundamental societal element that deserves protection.⁸⁸ Furthermore, the Convention recognizes a child’s right to live with her family.⁸⁹ The Court also attaches significance to the coexistence of the family in the context of the indigenous family as the

80. *Id.* ¶ 140.

81. *Id.*

82. *Id.* ¶ 141.

83. *Id.* ¶ 142.

84. *Id.* ¶ 148.

85. *Id.* ¶¶ 145, 146.

86. *Id.* “Declares” ¶ 6

87. *Id.* ¶ 161.

88. *Id.* ¶ 156.

89. *Id.* ¶¶ 57, 158.

*disappearance of parents in the Mayan family disrupts the traditional transfer of knowledge from parents to children.*⁹⁰

*In the present case, Mr. Chitay Nech's children had to grow up separately because they were afraid of suffering from persecution if they returned to their hometown.*⁹¹

Article 19 (Rights of the Child), in relation to Article 1(1) of the Convention, to the detriment of Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez, and Ms. María Rosaura Chitay Rodríguez,⁹² because:

*Guatemala violated the right to cultural life of Mr. Chitay Nech's children.*⁹³ *The Convention requires that children receive protection from their family, society and the State.*⁹⁴ *The Court recognizes both the American Convention and the Convention on the Rights of the Child as bodies of law that govern the rights of children.*⁹⁵ *Article 30 of the Convention of the Rights of the Child gives States the duty to protect the rights of indigenous children to live according to their culture, religion and language.*⁹⁶ *When indigenous children leave their communities, they suffer cultural and spiritual loss and in particular, suffer from deficient oral education, a traditional form of education in the Mayan culture.*⁹⁷ *Therefore, the rights of Mr. Chitay Nech's children were violated because the family was displaced, and family members were separated due to the forced disappearance of the father and the government's persecution.*

Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court) of the Convention, in relation to Article 1(1) of the Convention and Article I(b) of the Inter-American Convention on the Forced Disappearance of Persons to the detriment of Mr. Encarnación Chitay Rodríguez, Mr. Pedro Chitay Rodríguez, Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez,

90. *Id.* ¶¶ 159, 160.

91. *Id.* ¶ 161.

92. *Id.* "Declares" ¶ 6.

93. *Id.*

94. *Id.* ¶ 164.

95. *Id.* ¶ 165.

96. *Id.* ¶ 166.

97. *Id.* ¶ 169.

Ms. María Rosaura Chitay Rodríguez,⁹⁸ because:

Guatemala did not engage in formal and effective investigation of Mr. Chitay Nech's forced disappearance.⁹⁹ States have the duty to provide effective judicial remedies to allege victims of human rights violations and the remedies must conform to due process.¹⁰⁰ In forced disappearance cases, whenever there is reasonable belief that a person has become a victim of the crime, States must start an investigation once government officials take notice.¹⁰¹ In the present case, Mr. Chitay Nech's family reported his detention to the police and the DCG party, the political party Mr. Chitay Nech belonged to, announced his disappearance soon after.¹⁰² There were numerous instances that should have given the government ample notice of Mr. Chitay Nech's disappearance.¹⁰³ Despite this, the government did not engage in any investigation until 2009, when COPREDEH submitted a formal report.¹⁰⁴

In addition, Guatemala violated due process because it did not start investigating Mr. Chitay Nech's case within a reasonable time.¹⁰⁵ The right of access to justice requires that investigation take place in a reasonable time.¹⁰⁶ Time is even more important in cases of forced disappearance because it is difficult to amass material evidence as time passes.¹⁰⁷ In the present case, the State had not investigated Mr. Chitay Nech's case for twenty-nine years and denied an appeal of habeas corpus.

Article 5(1) (Right to Physical, Mental, and Moral Integrity) of the Convention, in relation to Article 1(1) of the Convention, to the detriment of Ms. Encarnación Chitay Rodríguez, Mr. Pedro Chitay Rodríguez, Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez, Ms. María Rosaura Chitay Rodríguez,¹⁰⁸ because:

98. *Id.* "Declares" ¶ 7.

99. *See id.* ¶ 195.

100. *Id.* ¶ 190.

101. *Id.* ¶ 193.

102. *Id.* ¶ 194.

103. *See id.*

104. *Id.* ¶ 195.

105. *See id.* ¶ 197.

106. *Id.* ¶ 196.

107. *Id.*

108. *Id.* "Declares" ¶ 8.

*Guatemala violated the right to physical and moral integrity of Mr. Chitay Nech's next of kin.*¹⁰⁹ *The Court has considered that the continued concealment of the truth of the disappeared person constitutes cruel and inhuman treatment for the person's close next of kin.*¹¹⁰ *Furthermore, the State has the duty to protect the next of kin's right to personal integrity by engaging in effective investigation.*¹¹¹

*In the present case, Mr. Chitay Nech's next of kin testified that they suffered sadness and anguish because of Mr. Chitay Nech's disappearance, separation of the family and the need to provide for themselves at a young age.*¹¹² *Such feelings persisted because the government never told Mr. Chitay Nech's family what happened to him.*¹¹³ *The Court ruled that the experiences of the next of kin affected their social and familial relationship and alienated them from their indigenous culture.*¹¹⁴

The Court found unanimously that Guatemala had not violated:¹¹⁵

Article I (Obligation to Respect Rights) of the Convention because:¹¹⁶

*Guatemala codified the crime of forced disappearance in its penal code.*¹¹⁷ *Additionally, Guatemala has started investigating Mr. Chitay Nech's case.*¹¹⁸ *Therefore, there is no basis for arguing that Guatemala failed to domestically implement the Convention.*¹¹⁹

Article II (Definition of Forced Disappearance) of the Inter-American Convention on the Forced Disappearance of Persons because:¹²⁰

109. *Id.*

110. *Id.* ¶ 221.

111. *Id.*

112. *Id.* ¶ 223.

113. *Id.* ¶ 225.

114. *Id.*

115. *Id.* "Declares" ¶ 9.

116. *Id.* "Declares" ¶ 10.

117. *Id.* ¶ 214.

118. *Id.*

119. *Id.*

120. *Id.* ¶ 120.

*Article II of the IACFDP refers to the definition of forced disappearance and is not an obligation that can be violated by itself.*¹²¹

Article III (Obligation to Adopt Legislative Measures) of the Inter-American Convention on the Forced Disappearance of Persons because:¹²²

*The representatives only referred to Article III of the IACFDP in the final argument and did not initially allege a violation.*¹²³

The Court did not rule on Article 21 (Right to Property) of the Convention because:¹²⁴

*The Court already upheld Guatemala's preliminary objection on this matter and therefore cannot rule on its merits again.*¹²⁵

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Investigation and Adjudication of Mr. Chitay Nech's Disappearance Case

The Court ordered Guatemala to determine the facts surrounding Mr. Chitay Nech's forced disappearance, investigate and sanction the

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* "Declares" ¶ 10.

125. *Id.*

perpetrators within reasonable time.¹²⁶

2. Determine the Location of Mr. Chitay Nech's Remains

The Court ordered Guatemala to recover Mr. Chitay Nech's remains and deliver them to his next of kin.¹²⁷ The Court also ordered Guatemala to cover Mr. Chitay Nech's funeral costs.¹²⁸

3. Publication of the Judgment and Radio Transmission

The Court ordered Guatemala to publish specific portions of the Judgment in its official gazette and another national newspaper.¹²⁹ Furthermore, the Court ordered Guatemala to publish the Judgment on Guatemala's official website.¹³⁰ Finally, Guatemala was ordered to broadcast an official summary of the Judgment in the Mayan language, Kaqchikel, through a radio station that covers the Department of Chimaltenango.¹³¹

4. Commemorate Mr. Chitay Nech

The Court ordered Guatemala to create a commemorative plaque bearing Mr. Chitay Nech's name in a public place significant to Mr. Chitay Nech's next of kin.¹³²

5. Medical and Psychological Care for the Victims

The Court ordered Guatemala to provide free medical and psychological treatment to the victims.¹³³

6. Guarantee of Non-Repetition

126. *Id.* ¶ 235.

127. *Id.* ¶ 240.

128. *Id.* ¶ 241.

129. *Id.* ¶ 244.

130. *Id.*

131. *Id.* ¶ 245.

132. *Id.* ¶ 251.

133. *Id.* ¶ 256.

The Court ordered continued evaluation of the fulfillment of the Judgment.¹³⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

For consequential damages, the Court ordered Guatemala to pay \$1,000 to Mr. Chitay Nech's next of kin for the expenses they spent on searching for his remains.¹³⁵ For Mr. Chitay Nech's loss of earnings, the Court ordered Guatemala to pay \$75,000, although the representatives did not include loss of earnings in the pleadings before the Court and did not offer specific evidence for the allegation.¹³⁶

2. Non-Pecuniary Damages

The Court ordered Guatemala to pay \$80,000 to Mr. Chitay Nech for his physical, moral and psychological damages.¹³⁷ Furthermore, the Court ordered Guatemala to pay Mr. Encarnación Chitay Rodríguez and Mr. Pedro Chitay Rodríguez \$40,000 each for the anguish due to Mr. Chitay Nech's disappearance, the separation of the family and other consequences they had to suffer.¹³⁸ Likewise, the Court ordered Guatemala to pay Mr. Eliseo Chitay Rodríguez, Mr. Estermerio Chitay Rodríguez and Ms. María Rosaura Chitay Rodríguez \$50,000 each for the same reason.¹³⁹

3. Costs and Expenses

The Court ordered \$10,000 for the costs and expenses for the litigation of the present case.¹⁴⁰

134. *Id.* ¶ 260.

135. *Id.* ¶¶ 265, 266.

136. *Id.* ¶¶ 271, 272.

137. *Id.* ¶ 290.

138. *Id.*

139. *Id.*

140. *Id.* ¶ 289.

4. Total Compensation (including Costs and Expenses ordered):

\$396,000

C. Deadlines

First, the State must fully investigate Mr. Chitay Nech's forced disappearance case within a reasonable time period.¹⁴¹ Second, the State must send Mr. Chitay Nech's remains to his family as soon as it locates them.¹⁴² Third, the Court ordered the State to publish sections of the Court's judgment in the newspaper, broadcast the judgment on radio, and present information on the government's official website in six months, one year, and two months, respectively.¹⁴³

Fourth, the State must create a commemorative plaque within a year of the judgment's publication.¹⁴⁴ Fifth, the State must immediately provide medical and psychological help to the victims.¹⁴⁵ The State must pay the pecuniary damages, non-pecuniary damages and costs and expenses to Mr. Chitay Nech's next of kin within one year after the judgment is announced.¹⁴⁶

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

December 1, 2011: The Court declared that Guatemala complied with the Court's order to publish the Judgment, create a plaque commemorating Mr. Chitay Nech, and compensate the victims for pecuniary and non-pecuniary damages and litigation costs and expenses.¹⁴⁷

141. *Id.* ¶ 235.

142. *Id.* ¶ 241.

143. *Id.* ¶¶ 241, 245.

144. *Id.* ¶ 251.

145. *Id.* ¶ 253.

146. *Id.* ¶ 290.

147. Chitay Nech v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1 (Dec. 1, 2011).

The Court will continue to monitor Guatemala's compliance with the Judgment on the investigation of Mr. Chitay Nech's disappearance case; determination of the location of Mr. Chitay Nech's remains; broadcasting the summary of the official Judgment both in Spanish and in the Mayan official language; publicly acknowledging its responsibility and apologizing for Mr. Chitay Nech's forced disappearance; and providing free medical and psychological treatment to Mr. Chitay Nech's next of kin.¹⁴⁸

August 22, 2013: In a Monitoring Compliance Judgment, the Court recognized that the State broadcasted a summary of the judgment in Spanish and the Mayan language.¹⁴⁹ The Court stated that it will continue to monitor compliance with the investigation into Mr. Chitay Nech's disappearance; the search for Mr. Chitay Nech; the obligation to perform a public act acknowledging responsibility; and provide medical and psychological care to the victims in this case.¹⁵⁰ The Court requested that the State inform the Court of its monitoring compliance no later than November 1, 2013.¹⁵¹

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Chitay Nech v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 212 \(May 25, 2010\).](#)

3. Provisional Measures

[None]

148. *Id.* "Declares" ¶ 2.

149. Chitay Nech v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resuelve Que" ¶ 1(a) (Aug. 22, 2013). Available only in Spanish.

150. *Id.* "Resuelve Que" ¶¶ 2(a)-(d).

151. *Id.* "Resuelve Que" ¶ 5.

4. Compliance Monitoring

[Chitay Nech v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 22, 2013\).](#)

[Chitay Nech v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 1, 2011\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Chitay Nech v. Guatemala, Admissibility Report No. 7/07, Inter-Am. Comm'n H.R., Case No. 12.599 \(Feb. 27, 2007\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

Chitay Nech v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.599 (Apr. 17, 2009).

VIII. BIBLIOGRAPHY

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