

# Villagrán Morales et al. (“Street Children”) v. Guatemala

## ABSTRACT<sup>1</sup>

*This case addresses the plight of street children in Guatemala. At the time the facts of this case occurred, State security forces carried out a systematic practice of aggression against street children in Guatemala including threats, persecution, torture, forced disappearance and homicide. Large numbers of children are still living on the streets of Guatemala. In this landmark case, the Court had the chance to spell out the obligations states have to protect this particularly vulnerable group.*

## I. FACTS

### A. Chronology of Events

**June 1990:** The Las Casetas sector of Zone One of Guatemala City shelters a large number of street children and is notorious for high crime rates.<sup>2</sup> At this time, State security agents frequently subject street children to cruel, inhuman and degrading treatment, and threaten, arrest, and murder these children in order to counter juvenile delinquency and vagrancy.<sup>3</sup>

The alleged victims, eighteen-year-old Henry Giovanni Contreras, twenty-year-old Federico Clemente Figueroa Túnchez, fifteen-year-old Julio Roberto Caal Sandoval, seventeen-year-old Jovito Josué Juárez Cifuentes, and seventeen-year-old Anstram Aman Villagrán Morales, all friends, are street children who live on Eighteenth Street, between Fourth and Fifth Avenues in Zone One of Guatemala City.<sup>4</sup> The boys frequent the Las Casetas sector of this area, where kiosks sell food and

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2. Villagrán Morales et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 78 (Nov. 19, 1999).

3. *Id.* ¶ 79.

4. *Id.* ¶ 77.

drinks, and where the events of this case take place.<sup>5</sup>

Ms. Rosa Trinidad Morales Pérez works at a Pepsi kiosk in this area.<sup>6</sup> She hates the children who hang around Las Casetas and throws hot coffee at them to keep them away from her kiosk.<sup>7</sup>

**June 15, 1990:** At about 10 o'clock in the morning, Ms. Morales Pérez gathers all the street children outside her kiosk.<sup>8</sup> She gives them soup, and tells them to eat a lot.<sup>9</sup> She tells the children that she is going to the washroom and will be back in a moment.<sup>10</sup> About ten minutes later, a pick-up truck parks in front of the kiosk and two men, dressed in civilian clothes and carrying firearms, get out of the truck.<sup>11</sup> The men force several of the children into the truck, including Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval, and Mr. Juárez Cifuentes.<sup>12</sup> The truck drives away.<sup>13</sup>

**June 16, 1990:** At 5:30 in the morning, the bodies of the Mr. Juárez Cifuentes and Mr. Figueroa Túnchez are discovered near each other in the San Nicolás Woods.<sup>14</sup> The First Magistrate's Court of Mixco (Department of Guatemala)<sup>15</sup> opens criminal proceedings based on the discovery of the two corpses.<sup>15</sup>

**June 17, 1990:** The next day, the bodies of Mr. Contreras and Mr. Caal Sandoval are also discovered in the San Nicolás Woods.<sup>16</sup>

The First Magistrate's Court opens a second set of criminal proceedings based on the discovery of the new corpses.<sup>17</sup> The official cause of death for all four victims is injuries produced by gunshots to the head.<sup>18</sup> Officials establish that the abductors held Mr. Juárez Cifuentes and Mr. Figueroa Túnchez for at least ten hours, and held

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5. *Id.*

6. *Id.* ¶ 99.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* ¶ 80.

14. *Id.* ¶ 81.

15. *Id.* ¶ 84.

16. *Id.* ¶ 81.

17. *Id.* ¶ 85.

18. *Id.*

Mr. Contreras and Mr. Caal Sandoval for at least twenty-one hours.<sup>19</sup> The victims' bodies exhibit signs of torture: their tongues and ears are cut off, and their eyes are burned or ripped from their sockets.<sup>20</sup> Mr. Caal Sandoval's chin and chest appear to have been burned with hot liquid.<sup>21</sup> The bodies are also covered in unidentified animal bites.<sup>22</sup>

For jurisdictional reasons, the proceedings are transferred to the Trial Court of the Municipality of Mixco.<sup>23</sup>

**June 25, 1990:** At approximately midnight, Mr. Villagrán Morales is shot and killed the Las Casetas sector.<sup>24</sup>

**June 26, 1990:** The Trial Court of the Municipality of Mixco (Department of Guatemala) requests that the National Police Force investigate the deaths.<sup>25</sup>

On March 21, 1991, the Trial Court of the Municipality of Mixco (Department of Guatemala) receives a preliminary report regarding the police investigation.<sup>26</sup> The report identifies of the four victims and states that National Police Force agents Mr. Néstor Fonseca López and Mr. Samuel Rocael Valdez Zúñiga, and Ms. Rosa Trinidad Morales Pérez are suspects in the case.<sup>27</sup> The report also includes a description of witness testimonies and indicates that one witness identified Mr. Néstor Fonseca López and Mr. Samuel Rocael Valdez Zúñiga as those responsible for the crime.<sup>28</sup>

**June 26, 1990:** The Magistrate's Court for Criminal Matters (Guatemala City) orders a criminal investigation into the murder of Mr. Villagrán Morales, whose identity is unknown at the time.<sup>29</sup> The Third National Police Unit submits a report to the court, indicating that Mr. Villagrán Morales died from a gunshot wound.<sup>30</sup> The forensic autopsy report confirms that the cause of his death was an abdominal

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19. *Id.* ¶ 82.

20. *Id.* ¶ 159.

21. *Id.*

22. *Id.* ¶ 158.

23. *Id.* ¶ 86.

24. *Id.* ¶ 83.

25. *Id.* ¶ 89. The judgment indicates that this occurred on June 26, 1999.

26. *Id.* ¶ 90.

27. *Id.*

28. *Id.*

29. *Id.* ¶ 91.

30. *Id.* ¶ 92.

gunshot wound.<sup>31</sup>

**January 17, 1991:** The Second Criminal Trial Court (Guatemala City) requests that the National Police Force investigate the death of Mr. Villagrán Morales.<sup>32</sup>

**March 25, 1991:** The National Police Force sends the Second Criminal Trial Court (Guatemala City) detailed information on the investigation into the deaths of Mr. Villagrán Morales, Mr. Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval and Mr. Juárez Cifuentes.<sup>33</sup> The report indicates that Mr. Fonseca López, Mr. Valdez Zúñiga and Ms. Morales Pérez are suspects for all five murders.<sup>34</sup> The report includes statements from two witnesses, Ms. Julia Consuelo López de Ramírez and Ms. Julia Griselda Ramírez López,<sup>35</sup> who indicated that they constantly saw Ms. Morales Pérez talking to Mr. Fonseca López and Mr. Valdez Zúñiga.<sup>36</sup> According to these witnesses, before Mr. Villagrán Morales was murdered, Ms. Morales Pérez told him not to speak to her because he would be killed in the same way as his four friends.<sup>37</sup>

The investigation, however, is incomplete in many respects.<sup>38</sup> The State does not perform through autopsies on any of the bodies: State agents do not fingerprint or take full-length photographs of the corpses.<sup>39</sup> The State does not summon eyewitnesses to make statements.<sup>40</sup> The police do not investigate the vehicle used to abduct the victims though one witness provides the truck's license plate number, nor do they search the homes of the defendants.<sup>41</sup> Witnesses report that they are threatened, but the State does not investigate.<sup>42</sup>

**April 19, 1991:** The First Magistrate's Court and the First Criminal Trial Court consolidate the proceedings.<sup>43</sup> The Third Criminal Sentencing Court opens criminal proceedings against National Police

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31. *Id.* ¶ 95.

32. *Id.* ¶ 96.

33. *Id.* ¶ 98.

34. *Id.*

35. *Id.* ¶ 99.

36. *Id.*

37. *Id.*

38. *Id.* ¶ 231.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* ¶ 103.

Force agent Mr. Fonseca López, former National Police Force agent Mr. Valdez Zúñiga, and Ms. Morales Pérez.<sup>44</sup> The Third Criminal Sentencing Court charges each defendant with five counts of homicide.<sup>45</sup>

The Third Criminal Sentencing Court prohibits the Attorney General from collecting evidence, including personal identification of the three defendants, authenticated reports on Mr. Valdez Zúñiga's duty shifts and schedules on the dates the crime occurred, and evidence indicating whether he left his issued firearm in the armory when he went off duty.<sup>46</sup> The Court does not address the Office of the Attorney General's request to conduct a medico-dental identification of Mr. Fonseca López and refuses to hear testimony from several witnesses who identify Mr. Fonseca López, Mr. Valdez Zúñiga, and Ms. Morales Pérez as the murderers.<sup>47</sup>

The Third Criminal Sentencing Court states that several witnesses cannot identify Mr. Fonseca López, Mr. Valdez Zúñiga, and Ms. Morales Pérez as the murders, and discounts the testimony of witnesses who implicate Mr. Fonseca López, Mr. Valdez Zúñiga, and Ms. Morales Pérez.<sup>48</sup>

The Third Criminal Sentencing Court acquits all three defendants.<sup>49</sup> The Attorney General appeals to the Fourth Chamber of the Court of Appeal.<sup>50</sup>

**March 25, 1992:** The Fourth Chamber of the Court of Appeal upholds Mr. Fonseca López, Mr. Valdez Zúñiga, and Ms. Morales Pérez's acquittal.<sup>51</sup>

The Attorney General appeals to the Criminal Chamber of the Supreme Court of Justice of Guatemala.<sup>52</sup> The Criminal Chamber of the Supreme Court of Justice of Guatemala upholds the Fourth Chamber of the Court of Appeal's decision.<sup>53</sup>

**November 19, 1999:** At the time of judgment, the State has not

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44. *Id.* ¶ 105.

45. *Id.*

46. *Id.* ¶ 108.

47. *Id.* ¶¶ 109, 112.

48. *Id.*

49. *Id.* ¶ 115.

50. *Id.* ¶¶ 116-17.

51. *Id.* ¶ 119.

52. *Id.* ¶ 120.

53. *Id.* ¶ 121.

convicted or punished those responsible for Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval, Mr. Juárez Cifuentes, or Mr. Villagrán Morales' deaths.<sup>54</sup>

### B. Other Relevant Facts

The term "street children" refers to homeless minors.<sup>55</sup> The definition of street children is contested, but many practitioners and policymakers use UNICEF's concept of boys and girls, aged under eighteen years, for whom "the street" (including unoccupied dwellings and wasteland) has become home and/or their source of livelihood, and who are inadequately protected or supervised.<sup>56</sup>

There are approximately 14,500 street children in Guatemala with 4,500 street children located in and around Guatemala City.<sup>57</sup> Guatemala has a population of just over twelve million, half of which are under eighteen years of age.<sup>58</sup> Approximately 60% of the population between the ages of six and eighteen live in extreme poverty.<sup>59</sup>

Many children and adolescents seek refuge on the streets.<sup>60</sup> This phenomenon is largely due to the disintegration of the family, but also to migration from rural to urban areas.<sup>61</sup> The alarming poverty rates plaguing the country force many to emigrate, further contributing to the fragmentation of the family.<sup>62</sup>

Street children are often perceived as 'delinquents' and as 'disposable', and are often subject to police brutality.<sup>63</sup> Gangs often use homeless children and at-risk youth for recruitment and to carry out jobs for them.<sup>64</sup> An average of forty-six boys and girls are killed violently every month on the streets of Guatemala.<sup>65</sup>

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54. *Id.* ¶ 228.

55. A. Dressler & Dr. S. Thomas De Benitez, *State of the World's Street Children: Violence Report* (Feb. 23, 2009) available at <http://www.slideshare.net/Consortium/state-of-the-worlds-street-children-violence-report>.

56. *Id.*

57. *Casa Alianza: Changing Street Childrens' Lives*, CASA ALIANZA <http://www.casa-alianza.org.uk> (last visited Feb. 27, 2014).

58. *Id.*

59. *Id.*

60. *Overview: Casa Alianza Guatemala*, CASA ALIANZA, <http://www.casa-alianza.org/casas/guatemala> (2014).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Statistics*, The Consortium for Street Children, [http://www.streetchildren.org.uk/\\_uploads/resources/Street\\_Children\\_Stats\\_FINAL.pdf](http://www.streetchildren.org.uk/_uploads/resources/Street_Children_Stats_FINAL.pdf)

According to the Inter-American Court of Human Rights, at the time the facts of this case occurred, State security forces carried out a systematic practice of aggression against street children in Guatemala including threats, persecution, torture, forced disappearance and homicide.<sup>66</sup>

## II. PROCEDURAL HISTORY

### A. *Before the Commission*

**September 15, 1994:** The Center for Justice and International Law (“CEJIL”) and *Casa Alianza* present a petition on behalf of the victims to the Inter-American Commission on Human Rights.<sup>67</sup>

**September 20, 1994:** The Commission opens case No. 11.383.<sup>68</sup>

**October 16, 1996:** The Commission adopts Admissibility Report No. 33/96.<sup>69</sup> The Commission finds that the State violated of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 19 (Rights of the Child), and 25 (Right to Judicial Protection) of the American Convention, and failed to comply with its obligations stipulated in Article 1 (Obligation to Respect Rights).<sup>70</sup> The Commission also finds that the State violated Articles 1 (Obligation to Prevent and Punish Torture), 2 (Acts that Constitute Torture) and 6 (Obligation to Take Effective Measures) of the Inter-American Convention to Prevent and Punish Torture.<sup>71</sup>

The Commission ordered the State to conduct a prompt, impartial and effective investigation into the murders of Mr. Villagrán Morales, Mr. Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval and Mr. Juárez Cifuentes.<sup>72</sup> The Commission also ordered the State to punish those responsible for the violations through an appropriate

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(last visited Feb. 27, 2014).

66. Villagrán Morales et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 189 (Nov. 19, 1999).

67. *Id.* ¶ 5.

68. *Id.*

69. Villagrán Morales et al. v. Guatemala, Admissibility Report, Report No. 33/96, Inter-Am. Comm’n H.R., Case No. 11.383 (Oct. 16, 1996); Villagrán Morales et al. v. Guatemala, Merits, ¶ 29.

70. Villagrán Morales et al. v. Guatemala, Merits, ¶ 29.

71. *Id.*

72. *Id.* ¶ 30.

judicial proceeding founded on a complete and effective investigation of the case.<sup>73</sup> The Commission also ordered the State to remedy the consequences of the violations of the rights listed and compensation the victims' next of kin.<sup>74</sup> The Commission also ordered the State to implement measures to ensure the human rights of Guatemalan street children.<sup>75</sup>

### *B. Before the Court*

**January 30, 1997:** The Commission submits the case to the Court after the State fails to adopt its recommendations.<sup>76</sup>

#### 1. Violations Alleged by Commission<sup>77</sup>

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 19 (Rights of the Child)

Article 25 (Right to Judicial Protection)

*all in relation to:*

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

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures)

Article 8 (Duty to Undertake Measures) of the Inter-American Convention to Prevent and Punish Torture.<sup>78</sup>

#### 2. Violations Alleged by Representatives of the Victims<sup>79</sup>

Same Violations Alleged by Commission.<sup>80</sup>

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73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* ¶ 35.

77. *Id.* ¶ 2.

78. *Id.* ¶ 3.

79. *Id.*

80. *Id.* The Merits Judgment indicates that the victims were represented by the Commission, but does not indicate whether non-governmental organizations or law firms also represented the victims. *See id.* ¶ 56.



**April 2, 1997:** Guatemala requests an extension and presents a brief that raises four preliminary objections.<sup>81</sup>

**April 16, 1997:** The Court issues an Order declaring the State's request for an extension inadmissible.<sup>82</sup>

**April 18, 1997:** The State informs the Court of an error in the brief on preliminary objections and requests that the Court deem that the preliminary objections have not been presented.<sup>83</sup> The President of the Court approves this request.<sup>84</sup>

**May 6, 1997:** The State submits a second brief raising preliminary objections.<sup>85</sup> The State argues that if the Court takes this case, it will impermissibly review the final decisions of Guatemala's domestic courts and infringe on the sovereignty of the State.<sup>86</sup>

**September 11, 1997:** The Court determines the State's preliminary objection should be raised during the merits and dismisses the State's objection as inadmissible.<sup>87</sup>

### III. MERITS

#### A. *Composition of the Court*<sup>88</sup>

Antônio A. Cançado Trindade, President  
Máximo Pacheco Gómez, Vice-President  
Hernán Salgado Pesantes, Judge  
Oliver Jackman, Judge  
Alirio Abreu Burelli, Judge  
Carlos Vicente de Roux Rengifo, Judge

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81. *Id.* ¶ 43.

82. *Id.* ¶ 44.

83. *Id.* ¶ 45.

84. *Id.* ¶ 46.

85. Villagrán Morales et al. v. Guatemala, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 32, ¶ 10 (Sept. 11, 1997).

86. *Id.* ¶ 15.

87. *Id.* ¶¶ 18-20.

88. Judge Sergio García Ramírez was unable to take part in the preparation and adoption of the Judgment due to circumstances beyond his control. *Id.* at n.\*\*.

Manuel E. Ventura Robles, Secretary  
Renzo Pomi, Deputy Secretary

*B. Decision on the Merits*

**November 19, 1999:** The Court issues its Judgment on Merits.<sup>89</sup>

The Court found unanimously that Guatemala had violated:

Article 7 (Right to Personal Liberty), in relation to Article 1(1) of the Convention, to the detriment of Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval and Mr. Juárez Cifuentes,<sup>90</sup> because:

*They were illegally and arbitrarily deprived of their liberty by members of the National Police Force.<sup>91</sup> Article 7 (Right to Personal Liberty) provides that no individual shall be deprived of liberty except for reasons previously established by law.<sup>92</sup> Article 7 (Right to Personal Liberty) also provides that no individual shall be deprived of liberty for reasons incompatible with that individual's human rights.<sup>93</sup>*

*The four youths were arrested in contravention of the provisions of the Guatemalan Constitution.<sup>94</sup> Article 6 of the Guatemalan Constitution establishes that a person may only be deprived of his liberty "under an order issued according to the law by a competent judicial authority" or because he is caught while committing a crime or offence.<sup>95</sup> Neither of these two conditions were present in this case.<sup>96</sup> Moreover, contrary to the provisions of the Article 6 of the Guatemalan Constitution, the victims were not "brought before the competent judicial authority within six hours."<sup>97</sup> This article expressly establishes that those arrested "may not be subject to any other authority."<sup>98</sup> Here, this basic*

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89. Villagrán Morales et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999).

90. *Id.* ¶ 122.

91. *Id.*

92. *Id.* ¶ 131.

93. *Id.*

94. *Id.* ¶ 132.

95. *Id.*

96. *Id.*

97. *Id.* ¶ 133.

98. *Id.*

*procedural regulation was ignored.<sup>99</sup> Consequently, neither the material nor the formal aspects of the legal rules for detention were observed in the detention of the four youths.<sup>100</sup> Therefore, the Court found that the State violated Article 7 (Right to Personal Liberty).<sup>101</sup>*

Article 4 (Right to Life), in relation to Article 1(1) of the Convention, to the detriment Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval, Mr. Juárez Cifuentes and Mr. Villagrán Morales,<sup>102</sup> because:

*State agents and, more specifically, members of the National Police Force, murdered Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval, Mr. Juárez Cifuentes and Mr. Villagrán Morales.<sup>103</sup> The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights.<sup>104</sup> States have the obligation to guarantee that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.<sup>105</sup> In this case, the State failed to uphold this fundamental right.<sup>106</sup> As a result, the Court found that the State violated Article 4 (Right to Life).<sup>107</sup>*

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment), in relation to Article 1(1) of the Convention, to the detriment of Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval, and Mr. Juárez Cifuentes,<sup>108</sup> because:

*Members of the National Police Force subjected the victims to physical and psychological torture before they died.<sup>109</sup> The boys' bodies were found with signs of serious physical violence that the State was unable to explain.<sup>110</sup> Therefore, the Court found that the State violated Articles*

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99. *Id.*

100. *Id.* ¶ 134.

101. *Id.* "Decides" ¶ 1.

102. *Id.* "Decides" ¶ 2.

103. *Id.* ¶ 142.

104. *Id.* ¶ 144.

105. *Id.*

106. *Id.* "Decides" ¶ 3.

107. *Id.*

108. *Id.*

109. *Id.* ¶ 157.

110. *Id.* ¶ 158.

5(1) (*Right to Physical, Mental, and Moral Integrity*) and 5(2) (*Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment*).<sup>111</sup>

Article 5(2) (*Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment*), in relation to Article 1(1) to the detriment of the victims' mothers, Ms. María Contreras, Ms. Matilde Reyna Morales García, Ms. Rosa Carlota Sandoval, Ms. Margarita Sandoval Urbina, Ms. Marta Isabel Túnchez Palencia and Ms. Noemí Cifuentes,<sup>112</sup> because:

*The mothers of the victims suffered intense suffering and anxiety as a result of the torture and murder of their sons.*<sup>113</sup> *The State did not make an effort to identify the victims' bodies, locate their families, or inform the families of the victims' deaths.*<sup>114</sup> *The State's failure to adequately investigate the crimes exacerbated the suffering of the victims' next of kin.*<sup>115</sup> *As a result, the Court found that the State violated Article 5(1) (*Right to Physical, Mental, and Moral Integrity*) to the detriment of the victims' mothers.*<sup>116</sup>

Article 19 (*Rights of the Child*), in relation to Article 1(1) of the Convention, to the detriment of the minors, Mr. Caal Sandoval, Mr. Juárez Cifuentes, and Mr. Villagrán Morales,<sup>117</sup> because:

*Article 19 (*Rights of the Child*) of the Convention stipulates "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."*<sup>118</sup> *Although Article 19 of the American Convention does not define what child means, Article 1 (*Obligation to Respect Rights*) of the Convention on the Rights of the Child considers every human being under eighteen years of age to be a child, "unless, by virtue of an applicable law, he shall have attained his majority previously."*<sup>119</sup> *According to the Guatemalan legislation in force at the time the events of this case took*

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111. *Id.* ¶ 177.

112. *Id.*

113. *Id.* ¶ 172.

114. *Id.* ¶ 173.

115. *Id.*

116. *Id.* ¶ 177.

117. *Id.* "Decides" ¶ 4.

118. *Id.* "Decides" ¶ 187.

119. *Id.* ¶ 188.

place, those under the age of eighteen were minors. Using this criterion, only three of the victims, Mr. Caal Sandoval, Mr. Juárez Cifuentes and Mr. Villagrán Morales, were children.<sup>120</sup> However, in this judgment, the Court used the colloquial expression street children to refer to the five victims in this case, who lived on the streets, in an at risk situation.<sup>121</sup>

The Court noted that, at the time the facts of this case occurred, State security forces carried out a systematic practice of aggression against street children in Guatemala including threats, persecution, torture, forced disappearance and homicide.<sup>122</sup> Based on the different reports on the issue of street children in Guatemala, and the characteristics and circumstances of this case, the Court believed that the events that resulted in the deaths of Mr. Caal Sandoval, Mr. Juárez Cifuentes and Mr. Villagrán Morales are linked to the prevailing pattern of violence against street children in Guatemala.<sup>123</sup>

In light of Article 19 (Rights of the Child) of the American Convention, the fact that a State Party to this Convention applied or tolerated a systematic practice of violence against at-risk children in its territory is particularly grave.<sup>124</sup> When States violate the rights of at-risk children, it makes these children victims of a double aggression.<sup>125</sup> First, the State did not prevent the children from living in misery, thus depriving them of the minimum conditions for a dignified life and preventing them from the “full and harmonious development of their personality.”<sup>126</sup> Every child has the right to a full life that should be tended and encouraged by the public authorities so that the child may develop as a person and citizen for his personal benefit and that of the society to which the child belongs.<sup>127</sup> Second, the State violated the children’s physical, mental and moral integrity as well as their lives.<sup>128</sup>

Accordingly, the Court found that the State violated Article 19 (Rights of the Child).<sup>129</sup>

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120. *Id.*

121. *Id.*

122. *Id.* ¶ 189.

123. *Id.* ¶ 190.

124. *Id.* ¶ 191.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* “Decides” ¶ 5.

Articles 8(1) (Right to a Hearing Within A Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention, to the detriment of Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval, Mr. Juárez Cifuentes, Mr. Villagrán Morales, and their immediate next of kin<sup>130</sup> because:

*When a protected right has been violated “the State is obliged to respond sua sponte with specific investigative measures, actions aimed at punishing and penalizing the perpetrators and mechanisms that guarantee access to compensation” and, “[a]t the same time, the victim has a direct right to receive protection and judicial remedy.”<sup>131</sup> In the Commission’s opinion, the State did not comply with these obligations or respect these rights in the instant case,<sup>132</sup> because the State failed to conduct an adequate domestic investigation in this case, allowing the perpetrators to escape with impunity.<sup>133</sup> Article 8 (Right to a Fair Trial) of the Convention mandates that the victims of human rights violations or their next of kin have substantial possibilities to be heard and act in the proceedings, in order to clarify the facts and punish those responsible, and to seek due reparation.<sup>134</sup>*

*Although Guatemala conducted various judicial proceedings in this case, those responsible have not been identified or punished.<sup>135</sup> Records of Guatemala’s judicial proceedings on the case indicate two defects in the domestic proceedings.<sup>136</sup> First, the investigation of the crimes of abduction and torture was completely omitted.<sup>137</sup> Second, evidence that could have been very important for the clarification of the homicides was not collected, examined, or evaluated.<sup>138</sup> The State performed incomplete autopsies; did not summon witnesses or collect important evidence; and investigators did not reconstruct the facts relating to the murder of Mr. Villagrán Morales.<sup>139</sup> The State also did not investigate*

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130. *Id.* “Decides” ¶ 6.

131. *Id.* ¶ 199.

132. *Id.* “Decides” ¶ 5.

133. *Id.* ¶ 228.

134. *Id.* ¶ 227.

135. *Id.* ¶ 228.

136. *Id.* ¶ 230.

137. *Id.*

138. *Id.*

139. *Id.*

threats against witnesses.<sup>140</sup>

Furthermore, the domestic courts totally or partially disqualified important testimonies as irrelevant based on questionable criteria.<sup>141</sup> Consequently, the State failed to comply with the obligation to carry out an effective and adequate investigation in violation of Article 8 (Right to a Fair Trial).<sup>142</sup>

The Court found that Guatemala violated Article 25 (Right to Judicial Protection) of the American Convention because State agents abducted Mr. Giovanni Contreras, Mr. Caal Sandoval, Mr. Juárez Cifuentes and Mr. Figueroa Túnchez.<sup>143</sup> The State agents clandestinely detained the victims for several hours, then murdered the victims on the following day.<sup>144</sup> These victims were thus prevented from exercising, either by themselves or through representatives, their right to an effective recourse before a competent tribunal.<sup>145</sup> As such, the Court found that the State violated Article 25 (Right to Judicial Protection).<sup>146</sup>

Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures), and 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture to the detriment of Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval and Mr. Juárez Cifuentes,<sup>147</sup> because:

The Guatemalan administrative and judicial authorities did not adopt any formal decision to initiate a criminal investigation into the alleged perpetration of the crime of torture.<sup>148</sup> As a result, the Court found that the State violated Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures), and 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture.<sup>149</sup>

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140. *Id.*

141. *Id.* ¶ 232.

142. *Id.* ¶ 233.

143. *Id.* ¶ 236.

144. *Id.*

145. *Id.*

146. *Id.* “Decides” ¶ 6.

147. *Id.*

148. *Id.* ¶ 250.

149. *Id.* “Decides” ¶ 7.

*C. Dissenting and Concurring Opinions*

## 1. Joint Concurring Opinions of Judges Antônio Augusto Cançado Trindade and Alirio Abreu Burelli

In a separate opinion, Judges Trindade and Abreu Burelli emphasized the strong connection between Article 4 (Right to Life) and Article 19 (Rights of the Child) of the American Convention in cases involving the violation of rights of children.<sup>150</sup> Judges Cançado Trindade and Abreu Burelli discussed the importance of States protecting vulnerable children, such as the street children in Guatemala, and taking positive measures to ensure their right to life with dignity.<sup>151</sup>

## IV. REPARATIONS

**May 26, 2001:** The Court issues its Judgment on Reparations and Costs.<sup>152</sup>

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

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

## 1. Adopt Legislative Measures

In accordance with Article 2 (Domestic Effects) of the Convention, the State must implement legislative, administrative or other measures necessary to adapt Guatemalan legislation to Article 19 (Rights of the Child) of the Convention, and to ensure non-repetition of the events that gave rise to this case.<sup>153</sup>

## 2. Investigate

The State must conduct an effective investigation to identify those

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150. Villagrán Morales et al. v. Guatemala, Merits, Separate Opinion of Judges Cançado Trindade and Abreu Burelli, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 7 (Nov. 19, 1999).

151. *See id.* ¶¶ 4, 6.

152. Villagrán Morales et al. v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77 (May 26, 2001).

153. *Id.* ¶ 98.



responsible for the human rights violations declared in this judgment and, where appropriate, punish them.<sup>154</sup>

### 3. Exhume of the Body of Mr. Giovanni Contreras

The State must adopt necessary measures to transfer the remains of Mr. Giovanni Contreras to the place chosen by his next of kin, without any cost to them, so as to satisfy the desire of the family to bury him according to their religious beliefs and customs.<sup>155</sup>

### 4. Raise Awareness

The State must designate an educational center with a name that alludes to the victims in this case.<sup>156</sup> The State must place a plaque with the names of Mr. Giovanni Contreras, Mr. Figueroa Túnchez, Mr. Caal Sandoval, Mr. Juárez Cifuentes and Mr. Villagrán Morales in this center in order to raise awareness and avoid the repetition of acts such as those that occurred in the instant case and keep the memory of the victims alive.<sup>157</sup>

## *B. Compensation*

The Court awarded the following amounts:

### 1. Pecuniary Damages

The State must pay the victims' mothers and grandmother \$32,286 for the loss of earnings and expenses of Mr. Villagrán Morales; \$30,995 for the loss of earnings and expenses of Mr. Giovanni Contreras; \$31,248 for the loss of earnings and expenses of Mr. Caal Sandoval; and \$30,504 for the loss of earnings and expenses of Mr. Figueroa Túnchez; \$28,181 for the loss of earnings of Mr. Juárez Cifuentes.<sup>158</sup>

### 2. Non-Pecuniary Damages

The State must pay \$23,000 to Mr. Villagrán Morales's; \$27,000

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154. *Id.* ¶ 99.

155. *Id.* ¶ 102.

156. *Id.* ¶ 103.

157. *Id.*

158. *Id.* ¶ 82.

to Mr. Giovanni Contreras; \$30,000 to Mr. Caal Sandoval; \$27,000 to Mr. Figueroa Túnchez; and \$30,000 to Mr. Juárez Cifuentes.<sup>159</sup> The State must pay these reparations to the victims' mothers and grandmother.<sup>160</sup>

The Court ordered the State to compensate the mothers and grandmother of the victims for the States' violation of their rights and the suffering they experienced due to the abduction, torture, and murder of their sons and grandson.<sup>161</sup> The State must pay \$26,000 each to Ms. Morales García, Ms. María Contreras, Ms. Carlota Sandoval, Ms. Urbina, Ms. Túnchez Palencia, and Ms. Cifuentes.<sup>162</sup>

The State must compensate the victims' siblings for the violation of their rights and the suffering caused by the abduction, torture and murder of their family members.<sup>163</sup> The State must pay \$3,000 to each of the victims' siblings, including Ms. Dalila Villagrán Morales, Ms. Villagrán Morales, Mr. Villagrán Morales, Ms. Renata Agreda Contreras, Mr. Agreda Contreras, Ms. Figueroa Túnchez, and Ms. Figueroa Túnchez.<sup>164</sup>

### 3. Costs and Expenses

The State must make a compensatory payment of \$4,150 for expenses to Mr. Villagrán Morales; \$2,900 for expenses to Mr. Giovanni Contreras; \$2,900 for expenses to Mr. Caal Sandoval; \$2,500 for expenses to Mr. Figueroa Túnchez; \$27,651.91 for expenses to *Casa Alianza*; and \$11,000 for expenses to CEJIL.<sup>165</sup>

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

\$ 508,865.91

### *C. Dissenting and Concurring Opinions*

#### 1. Separate Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade discussed the

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159. *Id.* ¶ 93.

160. *Id.* ¶ 92(a).

161. *Id.* ¶ 92(b).

162. *Id.* ¶ 93.

163. *Id.*

164. *Id.* ¶¶ 92(c), 93.

165. *Id.* ¶ 82.

importance of taking into account victimization, human suffering, and victim rehabilitation when determining the reparations that should be made in a given case.<sup>166</sup> He stressed that the intensity of human suffering in a case should be the most important factor in determining the amount of reparations.<sup>167</sup> Furthermore, he argued that though reparations can never come close to actually repairing the wrong that has been done to the victims, they serve an important role in helping to rehabilitate the relatives of victims.<sup>168</sup>

## 2. Separate Opinion of Judge Carlos Vicente de Roux Rengifo

In a separate opinion, Judge de Roux Rengifo discussed the Court's practice of ordering monetary compensation for non-pecuniary damages.<sup>169</sup> Although he concedes value cannot truly be assigned to human suffering, he agrees with the Court's practice, insofar as it is the only way of compensating victims for their incalculable losses.<sup>170</sup> His critique of the Court's practice lies in the fact that he thinks the court should address different categories of non-pecuniary damages separately.<sup>171</sup>

### *D. Deadlines*

The State must pay the compensations, reimburse the costs and expenses and adopt the other measures that are ordered within six months of the notification of the judgment.<sup>172</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

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166. Villagrán Morales et al. v. Guatemala, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 3 (May 26, 2001).

167. *Id.* ¶ 10.

168. *Id.* ¶ 45.

169. Villagrán Morales et al. v. Guatemala, Reparations and Costs, Separate Opinion of Judge Carlos Vicente de Roux Rengifo, Inter-Am. Ct. H.R. (ser. C) No. 77 (May 26, 2001).

170. *Id.*

171. *Id.*

172. *Id.* ¶ 114.

**November 27, 2003:** The Court found that the State complied with the compensation ordered for pecuniary and non-pecuniary damage, except for the payment to Mr. Villagrán Morales.<sup>173</sup> The Court also found the State complied with the order to designate an educational center with a name alluding to the victims in this case and had placed a plaque in this center with their names.<sup>174</sup> Furthermore, the Court found the State complied with the payment of the costs and expenses ordered in favor of the representatives of the victims' next of kin, and with the adoption of the necessary legislative measures to adapt Guatemalan legislation to Article 19 of the American Convention.<sup>175</sup> The Court stated that it would continue to monitor the State's compliance with the other provisions of the judgment.<sup>176</sup>

**June 14, 2005:** The Court found that the State paid damages ordered for Mr. Villagrán Morales and provided resources and other measures necessary for the transfer of the remains of Mr. Giovanni Contreras to his family.<sup>177</sup>

**December 13, 2007:** The Court ordered a private hearing with the State and the victims' representatives to determine the State's compliance with the Court's orders.<sup>178</sup>

**January 16, 2008:** The Court granted the State an extension for the private hearing.<sup>179</sup>

**November 11, 2008:** The Court ordered another private hearing with the State and the victims' representatives to determine the State's compliance with the Court's orders.<sup>180</sup>

**January 27, 2009:** The Court found that the State had not yet fulfilled

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173. Villagrán Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Nov. 27, 2003).

174. *Id.*

175. *Id.*

176. *Id.* "Declares" ¶ 2.

177. Villagrán Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (June 14, 2005).

178. Villagrán Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Resolves," ¶ 1 (Dec. 13, 2007).

179. Villagrán Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Jan. 16, 2008).

180. Villagrán Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Nov. 11, 2008).

its obligation to investigate the events of the instant case, identify and, as appropriate, punish those responsible.<sup>181</sup> The Court also found that the State had not adapted domestic laws as required to guarantee the performance of this obligation.<sup>182</sup> The Court decided to continue monitoring the State's compliance until the State fully satisfies this aspect of the judgment.<sup>183</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[Villagran Morales et al. v. Guatemala, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 32 \(Sept. 11, 1997\).](#)

#### 2. Decisions on Merits, Reparations and Costs

[Villagran Morales et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 63 \(Nov. 19, 1999\).](#)

[Villagran Morales et al. v. Guatemala, Merits, Separate Opinion of Judges Cancado Trindade and Abreu-Burelli, Inter-Am. Ct. H.R. \(ser. C\) No. 63 \(Nov. 19, 1999\).](#)

[Villagran Morales et al. v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 77 \(May 26, 2001\).](#)

[Villagrán Morales et al. v. Guatemala, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 77 \(May 26, 2001\).](#)

[Villagrán Morales et al. v. Guatemala, Reparations and Costs, Separate Opinion of Judge Carlos Vicente de Roux Rengifo, Inter-Am. Ct. H.R. \(ser. C\) No. 77 \(May 26, 2001\).](#)

#### 3. Provisional Measures

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181. Villagrán Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Jan. 27, 2009).

182. *Id.*

183. *Id.*

[Villagran Morales et al. v. Guatemala, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Dec. 14, 1998\) \(Available only in Spanish\).](#)

[Villagran Morales et al. v. Guatemala, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Apr. 18, 1997\) \(Available only in Spanish\).](#)

#### 4. Compliance Monitoring

[Villagran Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jan. 27, 2009\).](#)

[Villagran Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 11, 2008\) \(Available only in Spanish\).](#)

[Villagran Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jan. 16, 2008\).](#)

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[Villagran Morales et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 27, 2003\).](#)

#### 5. Review and Interpretation of Judgment

[None]

##### *B. Inter-American Commission*

##### 1. Petition to the Commission

Villagran Morales et al. v. Guatemala, Petition No. 11.383, Inter-Am.

Comm'n H.R. (Sept. 15, 1994).

2. Report on Admissibility

Villagran Morales et al. v. Guatemala, Admissibility Report, Report No. 33/96, Inter-Am. Comm'n H.R., Case No. 11.383 (Oct. 16, 1996).

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Villagran Morales et al. v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.383 \(Jan. 30, 1997\) \(Available only in Spanish\).](#)

VIII. BIBLIOGRAPHY

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