

# “White Van” (Paniagua Morales et al.) v. Guatemala

## ABSTRACT<sup>1</sup>

*Between 1987 and 1988, eleven individuals were abducted and subsequently tortured and murdered. All victims were abducted with a white van by armed men associated with the Treasury Police or some other military or police institution. The Court found that the State violated the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture.*

## I. FACTS

### A. Chronology of Events

**1985:** Mr. Vinicio Cerezo Arevalo, of the Guatemalan Christian Democratic Party, becomes President and serves for five years.<sup>2</sup> His presidency gives Guatemalans the hope that the country is moving away from dictatorial regimes and towards democracy.<sup>3</sup>

**June 1987 – February 1988:** In spite of the new presidency, Guatemala experiences a rash of violence. Over a period of nine months, several people in and around Guatemala City are abducted in a white van by armed men associated with the Treasury Police or some other military or police institution. Most are tortured and, in some instances, killed.<sup>4</sup>

#### 1. Events Pertaining to Mr. Juliàn Salomòn Gòmez Ayala

**June 1, 1987:** Mr. Gómez Ayala walks down the street at 10:00 a.m.

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1. Maya Rozov, Author; Grace Kim and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Timeline: Guatemala*, BBC (July 3, 2012, 11:37 AM), [http://news.bbc.co.uk/2/hi/americas/country\\_profiles/1215811.stm](http://news.bbc.co.uk/2/hi/americas/country_profiles/1215811.stm).

3. Dianne Klein, *The Struggle to Break With the Past/A Land Searching for Democracy*, HOUSTON CHRONICLE, May 18, 1987, at 1.

4. *Id.*

when five unidentified armed men force him into a white van with tinted windows.<sup>5</sup>

2. Events Pertaining to Mr. Augusto Angárita Ramírez and Ms. Doris Torres Gil

**December 29, 1987:** Treasury Police officers capture and place Mr. Angárita Ramírez and Ms. Torres Gil in a white van with tinted windows.<sup>6</sup>

The officers force Mr. Angárita Ramírez to confess to a crime that he did not commit.<sup>7</sup> The police log indicates that Mr. Angárita Ramírez was carrying a package containing more than two pounds of cocaine.<sup>8</sup> The officers handcuff Mr. Angárita Ramírez and place a plastic hood over his head so he cannot breathe and then beat him.<sup>9</sup>

The officers handcuff Ms. Torres Gil, steal her belongings, and make sexual overtures to her.<sup>10</sup>

3. Events Pertaining to Ms. Anna Elizabeth Paniagua Morales

**February 9, 1988:** Ms. Paniagua Morales is two-months pregnant when she goes to the store to buy milk and bread.<sup>11</sup> When it becomes clear that she has gone missing, her mother, Ms. María Idelfonsa Morales de Paniagua, reports the disappearance to the Anti-Kidnapping Squad of the Special Investigation and Narcotics Brigade of the National Police.<sup>12</sup> Witnesses say Ms. Paniagua Morales was abducted by men in a white van.<sup>13</sup> Ms. Morales de Paniagua, files a writ of habeas corpus upon learning that her daughter was abducted, but never receives a reply.<sup>14</sup> Ms. Paniagua Morales is found dead three days later with her head almost severed from her body and her genitals bearing signs of rape.<sup>15</sup>

4. Events Pertaining to William Otilio González Rivera and Pablo

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5. "White Van" (Paniagua-Morales et al.) v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 37, ¶ 89(d)(1) (Mar. 8, 1998).

6. *Id.* ¶ 89(d)(2).

7. *Id.* ¶ 66(2)(a).

8. *Id.* ¶ 66(2)(f).

9. *Id.*

10. *Id.* ¶ 66(2)(a).

11. *Id.* ¶ 67(d).

12. *Id.* ¶ 65(3).

13. *Id.* ¶ 89(d)(3).

14. *Id.* ¶ 67(d).

15. *Id.* ¶¶ 66.3(e), 89(d)(3), 67(b).

Corado Barrientos

**February 10, 1988:** Armed men force Mr. González Rivera and Mr. Corado Barrientos into a white van.<sup>16</sup> Their bodies are found later in the day and show signs of torture.<sup>17</sup> An investigator with the Special Investigation and Narcotics Brigade of the National Police speculates that the armed men were associating with Mr. González Rivera because of his position in the State military as an ex-paratrooper.<sup>18</sup>

5. Events Pertaining to Mr. Manuel de Jesús González López

**February 11, 1988:** Armed men kidnap Mr. González López, a mechanic,<sup>19</sup> in a white van.<sup>20</sup> Two days later his body is found with signs of having been bound and hung.<sup>21</sup>

6. Events Pertaining to Mr. Oscar Vásquez

**February 13, 1988:** Mr. Vásquez, a wood seller,<sup>22</sup> is detained in his home and then forced into a white van with tinted windows by a member of the Treasury Police and another armed man.<sup>23</sup> They take him to the Treasury Police Station, beat him, and accuse him of committing unlawful trafficking of drugs and bribery.<sup>24</sup>

7. Events Pertaining to Mr. José Antonio Montenegro

**February 13, 1988:** Three men in civilian clothes detain Mr. Montenegro in his home<sup>25</sup> and then take him in a white van with tinted windows to the Treasury Police station.<sup>26</sup> The men are later identified as agents of the Special Investigations and Narcotics Brigade.<sup>27</sup>

It is unclear whether marijuana is planted on Mr. Montenegro by

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16. *Id.* ¶ 89(d)(4).

17. *Id.*

18. *Id.* ¶ 66(4)(b).

19. *Id.* ¶ 67(a).

20. *Id.* ¶ 89(d)(5).

21. *Id.*

22. *Id.* ¶ 67(e).

23. *Id.* ¶ 66(6)(a).

24. *Id.* ¶ 66(6).

25. *Id.* ¶ 66(7)(a).

26. *Id.* ¶ 66(7).

27. *Id.* ¶ 89 (d)(7).

the police or if he is actually part of a transaction buying and selling marijuana.<sup>28</sup> Police reports indicate that marijuana is seized from Mr. Montenegro, and he goes before the Twelfth Criminal Court of Guatemala, facing accusations of unlawful trafficking of pharmaceuticals and drugs and bribery.<sup>29</sup>

#### 8. Events Pertaining to Mr. Erik Leonardo Chinchilla

**February 17, 1988:** A number of witnesses see Mr. Chinchilla leave with several men in a pick-up truck.<sup>30</sup>

At the time of judgment, the circumstances of his death have not been clarified.<sup>31</sup> An autopsy of his body shows that he was shot nine times.<sup>32</sup> Ms. María Luisa Chinchilla Ruano, Mr. Chinchilla's mother, testifies that her son had gotten into a car accident the day before his death.<sup>33</sup> The accident involved two bodyguards of the Director of the National Police.<sup>34</sup> One of the guards appeared to also be one of the men who later took Mr. Chinchilla in the pick-up truck.<sup>35</sup>

#### 9. Events Pertaining to Mr. Marco Antonio Montes Letona

**February 19, 1988:** Two men wearing Treasury Police Uniforms and four men in civilian clothes detain Mr. Montes Letona at the Hotel Capri and then force him into a white van with tinted windows.<sup>36</sup> Mr. Montes Letona is taken to a Treasury Police station and six different uniformed agents beat him.<sup>37</sup>

**February 20, 1988:** Mr. Montes Letona is brought in front of the Thirteenth Criminal Justice of Peace because he is accused of fraud, theft and unlawful use of identity papers.<sup>38</sup>

**March 10, 1988:** The Director of the National Police of Guatemala,

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28. *Id.* ¶¶ 66(7)(a)-66(7)(e).

29. *Id.* ¶ 66(7).

30. *Id.* ¶ 65(8).

31. *Id.* ¶ 89(8).

32. *Id.* ¶ 65(8).

33. *Id.* ¶ 66(8)(b).

34. *Id.*

35. *Id.*

36. *Id.* ¶ 89(9).

37. *Id.*

38. *Id.*

Mr. Julio Enrique Caballeros Seigne, leads an operation in which six Treasury Police agents are arrested from within a white van.<sup>39</sup> The arrested agents are later identified by witnesses and victims as the perpetrators of some of the arrests and beatings.<sup>40</sup>

**June 6, 1988:** The National Police issues a report that concludes that the white van had been used by the agent to commit a series of crimes.<sup>41</sup> The report is delivered to the Seventh Criminal Court of Instruction.<sup>42</sup>

**June 10, 1988:** Judge Julio Aníbal Trejo Duque of the Seventh Court of Criminal First Instance initiates the preliminary investigation into the case.<sup>43</sup>

**June 19 and 20, 1988:** Judge Trejo Duque orders the arrest of sixteen men<sup>44</sup> who were all Treasury Police agents at the time of the events giving rise to this case; he also summons Mr. Oscar Augusto Díaz Urquizu, the former Director of the Treasury Police and two other officers for questioning.<sup>45</sup>

**July 20, 1988:** At 3:45 p.m., Judge Trejo Duque is kidnapped.<sup>46</sup> Two days later, he is released.<sup>47</sup> During his captivity, Judge Vicente Sagastume Pérez orders the provisional imprisonment of eight additional men,<sup>48</sup> as well as the arrest of the former Director of the Treasury Police and two agents.<sup>49</sup>

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39. *Id.* ¶ 89(e).

40. *Id.*

41. *Id.* ¶ 89(h).

42. *Id.*

43. *Id.* ¶ 89(j).

44. *Id.* ¶ 89(k). Their names are: Aníbal René Morales Marroquín, Manuel de Jesús de la Cruz Hernández, Edwin Arturo Pineda Hichos, José Luis Grajeda Beltetón, Juan José Elías Palma, César Augusto Guerra Ramírez, Neftalí Ramírez García, Igloberto Pineda Juárez, Marco Tulio Ramírez Lorenzana, Edgar René Eguizabal Morales, Jorge Edilio Guerra Lemus, Sarvélio Valdéz Hernández, Juan Francisco Pensamiento Alvarado, Víctor Manuel Samayoa García, Hugo Silva Morán and Mario Rolando Marín León.

45. *Id.* ¶¶ 89(k), 89(m).

46. *Id.* ¶ 89(l).

47. *Id.*

48. Their names are: José Ruben Carías Ortega, José Germán Mazariegos Salazar, Benner Orlando Noriega Batres, José Antonio Aldana Fajardo, Francisco Javier Guerra Trabanino, Jorge Enrique Pérez Ruíz, Miguel Humberto Aguirre López and Manuel Boiton Ayala.

49. *Id.* ¶ 89(m). The names of the two agents are: Tomas Roca Estrada and Douglas Rafael Meneses González.

**July 26, 1988:** After resuming his duties as judge, Judge Trejo Duque revokes the arrest orders against the former Director and the two agents.<sup>50</sup> He also revokes the order of provisional imprisonment against all of the other accused Treasury Police agents.<sup>51</sup> They are granted provisional releases on bail.<sup>52</sup>

**October 18, 1988:** The Tenth Chamber of the Court of Appeal confirms Judge Trejo Duque's orders and grants the men absolute releases in lieu of the provisional releases on bail.<sup>53</sup>

After this date, no significant progress is made with the investigation and the case remains open at the indictment stage.<sup>54</sup>

### B. Other Relevant Facts

President Cerezo Arevalo claims that paramilitary groups opposed to his government are responsible for the kidnappings and murders.<sup>55</sup> He says he is working to reduce the violence by disbanding the Department of Special Investigations, which is notorious for committing human rights abuses.<sup>56</sup> Citizens believe, however, that there has not been any significant reduction in violence and that the reason is President Cerezo Arevalo's "subservience" to military extremists.<sup>57</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

#### 1. Events Pertaining to Ms. Anna Elizabeth Paniagua Morales

**February 10, 1988:** Mr. Mark Martel, Ms. Viviana Krsticevic, Ms. Ariel Dulitzky, Ms. Marcela Matamoros, Mr. Juan Méndez and Mr. José Miguel Vivanco present a petition on behalf of Ms. Paniagua Morales to the Inter-American Commission.<sup>58</sup>

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50. *Id.* ¶ 89(n).

51. *Id.*

52. *Id.* ¶ 89(o).

53. *Id.*

54. *Id.* ¶ 89(p).

55. Dianne Klein, *The Struggle to Break With the Past/A Land Searching for Democracy*, HOUSTON CHRONICLE, May 18, 1987, at 1.

56. *Id.*

57. *Id.*

58. "White Van" (Paniagua-Morales et al.) v. Guatemala, Merits, ¶¶ 3, 19.

2. Events Pertaining to Mr. Erik Leonardo Chinchilla

**February 13, 1989:** After Mr. Chinchilla's murder on February 17, 1988, the petitioners request that he be included in the case.<sup>59</sup>

3. Events Pertaining to Mr. Julián Salomón Gómez Ayala; Mr. Augusto Angárita Ramírez; Ms. Doris Torres Gil; Mr. William Otilio González Rivera; Mr. Pablo Corado Barrientos; Mr. Manuel de Jesús González López; Mr. Oscar Vásquez; Mr. José Antonio Montenegro; and Mr. Marco Antonio Montes Letona

**December 30, 1991:** Petitioners submit an expanded list of victims, some of whom had been abducted and murdered, and others of whom had been abducted and unlawfully detained.<sup>60</sup>

**July 23 and August 5, 1993:** The State and petitioners indicate their interest in reaching a settlement agreement with the help of the Commission.<sup>61</sup>

**July 28, 1994:** The petitioners consider settlement negotiations with the State as having terminated when the State stops responding favorably to the attempts made by the petitioners.<sup>62</sup>

4. Events Pertaining to all of the Named Victims

**September 11, 1994:** Five days before the final hearing on the case before the Commission, Mr. Vásquez is murdered.<sup>63</sup>

**September 28, 1994:** The Commission adopts Report No. 23/94.<sup>64</sup>

The Commission finds the violation of Article 4(1) (Prohibition of Arbitrary Deprivation of Life) because agents of the State (members of the Treasury Police) arbitrarily executed Ms. Paniagua Morales, Mr. Gómez Ayala, Mr. González Rivera, Mr. Corado Barrientos, Mr. González López and Mr. Chinchilla.<sup>65</sup>

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59. *Id.* ¶ 5.

60. *Id.* ¶ 9.

61. *Id.* ¶ 11.

62. *Id.*

63. *Id.* ¶ 12.

64. *Id.* ¶ 15.

65. *Id.* ¶ 113.

The Commission finds the violation of Articles 5 (Right to Humane Treatment) of the American Convention, and of Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ms. Paniagua Morales, Mr. Gómez Ayala, Mr. González Rivera, Mr. Corado Barrientos, Mr. González López, Mr. Angárta Ramírez, Ms. Torres Gil, Mr. Montenegro, Mr. Vásquez, and Mr. Montes Letona.<sup>66</sup> The Commission bases its conclusion on the signs and evidence that the victims were violently beaten, and in some cases tortured, by agents of the State, as well as on the failure of the State to investigate the torture as required under Article 8 of the Convention to Prevent and Punish Torture.<sup>67</sup>

The Commission considers Article 7 (Right to Personal Liberty) to have been violated to the detriment of Ms. Paniagua Morales, Mr. Gómez Ayala, Mr. González Rivera, Mr. Corado Barrientos, Mr. González López, Mr. Angárta Ramírez, Ms. Torres Gil, Mr. Montenegro, Mr. Vásquez, and Mr. Montes Letona on the basis of their arbitrary detention, torture, and, in some cases, murder by State agents.<sup>68</sup>

The Commission also finds the violation of Article 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) for several reasons. First, the independence and impartiality of the Seventh Court of Criminal First Instance was jeopardized when the State failed to investigate Judge Trejo Duque's kidnapping and when he was not replaced as judge to the case.<sup>69</sup> Second, the release of the suspects was unjustified, arbitrary, and inconsistent with the available evidence.<sup>70</sup> It appears that the Tenth Chamber of the Court of Appeal did not consider Judge Trejo Duque's kidnapping an important aspect of the appeal.<sup>71</sup> Lastly, the State failed to conduct a serious investigation into the violations committed, identify and punish those responsible, and provide reparations to the victims.<sup>72</sup>

The Commission recommends that the State investigate the violations and take measures to prevent these violations from

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66. *Id.* ¶ 1.

67. *Id.* ¶ 126.

68. *Id.* ¶ 96.

69. *Id.* ¶¶ 137, 157.

70. *Id.* ¶¶ 138, 157.

71. *Id.*

72. *Id.* ¶¶ 139, 157.



recurring.<sup>73</sup> The Commission also recommends that the State try to punish the responsible parties and pay compensation to the victims’ next of kin.<sup>74</sup>

**December 13, 1994:** The Petitioners send a request to the Commission for precautionary measures to protect the relatives of Mr. Vásquez.<sup>75</sup> On the same day, the Commission requests the State to take all necessary measures to protect the life, physical integrity, and liberty of the relatives.<sup>76</sup>

### *B. Before the Court*

**January 19, 1995:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>77</sup>

#### 1. Violations Alleged by Commission<sup>78</sup>

To the detriment of Ms. Paniagua Morales, Mr. Gómez Ayala, Mr. González Rivera, Mr. Corado Barrientos, and Mr. González López:

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 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 and Punish Torture and Cruel, Inhuman, and Degrading Treatment)  
Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.

To the detriment of Mr. Angárta Ramírez, Ms. Torres Gil, Mr. Montenegro, Mr. Vásquez, Mr. Montes Letona:

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73. *Id.* ¶ 15(1)(b).

74. *Id.* ¶ 15.

75. *Id.* ¶ 17.

76. “White Van” (Paniagua-Morales et al.) v. Guatemala, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 23, ¶ 19 (Jan. 25, 1996). 001

77. “White Van” (Paniagua-Morales et al.) v. Guatemala, Merits, ¶ 18.

78. *Id.* ¶¶ 96-177.

Article 5 (Right to Humane Treatment)  
Article 7 (Right to Personal Liberty)  
Article 8 (Right to a Fair Trial)  
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 and Punish Torture  
and Cruel, Inhuman, and Degrading Treatment)  
Article 8 (Obligation to Investigate and Prosecute) of the Inter-  
American Convention to Prevent and Punish Torture.

To the detriment of Mr. Chinchilla:

Article 4 (Right to Life)  
Article 8 (Right to a Fair Trial)  
Article 25 (Right to Judicial Protection)

*all in relation to:*

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

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

Same Violations Alleged by Commission.

**April 3, 1995:** The State submits two preliminary objections.<sup>80</sup> The State first claims that the Commission has not respected time limits in submitting the application to the Court within three months, pursuant to the requirements of Article 51(1) of the American Convention.<sup>81</sup> Second, the State contends that the Commission's submission of the case to the Court was legally invalid because the application was made via fax and without the transmittal of ten copies as required by Article 26 of the Rules of Procedure.<sup>82</sup>

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79. *Id.* ¶¶ 19, 96-177. Mark Martel, Viviana Krsticevic, Ariel Dulitzky, Marcela Matamoros, Juan Méndez (who withdrew as representative on September 16, 1996), and José Miguel Vivanco all served as representatives of the original petitioners.

80. "White Van" (Paniagua-Morales et al.) v. Guatemala, Preliminary Objections, ¶ 23.

81. *Id.*

82. *Id.* ¶¶ 23, 31.

**April 19, 1995:** The State appoints Mr. Edgar Enrique Larraondo Salguero as Judge *ad hoc*.<sup>83</sup>

**August 16, 1995:** Mr. Oscar Augusto Díaz Urquizú, former Director of the Treasury Police of Guatemala, submits an amicus curiae brief to the Court.<sup>84</sup>

**January 25, 1996:** The Court rejects the first preliminary objection because the Commission did submit the case within the required three months; therefore, there was no violation of Article 51(1).<sup>85</sup> Additionally the Court found that it is constant practice for the Commission to file the application with the Court by fax before submitting the ten copies a few days later.<sup>86</sup> Thus, there was no violation of Article 26 or 61(1).

**February 5, 1998:** The Commission requests that the Court adopt provisional measures to protect the life and physical integrity of Mr. Oscar Vásquez’s family.<sup>87</sup>

### III. MERITS

#### A. Composition of the Court

Hernán Salgado Pesantes, President  
Antônio Augusto Cançado Trindade, Vice-President  
Héctor Fix-Zamudio, Judge  
Alejandro Montiel Argüello, Judge  
Máximo Pacheco Gómez, Judge  
Alirio Abreu Burelli, Judge  
Edgar E. Larraondo-Salguero, Judge *ad hoc*

Manuel E. Ventura-Robles, Secretary  
Víctor M. Rodríguez-Rescia, Interim Deputy Secretary

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83. Judge Oliver Jackman abstained from the hearing because he was previously a member of the Commission during various stages of this case.

84. “White Van” (Paniagua-Morales et al.) v. Guatemala, Merits, ¶¶ 53-54.

85. *Id.* ¶¶ 29-30.

86. *Id.* ¶ 34.

87. *Id.* ¶ 56.

*B. Decision on the Merits*

**March 8, 1998:** The Court issues its Judgment on Merits.<sup>88</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 Ms. Paniagua Morales, Mr. Gómez Ayala, Mr. González Rivera, Mr. Corado Barrientos, Mr. González López, Mr. Angárta Ramírez, Ms. Torres Gil and Mr. Montes Letona,<sup>89</sup> because:

*The victims were arbitrarily denied their freedom and safety by the Treasury Police.<sup>90</sup> The State has a duty to protect the liberty and security of its citizens.<sup>91</sup> The victims were randomly arrested, detained, tortured and murdered by members of the State.<sup>92</sup> The State's failure to protect these victims from such atrocious acts is a violation of Article 7.<sup>93</sup>*

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) of the Convention, to the detriment of Ms. Paniagua Morales, Mr. Gómez Ayala, Mr. González Rivera, Mr. Corado Barrientos and Mr. González López,<sup>94</sup> because:

*These victims were arbitrarily murdered by the Treasury Police.<sup>95</sup> Each individual has the right to have his life respected, and the State has an obligation to protect the lives of each of these individuals.<sup>96</sup> It was members of the State who were ultimately responsible for these murders, thus the Court found that the State was responsible for the deprivation of numerous lives.<sup>97</sup> There was no such finding with respect to the life of Mr. Chinchilla, because his murder could not conclusively*

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88. *Id.* ¶ 53.

89. *Id.* ¶ 181(1).

90. *Id.* ¶¶ 96, 105-10.

91. *Id.* ¶ 107.

92. *Id.* ¶¶ 96, 105-10.

93. *Id.*

94. *Id.* ¶ 181(2).

95. *Id.* ¶ 120.

96. *Id.* ¶ 118.

97. *Id.* ¶ 120.

*be attributed to members of the State.*<sup>98</sup>

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, as well as Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention To Prevent and Punish Torture, to the detriment of Ms. Paniagua Morales, Mr. Gómez Ayala, Mr. González Rivera, Mr. Corado Barrientos, Mr. González López, Mr. Angárita Ramírez and Mr. Vásquez,<sup>99</sup> because:

*The victims endured great suffering and torture by members of the State.*<sup>100</sup> *Article 5 establishes each person’s right to have his physical, mental and moral integrity respected, and to not be subjected to torture or inhuman treatment that would deprive them of these rights.*<sup>101</sup> *Articles 1, 6, and 8 require that States take necessary measures to prevent such inhumane treatment like torture from happening and to criminally punish those who engage in such action.*<sup>102</sup> *The Articles also require that the State guarantee that an impartial investigation will be conducted into the case of anyone who has been tortured.*<sup>103</sup> *Autopsies of the murdered bodies revealed that State agents had tortured victims with stab wounds in places which increase bodily suffering, and some of the victims were decapitated. For those victims who were not murdered, their bodies still showed signs of cruel treatment and violence.*<sup>104</sup> *For the immense cruelty and misery these victims endured, the Court found the State to have violated these Articles.*<sup>105</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of Ms. Paniagua Morales, Mr. Gómez

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98. *Id.* ¶ 121.

99. *Id.* ¶ 181(3).

100. *Id.* ¶ 134.

101. *Id.* ¶ 133.

102. *Id.*

103. *Id.*

104. *Id.* ¶¶ 134-35.

105. *Id.* ¶ 136.

Ayala, Mr. González Rivera, Mr. Corado Barrientos, Mr. González López and Mr. Chinchilla,<sup>106</sup> because:

*The victims were not provided with their right to a fair trial.<sup>107</sup> The Article guarantees that every person has the right to a hearing within a reasonable time in front of a competent and impartial judge.<sup>108</sup> The present case was not properly tried in front of an impartial tribunal within a reasonable amount of time, nor did the State provide victims with proper due process.<sup>109</sup> Without these guarantees, the Court had to find the State to be in violation.<sup>110</sup>*

Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Ms. Paniagua Morales, Mr. Gómez Ayala, Mr. González Rivera, Mr. Corado Barrientos and Mr. González López,<sup>111</sup> because:

*State agents did not provide any judicial remedy to the victims to protect their freedom and lives.<sup>112</sup> The Article guarantees the right to simple and prompt recourse to anyone who has suffered a violation.<sup>113</sup> The Court pointed out that the existence of habeas corpus does not guarantee that it is providing necessary protection against violation of individual's rights.<sup>114</sup> For example, the habeas corpus filed on behalf of Ms. Paniagua Morales proved to be completely ineffective since she ended up dead.<sup>115</sup> The victims were killed and thus were prevented from attempting to exercise their right to a judicial remedy.<sup>116</sup>*

### C. Dissenting and Concurring Opinions

[None]

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106. *Id.* ¶ 181(4).

107. *Id.* ¶ 155.

108. *Id.* ¶ 148.

109. *Id.* ¶ 155.

110. *Id.* ¶ 156.

111. *Id.* ¶ 181(5).

112. *Id.* ¶ 168.

113. *Id.* ¶ 163.

114. *Id.* ¶ 164.

115. *Id.* ¶ 166.

116. *Id.* ¶ 165.

#### IV. REPARATIONS

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

Reparations Pertaining to All Victims:

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

###### 1. Conduct Investigations

The Court ordered the State to conduct effective investigations in order to establish who was responsible for the numerous human rights violations suffered by the victims.<sup>117</sup> Upon finding the responsible parties, the State is to punish the perpetrators accordingly.<sup>118</sup>

###### 2. Inform Next of Kin

The Court determined that the next of kin of the victims have the right to know what happened to their family members.<sup>119</sup> Therefore, the State must inform the next of kin of the findings that come out of the investigations.<sup>120</sup>

###### 3. Legislative Reform

The Court ruled that the State must adopt legislation or other measures necessary into its domestic law so that it effectively recognizes the rights recognized in the Convention.<sup>121</sup> These measures will enforce the right to personal liberty, fair trial, and judicial guarantees in order to avoid cases such as the present one from occurring again in the future.<sup>122</sup>

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117. “White Van” (Paniagua-Morales et al.) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 76, ¶ 199 (May 25, 2001).

118. *Id.*

119. *Id.* ¶ 200.

120. *Id.*

121. *Id.* ¶ 203.

122. *Id.*

#### 4. Create a Registry of Detainees

The Court ordered the State to create a registry of detainees, if one was not already in existence, which must include information about the identity of the person being detained, the reason behind the detention, the hour of entry and liberation, information on the arrest warrant, and information on the competent authority.<sup>123</sup>

Reparations Pertaining to Ms. Anna Elizabeth Paniagua Morales:

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

[None]

##### B. *Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$108,759<sup>124</sup> for the sum that Ms. Paniagua Morales would have earned as a bookkeeper for the remainder of her expected lifetime, approximately forty-eight more years.<sup>125</sup> This amount was to be given to Ms. Paniagua Morales' daughter.<sup>126</sup>

#### 2. Non-Pecuniary Damages

The Court awarded \$54,000 for non-pecuniary damages to be divided amongst the members of the Ms. Paniagua Morales' family who suffered due to their close relationship with her.<sup>127</sup> The members include: María Elisa Meza Paniagua, María Ildelfonsa Morales Chávez, Antonio Paniagua, Blanca Lidia Zamora, Alberto Antonio Paniagua Morales, Blanca Beatriz, Hugo Morani, Elsa Carolina and German Giovanni.<sup>128</sup>

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123. *Id.* ¶¶ 194, 203.

124. *Id.* ¶ 229(1)(A)(a).

125. *Id.* ¶ 95.

126. *Id.* ¶ 229(1)(A)(a).

127. *Id.* ¶ 229(1)(A)(c).

128. *Id.*



### 3. Costs and Expenses

The Court awarded \$10,000 to Ms. María Ildelfonsa Morales Chávez, the mother of Ms. Paniagua Morales.<sup>129</sup> She should distribute the money to the victim's family according to the expenses they individually incurred following the death of Ms. Paniagua Morales.<sup>130</sup>

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

\$172,759

Reparations Pertaining to Mr. Julián Salomón Gómez Ayala:

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

[None]

#### B. *Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$25,855 for the amount that Mr. Gómez Ayala would have earned during the expected remainder of his life, approximately forty-four years.<sup>131</sup> This amount should be divided between Mr. Gómez Ayala's son and his companion.<sup>132</sup>

#### 2. Non-Pecuniary Damages

The Court awarded \$27,000 for non-pecuniary damages to be divided by members of Mr. Gómez Ayala's family who suffered due to their close relationship with Mr. Gómez Ayala.<sup>133</sup> The members include: Bertha Viola Flores Gómez, Julio Salomón Gómez Flores,

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129. *Id.* ¶ 229(1)(A)(b).

130. *Id.*

131. *Id.* ¶ 229(1)(B)(a).

132. *Id.* ¶ 118.

133. *Id.* ¶ 229(1)(B)(c).

Petronilo Gómez Chávez, Blanca Esperanza Ayala de la Cruz, Danilo Abraham, Deifin Olivia, Ingrid Elizabeth, Israel, Jorge Isaías, Douglas Moises and Lidia Marisa.<sup>134</sup>

### 3. Costs and Expenses

The Court awarded \$3,000 to be distributed in equal amounts to Petronilo Gómez Chávez, Blanca Esperanza Ayala de la Cruz and Bertha Violeta Flores Gómez, Mr. Gómez Ayala's parents and companion, for the expenses they incurred due to his death.<sup>135</sup>

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

\$55,855

Reparations Pertaining to Mr. William Otilio González Rivera:

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

[None]

#### B. *Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$32,545 for the sum that Mr. González Rivera would have earned for the expected remainder of his life, approximately forty-two years.<sup>136</sup> There is inconsistent evidence as to whether Mr. González Rivera had a son. If a son is identified within one year of notification of the judgment, the son will be awarded the entire amount.<sup>137</sup> Otherwise, the amount should be given to Mr. González Rivera's parents.<sup>138</sup>

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134. *Id.* ¶ 127.

135. *Id.* ¶ 119.

136. *Id.* ¶ 229(1)(C)(a).

137. *Id.* ¶¶ 133-35.

138. *Id.* ¶ 131.

## 2. Non-Pecuniary Damages

The Court awarded \$25,000 for non-pecuniary damages to be divided by members of the Mr. González Rivera’s family who suffered due to their close relationship with Mr. González Rivera.<sup>139</sup> The members include: Salvador González Najarro; María Asunción Rivera Velásquez; Mr. González Rivera’s alleged son, Santos Hugo; José Alfredo; Julio Moises; and Anatanahel and Leidy Rosibel.<sup>140</sup>

## 3. Costs and Expenses

The Court awarded \$2,000 to Mr. González Rivera’s father, Salvador González Najarro, who will distribute the amount to the rest of the family according to the expenses they incurred due to Mr. González Rivera’s death.<sup>141</sup>

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

\$59,545

Reparations Pertaining to Mr. Pablo Corado Barrientos:

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

[None]

### B. *Compensation*

The Court awarded the following amounts:

## 1. Pecuniary Damages

The Court awarded \$32,814 for the sum that Mr. Corado Barrientos would have earned had he not been deprived of his life.<sup>142</sup> This amount should be given to Mr. Corado Barrientos’ mother.<sup>143</sup>

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139. *Id.* ¶ 229(1)(C)(c).

140. *Id.* ¶ 145.

141. *Id.* ¶ 138.

142. *Id.* ¶ 229(1)(D)(a).

143. *Id.* ¶ 151.

## 2. Non-Pecuniary Damages

The Court awarded \$22,000 compensation for non-pecuniary damages divided by members of Mr. Corado Barrientos' family who suffered due to their close relationship with Mr. Corado Barrientos.<sup>144</sup> The Court held that it is only natural that those close to him would suffer the repercussions of knowing about the inhumane torture and ultimate death that he endured.<sup>145</sup> Specifically, the Court awarded his mother \$20,000, for own suffering as well as the suffering of Mr. Corado Barrientos, with the remainder to be divided amongst his siblings.<sup>146</sup> The members of his family include: Juana Barrientos Valenzuela, Francisca Corado Barrientos and Tino Corado Barrientos.<sup>147</sup>

## 3. Costs and Expenses

The Court awarded \$2,000 to Juana Barrientos Valenzuela, Mr. Corado Barrientos' mother, for the expenses she incurred due to her son's death.<sup>148</sup> The State must also provide the necessary conditions to move Mr. Corado Barrientos' remains to the location chosen by his next of kin.<sup>149</sup>

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

\$56,814

Reparations Pertaining to Mr. Manuel de Jesús González López:

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

[None]

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144. *Id.* ¶ 229(1)(D)(c).

145. *Id.* ¶ 157.

146. *Id.* ¶ 158.

147. *Id.* ¶ 160.

148. *Id.* ¶ 153.

149. *Id.* ¶ 204.

*B. Compensation*

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$78,372 for the sum that Mr. González López would have earned during the remainder of his expected life, approximately forty years.<sup>150</sup> This amount should be given to Mr. González López’s wife and their three children.<sup>151</sup>

2. Non-Pecuniary Damages

The Court awarded \$40,000 compensation for non-pecuniary damages to be divided between Mr. González López’s wife, María Elizabeth Chinchilla, and his three children: Karen Paola, Silvia Argentina and Manuel Alberto.<sup>152</sup> The amount is to compensate his wife for witnessing the abuse of her husband and for later finding his mutilated body.<sup>153</sup> Further, Mr. González López’s wife was forced to leave the country as well as her children.<sup>154</sup> The children are being compensated for being left without both a father and mother.<sup>155</sup>

3. Costs and Expenses

The Court awarded \$3,000 for Mr. González López’s wife for costs incurred due to his death including the search for his body and his subsequent burial.<sup>156</sup>

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

\$121,372

Reparations Pertaining to Mr. Erik Leonardo Chinchilla:

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150. *Id.* ¶ 229(1)(E)(a).

151. *Id.* ¶¶ 166-67.

152. *Id.* ¶ 229(1)(E)(c).

153. *Id.* ¶ 174.

154. *Id.*

155. *Id.* ¶¶ 174-75.

156. *Id.* ¶¶ 168-70.

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

[None]

B. *Compensation*

The Court awarded the following amounts:

1. Pecuniary Damages

There were no pecuniary damages awarded because there was insufficient evidence to attribute responsibility of Mr. Chinchilla's death to the State.<sup>157</sup> Therefore the Court could not require the State to pay compensations.<sup>158</sup>

2. Non-Pecuniary Damages

The Court was unable to award non-pecuniary damages because the murder could not conclusively be determined as the State's fault.<sup>159</sup>

3. Costs and Expenses

The Court awarded \$8,000 to Mr. Chinchilla's mother, María Chinchilla Ruano, because of the suffering she endured as a result of her son's death and the violation of Article 8 (Right to a Fair Trial) by the State.<sup>160</sup>

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

\$8,000

Reparations Pertaining to Mr. Oscar Vásquez and Mr. Augusto Angárita Ramírez:

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157. "White Van" (Paniagua-Morales et al.) v. Guatemala, Merits, ¶ 121; "White Van" (Paniagua-Morales et al.) v. Guatemala, Reparations and Costs, ¶ 179.

158. *Id.* ¶ 179.

159. *Id.*

160. *Id.* ¶ 180.

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

[None]

*B. Compensation*

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court awarded \$8,000 each to Mr. Vásquez and Mr. Angárita Ramírez for the damage that each of them suffered due to the violation of each of their rights.<sup>161</sup> With regard to Mr. Angárita Ramírez, the Court looked at the violation of his freedom due to his detention as well as his right to human treatment, since he had been subject to cruel, inhumane and degrading treatment.<sup>162</sup> With respect to Mr. Vásquez, the Court determined that the State had violated his right to humane treatment.<sup>163</sup>

3. Costs and Expenses

[None]<sup>164</sup>

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

\$16,000

Reparations Pertaining to Ms. Doris Torres Gil and Mr. Marco Antonio Montes Letona:

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161. *Id.* ¶ 187.

162. *Id.* ¶ 185.

163. *Id.* ¶ 186.

164. *Id.* The Court did not find that Mr. Vásquez’s son’s move was related to the violations by the State.

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

[None]

B. *Compensation*

The Court awarded the following amounts:

1. Pecuniary Damages

[None]<sup>165</sup>

2. Non-Pecuniary Damages

The Court awarded \$3,000 each to Ms. Torres Gil and Mr. Montes Letona for the violations to their personal liberty due to their detention.<sup>166</sup>

3. Costs and Expenses

[None]

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

\$6,000

5. Total Compensation for All Victims:

\$496,345

C. *Deadlines*

The State must pay compensatory damages, cover reimbursements and expenses, as well as adopt necessary measures previously indicated

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165. *Id.* ¶ 191. Neither Ms. Torres Gil nor Mr. Montes Letona submitted their claims to the Court, nor did they personally appear in front of the Court.

166. *Id.* ¶ 193.



within six months of notification of the judgment.<sup>167</sup> For all under-aged beneficiaries, the State is to set up an account within six months to hold the benefits until the minor reaches the age of majority.<sup>168</sup> This account will accrue interest up until that point.<sup>169</sup> The same type of account is to be set up within six months if there is an adult beneficiary who cannot receive the compensatory payments within the allocated six months.<sup>170</sup> If the money is not collected within ten years, it will go back to the State.<sup>171</sup> The court did not provide deadlines for following: identify those responsible and punish them;<sup>172</sup> to establish and guarantee the operation of a register of detentions;<sup>173</sup> to provide the necessary conditions to transfer the mortal remains of Pablo Corado Barrientos to the place chosen by his next of kin.<sup>174</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

#### VI. COMPLIANCE AND FOLLOW-UP

**2001 and 2002:** The State declares it has paid the \$519,345 in compensation and reimbursement of costs and expenses in 2001 and 2002.<sup>175</sup>

**2007:** The Court points out that though nineteen years have passed since these events occurred, the investigations are not complete and that the State must continue to conduct them.<sup>176</sup> The Court held that the State did comply with its duties to provide the necessary circumstances for transferring the remains of Mr. Corado Barrientos.<sup>177</sup> The State properly disbursed the amount for costs and expenses, but not completely for

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167. *Id.* ¶ 220.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* ¶ 202.

173. *Id.* ¶ 203.

174. *Id.* ¶ 204.

175. *Id.* ¶ 20.

176. “White Van” (Paniagua-Morales et al.) v. Guatemala, Compliance Monitoring, ¶ 12 (Nov. 27, 2007).

177. *Id.* ¶¶ 14-18.

pecuniary damages. The state was not able to make compensatory payments to Mr. Augusto Angárita Ramírez, Doris Torres Gil and Marco Antonio Montes Letona because they could not be located.<sup>178</sup> Thus, the Court held that the State must do what it needs to locate these people so they can be properly compensated.<sup>179</sup> The State created a system for prisoners, but did not make a register of detainees that was statewide.<sup>180</sup> Hence, the Court held that the State has partially complied with the order to create a register of people deprived of their freedom.<sup>181</sup> The State has kept open the proceedings for monitoring compliance with its duties to investigating, identifying and punishing parties responsible for the numerous violations.<sup>182</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 23 \(Jan. 25, 1996\).](#)

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

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 76 \(May 25, 2001\).](#)

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 37 \(Mar. 8, 1998\).](#)

#### 3. Provisional Measures

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Aug. 28, 2001\).](#)

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178. *Id.* ¶ 21.

179. *Id.* ¶ 24.

180. *Id.* ¶ 28.

181. *Id.* ¶ 20.

182. *Id.*

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Jan. 29, 2001\).](#)

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 27, 1998\).](#)

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(June 19, 1998\).](#)

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 10, 1998\).](#)

#### 4. Compliance Monitoring

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-am. Ct. H.R. \(Nov. 27, 2007\).](#)

[White Van \(Paniagua-Morales et al.\) v. Guatemala, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-am. Ct. H.R. \(Oct. 29, 2007\) \(Available only in Spanish\).](#)

[White Van \(Paniagua-Morales et al.\) v. Guatemala, 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

White Van (Paniagua-Morales et al.) v. Guatemala, Petition No. 10.154, Inter-Am. Comm’n H.R. (Feb. 10, 1988).

##### 2. Report on Admissibility

[None]

### 3. Provisional Measures

[None]

### 4. Report on Merits

White Van (Paniagua-Morales et al.) v. Guatemala, Report on Merits, Report No. 23/94, Inter-Am. Comm'n H.R., Case No. 10.154 (Sept. 28, 1994).

### 5. Application to the Court

White Van (Paniagua-Morales et al.) v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.154 (Jan. 19, 1995).

## VIII. BIBLIOGRAPHY

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