INTER-AMERICAN COURT OF HUMAN RIGHTS

VILLAGRAN MORALES *ET AL.* CASE
(THE "STREET CHILDREN" CASE)

JUDGMENT OF NOVEMBER 19, 1999

In the Villagrán Morales *et al.* case (the "street children" case*).

The Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") composed of the following judges**:

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

also present,

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

pursuant to Articles 55 and 57 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), delivers the following judgment.

---

* Regarding the use of the term "street children" in this judgment, see para. 188.

** Judge Sergio García Ramírez was unable to take part in the preparation and adoption of this Judgment due to circumstances beyond his control.

I
INTRODUCTION OF THE CASE

1. On January 30, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court an application against the Republic of Guatemala (hereinafter "the State" or "Guatemala") deriving from a petition (No. 11, 383) received by the Secretariat of the Commission on September 15, 1994.

2. When presenting the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 32 *et seq.* of the Rules of Procedure. The Commission referred this case for the Court to determine whether Guatemala had violated the following Articles of the Convention: 1 (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection). According to the application, these violations were the result of

> the abduction, torture and murder of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes; the murder of Anstraum [Aman] Villagrán Morales; and the failure of State mechanisms to deal appropriately with the said violations and provide the victim's families with access to justice.

3. As two of the victims, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes, were minors when they were abducted, tortured and murdered, and Anstraum Aman Villagrán Morales was a minor when he was killed, the Commission alleged that Guatemala had violated Article 19 (Rights of the Child) of the American Convention. The Commission requested the Court to order the State to take the necessary steps to conduct a prompt, impartial and effective investigation into the facts "so that [the individual responsibilities for the alleged violations may be] recorded in an officially authorized report" and "those responsible may be pun-

ished appropriately". It also requested the Court to order the State "to vindicate the names of the victims and make fair payment to the persons affected by the violations of the aforementioned rights" and to pay costs to the victims and their representatives. In its application, the Commission also cited the violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "Convention against Torture").

II
COMPETENCE OF THE COURT

4. The Court is competent to hear this case. Guatemala has been a State Party to the American Convention since May 25, 1978, accepted the contentious jurisdiction of the Court on March 9, 1987, and ratified the Convention against Torture on January 29, 1987.

III
PROCEEDINGS BEFORE THE COMMISSION

5. On September 15, 1994, the Center for Justice and International Law (CEJIL) and Casa Alianza presented the formal petition corresponding to this case to the Inter-American Commission. The petition was based on "the death of five youths and the alleged denial of domestic justice in the case". On September 20, 1994, the Commission opened case No. 11,383, transmitted the pertinent parts of the petition to the State and requested it to provide information on the facts contained in this communication with a period of 90 days.

6. During its 87th session, from September 19 to 30, 1994, the Commission held a hearing on the case. On that occasion, Guatemala presented its reply to the petition.

7. On December 15, 1994, the State presented an additional report related to the Commission's request of September 20, 1994.

8. On January 17, 1995, the Commission received the petitioners' response to the reply presented to the Commission by the State.

9. On January 20, 1995, the Commission forwarded to the petitioners the pertinent parts of the additional report that the State had presented on December 15, 1994.

10. On February 1, 1995, the petitioners' reply was forwarded to the State.

11. Guatemala responded to the petitioners' reply on March 29, 1995, and the following day the Commission forwarded the pertinent parts of this communication to the petitioners.

12. On May 17, 1995, the Commission received a letter from the petitioners responding to the State's report of December 15, 1994, and the reply of March 29, 1995. The information was forwarded to Guatemala on May 24, 1995.

13. On June 27, 1995, the Commission received a report from the State in response to the petitioners' communication of May 17, 1995. On July 19, 1995, the Commission forwarded the pertinent parts of the State's report to the petitioners.

14. On September 19, 1995, the petitioners presented their reply to the Commission and on September 29, 1995, the Commission forwarded the pertinent parts to the State.

15. On November 6, 1995, the State forwarded additional information to the Commission consisting in copies of the judgments delivered in various instances during the domestic proceedings. The Commission forwarded this documentation to the petitioners on November 13, 1995.

16. The petitioners also send the Commission additional information on December 5, 1995, and January 15, 1996, and the pertinent parts of this were forwarded to the State on December 13, 1995, and January 29, 1996, respectively.

17. On January 18, 1996, Guatemala presented a reply to the information sent by the petitioners on December 5, 1995.

18. On February 22, 1996, during its 91st session, the Commission held a second hearing on the case. During this hearing, the Commission made itself available to the parties to conduct negotiations for a friendly settlement. The petitioners expressed their willingness to consider a friendly settlement, although they had their reserves about the possibility of reaching one in this case. Guatemala indicated its intention of giving its opinion on this point subsequently.

19. The petitioners confirmed their willingness to take part in a friendly settlement process in a letter received by the Commission on March 1, 1996.

20. The same day, the Commission received a letter from the State in which it affirmed that it had already forwarded all the relevant reports in this case.

21. On March 18, 1996, the petitioners sent an additional communication to the Commission about this case. The following day, the Commission forwarded the pertinent parts to the State.

22. On March 20, 1996, the Commission transmitted a note to the State in which it again made itself available to the parties to reach a friendly settlement.

23. On May 8, 1996, the Commission received the State's reply, indicating that, in its opinion, "it would not be necessary to conduct a friendly settlement process".

24. On June 24, 1996, the Commission sent a note to the State asking it about the status of the corresponding judicial proceedings in the domestic jurisdiction.

25. On July 8, 1996, the State presented a communication to the Commission transmitting a copy of a note from the Presidential Coordinating Committee for the Executive's Human Rights Policy (COPREDEH) addressed to the petitioners. On July 9, 1996, the petitioners were sent the pertinent parts of this communication.

26. The petitioners replied to the State on July 23, 1996, and on August 12, 1996, they sent a copy of this reply to the Commission.

27. On July 23, 1996, the Commission requested specific additional information and documentation from the State to assist them in their examination of the petition. On August 29, 1996, Guatemala responded to this request and forwarded the required documents.

28. On October 1, 1996, the State sent the Commission additional information in reply to the note of July 23, 1996. This information was forwarded to the petitioners on October 8, 1996.

29. During its 93rd session, in a meeting held on October 16, 1996, the Commission adopted Report No. 33/96, in which it declared that the petition presented in this case was admissible, and declared

> [t]hat, having seen the information and the observations that have been presented, the State of Guatemala violated the human rights of the child and the rights to life, humane treatment, personal liberty, and to a fair trial and judicial protection embodied in Articles 4, 5, 7, 19, 8 and 25 of the American Convention, and failed to comply with its obligations stipulated in Article 1.
>
> That the State of Guatemala violated Articles 1, 2 and 6 of the Inter-American Convention to Prevent and Punish Torture.

30. Furthermore, in the said report, the Commission made the following recommendations to the State:

> [t]hat [...] it should carry out a prompt, impartial and effective investigation of the facts denounced so that the circumstances and the responsibility for the violations that occurred may be fully established in relation to the crimes committed against Anstraum [Aman] Villagrán Morales, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and [Jovito] Josué Juárez Cifuentes.

> That [...] it should adopt the necessary measures to submit those responsible for the violations that are the subject of this case to the appropriate judicial proceeding, which should be founded on a complete and effective investigation of the case and include a careful examination of all the pertinent evidence, with absolute observance of the law and due process.
>
> That [...] it should remedy the consequences of the violations of the rights listed, including payment of a fair compensation to the next of kin of Anstraum [Aman] Villagrán Morales, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and [Jovito] Josué Juárez Cifuentes.
>
> That [...] it should institute the appropriate measures so that violations of the human rights of street children do not occur in the future. These measures should include their effective protection, particularly of minors, and the training and supervision of police agents so that they do not ill-treat street children.

Lastly, the Commission decided "to transmit this report to the State of Guatemala and establish a period of two months from the transmittal of the report, for the State to implement the recommendations contained herein. During this period, the State is not at liberty to publish the report, as established in Article 50 of the Convention".

31. On October 30, 1996, the Commission forwarded Report No. 33/96 to the State, requesting it to provide information on the measures taken to comply with the recommendations.

32. On December 30, 1996, the State requested an extension in order to present its reply to the Commission's report. On December 31, 1996, the Commission informed the State that an extension had been granted until January 6, 1997.

33. On January 7, 1997, the Commission decided to refer the case to the Inter-American Court.

34. On January 9, 1997, the State presented its reply to Report No. 33/96. On this occasion, Guatemala stated that it would send additional documentation in the coming days; however, this did not happen. Although it was time-barred, the Commission accepted the State's reply.

IV
PROCEEDINGS BEFORE THE COURT

35. The Commission submitted the application to the Court on January 30, 1997. It in, it designated John Donaldson and Claudio Grossman as its Delegates, David J. Padilla and Elizabeth H. Abi-Mershed as its Lawyers and Ariel Dulitzky, Viviana Krsticevic, Alejandro Valencia Villa, Francisco Cox Vial and José Miguel Vivanco as assistants.

36. On February 12, 1997, the Secretariat of the Court (hereinafter "the Secretariat"), informed the Commission that once "the application has been received in Spanish, it [would] proceed to formally notify it to the Government of Guatemala", as it had been forwarded in English originally.

37. On March 4, 1997, the Commission sent by fax the application translated into Spanish in a version that contained several translation errors.

38. In a note of March 6, 1997, the Secretariat notified the application in English to the State and informed it that it had four months in which to present its answer, two months to file preliminary objections and one month to appoint an agent and a deputy agent; all these periods started from the date of notification of the application. In a communication of the same date, the State was invited to designate a Judge *ad hoc*.

39. In a further note of the same date, March 6, 1997, the Secretariat requested the Commission to send the original file processed by the Commission, and also the photographs that appeared as annexes 42, 43, 44, 59, 60, 61 and 62 of the application, the addresses of the original complainants and the representatives of the victims or their next of kin, with their respective powers of attorney and, also, the missing or illegible annexes.

40. On March 11, 1997, the Court received the corrected Spanish translation of the application and the photographs that appeared as annexes 59 to 62.

41. On March 14, 1997, the Secretariat of the Court sent the State a copy of the corrected Spanish translation of the application and of the above-mentioned annexes. Furthermore, on the same date, the Court requested the Commission to send the annexes that were still missing.

42. On March 30, 1997, Guatemala informed the court that it had designated Julio Gándara Valenzuela, Guatemalan Ambassador to the Republic of Costa Rica, as its Agent.

43. On April 2, 1997, Guatemala presented a brief in which it raised four preliminary objections and requested the Court "to extend the term for responding to the application until [the preliminary objections] [had been] resolved".

44. By Order of April 16, 1997, the Court declared "inadmissible the request by the State of Guatemala for an extension of the period for responding to the application" in the instant case and decided "to continue to process the case in accordance with the respective procedural stages".

45. On April 18, 1997, the State informed the Court of an "error of substance in the brief on preliminary objections" (capital letters in the original) and requested it to deem "that it had not been presented [and] therefore, to abrogate the Order of the Court of April 16, 1997" (capital letters in the original).

46. By Order of April 18, 1997, the President of the Court decided "to deem the brief on preliminary objections of April 2, 1997, not to have been presented".

47. On May 6, 1997, pursuant to Article 36 of the Rules of Procedure, the State presented a brief in which it raised a single preliminary objection entitled "Incompetence of the honorable Inter-American Court of

Human Rights to hear [...] the instant case" (capital letters in the original).

48. On May 21, 1997, the Commission presented part of the documentation requested.

49. On July 4, 1997, the State submitted its answer to the application and a copy of this was forwarded to the Commission on July 8, 1997.

50. On September 11, 1997, the Court delivered judgment on preliminary objections, in which it unanimously resolved "[t]o dismiss as inadmissible the preliminary objection brought by the State of Guatemala" and "[t]o continue to examine the case".

51. On April 15, 1998, Guatemala advised the Court of the appointment of Guillermo Argueta Villagrán, Guatemalan Ambassador to the Government of Costa Rica, as the State Agent in this case, in substitution of Julio Gándara Valenzuela.

52. On November 6, 1998, the Commission informed the Court that in future, Claudio Grossman would act as its sole Delegate in this case, thus annulling the appointment in this capacity of John Donaldson.

53. On December 9, 1998, the Commission sent its definitive list of witnesses and expert witnesses for the case.

54. On December 14, 1998, the President summoned the State and the Commission to a public hearing to be held at the seat of the Court on January 28, 1999, in order to receive the statements of the witnesses and the reports of the expert witnesses proposed by the Commission. Furthermore, the President instructed the Secretariat to inform the parties that, as soon as this evidence had been received, they could present their final oral arguments on the merits of the case.

55. On December 28, 1998, the Commission presented the powers of attorney granted by Matilde Reyna Morales García, Ana María Contreras and Margarita Urbina Sandoval, next of kin of three of the victims.

56. On January 28 and 29, 1999, the Court received the statements of the witnesses and the reports of the expert witnesses proposed by the Commission and heard the final oral arguments of the parties in a public hearing on the merits of the case.

There appeared before the Court

for the State of Guatemala:

Guillermo Argueta Villagrán, Agent;
Dennis Alonzo Mazariegos, Deputy Agent; and
Alejandro Sánchez Garrido, Advisor

for the Inter-American Commission:

Claudio Grossman, Delegate;
Elizabeth H. Abi-Mershed, Lawyer;
Viviana Krsticevic, Assistant;
Luguely Cunillera, Assistant;
Ana María Méndez, Assistant; and
Héctor Dionisio, Assistant.

As witnesses proposed by the Inter-American Commission:

Ana María Contreras;
Matilde Reyna Morales García;
Bruce Harris;
Rosa Angélica Vega;
Julia Griselda Ramírez López;
Osbelí Arcadio Joaquín Tema;
Delfino Hernández García;
Roberto Marroquín Urbina; and
Ayende Anselmo Ardiano Paz.

As expert witnesses proposed by the Inter-American Commission:

Roberto Carlos Bux; and
Alberto Bovino.

57. On August 3, 1999, the Secretariat sent the final version of the transcript of the public hearings to the parties, informing them that they had one month to present their final written arguments. This period was extended twice, following two requests presented by the Commission.

58. On September 21, 1999, Guatemala presented its final arguments. The Commission did so in English on September 20 and in Spanish on November 10[1].

V
The Evidence

A) DOCUMENTARY EVIDENCE

59. The Commission presented a copy of documents related to the following, as annexes to the application and as evidence:

a. Domestic judicial proceedings relating to the homicide of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes and to the homicide of Anstraum Aman Villagrán Morales.

In this respect, copies of the files created during the judicial proceedings conducted by the following courts were presented:

- the First Magistrate's Court of Mixco (Department of Guatemala)[2];

1 The Childrights International Research Institute presented an *amicus curiae* brief on January 21, 1999.

2 *Cf. Report of June 16, 1990, of the First Magistrate's Court of Mixco, on the discovery of two bodies in the San Nicolás Woods; Report of June 17, 1990, of the First Magistrate's Court of Mixco, on the discovery of two bodies in the San Nicolás Woods; court order of June 26, 1990, requiring the National Police Force to investigate the circumstances resulting in the discovery of the bodies on June 16 and 17; Forensic Report of June 20, 1990, on a body found on June 17, 1990; Forensic Report of June 19, 1990, on a body found on*

- the Trial Court of the Municipality of Mixco (Department of Guatemala)[3];

- the First Criminal Trial Court (Guatemala City)[4];

June 17, 1990; letter of June 28, 1990, from the Police Force to the First Magistrate's Court of Mixco, regarding the identification of the bodies found on June 16 and 17, 1990; birth certification of Henry Giovanni Contreras; authenticated certificate issued by the Secretary of the Identification Office of the National Police Force on July 13, 1990, certifying the identification of Julio Roberto Caal Sandoval as one of the bodies found on June 17, 1990; exhumation order of July 27, 1990, issued by the Criminal Trial Court at the request of Rosa Carlota Sandoval; official communication of the Fourth National Police Corps of August 15, 1990, certifying that the exhumation had been carried out, the body was identified by Rosa Carlota Sandoval, who stated that it was her son, Julio Roberto Caal Sandoval - the body was then buried; another Magistrate's order of August 9, 1990, to perform an exhumation and the certificate that the exhumation had been carried out issued by the Ninth Magistrate for Criminal Matters on August 14, 1990.

3 *Cf. Forensic Report of June 26, 1990, on a body found on June 16, 1990; birth certificate of Julio Roberto Caal Sandoval; statement of July 19, 1990, by the mother of Henry Giovanni Contreras before the Criminal Trial Court of the Municipality of Mixco; statement made by Rosa Carlota Sandoval on July 20, 1990, before the Judge of the First Criminal Trial Court; Report of March 4, 1991, of the Criminal Investigation Department of the National Police Force in the case of the youths found in the San Nicolás Woods [the San Nicolás Woods Report]; photocopies of photographs related to and verifying the testimony of María Eugenia Rodríguez, taken by Bruce Harris; photocopies and photographs relating to the discovery of the bodies of four youths in San Nicolás Woods, taken by the National Police Force; photocopies of photographs that show places related to the discovery of the bodies of four youths in the San Nicolás Woods, taken by the National Police Force; photographs of Jovito Josué Juárez Cifuentes; photograph of Julio Roberto Caal Sandoval; photograph of Federico Clemente Figueroa Túnchez; official telegram of September 12, 1990, from the Judge of the First Criminal Trial Court to the Judge of the Criminal Trial Court of the Municipality of Mixco, and certificate of July 8, 1991, of the academic studies of Samuel Rocael Valdez Zúñiga.*

4 *Cf. statement of July 18, 1990, of Bruce Harris before the Legal Department for Minors (Procuraduria de Menores) of the Office of the Attorney-General; statement of August 20, 1990, of Bruce Harris before the Judge of the First Criminal Trial Court; expansion of Bruce Harris's statement of August 20, taken on September 11, 1990, before the First Criminal Trial Court offering testimonial evidence; statement of September 11, 1990, of María Eugenia Rodríguez before the First Criminal Trial Court; statement of September 19, 1990, of Gustavo Adolfo Cóncaba Cisneros before the First Criminal Trial Court; brief of the Office of the Attorney-General of July 23, 1990, to the First Criminal*

- the sitting Magistrate's Court for Criminal Matters[5] (Guatemala City);

- the Second Criminal Trial Court[6] (Guatemala City);

Trial Court, ratifying the complaint made by Bruce Harris, and also requesting that the Office of the Attorney-General be represented in the proceeding that was about to commence; brief of July 15, 1990, (ref. C-2599-90-50) of the Judge of the First Criminal Trial Court ordering the commencement of the summary proceedings on the facts denounced.

5 *Cf. Report of June 26, 1990, of the sitting Magistrate's Court for Criminal Matters on the removal of a body (Anstraum Aman Villagrán Morales); Report of June 26, 1990, of the sitting Magistrate's Court for Criminal Matters on the judicial identification of a body (Anstraum Aman Villagrán Morales); Report of June 26, 1990, of the National Police Force, on the discovery of a body (Anstraum Villagrán Morales); Autopsy report of June 27, 1990 (Anstraum Aman Villagrán Morales); Report of June 3, 1990, of the Identification Office of the National Police Force on the ballistic test.*

6 *Cf. statement of July 27, 1990, of Bruce Harris before the Second Criminal Trial Court; statement of August 29, 1990, of Matilde Reyna Morales García (mother of Anstraum Aman Villagrán Morales) before the Second Criminal Trial Court; statement of August 31, 1990, of Bruce Harris before the Second Criminal Trial Court: copy of the statement of August 31, 1990, of the witness, Gustavo Adolfo Cóncaba Cisneros, before the Second Criminal Trial Court; statement of the witness, Aída Patricia Cámbara Cruz before the Second Criminal Trial Court; order of January 17, 1991, of the Second Criminal Trial Court to the Director of the National Police Force, to proceed to investigate the violent death of Anstraum Villagrán Morales; Report of the Identification Section of the National Police Force of February 27, 1991, on the ballistic test; Report of March 25, 1991, of the Criminal Investigations Department of the National Police Force on the murder of Anstraum Villagrán Morales Villagrán Police Report; letter of February 3, 1991, of the Fifth National Police Unit regarding the duty record of Samuel Rocael Valdez Zúñiga on June 25 and 26, 1990; birth certificate of Anstraum Villagrán Morales; Report of the Identification Section of the National Police Force of March 15, 1991, on the ballistic test; statement of March 26, 1991, of the witness, Julia Griselda Ramírez López, before the Second Criminal Trial Court; statement of March 27, 1991, of the police investigator, Ayende Anselmo Ardiano Paz, before the Second Criminal Trial Court; statement of March 27, 1991, of the police investigator, Edgar Alberto Mayorga Mazariegos before the Second Criminal Trial Court; statement of March 27, 1991, of the police investigator, Rember Aroldo Larios Tobar, before the Second Criminal Trial Court; letter of April 5, 1991 (ref. 1251-91) of the Criminal Investigations Department of the National Police Force to the Second Criminal Trial Court confirming the status of officers Fonseca and Valdez; letter of March 30, 1991, from a National Police Force Inspector to the Fifth Unit confirming that the gun registered with the number 1481127 had been issued to*

- the Third Criminal Sentencing Court[7] (Guatemala City);

agent Valdez Zúñiga; statement of April 11, 1991, of the police investigator Delfino Hernández García before the Second Criminal Trial Court; statement of April 12, 1991, of the witness, Micaela Solís Ramírez before the Second Criminal Trial Court; statement of April 12, 1991, before the Second Criminal Trial Court of the witness, Rosa Angélica Vega; Official record of April 18, 1991, of the Judicial Identification Procedure [line-up] with the witnesses, Walter Aníbal Choc Teni, Julia Griselda Ramírez López, Micaela Solís Ramírez and Gustavo Adolfo Cisneros Cóncaba; letter of April 24, 1991, from the National Police Force to the Judge of the Second Criminal Trial Court referring to the duty schedule of Néstor Fonseca and letter of April 22, 1991 (ref. 2810) from the National Police Force to the Judge of the Second Criminal Trial Court referring to the dismissal of Samuel Rocael Valdez Zúñiga.

7 *Cf. letter of April 18, 1991, of the National Police Force to the Office of the Eighth Magistrate's Court for Criminal Matters, with information on the arrest of agent Néstor Fonseca López; death certificate of Rosa Carlota Sandoval; statement of September 18, 1991, of María Eugenia Rodríguez, pursuant to a special summons before the Third Criminal Sentencing Court; statement of October 16, 1991, of Micaela Solís Ramírez, pursuant to a special summons before the Third Criminal Sentencing Court; death certificate of Gustavo Adolfo Cóncaba; statement during the preliminary examination of Néstor Fonseca López before the Third Criminal Sentencing Court on April 11, 1991; Judgment of December 26, 1991, of the Third Criminal Sentencing Court; brief on remedy of annulment with the possibility of appealing of April 26, 1991 filed by Rosa Trinidad Morales before the Third Criminal Sentencing Court, for the opening of the proceeding and the warrant for pre-trial detention against her; Statement of the defendant, Néstor Fonseca López of May 6, 1991, before the Judge of the Third Criminal Sentencing Court rejecting the acts that are attributed to him; brief of the Office of the Attorney-General of May 24, 1991, addressed to the Judge of the Third Criminal Sentencing Court, in proceeding No.145-4-91 against Néstor Fonseca López and Rosa Trinidad Morales Pérez, requesting that the proceeding should begin taking testimony and that all relevant testimony be brought forward; brief of Police Force investigator III of May 29, 1991, making the defendant, Samuel Rocael Valdez Zúñiga, available to the Judge of the Second Trial Court; statement under questioning of the defendant, Samuel Rocael Valdez Zúñiga of May 30, 1991, before the Third Criminal Sentencing Court; expansion of the statement under questioning of the defendant, Samuel Rocael Valdez Zúñiga, of May 31, 1991, before the Judge of the Third Criminal Sentencing Court; order for opening proceedings and pre-trial detention against Rosa Trinidad Morales and Néstor Fonseca López issued by the Third Criminal Sentencing Court on April 24, 1991; decision of May 31, 1991, of the Third Criminal Sentencing Court, resolving pre-trial detention against Samuel Rocael Valdez Zúñiga; brief for revocation of the order of pre-trial detention presented by Néstor Fonseca López's defense counsel on April 22, 1991; decision of May 31, 1991, of the Third Criminal Sentencing Court, extending the order for opening proceedings; decision of June 3, 1991, of the Third Criminal Sentencing Court, refusing to recognize the right of representation of Zoila*

- the Fourth Chamber of the Guatemalan Court of Appeal[8]; and

Eugenia Ligorria González de Monterroso; brief granting the remedy of appeal filed by Rosa Trinidad Morales on June 4, 1991, before the Third Criminal Sentencing Court on April 26 against the order for opening proceedings of April 24, 1991; offer of testimonial evidence of June 5, 1991, by Néstor Fonseca López; offer of testimonial evidence of June 5, 1991, by the court-appointed defense counsel of Néstor Fonseca López; statement by the defendant Samuel Rocael Valdez Zúñiga of June 7, 1991; appointment of June 13, 1991, of Mayra Yojana Veliz López as defense counsel of Samuel Rocael Valdez Zúñiga; socio-economic report of June 20, 1991, on Rosa Trinidad Morales Pérez, prepared by the Judiciary's Social Information Service; offer of evidence by the Office of the Attorney-General, Legal Department for Minors, on June 19, 1991; socio-economic report of June 24, 1991 on Néstor Fonseca López, prepared by the Judiciary's Social Information Service; expansion of the proposed evidence of Néstor Fonseca López of July 2, 1991; socio-economic report of July 3, 1991, on Samuel Rocael Valdez Zúñiga, prepared by the Judiciary's Social Information Service; offer of evidence of Mayra Yojana Veliz López, Samuel Rocael Valdez Zúñiga's lawyer; police record certificate of Samuel Rocael Valdez Zúñiga of March 13, 1991; revocation of order for the pre-trial detention of Rosa Trinidad Morales Pérez of July 22, 1991; official communication of July 23, 1991, of the Judge of the Third Criminal Sentencing Court to the Director General of Immigration, informing him of the prohibition for Rosa Trinidad Morales Pérez to leave the country; brief of July 30, 1991, for the hearing of the defense counsel of Rosa Trinidad Morales Pérez; order of the Third Criminal Sentencing Court of August 30, 1991, to start taking evidence; statement of September 19, 1991, during a special summons of the defendant, Néstor Fonseca López; judicial inspection of October 17, 1991, not complemented by a reconstruction of the facts; brief of October 18, 1991, of the Office of the Attorney-General again requesting a judicial inspection with reconstruction of the facts; decision of the Third Criminal Sentencing Court of October 21, 1991, rejecting the action requested by the Office of the Attorney-General to conduct a judicial inspection with reconstruction of the facts; examination of June 19, 1991, pursuant to a special summons of the defendant, Samuel Rocael Valdez Zúñiga; statement of October 18, 1991, pursuant to a special summons of the defendant, Samuel Rocael Valdez Zúñiga; briefs of the Office of the Attorney-General presented to the Third Criminal Trial Court of October 30, 1991; brief of October 30, 1991, of the defense counsel of Néstor Fonseca López, presenting defense arguments in his favor; and communication of April 3, 1991, of the Judge of the Third Criminal Sentencing Court to the Supervisor General of Proceedings, informing him that the December 26 acquittal ordered by the Third Criminal Sentencing Court in favor of Rosa Trinidad Morales Pérez, Néstor Fonseca López and Samuel Rocael Valdez Zúñiga, had been confirmed by the Fourth Chamber of the Court of Appeal and the defendants had been freed.

8 *Cf. Judgment of March 25, 1992, of the Fourth Chamber of the Guatemalan Court of Appeal and record of the verbal filing of the remedy of appeal by the Office of the Attorney-General of January 21, 1992.*

- the Criminal Chamber of the Supreme Court of Justice of Guatemala (hereinafter "Supreme Court")[9];

b. The processing of the case before the Inter-American Commission on Human Rights[10].

c. The issue of "street children" in Guatemala at the time the facts that originated this case occurred[11].

60. The State did not contest or object to the documents presented by the Commission nor did it question their authenticity, so the Court considers them to be valid.

61. The State did not present any evidence in its reply to the application or at any time during the preliminary objections and merits phases.

62. During the hearing on the merits of the case, held on January 28, 1999, the Inter-American Commission presented copies of 14 documents that were received by the Secretariat of the Court. These documents were also handed to the State during the hearing.

9 *Cf. Judgment of the Criminal Chamber of the Supreme Court of Justice of Guatemala of June 21, 1993, in the appeal for annulment filed by the Office of the Attorney-General, against the judgment delivered by the Fourth Chamber of the Court of Appeal of March 25, 1992; and appeal for annulment of May 4, 1992, filed by the Office of the Attorney-General against the judgment of the Fourth Chamber of the Guatemalan Court of Appeal.*

10 *Cf. petition addressed by Casa Alianza Association, the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas to the Executive Secretariat of the Inter-American Commission for Human Rights; copy of official communication No. 948.94 from the Permanent Representative of Guatemala to the Organization of American States; copy of Report No. 33/96 of October 16, 1996, issued by the Inter-American Commission during its 93rd session and the file processed by the Inter-American Commission.*

11 *Cf.* Amnesty International, Report *Guatemala: Los Niños de la Calle (1990)* and Casa Alianza, *Report to the Committee against Torture on the Torture of Guatemala Street Children: 1990 – 1995* (1995).

63. Article 43 of the Rules of Procedure establishes that

> [i]tems of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto and, where appropriate, in the communication setting out the preliminary objections and in the answer thereto. Should any of the parties allege *force majeure*, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing party is guaranteed the right to defense.

This provision confers an exceptional character on the possibility of admitting items of evidence at a time other than those indicated. The corresponding exception is only constituted when the applicant alleges *force majeure*, serious impediment or supervening events, which has not occurred in this case.

64. Furthermore, the Court observes that the documents presented by the Commission in the public hearing had previously been added to the file as annexes to the application (*supra*, paras. 49 and 56) and already formed part of the probative material in this case, so that a second incorporation would be redundant.

B) TESTIMONIAL EVIDENCE

65. During the public hearing, the Court received the following testimonies:

a. Testimony of Ana María Contreras, mother of Henry Giovanni Contreras

She declared that, during 1989 and 1990, her son sometimes lived on the streets of Guatemala City, specifically on 18th, 9th and 17th streets. In June 1990, when he was abducted, he was spending some periods of time with her in her house and others in Casa Alianza. Moreover, during this time her son worked in a printing workshop.

On June 15, 1990, between nine and ten in the morning, Henry Giovanni Contreras left his home to obtain an identity card as he had recently had his 18th birthday. When about 15 days had elapsed and he had not returned, the witness went to look for him "on the streets". She asked in a café located in front of a place called "the Zocalo", on 18th Street, showing a photograph of her son. The woman who worked in the café told her that "he had been taken away in a pickup truck with some other boys".

The following day, she went to the Guatemalan National Police Force (hereinafter "National Police Force") where the death of Henry Giovanni Contreras was confirmed and she was shown a half-length photograph of "the body [of her son] with a bullet wound". Furthermore, she was told that she should go to Mixco, where she could find out more details of what had happened. In Mixco, they explained to her that Henry Giovanni Contreras had been found dead in the San Nicolás Woods and she was questioned about this. She declared that she was also summoned by a court or tribunal, which she only referred to as a "court", where "they questioned" her about her son, although she does not remember the exact nature of the questions.

She stated that she could not bury her son, because numerous bureaucratic measures were required in order to obtain his body and she "was already suffering from health problems in her head that later began to get worse". She declared that, as a consequence of what happened to her son, she developed a facial paralysis that "resulted in a year in hospital".

She added that, following her statements to the courts, she received an anonymous threatening letter. This frightened her and she said that she was also afraid to be making a statement on the events to the Inter-American Court.

She indicated that she did not know who was responsible for the death of her son or what were the motives for his assassination. She only learned though the media that the alleged perpetrators had

been arrested and then freed. She has not been summoned again to make statements to the courts.

She declared that Henry Giovanni Contreras consumed drugs and alcohol and that he had been arrested on several occasions "[f]or vagrancy on the streets".

b. Testimony of Matilde Reyna Morales García, mother of Anstraum Aman Villagrán Morales

She declared that Anstraum Aman Villagrán Morales attended school up to sixth year and, when he was 15 years of age, he abandoned his studies and began to work in the "La Parroquia" market. From then on, he helped his family financially and was like the man of the house. In 1990, Villagrán Morales "lived" with her and his siblings. However, she indicated that he ceased to live with them "on a permanent basis" when he began to work. She also said that he had been arrested once.

In the early morning of June 26., 1990, her daughter told her that she had been advised by the morgue employees that Anstraum Aman Villagrán Morales was dead. She went to the morgue with her daughter and identified his body. They were given no information about the circumstances of death. When she left the morgue, a youth of about 17 years of age approached her and told her that he had been a friend of her son. He added that, when he was having a cup of coffee in a sector of 18th Street, he saw three men go past shooting at Anstraum Aman Villagrán Morales and that one of the bullets killed him.

During August, she made a statement before a court. She was not given any information about the death of her son there either, nor was she informed of the results of the judicial proceeding.

She did not take any steps before the authorities because she was afraid that the same thing that happened to Anstraum Aman Villagrán Morales might happen to her or to her other children and

because she was two months pregnant at the time of her son's death.

c. Testimony of Bruce Harris, Regional Director for Latin America of Casa Alianza

He declared that Casa Alianza is an organization that executes educational and support programs for "street children" in Mexico, Guatemala, Honduras and Nicaragua. He heard about the case of the four bodies found in the San Nicolás Woods through Aída Cámbara Cruz, a "street child" who took part in the organization's program. He knew the victims because they also participated in Casa Alianza programs. He stated that Anstraum Aman Villagrán Morales and the four youths who were murdered in the San Nicolás Woods were a group of friends who could often be seen on 18th Street.

Regarding the events relating to the abduction and homicide of the four youths, he declared that, from what he saw in photographs that he was shown when he identified the victims before the National Police Force, "they had suffered tremendously [...], they had been tortured, abused [...] and [...] had [received several shots] in the head". Byron Gutiérrez, an investigator from the Ombudsman's Office *(Procuraduría de Derechos Humanos)*, told him that the boys showed signs of "torture, typical of the State security forces". He also stated that the area called "Las Casetas" in 18th Street, is known to be a very dangerous area and that he had heard from the Casa Alianza street educators that Anstraum Aman Villagrán Morales "was apparently drinking beer with two men who were identified or recognized as police agents from the Fifth Corps, apparently [there was] some kind of discussion, shots were heard and the two men ran off and Anstraum [...] died there from the shots."

Moreover, he added that the area of "Las Casetas" is in the center of the city, where there were probably about 300 people at the time of the events, among whom were certainly Gustavo Adolfo Cóncaba Cisneros, known as "Toby", Julia Griselda Ramírez López,

Rosa Angélica Vega and Micaela Solís Ramírez, all of them also "street children".

Based on information received from Aída Cámbara Cruz, on July 18, 1990, the witness denounced what had happened before the Office of the Attorney-General, the Ombudsman's Office, the National Police Force, and the Mixco Magistrate's Court.

He stated that the file at the Mixco Magistrate's Court was composed of "a few pages" and made no reference to the torture that he had seen in the National Police Force's identification photographs. The police report of March 4, 1991, did not mention the signs of torture found on the bodies of the victims either.

While he was the private prosecutor in the case – he was later replaced by Rosa Carlota Sandoval, mother of Julio Roberto Caal Sandoval – the judge never summoned him. Moreover, not all the witnesses that he proposed were summoned, and the information that he contributed to the proceeding was not used in the investigation. Only about half the witnesses that he proposed in his complaint were called to declare.

He stated that both the Judiciary and the National Police Force took an excessive time to investigate the events.

He stated that he was frightened as a result of the denunciations made in the case. Three colleagues from Casa Alianza had to go to Canada because of threats they received during the investigation. In July 1991, three men came to look for him in an armored vehicle without license plates and, as he was not at Casa Alianza, "they covered the façade of our building with bullet holes". He added that Rosa Carlota Sandoval, who later died in a traffic accident, apparently received threats. Gustavo Adolfo Cóncaba Cisneros, alias "Toby", a "street child" who had been an eye witness in the San Nicolás Woods case and who had identified one of the police agents who had allegedly participated in the attack also died, apparently stabbed by another "street child".

He added that Casa Alianza is handling 392 cases of alleged crimes against "street children", of which approximately 50 are for murder. Of the 392 cases, less than five per cent have been finalized by the courts, and almost half of them have been closed. Most of the perpetrators of these crimes were members of the National Police Force or other State security forces, or private police agents who were also under the aegis of the Ministry of the Interior. He knew of no training programs for police agents in Guatemala on how to treat children.

d. Testimony of Rosa Angélica Vega, "street child" at the time the events occurred

She declared that she was a friend of the five youths in this case. In 1990, she worked at night in the kiosk of Julia Griselda Ramírez López on 18th Street. On the day of the events she saw how three police agents abducted the four youths later found dead in the San Nicolás Woods. She stated that they were held up at gunpoint and taken away in a black "pick-up". The police agents were dressed in civilian clothes, but she knew they were policemen because of the heavy-caliber arms that they carried. Following the event, she went to the Identification Section of the National Police Force to see the photographs of the bodies.

She stated that on the night of the murder of Anstraum Aman Villagrán Morales, she saw him drinking beer with a young man with curly-hair wearing "tight denim trousers and boots", who she did not know. The young man urged Villagrán Morales to leave; then the two of them walked to the corner and she heard a shot. When she left the kiosk to see what was happening, she saw Villagrán Morales running and then "he bumped into some boards and fell there, face up". Because she was afraid, she waited for people to approach Villagrán Morales' body before she herself went to look at it. Julia Griselda Ramírez López and she approached the body and saw a child known as "Pelé" among those who were looking at it. Then, a man who was there, kicked Villagrán Morales' hand as he left and "Pelé" commented "there goes that beggar

("mendigo")". When he heard these words, the man turned round, with a gun in his hand, and asked who had spoken and "whether he wanted one also". When she returned to her kiosk, she saw that the same man was there drinking beer, accompanied by another person. Gustavo Adolfo Cóncaba Cisneros, alias "Toby", was also present. According to the witness, three men may have participated in the murder of Villagrán Morales, as she is unable to say if the person who was drinking beer with the victim before the events was one of the two she later saw near the body.

The witness was afraid of the threats of the National Police Force when she was a "street child" and, even today, she is afraid to make statements on the case, such as before this Court. Consequently, when on April 12, 1991, she make a statement before the Judge of the Guatemalan Second Criminal Trial Court, she said nothing about what she had seen because she feared for her life and, in the instant case she fears also for that of her children. She stated that she identified the man who accompanied Anstraum Aman Villagrán Morales in the kiosk in photographs before the Guatemalan court. However, on that occasion she said that it would be more appropriate to identify him in person.

In continuation, she referred to Rosa Trinidad Morales Pérez, who also worked in a kiosk on 18th Street, and declared that this woman mistreated the children, throwing hot water and coffee at them. On one occasion, she heard her threaten Anstraum Aman Villagrán Morales saying that "if he did not want to go the same way as the other four [children killed in the San Nicolás Woods], he should not pick a quarrel with her". She added that Rosa Trinidad Morales Pérez had many friends who were policemen and who visited the kiosk where she worked.

In general, regarding her experience as a "street child", she declared that she was afraid of the police because they told her companions and herself that "if they did not [...] disappear from there, [they would take them] prisoner", they would beat them and, "as [they] were good for nothing", they would be better dead. Lastly, she stat-

ed that she had been arrested "once or twice" when "she was very young".

e. Testimony of Julia Griselda Ramírez López, who worked in a kiosk on 18th Street in Guatemala City

She declared that she is the daughter of Julia Consuelo López de Ramírez and, in 1990, she worked in a kiosk which sold food, known as the "Pepsi" kiosk, located on 18th Street in Guatemala City, in front of a café called "El Zócalo". She worked from seven in the evening until seven in the morning. Rosa Trinidad Morales Pérez worked the day shift in the same kiosk. She knew the five victims, but only saw what happened to Anstraum Aman Villagrán Morales.

On the night that Anstraum Aman Villagrán Morales was murdered, Rosa Trinidad Morales Pérez was handing over the shift to the witness. Villagrán Morales arrived at around seven in the evening. At that time, Mrs. Morales Pérez said to the boy: "you are going to turn up dead like your friends, the others". During the evening, Villagrán Morales remained near the kiosk where she worked. At about midnight, Villagrán Morales returned to the kiosk accompanied by a "curly-headed" man who wore black denim trousers. Subsequently, they went over to a kiosk that sold grilled meat, in front of the kiosk where she worked. The man told Villagrán Morales to drink his beer quickly; then Villagrán Morales entered the lane and the man followed him. Five or ten minutes later, she heard one or two shots. At that moment she was accompanied by Rosa Angélica Vega, known as "Chochi", who was helping her in the kiosk. When they heard the shots, they looked out and could see how Anstraum Aman Villagrán Morales "bumped" against one of the kiosks and then fell to the ground about 10 meters from her kiosk. The two women waited until other people approached the body, because they were afraid. When this happened, they also approached it. Then the witness returned to her kiosk; two men also came to the kiosk, one of whom was the man who had accompanied Villagrán Morales to the lane, and they ordered two beers. One of them was armed.

Later she returned to the place where the body of Villagrán Morales lay. While she was there, the two above-mentioned men walked through the lane and a child known as "Pelé" said to them "there go those beggars *(mendigos)*". In response, one of the men turned round, gun in hand, and asked "who said that? Do you want to be shot too?". As he walked away, he kicked Villagrán Morales' hand.

She added that subsequently the National Police Force arrived to collect the body of Anstraum Aman Villagrán Morales and they asked her if she knew or had seen anything; however, she refused to answer because she was afraid.

Several days after the death of Villagrán Morales, the man who had accompanied him on the night he was murdered came to the kiosk again. He arrived in the uniform of the Fifth National Police Corps, in a blue pick-up truck, identified as belonging to the same police corps, and accompanied by other policemen, who were conducting a "raid". This man was looking for her mother who also worked in the kiosk.

She told her mother that police agents were looking for her. It was then that her mother, who feared for her own life, advised her to make a statement about what she had seen. She said that she went to make a statement to the National Police Force and then her mother went to the United States "for fear that something [might happen to her]". She stated that she also made a statement before the "courts" and that the State did not take any measure to protect her safety or that of her mother.

On March 26, 1991, she made a statement before a judge. On October 9, 1990, she had done the same to National Police Force investigators. She identified a policeman named Néstor Fonseca López as a participant in the murder, from a "kardex", that is cards with identification photographs. With regard to the personal identification procedure, she stated that "[she] was taken to several places, but [Néstor Fonseca López] was not there" and she was

never called to personally identify Samuel Rocael Valdez Zúñiga. She declared that a man whose last names were Valdez Zúñiga, who she saw in another photograph, was similar to the man who accompanied Fonseca López on the day of the events. One of the men had a gold tooth.

Lastly, she stated that she was frightened of declaring before the Inter-American Court.

f. Testimony of Osbelí Arcadio Joaquín Tema, former Guatemalan National Police Force investigator

He declared that, in 1990, he worked as an investigator in the Homicide Unit of the National Police Force and, currently, he is the Second Officer of this Unit. It was his responsibility to "collect the physical evidence and interview the persons who were present". He was in charge of the preliminary investigation in the case of Anstraum Aman Villagrán Morales. He arrived at the scene of the crime in civilian clothes at approximately one in the morning. There, he found a "Police Force vehicle [...], the Identification Section vehicle [both of the national Police Force] and a vehicle with the judge".

He stated that he was able to observe when a person from the Identification Section of the National Police Force found a bullet head "of unknown caliber" about a meter from the body. He did not have access to the results of the ballistic tests because it was not part of his work, but according to the characteristics of the hole where the bullet entered, he calculated that it could have been a .30 or .38 caliber. At that time, the National Police Force used .38 special revolvers. The shot had been fired from a distance of five to six meters from the victim. He said that the examination and analysis of the bullet head could reveal the type of arm that had been used. When asked about the procedure followed in Guatemala in cases such as this, when it was determined that the bullet belonged to a police arm, he indicated that, according to law, the judicial authority would order the arrest of the suspect.

He stated that he interviewed three children who were at the scene of the crime and also a woman who attended a food kiosk. However, no one could identify the dead youth and no one said that they had directly seen the perpetrator of the act. At that time, he concluded that some event might have occurred among the children themselves that led to the crime.

He added that the persons who continued the investigation based on his report did not inform him about subsequent findings or observations.

g. Testimony of Delfino Hernández García, former expert in the Identification Office of the National Police Force

He declared that in 1990 and 1991 he was an expert in the Identification Office of the National Police Force.

On June 26, 1990, after midnight, he and a photographer arrived at the site of the murder of Anstraum Aman Villagrán Morales. Their task was to collect and record information related to the identification of the body. When he arrived at the scene of the crime, he took the fingerprints of the body and received a bullet head from a gun bullet from the hands of the judge.

He stated that he was called once to make a statement in court.

h. Testimony of Roberto Marroquín Urbina, former chief of the Minors' Section of the National Police Force

He declared that his function, when he was Chief of the Minors' Section of the National Police Force, was to investigate both abuses against children and offenses committed by children. He initiated the investigation of the San Nicolás Woods case. In the context of those proceedings, he interviewed María Eugenia Rodríguez, who was a "street child" and who told how she had been abducted together with other "street children" a few days before the abduction of the four youths whose bodies were found in the San

Nicolás Woods. María Eugenia Rodríguez described a series of places and persons. To corroborate her statement, he stated that he visited the places and questioned several of the persons she had mentioned, but was unable to corroborate her version and, consequently, decided that it was not true. Subsequently, he delegated the investigation to the subordinate investigators, Ayende Anselmo Ardiano Paz and Edgar Alberto Mayorga Mazariegos.

He was also in charge of the investigations in the case of Anstraum Aman Villagrán Morales and he declared that two witnesses, a mother and daughter, who were on 18th Street, had identified the police agents from the Fifth National Police Unit, Néstor Fonseca López and Samuel Rocael Valdez Zúñiga, as those responsible for the murder. He stated that, with the identification of those responsible by witnesses and the ballistic test, it was concluded that the incriminated agents were responsible, and the corresponding information that he had collected and signed was forwarded to the Chief of the Criminal Investigations Department of the National Police Force. He indicated that when comparing the bullet heads, a test one and the other related to the case of Anstraum Aman Villagrán Morales, the expert had determined that both bullet heads were fired by the same gun. He added that when a policeman is off-duty he must leave his arm in the armory, where the date, name and signature of the person who hands over the equipment are recorded in a ledger.

He also investigated another case of the murder of a "street child", Nahamán Carmona López, committed by agents of the National Police Force, which occurred in 1994. He added that police agents had been responsible for other cases of the abuse and murder of "street children".

i. Testimony of Ayende Anselmo Ardiano Paz, National Police Force investigator

He declared that he drew up a report on his investigation into the murder of Anstraum Aman Villagrán Morales. He took part in the

inspection of the site where this occurred. He interviewed Julia Griselda Ramírez López, who told him that, on the day of his death, Villagrán Morales had been in the "Pepsi-Cola" kiosk, where she worked. Villagrán Morales encountered Rosa Trinidad Morales Pérez there and she threatened him, saying that "he should leave the place because, to the contrary, the same thing would happen to him as had happened to his companions". He said that he conducted the procedure for the photographic identification of the policemen, Samuel Rocael Valdez Zúñiga and Néstor Fonseca López, when Griselda Ramírez López identified the aforementioned agents. Furthermore, he interviewed the mother of Mrs. Ramírez López, Julia Consuelo López de Ramírez, who told him that she had received death threats from Samuel Rocael Valdez Zúñiga and Néstor Fonseca López; no one ordered an investigation of this fact. He indicated that, according to the ballistic test, the bullet head found near the body of Anstraum Aman Villagrán Morales coincided with fragments in Samuel Rocael Valdez Zúñiga's revolver. In his report, he concluded that Néstor Fonseca López and Samuel Rocael Valdez Zúñiga were responsible for the murder of Anstraum Aman Villagrán Morales "because of the interviews and the certainty of the persons that [he] interviewed and also because of the ballistic test on the arm that [Samuel Rocael Valdez Zúñiga] carried, since there were sufficient elements to be sure that he was responsible". In his report, he added that Rosa Trinidad Morales Pérez was also a possible suspect of the death of Villagrán Morales, because "she did not get on well with [the] children". He indicated that he was only summoned by a judge when arrest warrants against the two alleged perpetrators were issued and when the police report was delivered. He declared that it is not the normal practice in Guatemala that the officer in charge of an investigation does not appear in court to be questioned.

C) EXPERT WITNESS EVIDENCE

66. The Court heard the reports of the expert witnesses that are summarized below in a public hearing:

a. Report of Roberto Carlos Bux, Deputy Director of the Bay County Forensic Center, San Antonio, Texas

He stated that he has been practicing forensic medicine for 14 years, during which time he has performed "more than 4,000 autopsies and 1,200 of these were for homicides".

Regarding the youths found dead in the San Nicolás Woods, he declared that the forensic analysis report in the case contained important information, such as the fact that the youths had not been killed in the place where the bodies were found. He stated that two of the victims, those who were found on June 16, 1990, had died that day before 3.30 a.m. or at 5.30 a.m. at the latest; the other two, whose bodies were found the following day, were also killed on June 16, 1990, but after 3.30 a.m., approximately 12 hours later. He stated that the two groups of youths that were found died at different times. He affirmed that the autopsy report on Henry Giovanni Contreras shows that there were three wounds from a firearm, but there could have been four or five. He indicated that one of the photographs shows that, in view of the type of wound, the firearm was "let's say, less than six inches away; it was very close". He added that there are signs that the shot was fired when the youth was alive, not afterwards. Regarding the modus operandi used in the homicide of the alleged victims, he stated that it was the same in all the cases "because they have multiple shots to the head". Moreover, to the question of whether the youths died during a fight in which they might have defended themselves and also attacked their aggressors, he pointed out that there was no evidence of this and that it was very probable that they had been fired upon at very close range. Furthermore, he stated that Henry Giovanni Contreras "received three shots [from] behind".

He added that, contrary to the usual practice in his profession, in this case, steps were not taken to locate and record certain information that could have helped in the identification, such as photographs, fingerprints or dental studies. He stated that the forensic medicine reports that were prepared in this case are poor, because

there were wounds that are visible in the photographs, that were not recorded in the reports and because it is not possible to relate the photographs of the bodies to the official numbers on the autopsy reports. Moreover, he stated that the photographs are only of the face so that it is not possible to see if there were wounds in other parts of the body. He indicated that each of the autopsies of the victims was performed in 30 minutes, and that it is not possible to perform an autopsy well in such a short period of time. He concluded by saying that, from what can be seen in the reports, the homicides of the youths were premeditated.

With regard to the case of Anstraum Aman Villagrán Morales, he stated that the victim was on the ground when he was shot and he therefore inferred that this homicide was also a premeditated act.

b. Report of Alberto Bovino, Expert in criminal law, criminal procedural law and human rights

He stated that, when the hearing was being held, he was working on a book on the rights of the victim in Guatemalan criminal proceedings and Costa Rican law and that he had a fairly detailed knowledge of the court files in the instant case and the now rescinded Criminal Procedural Code, which was in force when the case was being processed.

He stated that the police investigation conducted into the case was in no way exhaustive and did not comply with the obligations established in the Guatemalan Criminal Procedural Code in force, because all the witnesses who could have identified the suspects were not summoned to make a personal identification (only four of them were summoned); neither were all the facts that had been denounced investigated (for example, the threats that several witnesses had received and the torture). As an example of the flaws, he indicated that there was no attempt to establish the identity of "Pele", a child who, according to the statements of various witnesses, saw Villagrán Morales murdered.

He mentioned other elements that show negligence in the investigation such as the fact that the judge issued the order for the investigation into the Anstraum Aman Villagrán Morales case six months after the murder had occurred; no order was issued to search the homes of the defendants, although this might have allowed the arm of Néstor Fonseca López to be found; although several witnesses had declared that Rosa Trinidad Morales Pérez had a very close relationship with one of the suspects, no search of her home was ordered either.

He added that there was no investigation of the contradictions between the ledger in the National Police Force armory, in which is was recorded that, on the night of the homicide, the arm that was allegedly used was there, and the ballistic test, that showed that the said arm was the one used to kill the victim. He also stated that there was a contradiction as regards the time at which Samuel Rocael Valdez Zúñiga left the National Police Force barracks, and the judge did not take steps to clarify this. Furthermore, the judge did not take into consideration the contents of two official communications that indicated that on June 15, 1990, the day the four youths were abducted, Mr. Fonseca López absconded from the National Police Force school with another person at 5.00 p.m., and they returned together at 6.00 a.m. the following morning.

He indicated that the judge had the positive obligation to continue the judicial investigation on matters that had remained pending during the summary proceeding; that he did not take the necessary measures to overcome the flaws in the police investigation in this case; that he did not summon the witnesses who had not had the opportunity to declare previously, which would have allowed the fact that Rosa Trinidad Morales Pérez was working in her kiosk when the events occurred to be corroborated.

He affirmed that the complaints of torture had not been investigated.

He indicated that, during the sentencing phase, the judge was characterized by his partiality when he rejected any evidence that tended

to discover the truth. For example, he did not examine witnesses about the gold tooth that one of the suspects allegedly had, although the Criminal Procedural Code in force at the time expressly established the court's obligation to use any particularity of a suspect to establish his identity.

Furthermore, he stated that Mr. Valdez Zúñiga, who was arrested when the case was already at the trial stage, was not identified in person. He expressed his amazement about the judge's interpretation of the above-mentioned Criminal Procedural Code, according to which it was only admissible to submit someone to personal identification when this occurred at the beginning of the investigation, but not should he be arrested subsequently. According to this reasoning, the fugitive from justice would be in a better position than the person who surrendered to the proceeding.

He affirmed that the judge had disqualified a great many testimonies because of his partiality, determining disqualification with dogmatic affirmations, in violation of his obligation to justify his opinions. As examples of this, he mentioned that the judge rejected witnesses for the sole reason that they were the victims' mothers and this procedure did not correspond to Guatemalan law. In this respect, he stated that "there [were] precedents in Guatemala, among them the Mack case - a fairly well-known case with similar characteristics - where State agents are accused of killing someone [... and] there is absolutely no objection to the denouncer or to the mother [of the victim]" although they did not have direct knowledge of the events. He concluded, therefore, that in the case before the Third Criminal Sentencing Court "the court [... abused] the use of objections to eliminate all the relevant evidence that had been accumulated, despite the flaws in the investigation". He mentioned that the court also rejected the testimony of Bruce Harris, because he was the Director of Casa Alianza and other testimonies because they were not relevant; the court only considered the testimonies of those persons who were present at the instant when the shot that produced the death of the victim was fired. Finally, with regard to the ballistic report, he established that the homicide bullet was fired

by the revolver belonging to Samuel Rocael Valdez Zúñiga; despite this the judge disqualified the report because this man went off duty at 8.00 p.m. that day.

He stated that the judge did not evaluate the police reports, contrary to an express rule of the Code; he did not take into account the threats against several witnesses, which could have influenced their statements, and he did not order any measure to protect them. He asserted, for example, that the judge should have observed the incoherence of the statement of Julia Griselda Ramírez López, who had identified Fonseca López in photographs but could not do so during the personal identification procedure. On that occasion, she did not identify her colleague at work either and, in the face of this contradiction, the judge should have questioned Mrs. Ramírez López to find out whether she had been threatened owing to her participation in the proceeding.

He observed that proceedings under the appellate procedure and before the Supreme Court confirmed the first instance judgment on the basis of the same dogmatic arguments.

He stated that a new proceeding on the complaints of torture, although not on the homicides, owing to the existence of *res judicata*.

He indicated that, from the evidence produced, the responsibility of Samuel Rocael Valdez Zúñiga and Néstor Fonseca López could have been established for the death of Anstraum Aman Villagrán Morales, but not for the youths who were murdered in the San Nicolás Woods and that, with regard to Rosa Trinidad Morales Pérez, the elements of proof were insufficient to justify a conviction.

VI
EVALUATION OF THE EVIDENCE

67. In the instant case, the State did not directly contest the facts alleged by the Commission or the charges of violation of Articles 7, 4 and

5 of the American Convention and Articles 1, 6 and 8 of the Convention against Torture. In answering the application and in its final arguments, Guatemala concentrated its defense on the contention that the facts of the case had been investigated by the courts, which had issued a series of decisions on them – including a judgment of the Supreme Court – that may not be discussed by other public bodies, under the principle of the independence of the Judiciary.

68. In this respect, the Court considers, as it has done in other cases, that when the State does not specifically contest the application, the facts on which it remains silent are presumed to be true, provided that the existing evidence leads to conclusions that are consistent with such facts[12]. However, the Court will proceed to examine and evaluate all the elements that make up the probative material in the case.

69. The Court will rule on the present case on the basis of both direct evidence – testimonies, expert reports or documents, *inter alia* – and indirect evidence; and as the consideration and use of the latter is complex, the Court deems it pertinent to establish certain criteria on this point. The Court, as the domestic tribunals, may base its judgments on indirect evidence – such as circumstantial evidence, indicia and presumptions – when they are coherent, confirm each other and lead to solid conclusions that are consistent with the facts under examination[13].

70. In previous cases, the Court granted circumstantial status to police reports prior to the judicial investigation, because they contained interrogations, statements, descriptions of places and facts and records of the

12 *Cf. Godínez Cruz case.* Judgment of January 20, 1989. Series C No. 5, para. 144 and Velásquez Rodríguez case. Judgment of July 29, 1988. Series C No. 4, para. 138.

13 *Cf. Castillo Petruzzi et al. case.* Judgment of May 30, 1999. Series C No. 52, para. 62; in the same sense, *Paniagua Morales et al. case.* Judgment of March 8, 1998. Series C No. 37, para. 72; *Gangaram Panday case.* Judgment of January 21, 1994. Series C No. 16, para. 49; *Fairén Garbi and Solís Corrales case.* Judgment of March 15, 1989. Series C No. 6, paras. 130-133; *Godínez Cruz case, supra* note 12, paras. 133-136 and *Velásquez Rodríguez case, supra* note 12, paras. 127-130.

results of legal practices such as those relating to the removal of the victims' corpses, that help to form a well grounded opinion on the facts, when related to concurrent elements of evidence[14].

71. In this case, the Court considers that the police reports contained in the file are useful because, apart from the elements mentioned in the previous paragraph, they include descriptions of autopsies and ballistic reports and reports that attribute responsibilities and, moreover, because they were presented during the domestic legal procedure and duly acknowledged even before this Court. When considered together with the remainder of the evidence, and in the light of the rules of competent analysis and experience, they make it possible to reach consistent conclusions on the facts.

72. Regarding testimonial evidence, this Court has said

> the criteria for evaluating evidence in an international human rights tribunal are endowed with special characteristics, so that the investigation into a State's international responsibility for human rights violations bestows on the Court a greater latitude to use logic and experience in evaluating the oral testimony that it hears on the pertinent facts[15].

73. In particular, with regard to the statements of the witnesses who were not present at the events, the Court has considered that they should be evaluated in a broad sense as sources of information on the general context of the facts in the corresponding case[16].

74. With specific regard to the evidence of torture, the Court deems it pertinent to state that, in order to establish if torture has been inflicted and its scope, all the circumstances of the case should be taken into consi-

14 *Cf. Paniagua Morales et al. case, supra* note 13, para. 81.

15 *Castillo Páez case.* Judgment of November 3, 1997. Series C No. 34, para. 39 and *Loayza Tamayo case.* Judgment of September, 17, 1997. Series C No. 33, para. 42.

16 *Cf. Blake case.* Judgment of January 24, 1998. Series C No. 36, para. 46.

deration, such as the nature and context of the respective aggressions, how they were inflicted, during what period of time, the physical and mental effects and, in some case, the sex, age and state of health of the victims[17].

75. Lastly, the Court has maintained that

> [u]like domestic criminal law, it is not necessary to determine the perpetrators' culpability or intentionality in order to establish that the rights enshrined in the Convention have been violated, nor is it essential to identify individually the agents to whom the acts of violation are attributed. The sole requirement is to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention. Moreover, the State's international responsibility is also at issue when it does not take the necessary steps under its domestic law to identify and, where appropriate, punish the author of such violations[18].

VII
PROVEN FACTS

76. After examining the documents, the statements of the witnesses and the reports of the expert witnesses, together with the arguments of the State and the Commission during this proceeding, the Court considers that the facts referred to in this section have been proved.

77. The alleged victims, Henry Giovanni Contreras, 18 years of age; Federico Clemente Figueroa Túnchez, 20 years of age; Julio Roberto Caal Sandoval, 15 years of age, Jovito Josué Juárez Cifuentes, 17 years of age, and Anstraum Aman Villagrán Morales, also 17 years of age, were "street

17 Cf. Eur. Court H. R., Costello-Roberts v. the United Kingdom Judgment of 25 March 1993, Series A no. 247-C, p. 59, § 30; Eur. Court H. R., Case Soering v. the United Kingdom, Judgment of 7 July 1989, Series A no. 161, p. 39, § 100; Eur. Court H. R., Case Ireland v. the United Kingdom, Judgment of 18 January 1978, Series A no. 25, p. 65, § 162, and Eur. Court H. R., Case Tyrer v. the United Kingdom, Judgment of 25 April 1978, Series A no. 26, pp. 14-15, §§ 29-30.

18 *Paniagua Morales et al. case, supra* note 13, para. 91.

children", friends, and lived on 18th Street, between 4th and 5th Avenues in Zone 1 of Guatemala City; in this general area they particularly frequented the sector known as "Las Casetas", where there were kiosks selling food and drinks, and where the facts of this case took place.

78. When the facts occurred, the area of "Las Casetas" was notorious owing to the high rate of crime and delinquency; it also sheltered a large number of "street children".

79. In Guatemala, at the time the events occurred, there was a common pattern of illegal acts perpetrated by State security agents against "street children"; this practice included threats, arrests, cruel, inhuman and degrading treatment and homicides as a measure to counter juvenile delinquency and vagrancy (*supra*, para. 59.c).

a. Abduction and murder of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes

80. During daylight hours of June 15, 1990, in the area of "Las Casetas", a pick-up truck approached the youths, Contreras, Figueroa Túnchez, Caal Sandoval and Juárez Cifuentes; armed men descended from the vehicle, obliged the youths to enter the vehicle and took them away.

81. The bodies of the youths Juárez Cifuentes and Figueroa Túnchez were found in the San Nicolás Woods on June 16, 1990, and the bodies of the youths Contreras and Caal Sandoval were discovered in the same place, the following day. In all cases, the official cause of death was attributed to injuries produced by gunshots in the head.

b. Torture of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Jovito Josué Juárez Cifuentes and Julio Roberto Caal Sandoval

82. The youths Juárez Cifuentes and Figueroa Túnchez were in the power of their abductors for at least 10 hours while the other two, Contreras and Caal Sandoval, were kept by the abductors for at least 21 hours.

c. Murder of Anstraum Aman Villagrán Morales

83. At approximately midnight on June 25, 1990, Anstraum Aman Villagrán Morales was killed by a gunshot in the "Las Casetas" sector.

d. Judicial proceeding on the murder of Jovito Josué Juárez Cifuentes, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Henry Giovanni Contreras before the First Magistrate's Court of Mixco (Department of Guatemala).

84. On June 16, 1990, the above court ordered the opening of criminal proceedings based on the discovery of two corpses on the property of the San Nicolás Woods at 5.30 a.m. – they were subsequently identified as the bodies of the youths Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes.

85. On June 17, 1990, the same court ordered the opening of the proceeding corresponding to the discovery of another two unidentified corpses at 2.00 p.m. – these were later identified as Henry Giovanni Contreras and Julio Roberto Caal Sandoval.

e. Judicial proceeding on the murder of Jovito Josué Juárez Cifuentes, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Henry Giovanni Contreras before the Trial Court of Mixco (Department of Guatemala) (case No. 2,782)

86. As the jurisdiction of the Magistrate's Court had been exhausted, the proceedings were transferred to the Trial Court of the Municipality of Mixco[19].

19 The First Criminal Trial Court opened criminal proceedings on facts that partially coincided with those of this case, based on the complaint made by Bruce Harris. During this proceeding, statements were received from Bruce Harris himself, and from María Eugenia Rodríguez and Gustavo Adolfo Cóncaba Cisneros. The proceedings of this court were subsequently joined with those of case No. 1,712/90 of the Second Criminal Trial Court, which will be referred to below (*infra*, paras. 93-103).

87. This court heard the witnesses, Ana María Contreras and Rosa Carlota Sandoval.

88. Autopsies on the four victims established the cause of death as penetrating wounds in the cranium, produced by bullets from firearms.

89. On June 26, 1999, the court sent an official communication to the Head of the Criminal Investigation Department of the National Police Force requesting him to investigate the criminal acts during which the four young men died.

90. On March 21, 1991, this court received "Preliminary Information" on the opening of the police investigation. This report included: a) the full identification of the four victims (name, age, names of the fathers and their residence, nicknames, status in the criminal files of the Identification Section of the National Police Force, physical characteristics, clothes found on the bodies, and description of the injuries; b) the indication that a 9 mm. caliber shell ("cascabillo") was found near the body of Juárez Cifuentes and was retained by the National Police Force; c) a description of the testimonies collected by the police investigators, rendered by María Eugenia Rodríguez, Ana María Contreras, Margarita Sandoval Urbina, Rosa Carlota Sandoval, Marta Isabel Túnchez Palencia, Julia Consuelo López de Ramírez, Julia Griselda Ramírez López, Pantaleón Tocay Punay, Gloria Angélica Jiménez Alvarado, Emma Josefina Jiménez Alvarado, Alcira Yolanda Jiménez Alvarado and Rubén Castellanos Avalos; d) the indication of three persons suspected of perpetrating the murders: the National Police Force agents, Néstor Fonseca López and Samuel Rocael Valdez Zúñiga, and Rosa Trinidad Morales Pérez; e) background information on the suspects – the report stated that Valdez Zúñiga had a record for robbery and Rosa Trinidad Morales Pérez had a criminal record for prostitution, sex trade, witchcraft, disorder and drunkenness; and f) the description of the results of three photographic identifications in which Julia Griselda Ramírez López identified Néstor Fonseca López and Samuel Rocael Valdez Zúñiga as those responsible for the crime.

f. Judicial proceeding on the murder of Anstraum Aman Villagrán Morales before the sitting Magistrate's Court for Criminal Matters (Guatemala City)

91. On June 26, 1990, this court ordered the opening of criminal proceeding on the murder of Villagrán Morales, whose identity was unknown at the time.

92. On the same day, the Third National Police Unit, submitted a report to the sitting Magistrate's Court for Criminal Matters, in which it was established that the victim died from a gunshot injury and that "he had a bullet of unknown caliber embedded" (capital letters in the original).

g. Judicial proceeding on the murder of Anstraum Aman Villagrán Morales before the Second Criminal Trial Court (Guatemala City) (case No. 1,712/90)

93. On June 26, 1990, the jurisdiction of the sitting Magistrate's Court for Criminal Matters having been exhausted, the proceedings were transferred to this court.

94. The court heard the witnesses, Bruce Harris, Matilde Reyna Morales García, Gustavo Adolfo Cóncaba Cisneros, José Méndez Sánchez, Aida Patricia Cámbara Cruz, Julia Griselda Ramírez López, Ayende Anselmo Ardiano Paz, Edgar Alberto Mayorga Mazariegos, Rember Aroldo Larios Tobar, Delfino Hernández García, Micaela Solís Ramírez and Rosa Angélica Vega.

95. The report of the forensic autopsy of the victim in the file stated that the cause of the youth's death was a "[p]enetrating wound in the abdomen produced by a bullet from a firearm".

96. On January 17, 1991, the court sent an official communication to the Director General of the National Police Force, requesting him to investigate the violent death of Anstraum Aman Villagrán Morales.

97. Reports of the ballistic tests on the bullet that was found on the ground when the body of Villagrán Morales was removed, and the arm that fired it, established that this bullet had a diameter of 9 mm. and that it came from a .38 inch caliber, Taurus revolver, registration No. 1481127.

98. On March 25, 1991, detailed information on the investigation conducted by the Minors' Section of the Criminal Investigations Department of the National Police Force into the death of Anstraum Aman Villagrán Morales and the murder of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes was sent to the court. It mentioned that the investigators had interviewed the following persons: Gaspar Xep Castro, Julia Consuelo López de Ramírez, Julia Griselda Ramírez López and Gustavo Adolfo Cóncaba Cisneros. This police report indicated that Néstor Fonseca López, Samuel Rocael Valdez Zúñiga and Rosa Trinidad Morales Pérez were the alleged perpetrators of the murders.

99. The police report concluded that

> From the investigation that has been conducted and the report of the Identification Section, it is proved that one of those directly responsible for the murder of ANSTRAUM AMAN VILLAGRÁN MORALES, is the former police agent, SAMUEL ROCAEL VALDEZ ZÚÑIGA and the alleged accomplices are NÉSTOR FONSECA LÓPEZ and ROSA TRINIDAD MORALES PÉREZ, as she was constantly seen by JULIA CONSUELO LÓPEZ DE RAMÍREZ and JULIA GRISELDA RAMÍREZ LÓPEZ, who were interviewed, talking to the accused persons and had a very close relationship with one of them. Moreover, before ANSTRAUM was murdered, she spoke to him and told him not to speak to her because he was going to be killed in the same way as his companions.
>
> ROSA TRINIDAD [Morales Pérez] is also related to the abduction and murder of four alleged minors, which occurred in the month of June 1990, on 18th Street, Plazuela Bolívar, Zone 1, because she hated the children who hung around that area, to the point that she

> threw hot coffee at them so that they would keep away from the PEPSI COLA kiosk, where she worked, but on June 5, at approximately 10.00 in strange circumstances, ROSA [Trinidad Morales Pérez] assembled all the street children outside the kiosk and gave them soup, telling them eat a lot I will be back in a moment I am only going to the washroom, but approximately ten minutes later a vehicle parked in front of this kiosk and two individuals dressed in civilian clothes and carrying firearms got out and using considerable force compelled several alleged minors to get into the vehicle, among them:
>
> 01. - HENRY GEOVANY CONTRERAS, alias SORULLO.
> 02. - FEDERICO CLEMENTE FIGUEROA TÚNCHEZ, alias CATRACHO or CONDORITO
> 03. - JULIO ROBERTO CAAL SANDOVAL, alias CATRACHITO
> 04. - JOVITO JOSUÉ JUÁREZ CIFUENTES alias EL CANARIO
>
> On June 16 and 17 their bodies were located in the San Nicolás Woods, zone 4 of the Municipality of Mixco, and it is presumed that those responsible were the same persons who murdered ANSTRAUM [Aman Villagrán Morales].

100. On March 26, 1991, Julia Griselda Ramírez López identified the defendants, Néstor Fonseca López and Samuel Rocael Valdez Zúñiga in photographs, before the court. On April 18, 1991, Gustavo Adolfo Cóncaba Cisneros directly identified Fonseca López, also before this court.

101. According to the report submitted to the court by the National Police Force, at the time of the events, Néstor Fonseca López "was on duty in the Officials Security Unit located in the installations of the National Police School, a unit which does not exist now [as] it was abolished [... owing to this] it was not possible to establish the type of arm that had been issued to him at that time". The police report added that

> as there are no records of the unit which was abolished, it is unknown whether on June 25, 1990, he had been assigned any duty, and it was only possible to establish that NÉSTOR FONSECA LÓPEZ accompanied by REGINALDO [...] ÁLVAREZ, who also worked in the above-mentioned unit, absconded from the installations of the National Police Force school at 5.00 p.m. on June 15, 1990, although it is not known where they went, and these two individuals returned at 6.00 a.m. on June 16, 1990, smelling of alcohol.

102. According to the same National Police Force report, at the time of the events, Samuel Rocael Valdez Zúñiga was on duty in the Fifth National Police Unit and "had been issued as equipment a .38 mm Taurus revolver, registration number 1481127 and a .30 caliber X-1 carbine, registration number 4030075". According to the same report, this agent "was assigned the 24-hour shift from 12.00 m. on June 24, 1990, to 12 m. on June 25, 1990, [... the day on which], having completed his duty, he deposit[ed] the equipment issued to him [as previously described] in the armory of the Fifth Unit".

103. On April 19, 1991, the proceedings of the First Criminal Trial Court on the violent death of the youths Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes were joined to this case.

h. Judicial proceeding before the Third Criminal Sentencing Court (Guatemala City) on the murder Jovito Josué Juárez Cifuentes, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Henry Giovanni Contreras and Anstraum Aman Villagrán Morales (case No. 145-4-91)

104. Once summary proceedings had been concluded by the Second Criminal Trial Court, the Supreme Court appointed the Third Criminal Sentencing Court to continue hearing the proceeding.

105. This court opened criminal proceedings against Néstor Fonseca López, National Police Force agent, Samuel Rocael Valdez Zúñiga, at that

time former agent of the same police force, and Rosa Trinidad Morales Pérez, and formulated charges against them for five crimes of homicide.

106. The Joint Operations Center of the General Directorate of the National Police Force advised the court that, agent Néstor Fonseca López had not been assigned any duty by this service on June 25 and 26, 1990.

107. In the order calling for evidence, the Third Criminal Sentencing Court required the following evidence to be collected, in response to the request of the Office of the Attorney-General and the defense: statements of numerous witnesses and a "judicial inspection with reconstruction of the facts" (capital letters in the original), and to this end requested the presence of the defendants and the witnesses.

108. In the same order, the court refused to allow collection of the following evidence that had been requested: personal identification of the three defendants and preparation of authenticated reports on the shifts and schedules when Néstor Valdez Zúñiga commenced and finished duty, and on whether he left the arm issued to him in the armory when he went off duty.

109. Furthermore, the court kept silent on the Office of the Attorney-General's request that, in compliance with an "order requiring additional steps to be taken", a medico-dental identification of Néstor Fonseca López should be conducted.

110. The court subsequently rejected the Office of the Attorney-General's request that a new date should be set to conduct the "reconstruction of the facts", already required in the order calling for evidence, but not carried out; when rejecting this request, the court stated that "if it was necessary, it [would] issue an order requiring additional steps to be taken".

111. In its final argument, the Office of the Attorney-General requested that a verdict of guilty should be pronounced against the male defendants and that the following measures should be taken under an "order requir-

ing additional steps to be taken": a) medico-dental identification of the male defendants to determine if they had the gold crowned tooth mentioned by some witnesses; b) personal identification of Néstor Valdez Zúñiga by María Eugenia Rodríguez; and c) request for information from the National Police Force about the arms that the male defendants carried and if they carried them on June 25 and 26, 1990, also indicating whether they were "off duty" and also if they had handed in their respective equipment.

112. In its judgment of December 26, 1991, the court established the following, with regard to the testimonial evidence collected:

> in the evaluation of evidence, the statements of MATILDE REYNA MORALES, GARCIA, ANA MARIA CONTRERAS and ROSA CARLOTA SANDOVAL are not taken into consideration because as the mothers of ANSTRAUM AMAN VILLAGRAN MORALES, HENRY GIOVANNI CONTRERAS and JULIO ROBERTO CAAL SANDOVAL, respectively, they are subject to total disqualification.
>
> Also that of BRUCE CAMBELL HARRIS LLOYD, because, in his capacity of Executive Director of the Casa Alianza Association, it is inferred that he lacks impartiality, since this social assistance organization shelters and protects street children, including the deceased, so that it is subject to partial disqualification.
>
> [...]
>
> With regard to the statements of MARIA EUGENIA RODRIGUEZ (minor), GUSTAVO ADOLFO CONCABA CISNEROS (minor), AIDA PATRICIA CAMBARA CRUZ, JUAN JOSE MENDEZ SANCHEZ (minor), JULIA GRISELDA RAMIREZ, MICAELA SOLIS RAMIREZ and ROSA ANGELICA VEGA, [...] none of them directly named the defendants, and other means of evidence are needed in order [...] to reach the legal conviction that [the defendants] are responsible for the facts [investigated].

[...]

> The declarations of the [...police] investigators are in the same conditions as those mentioned previously, because they do not name the defendants as the authors of these execrable crimes either directly or indirectly.

113. In the same judgment, the court refers to the following documents: a) report of the investigation conducted by the National Police Force, which records, among other circumstances that Julia Griselda Ramírez López "identified NÉSTOR FONSECA LÓPEZ and SAMUEL ROCAEL VALDEZ ZÚÑIGA, in the [k]ardex of the unit's personnel", and indicated that they were responsible for the murder of Anstraum Aman Villagrán Morales; it was established that Fonseca López and Valdez Zúñiga worked for the National Police Force; it was recorded that Valdez Zúñiga had as equipment a "thirty-eight caliber Taurus revolver, registration number [...] (1481127)" and that "the bullet, the head of which was found on inspecting the body of the minor Villagrán Morales, was fired by the said arm"; b) report of the Deputy Head of the Fifth National Police Unit from which it appears that on June 25 and 26, 1990, agent Valdez Zúñiga "left this unit at 8.00 to go off-duty"; report of the Head of the Criminal Investigations Department of the National Police Force in which it is repeated that Samuel Rocael Valdez Zúñiga and Néstor Fonseca López were members of the said Police Force and that the type of arm issued to Fonseca López had not been established; and d) descriptive records of the identification of the bodies in the case "corresponding to persons who died violently due to gun wounds". Regarding all these elements, the judge of the Third Criminal Sentencing Court concludes that "the foregoing is insufficient evidence to be certain of the participation of the defendants in the illegal criminal acts that are attributed to them".

114. Lastly, the first instance judgment asserts that

> The same situation arises with regard to the legal identification formalities practiced [...] from which it is clear that WALTER ANIBAL CHOC TENI, JULIA GRISELDA RAMIREZ LOPEZ and

> MICAELA SOLIS RAMIREZ did not identify the persons who are alleged to be responsible from among the persons that were put in front of them, only the minor GUSTAVO ADOLFO CISNEROS CONCABA [sic], stated that the defendant NESTOR FONSECA LÓPEZ was among those persons, but this fact does not change the situation.

115. The first instance judgment concluded by delivering an "ACQUITTAL" in favor of the defendants.

116. The Office of the Attorney-General filed a remedy of appeal against the judgment as soon as it was notified; the court granted the remedy and forwarded the case file to the Fourth Chamber of the Court of Appeal.

i. Judicial proceeding before the Fourth Chamber of the Guatemalan Court of Appeal (Case No. 175-92)

117. Before the Fourth Chamber of the Court of Appeal, the Office of the Attorney General again requested that the evidence formalities requested before the Third Criminal Sentencing Court should be carried out, in compliance with the "[o]rder requiring additional steps to be taken", and added the request that other formalities should be ordered: a) judicial inspection of the registry ledger of the Armory of the Fifth Nation Police Unit, in order to determine if it was altered on June 25 and 26, 1990, and also to establish who used the Taurus revolver mentioned previously, utilized in the murder of Anstraum Aman Villagrán Morales; b) demand that the National Police Force carry out a ballistic test on the bullet head found near the body of Jovito Josué Juárez Cifuentes in the San Nicolás Woods, in order to determine whether it belonged to the equipment issued to the defendant, Néstor Fonseca López; and c) "[r]econstruction of the facts, to be carried out on eighteenth street between fourth and fifth avenue of zone one".

118. The Fourth Chamber of the Court of Appeal refused to issue the "Order requiring additional steps to be taken" requested by the Office of the Attorney-General.

119. On March 25, 1992, the Fourth Chamber of the Court of Appeal confirmed the judgment of the Third Criminal Sentencing Court, repeating the criteria for the evaluation of evidence used on that opportunity, and it added the following considerations:

> [A]s the minor, María Eugenia Rodríguez, is a person who is directly affected, she is totally disqualified.
>
> [...]
>
> [The statements of various witnesses] suffer [from] lack of precision and contradictions, such as that of the minor Cóncaba Cisneros, in which he does not recall the date on which the facts occurred, and also those [... of] the minors Cámbara Cruz and Méndez Sánchez because the former asserts that the event occurred on Sunday, July twenty-sixth nineteen hundred and ninety, that is one month after Anstraum Aman Villagrán Morales had died, and the second, Méndez Sánchez, indicated that everything happened about a year ago, from October twenty-fifth nineteen ninety, which was the date on which he made his testimonial statement. In the testimonies of Julia Griselda Ramírez, Micaela Solís Ramírez and Rosa Angélica Vega, the lack of precision with regard to the date of the event and the identification of the perpetrators is also evident, which means that they are subject to total disqualification and not considered in the evaluation of the evidence.
>
> It should be noted that during the proceedings, it was fully demonstrated that the bullet found when inspecting the body of Anstraum Villagrán Morales, was fired by a Taurus, thirty-eight caliber revolver with registration number one million four hundred and eighty(-one) thousand one hundred and twenty-six, an arm that was part of the equipment of the defendant, Samuel Rocael Valdez Zúñiga, but this evidence does not confirm that the defendant, Valdez Zúñiga, was the person who fired the said gun, since, according to the report of the Deputy Head of the Fifth National Police Unit, former agent SAMUEL ROCAEL VALDEZ ZÚÑIGA, left the unit at eight hours to go off duty, returning the

following day at the same time; [...] this is insufficient to attribute responsibility to the defendant.

As regards the statements of the [... police] investigators and the witnesses Gaspar Xep Castro, Amanda Pelén Hernández and Walter Anibal Choc Teni, they are not considered in the evaluation of the evidence as they are irrelevant.

j. Appeal for reversal before the Criminal Chamber of the Supreme Court of Justice of Guatemala

120. The Office of the Attorney General presented an appeal for reversal of the judgment of the Fourth Chamber of the Court of Appeal, adducing the following: a) that Article 28 of the Guatemalan Constitution which embodies the constitutional right of petition had been violated, as the "order requiring additional steps to be taken" had not been issued so as to produce the evidence requested by the Office of the Attorney-General himself; b) that by omitting to issue the "order requiring additional steps to be taken", Article 746.III of the Criminal Procedural Code, which establishes the admissibility of the appeal for reversal when some element of evidence that could influence the decision of first instance and first appeal has been rejected, had also been violated; and c) that the Fourth Chamber of the Court of Appeal incurred in an error of fact in evaluating the evidence when it failed to evaluate the following: 1) personal identification of the defendant Néstor Fonseca López by Gustavo Adolfo Cóncaba Cisneros; 2) judicial photographic identification of this defendant by Julia Griselda Ramírez López; 3) contradictory official communications from the National Police Force: one indicating that the defendant Samuel Rocael Valdez Zúñiga had been assigned the 24-hour shift that commenced at 12.00 on June 24, 1990, and that he had therefore gone off duty on June 25, 1990, at the same time, and another, indicating that he had gone off duty at 8.00 on June 25; 4) judicial statements of the police officials who investigated the facts on court orders that were rejected by the Fourth Chamber of the Court of Appeal as "irrelevant"; and 5) reports of the police investigations ordered by the courts.

121. The Supreme Court confirmed the judgment of the Fourth Chamber of the Court of Appeal, maintaining the following, *inter alia*: a) that "the order requiring additional steps to be taken is a discretional faculty that the legislator grants the judge so that [...] when he delivers judgment, [he may, if] he considers necessary[,] take some steps to help him decide on the fact investigated"; b) that Article 643 of the Criminal Procedural Code does not stipulate that personal identification is an autonomous element of evidence but rather an accessory to testimony and that, as the testimonial statement of the person who performed it was rejected, the validity of the identification was affected; c) that the test of reconstructing criminal acts was ordered by the competent judicial authority but it was not carried out because "the accused were not presented"; and d) that there was no error of fact in the evaluation of the testimonies that were qualified as irrelevant, the ballistic test and the official communications of the National Police Force, "because there was no evaluative omission [and] no tergiversation of the content of those probatory measures [... which only occurs] when the judge says the contrary to what the evidence proves, when evaluating the evidence".

VIII
VIOLATION OF ARTICLE 7

(Right to Personal Liberty)

122. In the application, the Commission alleges that Article 7 of the Convention has been violated since Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes were illegally and arbitrarily deprived of their liberty by National Police Force agents.

123. When it answered the application, the State did not offer any defense with regard to the violation of Article 7 of the Convention (*supra*, paras. 67 and 68).

124. In its final arguments, the Commission stated that, when these four youths were abducted, the State violated not only the provisions of the

Convention but also those of domestic law, specifically Article 6 of the Guatemalan Constitution.

125. In particular, the Commission stated that the former officers Néstor Fonseca López and Samuel Rocael Valdez Zúñiga, who they allege are the perpetrators of the abduction and retention, did not make a report on the detentions, did not present the youths before the competent judicial authority and, therefore, did not allow them to file a petition for habeas corpus. It also stressed that the right to personal liberty is an essential condition for the exercise of the other fundamental rights and that, as the alleged victims were retained clandestinely, they had no defense against the violation of the rights to receive humane treatment and to life that they also suffered.

126. In its final arguments, the State did not make any comment in this respect (*supra,* paras. 67 and 68).

127. Article 7 of the Convention provides that

> 1. Every person has the right to personal liberty and security.
>
> 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
>
> 3. No one shall be subject to arbitrary arrest or imprisonment.
>
> [...]
>
> 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
>
> 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide

> without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
>
> [...]

128. In the instant case, there is abundant concurring evidence that the abduction of the four youths was perpetrated by State agents and, more specifically, by members of the National Police Force. Indeed:

— according to witnesses, those who deprived them of their liberty did so in daylight, in the street, without hiding their faces and they moved about freely within sight of numerous persons;

— the abductors had efficient means of mobilization and aggression: they arrived at the site in a pick-up truck, armed with firearms that they used to threaten the youths, and they left the site in the same vehicle, taking those abducted;

— several witnesses, who made statements during the domestic judicial proceedings, provided the investigators with detailed physical descriptions of the abductors and identified them in personal and photographic identification procedures. The persons identified by the witnesses were members of the National Police Force. Several of those who made statements mentioned that those agents frequented the area of "Las Caseras", and were friends of the administrator of a kiosk, who was known for her dislike of the "street children" in the sector. Some of these witnesses corroborated their declarations before this Court: and

— one witness declared that the National Police Force agents who were identified as the perpetrators of the detention of the youths had taken part in a similar abduction of "street children" from the "Las Casetas" area a few days earlier, and that she was one of the victims (supra, para. 119).

129. The investigations of the National Police Force itself, conducted on the orders of the domestic judges, and presented during the respective judicial proceedings, arrived at the conclusion that the four youths had been apprehended by the two agents identified by the witnesses. The State has not challenged this conclusion and even confirmed it, because when referring to the issue in the answer to the application, it maintained that "the interaction of the various State bodies show[s] perfectly that the legal system carried out its functions, both through the principle of the presence of both parties to the action [and because the] investigation by the National Police Force [...] supported the accusation presented by the Office of the Attorney-General".

130. The said conclusion is confirmed by abundant information on the environment, which is available in documents that are part of the probative material (*supra*, para. 59.c) and describe unlawful and violent actions against the "street children" by various types of State security agents. These actions include several that are very similar to those that constitute the facts of the instant case.

131. With regard to arrests the Court has said

> [Article 7] contains as specific guarantees, described in its subparagraphs 2 and 3, the prohibition of detention or unlawful or arbitrary arrest, respectively. According to the first of these regulatory provisions, no one shall be deprived of his physical liberty, except for the reasons, cases or circumstances specifically established by law (material aspect), but, also, under strict conditions established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that – although qualified as legal – may be considered incompatible with respect for the

> fundamental rights of the individual because they are, among other matters, unreasonable, unforeseeable or out of proportion[20].

132. It is clear that, contravening the provisions of Article 7.2 of the Convention, the four youths were arrested although the causes or conditions established by the Guatemalan Constitution, in force since January 14, 1986, were not present. Article 6 of the 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 *in fraganti* while committing a crime or offence. Neither of these two grounds was present in this case.

133. Moreover, they were not "brought before the competent judicial authority within six hours", as the said Article 6 of the Guatemalan Constitution orders. What is more, this article expressly establishes that those arrested "may not be subject to any other authority". If we compare the facts of this case with this basic procedural regulation, it is clear that it was not complied with.

134. Consequently, we can conclude that neither the material nor the formal aspect of the legal rules for detention were observed in the detention of the four youths.

135. The European Court of Human Rights (hereinafter "European Court") has remarked that the emphasis on the promptness of judicial control of arrests is of special importance for the prevention of arbitrary arrests. Prompt judicial intervention allows the detection and prevention of threats against life or serious ill-treatment that violate fundamental guarantees contained in the European Convention for the Protection of Human Rights and Fundamental Liberties (hereinafter "European Convention")[21] and the American Convention. The protection of both the physical liberty of the individual and his personal safety are in play, in

20 *Gangaram Panday case, supra* note 13, para. 47.

21 *Cf.* Eur. Court HR, Aksoy v. Turkey judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2282, § 76 and *Brogan and Others*

a context where the absence of guarantees may result in the subversion of the rule of law and deprive those arrested of the minimum legal protection. In this respect, the European Court particularly stressed that the failure to acknowledge the arrest of an individual is a complete negation of these guarantees and a very serious violation of the article in question.

136. Consequently, this Court concludes that the State violated Article 7 of the American Convention on Human Rights, in relation to Article 1.1 of the Convention, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes.

IX
VIOLATION OF ARTICLE 4
(Right to Life)

137. In the application, the Commission maintained that Guatemala had violated Article 4 of the Convention because two National Police Force agents murdered Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Aman Villagrán Morales. The Commission emphasized that "[t]he right to life cannot be annulled" and that "[t]he violation of that norm [...] has not been the object of any corrective".

138. The State did not offer any defense on this point in its answer to the application (*supra*, paras. 67 and 68).

139. In its final arguments, the Commission underscored the *ius cogens* nature of the right to life and the fact that it is the essential basis for the exercise of the other rights. The Commission stated that compliance with Article 4 in relation to Article 1.1 of the Convention, not only presumes that no person shall be deprived of his life arbitrarily (negative obligation), but also requires the States to take all necessary measures to

Judgment of 29 November 1988, Series A no. 145-B, p. 32, § 58 and Eur. Court HR, Kurt v. Turkey judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1185, §§ 123-124.

protect and preserve the right to life (positive obligation). It concluded, therefore, that the State had violated two aspects of the said right because, when the events took place, the "street children" were the object of different types of persecution, including threats, harassment, torture and murder. In consequence, there were a great many complaints to which the State should have responded with effective investigations, prosecutions and punishment; however, the State agents who were responsible were rarely investigated or convicted, and this gave rise to the *de facto* impunity that allowed, and even encouraged, the continuation of these violations against the "street children", increasing their vulnerability.

140. The State kept silent on this point in the final arguments (*supra*, paras. 67 and 68).

141. Article 4.1 of the Convention stipulates:

> Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

142. In the instant case there is extensive concurring evidence that it was State agents and, more specifically, members of the National Police Force, who murdered Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Aman Villagrán Morales. Indeed:

— State agents arrested the four youths whose bodies appeared in the San Nicolás Woods. The events following their seizure, which culminated in the murder of the four youths, involved the use of means of mobilization and aggression that were very similar, if not identical, to those used to carry out the abduction;

— according to several witnesses, those who murdered Anstraum Aman Villagrán Morales – like those who abducted the four youths – acted in the city streets, without hiding their faces, moving discreetly in the sight of numerous persons, to the point that, after having killed the victim, they remained in

the neighborhood drinking beer and then returned to the place where the body was lying and threatened potential witnesses, before finally leaving the site.

— Anstraum Aman Villagrán Morales was a friend of the four youths who were abducted and was often with them. On the night of the facts, he had been warned in threatening terms that he would be killed also, by the administrator of the kiosk, who was a friend of the murderers;

— various witnesses who gave declarations to the domestic judges and investigators, some of whom also declared before this Court, stated that the abductors of the four youths and the murderers of Anstraum Aman Villagrán Morales were the same persons;

— parts of bullets fired by police firearms were found, both where the bodies of the first four youths were discovered and where Anstraum Aman Villagrán Morales was killed. In the case of the elements found near the body of Villagrán Morales, tests established that this bullet had been fired by a revolver issued to one of the police agents recognized by the witnesses as the perpetrator of the act;

— investigations conducted by the National Police Force, on the orders of the domestic judges, which were presented during the corresponding judicial proceedings, concluded that the murderers of the youths whose bodies were discovered in the San Nicolás Woods and of Anstraum Aman Villagrán Morales were the two agents identified by witnesses; and

— trustworthy information about the general environment, which has been mentioned above (*supra*, para. 59.c), regarding a generalized pattern of violence against "street children" by agents of State security units, including, in particular, acts of collective and individual homicide and abandonment of bodies in uninhabited areas.

143. As State agents perpetrated the five homicides, the Court must necessarily conclude that they may be attributed to the State[22].

144. 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. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.

145. As the Human Rights Committee created by the United Nations International Covenant on Civil and Political Rights has stated,

> [t]he protection against arbitrary deprivation of life, which is explicitly required by the third paragraph of Article 6.1 [of the International Covenant on Civil and Political Rights] is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, [the State] must strictly control and limit the circumstances in which [a person] may be deprived of his life by such authorities[23].

146. The Court wishes to indicate the particular gravity of the instant case since the victims were youths, three of them children, and because the conduct of the State not only violated the express provision of Article 4 of the American Convention, but also numerous international instru-

22 *Cf. Paniagua Morales et al. case, supra* note 13, para. 120.

23 *United Nations Human Rights Committee*, General Comments 6/1982, para. 3 and *cf.* General Comment 14/1984, para. 1.

ments, that devolve to the State the obligation to adopt special measures of protection and assistance for the children within its jurisdiction (*infra*, para. 191).

147. Based on the foregoing, the Court concludes that the State violated Article 4 of the American Convention on Human Rights, in relation to Article 1.1 of the Convention, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Aman Villagrán Morales.

X
VIOLATION OF ARTICLE 5

(Right to Humane Treatment)

148. In the application, the Commission alleged that the State had violated Article 5 of the American Convention against Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes because they had been abducted by State agents who "were responsible for the physical integrity of the victims while they were [in] their custody".

149. The Commission observed that, when the facts in this case occurred, the so-called "street children" were subject to different forms of "abuse and persecution" by "agents from certain [State] security forces", and this inter-American body had already pointed out this circumstance in several of its reports.

150. When answering the application during the proceeding, the State did not offer any defense regarding the violation of the right to humane treatment embodied in the American Convention and, in particular, did not contest that the victims had been tortured (*supra*, paras. 67 and 68).

151. In its final arguments, the Commission declared that the four young victims of torture were retained incommunicado, a situation which, in itself, clearly results in "great anxiety and suffering".

152. In continuation, it made special reference to the tender age of the victims of torture, two of them minors, Julio Roberto Caal Sandoval, 15 years of age, and Jovito Josué Juárez Cifuentes, 17 years of age, and the fact that they lived on the streets.

153. Furthermore, the Commission added that the circumstances surrounding the death of these youths had caused a great deal of suffering to the families of the victims. The way in which the bodies were abandoned and the lack of answers about what happened caused the families anxiety and fear. In the Commission's opinion, the evidence makes it clear that the authorities did not try to communicate with the families or provide them with further information once the proceedings were underway.

154. In its final arguments, the State did not refer to the issue (*supra*, paras. 67 and 68).

155. Article 5 of the American Convention stipulates that

> 1. Every person has the right to have his physical, mental, and moral integrity respected.
>
> 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
>
> [...]

156. The Court considers that the violation of this Article should be examined from two angles. First, whether or not Article 5.1 and 5.2 have been violated to the detriment of the youths Contreras, Figueroa Túnchez, Juárez Cifuentes and Caal Sandoval should be analyzed. Second, the Court should evaluate whether the families of the victims were, themselves, subjected to cruel, inhuman and degrading treatment.

157. In the instant case, there is considerable, concurring evidence that the physical integrity of these four youths was violated and that, before they died, they were victims of serious ill-treatment and physical and psy-

chological torture by the State agents and, more specifically, members of the National Police Force.

158. The bodies of the youths were found dead with signs of serious physical violence that the State has been unable to explain. The file contains photographs of the faces and necks of the bodies of the youths. Different injuries are very visible in these photographs, including those made by the bullets that were the cause of death and other signs of physical violence. The four autopsies mention the approximate location of the shot wounds and, in two case, refer to other injuries that can be clearly seen in the photographs, or are located in other parts of the bodies, attributing them generically to "animal bites". The size of the wounds is not specified or their depth, the type of animal that could have produced them, or whether they occurred before or after death. The autopsies of the other two youths provide no explanation of the injuries to their bodies.

159. An Amnesty International report, included with the file (*supra*, para. 59.c), which was not contested by the State, mentions that

> the bodies presented signs of torture: the ears and tongues had been cut off, and the eyes had been burned or extracted. Furthermore, it appears that some kind of burning liquid had been thrown on the chest and chin of [Caal Sandoval]. According to the Prosecutor-General's office, the mutilations to which the four had been subjected correspond to the treatment that the police usually use on those who inform against this security force. The mutilation of the ears, eyes and tongue signifies that the person had heard or seen or spoken of something inadvisable.

160. One of the expert witnesses who appeared before this Court (*supra*, para. 66.a) observed that there were no photographs of the whole body of any of the four victims. Regarding the injuries to the eyes, the expert witness stated that, based on what could be seen in the photographs, in all cases they were produced by the shots received in the head; and, about the tongue of Clemente Figueroa Túnchez, the only one that was visible in the photographs, although "a little our of focus", he stated that he

could not affirm that it had been mutilated at all. With regard to two bodies, the expert witness stressed that "there [were] wounds here that were not [found] in the autopsy and [...that they were] clearly in the photo[graphs]". Moreover, he stated that there were no signs that the youths had tried to defend themselves.

161. A witness who declared in the domestic proceedings, and whose records form part of the probative material in the instant case, referred to facts that, taken in conjunction with the statements of the witnesses and elements from other related documents, allow us to infer the existence of a general pattern of violence against the "street children". This witness described an abduction prior to the one that is the subject of this case, of which she was a victim together with two of the youths whose bodies were found in the San Nicolás Woods, Juárez Cifuentes and Caal Sandoval. In her declaration, she related that they were taken to a cemetery and she provided information on the painful mistreatment to which they were submitted (*supra*, para. 59.a).

162. It should be remembered that the youths were retained clandestinely by their captors for between 10 and 21 hours. This lapse of time occurred between two extremely violent circumstances: forced seizure and death due to the impacts of a firearm while defenseless, which the Court has already declared proved (*supra*, para. 82). It is reasonable to conclude that the treatment they received during those hours was extremely aggressive, even if there was no other evidence in this regard.

163. While they were retained, the four youths were isolated from the external world and certainly aware that their lives were in danger. It is reasonable to infer that, merely owing to this circumstance, they experienced extreme psychological and moral suffering during those hours.

164. In this respect, it is relevant to recall that the Court has previously stated that the mere fact of being placed in the trunk of a car

> constitutes an infringement of Article 5 of the Convention relating to humane treatment, inasmuch as, even if no other physical or ill treatment occurred, that action alone must clearly be considered to

> contravene the respect due to the inherent dignity of the human person[24].

And that in the events under which the deprivation of liberty is lawful

> [o]ne of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effects it has on the detained person. Indeed, isolation from the outside world produces moral and psychological suffering in any person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts in prisons[25].

165. Similarly, the European Court has stated that the mere threat of a behavior that is prohibited by the provision of the European Convention (Article 3), which corresponds to Article 5 of the American Convention, when it is sufficiently real and imminent, may in itself be in conflict with the respective norm. In other words: creating a threatening situation or threatening an individual with torture may, at least in some circumstances, constitute inhuman treatment[26].

166. Furthermore, it is worth recalling, as this Court has already stated, that a persons who is unlawfully detained (*supra*, para. 134) is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated[27].

167. Lastly, from the documents and testimonies that are included in the probative material, it is clear, as we have already stated, that the facts in

24 *Castillo Páez case, supra* note 15, para. 66.

25 *Suárez Rosero case.* Judgment of November 12, 1997. Series C No 35, para. 90.

26 *Cf. Eur. Court. H. R, Campbell and Cosans judgment of 25 February 1982, Series A, no. 48*, p. 12, § 26.

27 *Cf. Loayza Tamayo case, supra* note 15, para. 57.

this case occurred in a context of great violence against children and youths who lived on the streets (supra, para. 79), violence that very often included different types of torture and ill-treatment[28].

168. Having proved the fact that the physical and mental integrity of the youths, Contreras, Figueroa Túnchez, Caal Sandoval and Juárez Cifuentes was violated and that they were victims of ill-treatment and torture, the Court proceeds to determine the facts relating to the attribution of responsibility.

169. The Court believes that the ill treatment and torture was practiced by the same persons that abducted and killed the youths. Since the Court has established that those responsible for these acts were member of the National Police Force (*supra*, paras. 128 and 142), it is pertinent to conclude that the perpetrators of the ill-treatment and torture carried out in the time between the seizure and the murders, were State agents, whether they were those investigated and charged in the domestic proceedings or others.

170. In this respect, we should recall the presumption established by the European Court when considering that the State is responsible for ill-treatment exhibited by a person who has been in the custody of State agents, if the authorities are incapable of demonstrating that those agents did not incur in such behavior[29].

171. In its final written arguments, the Commission indicated that the circumstances of the death of the victims together with the lack of action

28 Reports by Casa Alianza and Amnesty International, annexed to the probative material in this case, *supra* note 11, mention shot wounds, cigarette burns, kicks and other hard blows, glue spilled on the head, bites from trained dogs, and various forms of humiliation by word and deed, as forms of torture and ill-treatment against Guatemalan "street children".

29 *Cfr. Eur. Court H. R., Aksoy v. Turkey, supra* note 21, p. 2278, § 61;. *Eur. Court HR, Ribitsch v. Austria judgment of 4 December 1995, Series A, no. 336,* p. 26 et seq., § 34 and *Eur. Court H. R. case of Tomasi v. France of 27 August 1992, Series A no. 241-A*, pp. 40-41, §§ 108-111.

by the State had caused the victims' next of kin "anxiety and also considerable fear". The Court considers that the fact that this point has only been raised during the final arguments, does not, *per se,* prevent examining it and deciding on it.

172. From the records of the proceedings and, in particular, from the statements of witnesses who intervened in the domestic proceedings and before this Court, it may be deduced that

— Matilde Reyna Morales García, mother of Anstraum Aman Villagrán Morales, heard of his death through her daughter, Lorena, and the body of her son had not been identified until she went to the morgue. She could only bury him on June 27, 1990. She was pregnant at the time of the facts and feared for her life and that of her other children, although she denied that she had ever been threatened. Furthermore, she asserted that she has not received official information about the case;

— Ana María Contreras, mother of Henry Giovanni Contreras, heard about the death of her son about 15 days after it occurred because she went to look for him with a photograph. When she heard, he had been buried as XX; at that time, she began the exhumation process but "she was already suffering from health problems in the head that later began to get worse" (*supra*, para. 65.a) and could not conclude it. She developed facial paralysis and had to be hospitalized for a year, losing "everything". She states that she was threatened by an anonymous letter in which she was advised "to leave things be". She also declared that she was not officially informed about the evolution of the judicial proceedings.

— Rosa Carlota Sandoval, mother of Julio Roberto Caal Sandoval, heard about what had occurred eight days after the events through the version of two other minors. The file shows that Mrs. Sandoval carried out the necessary exhumation measures, since her son had also been buried as XX, and

she was the private prosecutor in the case until she died on July 25, 1991. Julio Roberto Caal Sandoval used to live with his grandmother, Margarita Sandoval Urbina, who also took part in the domestic proceedings.

— Marta Isabel Túnchez Palencia, mother of Federico Clemente Figueroa Túnchez, she heard about the abduction of her son from two children, on June 15. On June 18, 1990 learned from the newspapers that several minors had been found dead and she went to the Identification Office of the National Police Force in order to make the corresponding identification;

— there is nothing in the proceedings about measures taken by the next of kin of Jovito Josué Juárez Cifuentes.

173. Furthermore, it is evident that the national authorities did not take any measures to establish the identity of the victims, who remained registered as XX until their next of kin came in person to identify them, even though three of the youths (Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes) had a criminal record in the "criminal archives". This evident negligence of the State should be added to the fact that the authorities did not make adequate efforts to locate the victims' immediate next of kin, notify them of their death, deliver the bodies to them and provide them with information on the development of the investigations. All these omissions delayed and, in some cases, denied the next of kin the opportunity to bury the youths according to their traditions, values and beliefs and, therefore, increased their suffering. Added to this is the feeling of insecurity and impotence caused to the next of kin by the failure of the public authorities to fully investigate the corresponding crimes and punish those responsible.

174. Among the actions of the State agents who intervened in the facts of the case that produced an impact on the families, the Court must stress the treatment of the corpses of the youths whose bodies were discovered in the San Nicolás Woods, Henry Giovanni Contreras, Federico

Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes. They were not only victims of extreme violence resulting in their physical elimination, but also, their bodies were abandoned in an uninhabited spot, they were exposed to the inclemency of the weather and the action of animals, and they could have remained thus during several days, if they had not been found by chance. In the instant case, it is clear that the treatment given to the remains of the victims, which were sacred to their families and particularly their mothers, constituted cruel and inhuman treatment for them.

175. In a recent case, the Court has stated that

> the burning of Mr. Nicholas Blake's mortal remains to destroy all traces that could reveal his whereabouts is an assault on the cultural values prevailing in Guatemalan society, which are handed down from generation to generation, with regard to respecting the dead. [This action] increased the suffering of Mr. Nicholas Blake's relatives[30].

176. The European Court has had the opportunity to issue an opinion on the condition of victim of inhuman and degrading treatment of the mother as a result of the detention and disappearance of her daughter at the hands of the authorities. In order to determine if Article 3 of the European Convention, corresponding to Article 5 of the American Convention, has been violated or not, the European Court evaluated the circumstances of the case, the gravity of the ill-treatment and the fact of not having official information to clarify the case. In the light of these considerations and that it was the mother of the victim of a human rights violation, the European Court concluded that she was also a victim and that the State had violated the said Article 3[31].

30 *Blake case, supra* note 16, para. 115.

31 *Eur. Court HR, Kurt v. Turkey, supra* note 21, pp. 1187, §§ 130-134. In this respect, see also, *United Nations Human Rights Committee, Quinteros v. Uruguay,* July 21, 1983 (19th session) Communication N° 107/1981, para. 14. In this case, the Committee stated that "it underst[ood] the deep sadness and anxiety that the

177. Owing to the foregoing, the Court concludes that the State violated Article 5.1 and 5.2 of the American Convention on Human Rights, in relation to Article 1.1 of the Convention, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Jovito Josué Juárez Cifuentes and Julio Roberto Caal Sandoval, and violated Article 5.2 of the Convention, in relation to its Article 1.1, to the detriment of their mothers, María Contreras, Matilde Reyna Morales García, Rosa Carlota Sandoval, Margarita Sandoval Urbina, Marta Isabel Túnchez Palencia and Noemí Cifuentes.

XI
VIOLATION OF ARTICLE 19
(Rights of the Child)

178. In the application, the Commission alleged that Guatemala had violated Article 19 of the American Convention by omitting to take adequate prevention and protection measures in favor of Julio Roberto Caal Sandoval, 15 years of age, Jovito Josué Juárez Cifuentes, 17 years of age and Anstraum Aman Villagrán Morales, also 17 years of age.

179. The Commission stated that the crimes committed against these minors "are an example of the serious human rights violations that Guatemalan street children suffered at the time the complaint in the case was made".

180. To this should be added, according to the Commission, the "serious risk for their development and even for their life [...] itself" to which "street children" were exposed, in view of their abandonment and social exclusion, a situation that "was exacerbated in some cases by the extermination and torture to which they were subjected by death squadrons or by the Police Force itself".

author of the communication suffer[ed] owing to the disappearance of her daughter and the continuing uncertainty about her fate and her whereabouts. The author had the right to know what had happened to her daughter. In this respect, she is also a victim of the violations of the [International] Covenant [on Civil and Political Rights], in particular of Article 7 [corresponding to Article 5 of the American Convention], suffered by her daughter".

181. In particular, the Commission believes that the State omitted to take measures destined to "safeguard the development and the life of the victims", to investigate and end the abuse, to punish those responsible, and "to train and impose adequate disciplinary measures and penalties on its agents". All this, despite being aware that "street children" were the object of acts of violence, particularly by members of the police force, based on reports presented to the State by several international organizations and complaints submitted by non-governmental organizations.

182. In its answer to the application, the State remained silent on this point (*supra*, paras. 67 and 68).

183. In its final arguments, the Commission indicated that Guatemala signed the United Nations Convention on the Rights of the Child (hereinafter "Convention on the Rights of the Child") on January 26, 1990, and deposited the respective instrument of ratification on June 9, 1990 – this Convention entered into force on September 2, 1990[32]. In 1995, during the hearings before the Committee on the Rights of the Child, a supervisory body created by this Convention, Guatemala presented a report in which it stated that "it could only provide information on the situation [of "street children"] as of 1994" and added that "although the number of complaints about police brutality suffered by street children had declined, the problem had not been resolved and the police force had not been completely restructured". Moreover, it stated that, in Guatemala, there was "a violent culture and that the police force did not receive training on how to deal with these children"". Lastly, the State "acknowledged that 84 children had been murdered in the first three months of 1996 and that, according to available information, there had only been seven [convictions]". The Commission asserted that this

32 On this point, the Commission explained that, prior to the time of the facts, Guatemala had accepted to commit itself to respect the terms of the Convention on the Rights of the Child and, therefore, in accordance with Article 18.b) of the Vienna Convention on the Law of Treaties, which provides that a State shall be obliged not to carry out acts that could counter the aim and purpose of the treaty that it has signed, Guatemala was obliged to respect the terms of the Convention on the Rights of the Child in June 1990.

declaration was a unilateral acknowledgement of facts generating international responsibility.

184. The Commission described the three child victims of the facts of this case as persons who lived in extremely precarious socio-economic conditions and who fought to survive alone and fearful of a society that did not include them, but rather excluded them. Furthermore, it stated that, as the State abstained from taking effective measures to investigate and prosecute the perpetrators, it exacerbated the risk of violations of the rights of "street children" in general, and the victims of this case, in particular.

185. The Commission stated that the reason for Article 19 of the Convention arose from the vulnerability of children and their incapacity to personally ensure the respect of their rights. It also declared that while the consequent protection responsibilities correspond to the family in principle, State measures are necessary in the case of at risk children. According to the Commission, this special State obligation encompasses the protection of a wide range of social, economic, civil and political interests of the child.

186. The State did not refer to this issue in its final arguments (*supra,* paras. 67 and 68).

187. Article 19 of the Convention stipulates that "[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".

188. Article 19 of the American Convention does not define what is meant by "child". However, the Convention on the Rights of the Child (Article 1) considers every human being who has not attained 18 years of age to be a child, "unless, by virtue of an applicable law, he shall have attained his majority previously". According to the Guatemalan legislation in force at the time of the facts of this case, those who had not attained 18 years of age were also minors. Using this criteria, only three of the victims, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Villagrán Morales, were children. However, in this judg-

ment, the Court is using the colloquial expression "street children" to refer to the five victims in this case, who lived on the streets, in a risk situation.

189. In this judgment, the Court has also recognized as a notorious and public fact that, at the time the facts of this case occurred, there was a systematic practice of aggression against 'street children' in Guatemala carried out by members of State security forces; this included threats, persecution, torture, forced disappearance and homicide (*supra*, paras. 59.c and 79).

190. Based on the different reports on the issue of "street children" in Guatemala, and the characteristics and circumstances of this case, the Court believes that the events that culminated in the death of the minors, Caal Sandoval, Juárez Cifuentes and Villagrán Morales, are linked to the prevailing pattern of violence against "street children" in Guatemala at the time the facts occurred.

191. In the light of Article 19 of the American Convention, the Court wishes to record the particular gravity of the fact that a State Party to this Convention can be charged with having applied or tolerated a systematic practice of violence against at-risk children in its territory. When States violate the rights of at-risk children, such as "street children", in this way, it makes them victims of a double aggression. First, such States do not prevent them 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"[33], even though every child has the right to harbor a project of life that should be tended and encouraged by the public authorities so that it may develop this project for its personal benefit and that of the society to which it belongs. Second, they violate their physical, mental and moral integrity and even their lives.

192. This Court has said that "when interpreting a treaty, not only the agreements and instruments formally related to it should be taken into

33 *Convention on the Rights of the Child,* Preamble, para. 6.

consideration (Article 31.2 of the Vienna Convention), but also the system within which it is (inscribed) (Article 31.3)"[34]. In accordance with this position, the Court has also declared that

> by means of an authoritative interpretation, the member States of the Organization have signaled their agreement that the [American] Declaration contains and defines the fundamental human rights referred to in the Charter [of the Organization]. Thus, [the latter] cannot be interpreted and applied, as far as human rights are concerned, without relating its norms [...] to the corresponding provisions of the Declaration[35].

193. The Court has previously indicated that this focus is particularly important for international human rights law, which has advanced substantially by the evolutive interpretation of international protection instruments. On this point, this Court has understood that

> [t]his evolutive interpretation is consequent with the general rules of the interpretation of treaties embodied in the 1969 Vienna Convention. Both this Court [...] and the European Court [...] have indicated that human rights treaties are living instruments, the interpretation of which must evolve over time in view of existing circumstances.[36]

194. Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of the child that should help this Court establish the

34 *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 113.

35 *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights.* Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 43.

36 *The Right to Information on Consular Assistance, supra* note 34, para. 114.

content and scope of the general provision established in Article 19 of the American Convention.

195. The Convention on the Rights of the Child contains various provisions that relate to the situation of the "street children" examined in this case and, in relation with Article 19 of the American Convention, it throws light on the behavior that the State should have observed towards them. These provisions appear below:

ARTICLE 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

ARTICLE 3

[...]

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

ARTICLE 6

* States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

ARTICLE 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

[...]

ARTICLE 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

[...]

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

ARTICLE 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be

imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

196. These provisions allow us to define the scope of the "measures of protection" referred to in Article 19 of the American Convention, from different angles. Among them, we should emphasize those that refer to non-discrimination, special assistance for children deprived of their family environment, the guarantee of survival and development of the child, the right to an adequate standard of living, and the social rehabilitation of all children who are abandoned or exploited. It is clear to the Court that the acts perpetrated against the victims in this case, in which State agents were involved, violate these provisions.

197. The file contains documentary references to the fact that one of the three children in this case, Jovito Josué Juárez Cifuentes, was registered in the "criminal archives" of the Identification Office of the National Police Force. In this respect, the Court considers that it is relevant to stress that, if the State had elements to believe that "street children" are affected by factors that may induce them to commit unlawful acts, or has elements to conclude that they have committed such acts, in

specific cases, it should increase measures to prevent crimes[37] and recurrence. When the State apparatus has to intervene in offenses committed by minors, it should make substantial efforts to guarantee their rehabilitation in order to "allow them to play a constructive and productive role in society"[38]. In this case, it is clear that the State seriously infringed these directives.

198. In view of the foregoing, the Court concludes that the State violated Article 19 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of the minors, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Aman Villagrán Morales.

XII
Violation of Articles 25, 8 and 1(1)

(RIGHTS TO JUDICIAL PROTECTION AND A FAIR TRIAL)

199. In the application, the Commission stated that Guatemala had violated Articles 25, 8 and 1.1 of the Convention to the detriment of Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes, Federico Clemente Figueroa Túnchez and Anstraum Aman Villagrán Morales, 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". In the Commission's opinion, the State did not comply with these obligations or respect these rights in the instant case.

37 *Cfr. United Nations directives for the prevention of juvenile delinquency (Riad Directives).* Adopted and proclaimed by the General Assembly of the United Nations in its resolution 45/112 of 4 December 1990, Chapter III, para. 9.

38 *Cf. United Nations Minimum rules for the administration of justice for minors ("Beijing Rules").* Adopted by the General Assembly of the United Nations in its resolution 40/33, of 29 November 1985, Fifth Part, Treatment in prison establishments, para. 26.1

200. First, with regard to the violation of Article 25, the Commission believes that "[t]he judicial investigation was conducted in an arbitrary manner", and observes that "the judicial authorities in charge of the case omitted or refused to perform many decisive and obvious investigative tasks", in both the first and subsequent instances.

201. Second, regarding Article 8.1, the Commission considered that "the [Third] Sentencing Court failed to take into account or evaluate a significant part of the evidence that had been submitted to [it], or refused to do so, [...] causing a substantial and additional denial of justice".

202. The Commission stated that "[i]t is not the function of the supervisory bodies of the inter-American human rights system to offer a sort of judicial appeal instance or a place for judicial review of judgments delivered by national courts", rather "[t]he work of the Court is to determine if the procedures have been fair when taken as a whole, including the way evidence has been obtained". In this case, the Commission found that they had not been.

203. Third, and with regard to both Article 25 and Article 8 of the Convention, the Commission stated that the court totally rejected the statements of Matilde Reyna Morales García, Ana María Contreras and Rosa Carlota Sandoval, based exclusively on the fact that they were the mothers of three of the victims. In this respect, the Commission concluded that "[a]n interpretation of the law such as the one applied in this case, which prevents the courts *per se* from accepting and evaluating the testimony of members of the victims' families, is a violation by the State of the right of such persons to be heard and have access to justice".

204. When referring to the violation of Article 1.1, the Commission considered "[t]hat as a result of the judgments in the domestic judicial proceedings, the members of the victims' families were denied their right to know and understand the truth [... and] the rights that they endeavored to revindicate through the courts". Furthermore, it added that "due to defects in the [... proceeding], no responsibility has been determined with regard to the criminal charges" and "the families of the victims continue to be denied their right to receive civil compensation" in accordance with Articles 25 and 8 of the Convention.

205. When answering the application, the State alleged that the Commission exceeded the framework of the American Convention when it referred the case to the Court because the Supreme Court, which is the paramount judicial authority of Guatemala, had issued a decision, the merits of which could not be discussed. In this respect, it affirmed that "[b]y virtue of its obligation to accept court judgments, the State does not have the legal faculty to enter into discussions on the merits of the matter [because] this would constitute interference of one power of the State in another" (*supra*, para. 49).

206. On the same point, the State stressed that "[a] negative result to a procedural claim is not an act that implies the violation of the rights guaranteed [by] the Convention" and that "[p]rocedural principles of immediacy in collecting evidence ensure that the domestic jurisdictions are able to evaluate [such evidence] directly".

207. Furthermore, it alleged that the rule of exhaustion of domestic remedies had not been complied with since "the constitutional procedure of amparo remained, should the interested parties consider it in order" and "[n]o lawsuit has been initiated under civil law [...]".

208. In its final arguments, the Commission replied to the State that "under international law, judicial decisions may not be excluded" from the sphere of international responsibility.

209. With regard to Articles 25 and 8, the Commission stated that the four youths who were abducted were not allowed to exercise their right to seek prompt and effective judicial protection by filing a petition for habeas corpus and, as they were in the hands of State agents, it was the State that was obliged to create the conditions necessary to ensure that this remedy could produce effective results. Furthermore, the judicial remedies used in this case proved to be illusory for the purpose of providing the victims' families with an effective judicial protection of their rights. In this respect, the Commission called attention to the fact that, during the 1990s, witnesses or parties to proceedings related to human rights cases – in particular, those involving State agents – frequently became the object of violations themselves.

210. Regarding the performance of the Third Criminal Sentencing Court, the Commission recalled the opinion of the expert witness, Alberto Bovino, according to which the court acted arbitrarily when interpreting and applying with partiality the relevant articles of the Criminal Procedural Code, specifically, when it rejected all the evidence submitted to it which indicated that the defendants were guilty. To justify this affirmation, the Commission quoted Articles 654 and 655 of the Code.

211. The Commission then examined the judicial proceeding as an organic whole and concluded that it was conducted in a way that did not satisfy the standards established in domestic legislation and, thus, was arbitrary. In this respect, the Commission indicated that in order to consider if a proceeding has been conducted fairly, various elements must be analyzed, such as the way in which evidence was offered and produced, the opportunity that the victim has to take part in the proceeding, and the failure of the judge to justify his decisions when he makes pronouncements on evidence.

212. The Commission also recalled that, for a time, the State had maintained that the authorities were investigating to discover the "real" perpetrators; however, in reality, no other person has been prosecuted in relation to this case. It also indicated that, in the instant case, the victims have not been able to have access to civil compensation; moreover, both the right to a proceeding to identify and punish those responsible for the human rights violations and the right to civil proceedings for reparations have been frustrated.

213. Regarding Article 1.1, in its final arguments, the Commission stressed that Guatemala was responsible for the acts committed by State agents when they arbitrarily and unlawfully deprived the five victims of their right to life and, four of them of the right to liberty and humane treatment also. According to the Commission, the State was also responsible for failing to take adequate measures of protection, particularly for the three minors involved in the case.

214. In its final arguments, the State again emphasized that "[t]he basic intention of the Commission [was] to review the results of the

Guatemalan judicial proceedings"; that, indeed, "[t]he expert witness Alberto Bovino [... had] criticized the application of Guatemalan domestic law in the proceedings conducted on the violent death of [the five youths]"; that, in reality, within the national Judiciary "there was a reasonable doubt about some of the evidence produced" and that one of the "characteristics of criminal law [... is] the rigor of the evidence, as it can lead to a limitation of the right to liberty".

215. In these arguments, the State indicated that in Guatemala, as of 1996, "a whole process to create a new National Civil Police Force commenced [that ...] will culminate in 2000". It affirmed also that "a case of this nature [would] be very different in the light of the current situation". In view of the foregoing, the State requested that "the application [should] be dismissed".

216. Article 25 of the Convention establishes that

> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
>
> 2. The States Parties undertake:
>
> a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
>
> b. to develop the possibilities of judicial remedy; and
>
> c. to ensure that the competent authorities shall enforce such remedies when granted.

217. And the relevant part of Article 8 of the Convention stipulates:

> 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
>
> [...]

218. Article 1(1) of the American Convention provides that

> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

219. Firstly, the Court observes that Article 62 of the American Convention grants it competence to hear any case submitted to its jurisdiction concerning the interpretation and application of the provisions of the Convention. Therefore, it is its function to resolve, as in this case, whether the alleged violations of Articles 25 and 8 of the American Convention, in relation to Article 1.1, have occurred.

220. It is a basic principle of law on the international responsibility of the State, embodied in international human rights law, that every State is internationally responsible for any or all act or omission of any of its powers or organs in violation of internationally enshrined rights. Article 1.1 of the American Convention is of fundamental importance in this regard.

Regarding acts or omissions of domestic judicial bodies, Articles 25 and 8 of the Convention define the scope of the above-mentioned principle of generation of responsibility for the acts of all State organs.

221. From the foregoing, it is clear that Guatemala may not excuse itself from responsibility for the acts or omissions of its judicial authori-

ties, since this attitude is contrary to the provisions of Article 1.1 related to Articles 25 and 8 of the Convention.

222. In order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine the respective domestic proceedings. In this respect, the European Court has indicated that the proceedings should be considered as a whole, including the decisions of the courts of appeal, and that the function of the international court is to determine if all the proceedings, and the way in which the evidence was produced, were fair[39].

223. As it has indicated on other occasions[40], the Court has attributions, not to investigate and punish individual conduct, but to establish the international responsibility of States as a result of human rights violations. It is the duty of this Court to determine the violations of the rights enshrined in the Convention to the detriment of Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes, Federico Clemente Figueroa Túnchez and Anstraum Aman Villagrán Morales, or their next of kin.

224. To this end, in view of the characteristics of the case and the nature of the violations alleged by the Commission, the Court must examine all the domestic judicial proceedings in order to obtain an integrated vision of these acts and establish whether or not it is evident that they violated the norms on the obligation to investigate, and the right to be heard and to an effective recourse, which arise from Articles 1.1, 8 and 25 of the Convention.

225. Having thus defined the scope of its jurisdiction, the Court must indicate that it is clear from Article 1.1 that the State is obliged to investi-

39 *Cf. inter alia, Eur. Court H. R., Edward v. the United Kingdom judgment of 16 December 1992, Series A no. 247-B*, pp. 34-35, § 34 and *Eur. Court H. R., Vidal v. Belgium judgment of 22 April 1992, Series A no. 235-B*, pp. 32-33, § 33.

40 *Cf. Castillo Petruzzi et al. case, supra* note 13, para. 90; *Paniagua Morales et al.; case, supra* note 13, para. 71; *Suárez Rosero case, supra* note 25, para. 37 and *Velásquez Rodríguez case, supra* note 12, para. 134.

gate and punish any violation of the rights embodied in the Convention in order to guarantee such rights; and, in the circumstances of the instant case, this obligation is related to the rights to be heard by the courts and to a prompt and effective recourse, established in Articles 8 and 25 of the Convention.

226. This Court has clearly indicated that the obligation to investigated should be undertaken

> in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government[41].

227. Moreover, it is evident from Article 8 of the Convention that the victims of human rights violations or their next of kin should have substantial possibilities of being heard and acting in the respective proceedings, both in order to clarify the facts and punish those responsible, and to seek due reparation.

228. If we confront the facts in this case with the foregoing, we can observe that Guatemala conducted various judicial proceedings on the facts. However, it is clear that those responsible have not been punished, because they have not been identified or penalized by judicial decisions that have been executed. This consideration alone is enough to conclude that the State has violated Article 1.1 of the Convention, since it has not punished the perpetrators of the corresponding crimes. In this respect, there is no point in discussing whether the defendants in the domestic proceedings should be acquitted or not. What is important is that, independently of whether or not they were the perpetrators of the unlawful acts, the State should have identified and punished those who were responsible, and it did not do so.

41 *Godínez Cruz case, supra* note 12, para. 188 and *Velásquez Rodríguez case, supra* note 12, para. 177.

229. In the file there are many records which reveal that the judicial authorities who conducted the proceedings deriving from the abduction, torture and homicide of Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Federico Clemente Figueroa Túnchez, and the homicide of Anstraum Aman Villagrán Morales, failed in their duty to encourage an adequate investigation and judicial proceeding that would lead to the punishment of those responsible, and affected the right of the victims' next of kin[42] to be heard and to have their accusations discussed by an independent and impartial tribunal.

230. In this respect, the Court observes that the domestic judicial proceedings revealed two types of serious defect: first, investigation of the crimes of abduction and torture was completely omitted (*supra,* para. 66.b). Second, evidence that could have been very important for the due clarification of the homicides was not ordered, practiced or evaluated (*supra*, paras. 104-121).

231. With regard to the elucidation of the murders, it should be emphasized that, for example, the autopsies were incomplete and were performed inadequately from a technical standpoint; the fingerprints of the corpses were not taken or preserved, and they were not photographed full length; personal identification by witnesses of one of those accused of the murders was not ordered; alleged eye witnesses of the events, mentioned by other witnesses, were not summoned to make statements; no dental expert appraisal was ordered to determine if one of the defendants had a particular characteristic that was described by various witnesses; there was no reconstruction of the facts relating to the murder of Anstraum Aman Villagrán Morales; the homes of the defendants were not searched; there was no investigation to see if the records for when the alleged murderers went on and off duty and the records for handing in and taking out their officially issued arms from the armories had been falsified; there was no investigation about the vehicle used by the abductors of the four youths whose corpses were found in the San Nicolás

42 *Cf. Loayza Tamayo case.* Reparations (Article 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 92.

Woods although one witness provided the license plate number; and there was no investigation of the threats that some witnesses suffered and that obviously hampered investigations.

232. Regarding the evaluation of the evidence, the domestic courts rejected certain important testimonies as irrelevant or totally or partially disqualified them, applying criteria that should be contested. Thus, for example, the mothers of three of the victims were disqualified as witnesses owing to their relationship to the victims. The witness who stated that she had been submitted to abduction and ill-treatment similar to those suffered by the four youths in this case, was rejected because she had been a victim of the very facts that she described. Several testimonies were declared to be "irrelevant" without any explanation, although they provided revealing elements about the way in which the facts occurred and contributed to identify those responsible. The report resulting from the police investigation ordered by the judges themselves, to support the judicial proceedings, was rejected as not being "sufficient evidence". The testimonial statements of the authors of these reports were also rejected because, neither "directly nor indirectly do they indicate the defendants to be [the perpetrators]" – it is worth clarifying that both the conclusions of these reports and the statements of the police investigators who prepared them before the domestic judicial authorities and before this Court, firmly asserted that the perpetrators of the murders had been the two police agents identified by the witnesses. The statement of another witness was ignored because he was a person who worked for the welfare of 'street children', which revealed an alleged direct interest in the case. The lack of precision in which certain witnesses incurred – whose statements were taken many months after the events had occurred – on the circumstances at the time when the events occurred, were used as grounds for the total rejection of these statements, although they provided revealing information on other aspects of the events under investigation that was consistent and concurring. With regard to the ballistic test, according to which the bullet found near the body of Anstraum Aman Villagrán Morales had been fired by an arm assigned to one of the accused policemen, the domestic judges reasoned that this did not prove that the arm had been used by the defendant. Confronted by two divergent official communications from the police force about whether or not this same defendant

was on duty when the homicide of the youth Villagrán Morales was committed, the said judges abided by the one that was most favorable to the interests of the defense of the accused policemen, without any explanation and without inquiring into the reasons for the contradiction.

233. If we consider how those judges proceeded as a whole, it is evident that they fragmented the probative material and then endeavored to weaken the significance of each and every one of the elements that proved the responsibility of the defendants, item by item. This contravenes the principles of evaluating evidence, according to which, the evidence must be evaluated as a whole, in other words, taking into accounts mutual relationships and the way in which some evidence supports or does not support other evidence. Consequently, the State failed to comply with the obligation to carry out an effective and adequate investigation of the corresponding facts, in violation of Article 1.1 of the American Convention, in relation to its Article 8.

234. Regarding the violation of Article 1.1, in relation to Article 25 of the American Convention, this Court has indicated on various occasions that everyone has the right to a simple and prompt recourse, or any other effective recourse, to a competent court or judge for protection against acts that violate his fundamental rights, "which constitutes one of the basic pillars not only of the American Convention, but also of the very rule of law in a democratic society in the sense of the Convention[43]".

235. It has also stated that

> the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that

43 *Cf. Cesti Hurtado case.* Judgment of September 29, 1999. Series C No. 56, para. 121; *Castillo Petruzzi et al. case, supra* note 13, para. 184; *Paniagua Morales et al. case, supra* note 13, para. 164; *Blake case, supra* note 16, para. 102; *Suárez Rosero case, supra* note 25, para. 65 and *Castillo Páez case, supra* note 15, para. 82.

> it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress[44].

236. In this specific case, the Court considered that it had been proved that Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Federico Clemente Figueroa Túnchez were abducted by State agents on June 15, 1990 (*supra,* para. 80). They remained clandestinely detained for several hours until they were murdered on the following day. Based on the foregoing, the Court concludes that these victims were prevented from exercising, either themselves or through their representatives, their right to an effective recourse before a competent domestic instance, embodies in Article 25 of the Convention, since they were detained unlawfully and clandestinely.

237. This Court has established that "Article 25 is closely linked to the general obligation in Article 1.1 of the American Convention, in that it assigns duties of protection to the States Parties through their domestic legislation"[45], from which it is clear that the State has the obligation to design and embody in legislation an effective recourse, and also to ensure the due application of the said recourse by its judicial authorities.

238. In view of the foregoing, the Court concludes that the State violated Articles 8.1 and 25 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes, Federico Clemente Figueroa Túnchez, Anstraum Aman Villagrán Morales and their immediate next of kin and that it also violated Article 1.1 of the American Convention as regards the obligation to investigate.

44 *Cesti Hurtado case, supra* note 43, para. 125; *Castillo Petruzzi et al. case, supra* note 13, para 185 and *Judicial Guarantees in States of Emergency* (Articles 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

45 *Cesti Hurtado case, supra* note 43, para. 121; *Castillo Petruzzi et al. case, supra* note 13, para. 184; *Paniagua Morales et al. case, supra* note 13, para. 164; *Blake case, supra* note 16, para. 102; *Suárez Rosero case, supra* note 25, para. 65 and *Castillo Páez case, supra* note 15, para. 83.

XIII
VIOLATION OF ARTICLES 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

239. In its application, the Commission alleged that the State had also violated Articles 1, 6 and 8 of the Convention against Torture, which "define more precisely and extensively the mechanisms of protection established in Article 5 of the American Convention", to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes. Furthermore, it added that, in violation of the provisions of the Convention against Torture, "an investigation was never initiated, nor were the perpetrators [of this crime] prosecuted or punished" although the State was fully and opportunely aware of the events through "[c]ompetent [national] authorities" who "examined and recovered the bodies from the site in the San Nicolás Woods"; and moreover, although "the Office of the Attorney-General had indicated that it was a relevant fact in the context of the [domestic] judicial investigation" for homicide.

240. Just as the State did not make any reference to the violation of Article 5 of the American Convention in its answer to the application, neither did it allude to the violation of Articles 1, 6 and 8 of the Convention against Torture, nor did it offer or contribute any type of evidence that would show that the corresponding complaints had been effectively investigated (*supra*, paras. 67 and 68).

241. In its final arguments, the Commission again emphasized the lack of an investigation into the torture and underscored that no measures had been taken that were adequate to the nature of the evidence that had been collected. Specifically, it mentioned that "complete autopsies" had not been performed, although this was "a faculty of the state"; that there were no "full-length photographs of the bodies" and that, although some photographs show clear signs of physical violence, this was not recorded or described in the corresponding reports. Likewise, the Commission believed that, in the context of the investigations into

the five homicides, the identification of the two police agents by witnesses, together with the ballistic tests, should have allowed the domestic instance to conclude with certainty that police officer Néstor Fonseca López and former police officer Samuel Valdez Zúñiga were responsible for these deaths and by a logical assumption, for the acts of torture against Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes.

242. Furthermore, the Commission cited various provisions that establish the obligation to investigate, prosecute and punish those responsible for the crime of torture, including: Articles 7 and 12 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[46]; Articles 9 and 10 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[47]; and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[48].

243. In its final arguments, the State did not refer to the issue (*supra*, paras. 67 and 68).

244. Article 1 of the Convention against Torture stipulates:

> The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

46 Adopted and open to signature, ratification and adhesion by the General Assembly of the United Nations in its resolution 39/46, of 10 December 1984; entered into force on June 26, 1987. Guatemala is a party to this Convention since February 1990.

47 Adopted by the General Assembly of the United Nations in its resolution 3452 (XXX), of 9 December 1975.

48 Adopted by the General Assembly of the United Nations in its resolution 43/173, of 9 December 1988.

245. Article 6 of the Convention against Torture establishes

> In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.
>
> The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.
>
> The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

246. Lastly, Article 8 of the Convention against Torture adds:

> The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.
>
> Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.
>
> After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

247. Firstly, the Court considers that it should refer to its own competence to interpret and apply the Convention against Torture and to declare the responsibility of a State that has agreed to be obliged by this Convention and has also accepted the jurisdiction of the Inter-American

Court of Human Rights. As some member countries of the Organization of American States were still not parties to the American Convention and had not accepted the jurisdiction of the Court, the drafters of the Convention against Torture decided not to include in it an article that made express and exclusive reference to the Inter-American Court in order not to indirectly bind them to the former Convention and the aforementioned jurisdictional organ[49].

248. The possibility of ratifying or adhering to the Convention against Torture was opened to the greatest number of States by means of a general clause. What was considered important was to attribute the competence for applying the Convention against Torture to an international organ, whether this was a commission, a committee, an existing tribunal or one that would be created in the future. In the instant case, referred to the Court by the Inter-American Commission, it corresponds to this Court to exercise the said jurisdiction. Guatemala accepted the jurisdiction of this Court on March 9, 1987, and ratified the Convention against Torture on January 29, 1987; this Convention entered into force on February 28, 1987.

249. Furthermore, this Court has already had the opportunity to apply the Convention against Torture and to declare state responsibility in virtue of its violation[50].

250. It is clear from the documents, testimonies and expert witness reports in the file, that 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, neither did they investigate it in the practice, although a great deal of concurring evidence was collected on the cruel treatment and torture of the victims when the homicides were investigated.

49 Organization of American States, Permanent Council, Report of the Committee on Juridical and Political Affairs on the Draft Convention Defining Torture as an International Crime, OEA/Ser. G CP/doc. 1524/84, 18 October 1984, Original: Spanish, Appendix VIII, p. 61 and Appendix IX, p. 71.

50 *Cf. Paniagua Morales et al. case, supra* note 13, para. 136.

251. Article 8 of the Convention against Torture expressly embodies the State's obligation to proceed *de oficio* and immediately in cases such as this one, and the Court has declared that "in proceedings on human rights violations, the State's defense cannot rest on the impossibility of the plaintiff to obtain evidence that, in many cases, cannot be obtained without the State's cooperation"[51]. However, the State did not act in accordance with these provisions.

252. Therefore, the Court concludes that the State violated Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes.

XIV
OPERATIVE PARAGRAPHS

253. Therefore,

THE COURT

DECIDES

unanimously,

1. to declare that the State violated Article 7 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes;

2. to declare that the State violated Article 4 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa

51 *Gangaram Panday case, supra* note 13, para. 49; *Godínez Cruz case, supra* note 12, para. 141 and *Velásquez Rodríguez case, supra* note 12, para. 135.

Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Aman Villagrán Morales;

3. to declare that the State violated Article 5.1 and 5.2 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Jovito Josué Juárez Cifuentes and Julio Roberto Caal Sandoval;

4. to declare that the State violated Article 5.2 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of the mothers of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Jovito Josué Juárez Cifuentes and Julio Roberto Caal Sandoval, Ana María Contreras, Matilde Reyna Morales García, Rosa Carlota Sandoval, Margarita Sandoval Urbina, Marta Isabel Túnchez Palencia and Noemí Cifuentes;

5. to declare that the State violated Article 19 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Aman Villagrán Morales;

6. to declare that the State violated Articles 8.1 and 25 of the American Convention on Human Rights, in relation to its Article 1.1, to the detriment of Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes, Federico Clemente Figueroa Túnchez and Anstraum Aman Villagrán Morales and their immediate next of kin;

7. to declare that the State violated Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes;

8. to declare that the State violated Article 1.1 of the American Convention on Human Rights regarding the obligation to investigate, that the State should conduct a real and effective investigation to determine the persons responsible for the human rights violations referred to in this judgment and eventually punish them; and

9. to open the phase of reparations and costs and authorize the President to adopt the corresponding procedural measures.

Judges Cançado Trindade and Abreu-Burelli advised the Court of their Joint Concurring Opinion, which accompanies this judgment.

Done in Spanish and English, the Spanish text being authentic, at San Jose, Costa Rica, this nineteenth day of November, 1999.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary