



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW

“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

- Section:** Globalization and Human Rights – Inter-American Court of Human Rights
- Title:** Protecting “At-Risk Children”: The Pioneering and Paradigmatic “Street Children” Case (*Villagrán Morales et al. v. Guatemala*) before the Inter-American Court of Human Rights – Part I
- Author:** SABRINA VANNUCCINI
- Judgment:** IACtHR (Judgment) 19 November 1999, *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala (Merits)*, Series C No. 63.
- Conventional Parameters:** Article 1(1) ACHR; Article 4 ACHR; Article 5(1), (2) ACHR; Article 7 ACHR; Article 8(1) ACHR; Article 19 ACHR; Article 25 ACHR, Article 1 IACPPT; Article 6 IACPPT; Article 8 IACPPT.
- Key Words:** Street children; obligation to respect rights; right to life; right to humane treatment; right to personal liberty; right to a fair trial; rights of the child; right to judicial protection; obligation to prevent and punish torture; obligation to take effective measures to prevent and punish torture; right to impartial examination, investigation and criminal process of a case.

“In the face of the imperative of the protection of human life, and of the concerns and thoughts aroused by death, it is very difficult to separate dogmatically the considerations of juridical order from those of moral order: we are before an order of superior values, – substratum of legal norms, – which help us to seek out the meaning of the existence and of the destiny of each human being”.

(Judges A.A. Cançado Trindade and A. Abreu-Burelli)



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

1. Who Are “Street Children”? A Concern of Definition

Millions of children throughout the world live on the street. In 1989, the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) estimated the number of street children worldwide to be about 100 million. Fourteen years later UNICEF reported: “The latest estimates put the numbers of these children as high as 100 million”. And even more recently: “The exact number of street children is impossible to quantify, but the figure almost certainly runs into tens of millions across the world. It is likely that the numbers are increasing as the global population grows and as urbanization continues apace”.

A major difficulty in estimating street children population is that definitions of the term “street children” are contested. This term is problematic as it can be employed as a stigmatizing label. Well then, who are “street children”? A commonly accepted definition of street children does not exist, though countless attempts to establish one have been made. Because children create different bonds with the street, no one definition can catch all the experiences of street children worldwide. The reasons for children migrating to street life are individual and complex: poverty, neglect, physical, emotional and sexual abuse, abandonment, school failure, disease, disability, parental death, peer pressure, hope for a better future, regional and country-specific factors.

The term “street children” was used for the first time in 1851 by Henry Mayhew when writing *“London Labour and the London Poor”*. Street children were referred to as homeless, abandoned or runaways. Nevertheless, the term in question came into general use only in 1979 on the occasion of the International Year of the Child, a United Nations (UN) initiative that marked the 20th anniversary of the Declaration of the Rights of the Child. The UN defines street children as “boys and girls for whom the street has become their home and/or source of livelihood and who are inadequately protected or supervised by responsible adults”. The most habitually used definition derives from UNICEF, which distinguishes two groups: 1) children on the street (“home based” children who spend much of the day on the street but have some family support and usually return home at night); 2) children of the street (“street based” children who spend most days and nights on the street and are functionally without family support).

Up till now, this phenomenon, commonly considered as a “global problem of growing magnitude”, is especially acute in the developing countries of Latin America, where poverty is pervasive and extreme. Street children are among the most physically visible of all children, living and working on the roads and public squares of cities. Nevertheless, paradoxically, they are also among the most invisible and thus hardest children to reach with essential services, and the most



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

difficult to defend. These children are among the most deprived; they usually have no access to health care or education, and some of them have been victims of violence even before taking to the street. Street children are seen by many as worthless. As one might expect, these children suffer profoundly and face enormous economic, political and social challenges. In addition to economic poverty, which often leads to malnutrition and even starvation, in several cases they are exploited and victimized by their own governments, which use violent and punitive measures to remove them: those who are entrusted to defend them become the perpetrators of crimes against them. So, they often find themselves in conflict with the police and other authorities.

Street children are generally minors in risky situations. According to Judge García Ramírez, a child at risk is one who is in a situation which involves no legally defined crime: the conduct of the child (by action or omission) has not been legally defined as criminal as such, but the child is extremely vulnerable, for any number of reasons (material and intellectual impoverishment, family breakdown, misery, etc.) and this abnormal situation carries great risks, including loss of life.

In the past decade or more, advocates have relied on international human rights law and treaties to try to force governments to protect street children and provide for their welfare. One such treaty is the American Convention on Human Rights (ACHR).

The so-called “*Street Children*” case (*Villagrán Morales et al. v. Guatemala*), the landmark 1999 decision by the Inter-American Court of Human Rights (IACtHR, Court), has been the very first case in the history of the IACtHR where the victims of human rights violations were children, and in which the Court referred to the “measures of protection” laid down in Article 19 (Rights of the Child) ACHR, a specific provision for the protection of children without parallel in the European Convention for the Protection of Human Rights and Fundamental Liberties (ECHR), the African Charter on Human and People’s Rights and the UN International Covenant on Civil and Political Rights (ICCPR). This case has also been the first one of the kind in which the cause of the children abandoned in the streets was brought before an international human rights tribunal.

2. Guatemalan Background Context of the “*Street Children*” Case

The events of the instant case took place in the context of the 36-year Guatemalan civil war, six and a half years before the signing of the Peace Accords, during which the death toll has been estimated at 200.000. In 1990, some street children were casualties of displacement and family



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

fragmentation caused by the army counter-insurgency campaigns of the early 1980s, whilst others were refugees escaping political violence in neighbouring El Salvador and Nicaragua.

The background to the case *Villagrán Morales et al. v. Guatemala* stood out for gross and systematic human rights violations in general, and for the atmosphere of extreme societal violence that is left deep-rooted in Central America’s most populous country, combined with an institutionalised culture of impunity for security forces.

The State of Guatemala has signed of the UN Convention on the Rights of the Child (CRC) on 26 January 1990, by which it has pledged to safeguard children from harm, abuse, exploitation, violence and neglect. Moreover, Article 51 of the Guatemalan Constitution (*Constitución Política de la Republica de Guatemala*), in force since 14 January 1986, requires the State to protect the physical, mental and moral health of minors, and guarantee their rights to food, health, education, security and social welfare

(“Artículo 51 (Protección a menores y ancianos). El Estado protegerá la salud física, mental y moral de los menores de edad y de los ancianos. Les garantizará su derecho a la alimentación, salud, educación y seguridad y previsión social”).

Yet the problem of street children lasts. In the late 1980s and early 1990s, violence, murder and torture of street children were usual, but these practices persist to some extent up to today.

Shocking statistics prove that 408 children were killed in the first ten months of 2002, which is a 27% increase from 2001. Some were killed in gangs, others by security forces, and others in drive-by shootings. 150-200 boys and 50 girls were sent to jail every month (Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG) 2005 report). 80% of gun related deaths were of 15 to 17 year olds (ODHAG 2005 report). 90% of children on Guatemala's streets were victims of some form of sexual abuse. In the years 2008-2009, a child was abandoned in Guatemala City every four days; most were babies (Joint Council on International Children's Services (JCICS), February 2009). More than 10 children died every week as a result of violence, 52% of these from gunshot wounds (ODHAG, October 2009).

Even if, at the time of the events of the present case, there was not any official statistics, Amnesty International (AI) estimated numbers of street children in Guatemala City in 1990 as amounting to around 5000, aged five to eighteen. According to Human Rights Watch, “[s]ixty-five percent of Guatemala City's street children and youth [were] between the ages of ten and seventeen. Most of the rest [were] eighteen or older, with only about 3 percent younger than ten”. Most of



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

them in the country lived in the downtown area of Guatemala City, and about 10% to 15% were immigrants from neighbouring Central American countries, especially Honduras and El Salvador.

Life on the street is frightful for Guatemalan street children. In general, they have little or no education and their health is poor. 63% of children complete primary school education; over 95% enrol, but there are high drop-out rates due to poverty or to the fact that these children have to work; 29% of children aged five to fourteen are involved in child labour and are being sent out to work in difficult and dangerous conditions (UN). They suffer from conditions such as malnutrition, anaemia, chronic and acute respiratory infections, gastro-intestinal diseases, dental caries and sexually transmitted diseases. Many of them take drugs, sniff glue or solvents, drink alcohol and smoke.

Street children in Guatemala cope with beatings, thefts and sexual assaults, believed to be the work of “Death Squads” drawn from the security forces and private security guards to carry out “social cleansing”: the rising crime rate in the city, juvenile delinquency and vagrancy are attributed by the public and authorities to street children, and consequently seen as “excusing” severe policing measures against them.

In the so-called “*Street Children*” case, when the events occurred, the street children were the object of different types of persecution.

3. Factual Framework: Genesis of the “*Street Children*” Case

The alleged victims, a group of friends named 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 Anstram Aman Villagrán Morales (17 years of age), were street children 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. This area was infamous for its high rate of crime and delinquency, and large number of street children.

During daylight hours of 15 June 1990, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes were approached by a pick-up truck and violently apprehended by armed men in civilian clothes (Samuel Rocaél Váldez Zúñiga and Néstor Fonseca López, identified as members of the National Police Force) descended



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

from the vehicle. They were held up at gunpoint before being handcuffed, beaten with pistols and taken away. The next day, on 16 June 1990, the tortured and mutilated bodies of Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes were found thrown in the San Nicolás Woods (*Bosques de San Nicolás*) in an isolated area of Mixco, a suburb of Guatemala City. The two youths had been in the power of their abductors for at least 10 hours.

The day after that, Henry Giovanni Contreras and Julio Roberto Caal Sandoval were likewise found in the same place. All of them had been shot multiple times through the head at close range. The abductors had kept the two youths for at least 21 hours.

Ten days later, on 25 June 1990, at approximately midnight, Ansträum Aman Villagrán Morales, a friend of the other victims, was approached by the same two policemen, in the same area where his friends had been kidnapped. They spoke with him alone, let him walk away into an alley, and then killed him by a gunshot in the back. He had just been threatened by Rosa Trinidad Morales Pérez – a kiosk woman known for both her hate and ill-treatment of street children (hurling hot coffee at them) and for her friendship with the policemen in question – making use of the words “you are going to turn up dead like your friends, the others”.

On 16 June 1990, the First Magistrate’s Court of Mixco (Department of Guatemala) ordered the opening of criminal proceedings based on the discovery of two corpses – subsequently identified as the bodies of the youths Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes – on the property of the San Nicolás Woods at 5.30 a.m. On 17 June 1990, the same court ordered the opening of the proceeding corresponding to the discovery of another two unidentified corpses – later identified as Henry Giovanni Contreras and Julio Roberto Caal Sandoval – at 2.00 p.m.

As the jurisdiction of the First Magistrate’s Court had been exhausted, the proceedings were transferred to the Trial Court of the Municipality of Mixco (Department of Guatemala) that, on 26 June 1990, 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. On the same day, the sitting Magistrate’s Court for Criminal Matters (Guatemala City) ordered the opening of criminal proceeding on the murder of Ansträum Aman Villagrán Morales, whose identity was unknown at the time. On the same day, the jurisdiction of this court having been exhausted, the proceedings were transferred to the Second Criminal Trial Court (Guatemala City) that, on 17 January 1991, sent an official communication to the Director General of the National Police Force, requesting him to investigate the violent death of Ansträum Aman Villagrán Morales.



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

The National Police Force instituted two separate investigations, that were later joined, and examined various persons, including mothers and relatives of four of the victims, two women who worked at the kiosk on the nights of the murders, and the street children who heard shots fired and saw the policemen run away from the place of the homicide of Anstram Aman Villagrán Morales. During the course of the investigation, key witnesses were threatened, two of them subsequently died (Rosa Caal Sandoval, mother of the victim Julio, apparently received threats and later died in a traffic accident, and Gustavo Adolfo Cóncaba Cisneros, alias ‘Toby’, a street child who had been an eye witness and who had identified one of the policemen involved, also died, apparently stabbed by another street child), and workers at Casa Alianza – the Latin American branch of New York-based NGO Covenant House, a Catholic agency, providing educative, rehabilitative programmes and legal aid to street children in Guatemala, Honduras, Mexico and Nicaragua, and specializing in the defence of children’s rights – were intimidated to the extent that three of the staff had to leave Guatemala.

Despite strong evidence to support the plaintiff’s case, including ballistics tests linking one policeman directly to the crime, the case had been subject to arbitrary consideration, judicial partiality and omission of vital evidence and investigation at every level of the Guatemalan judicial system. Once the Second Criminal Trial Court had concluded summary proceedings, the Supreme Court of Justice of Guatemala appointed the Third Criminal Sentencing Court (Guatemala City) to continue hearing the proceeding. In its decision of 26 December 1991, this court invalidated the testimonies of the mothers of three of the murdered boys because it judged them wanting in impartiality, and so “subject to total disqualification”. It also decided that the testimonies of seven witnesses and five National Police investigators were inadequate to demonstrate the guiltiness of the accused. The first instance judgment concluded by delivering an “acquittal” in favour of the defendants.

The Office of the Attorney General filed a remedy of appeal against the judgment as soon as it was notified. On 25 March 1992, the Fourth Chamber of the Guatemalan Court of Appeal stated that the Third Criminal Sentencing Court correctly left out the testimonies of the mothers of the victims. On 5 May 1992, the Office of the Attorney General presented an appeal for reversal of the judgment of the Fourth Chamber of the Guatemalan Court of Appeal before the Criminal Chamber of the Supreme Court of Justice of Guatemala. On 21 July 1993, the Supreme Court upheld the decision in favour of the defendants.

Under Article 44 ACHR,



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

“[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the [Organization of American States (OAS)], may lodge petitions with the [Inter-American Commission on Human Rights (IACommHR)] containing denunciations or complaints of violation of this Convention by a State Party”.

On 15 September 1994, four years after the events, having exhausted all domestic remedies, Casa Alianza in association with Centre for Justice and International Law (CEJIL) – a Washington D.C.-based organization that conducts international human rights litigation in Latin America and the Caribbean, and which is known for its original vocation as a defender of human rights before the IACommHR – decided to file a formal petition concerning this case to the IACommHR against the State of Guatemala, alleging the kidnapping, torture and death of four youths and the murder of a fifth one in 1990, in the City of Guatemala, by members of the security forces, and the State's failure to provide adequate judicial protection to the victims' families.

Having examined the admissibility and merits of the case, and both parties being unwilling to negotiate a friendly settlement, on 30 January 1997 the IACommHR (acting as petitioner on behalf of Casa Alianza and CEJIL/the victims) submitted the case to the IACtHR, in conformity with Article 50 ACHR

“1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report. 2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it. 3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit”)

and Article 51 ACHR

“1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration. 2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW

“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

the situation examined. 3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report”),

and Article 32 *et seq.* of the Rules of Procedure of the Court, in force at that time, to determine whether the State of Guatemala had violated the following Articles of the ACHR: 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). As two of the victims, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes, were minors when they were abducted, tortured and murdered, and Anstram Aman Villagrán Morales was a minor when he was killed, the IACommHR alleged that Guatemala had also violated Article 19 (Rights of the Child) ACHR. In its application, the IACommHR alleged that the State had also violated Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (IACPPT), which “define more precisely and extensively the mechanisms of protection established in Article 5 of the American Convention”.

The Court was competent to hear this case. Guatemala has been a State Party to the ACHR since 25 May 1978, accepted the contentious jurisdiction of the Court on 9 March 1987, and ratified the IACPPT on 29 January 1987.

On 6 May 1997, pursuant to Article 36 (Preliminary Objections) of the Rules of Procedure of the Court

(“1. Preliminary objections may only be filed in the brief answering the application. 2. The document setting out the preliminary objections shall set out the facts on which the objection is based, the legal arguments, and the conclusions and supporting documents, as well as any evidence which the party filing the objection may wish to produce. 3. The presentation of preliminary objections shall not cause the suspension of the proceedings on the merits, nor the respective time periods or terms. 4. Any parties to the case wishing to submit written briefs on the preliminary objections may do so within 30 days of receipt of the communication. 5. When the Court considers it indispensable, it may convene a special hearing on the preliminary objections, after which it shall rule on the objections. 6. The Court may decide on the preliminary objections and the merits of the case in a single judgment, under the principle of procedural economy”),

Guatemala presented a brief in which it raised a single preliminary objection entitled “Incompetence of the honourable Inter-American Court of Human Rights to hear the instant case” [capital letters in the original]. The State cited its own Constitution, which renders that Guatemalan



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

Justice Tribunals’ judgments, which have the authority of a final judgment, may only be subject to judicial review by the Guatemalan Supreme Court of Justice and the other competent domestic courts, and that no other authority may intervene in the administration of justice in Guatemala without illegally infringing on Guatemala's sovereignty

(“Artículo 203 (Independencia del Organismo Judicial y potestad de juzgar). [...] La función jurisdiccional se ejerce, con exclusividad absoluta, por la Corte Suprema de Justicia y por los demás tribunales que la ley establezca. Ninguna otra autoridad podrá intervenir en la administración de justicia”).

On 11 September 1997, the IACtHR delivered judgment on preliminary objections in which it considered these objections as “a question that concerns the merits of the case”. It found that the petition submitted by the IACommHR did not seek to review the judgment of the Supreme Court of Justice of Guatemala, but sought to have the State declared in violation of several precepts of the ACHR through the death of the five street children, which the IACommHR imputed to members of the National Police Force of that State, and therefore declared responsible (see IACtHR (Judgment) 11 September 1997, Series C No. 32, *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, para. 18). The IACtHR resolved unanimously to dismiss as inadmissible the preliminary objection brought by the State of Guatemala and to continue to examine the case.

On 19 November 1999, over nine years after the actual events, in the *Villagrán Morales et al. v. Guatemala* case, the IACtHR rendered a landmark decision in which it accepted the arguments on the merits submitted by the IACommHR and condemned the State of Guatemala on all counts, that is to say violation of all the provisions mentioned in the petition.

4. Violation of Article 7 (Right to Personal Liberty) ACHR

Firstly, the IACtHR declared its opinion on the alleged encroachment on the right to personal liberty enshrined on Article 7 (Right to Personal Liberty) ACHR, which guarantees to every person the right to personal liberty and security, and provides in the relevant part that 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”.

This provision also explicitly prohibits arbitrary arrest or imprisonment.



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

Article 6 of the Guatemalan Constitution establishes that a person may only be deprived of his liberty “under an order issued according to the law by a competent judicial authority” or because he is caught *in flagranti* while committing a crime or offence

(“Artículo 6 (Detención Legal). Ninguna persona puede ser detenida o presa, sino por causa de delito o falta y en virtud de orden librada con apego a la ley por autoridad judicial competente. Se exceptúan los casos de flagrante delito o falta. Los detenidos deberán ser puestos a disposición de la autoridad judicial competente en un plazo que no exceda de seis horas, y no podrán quedar sujetos a ninguna otra autoridad”).

Neither of these two grounds was present in the so-called “*Street Children*” case.

Besides, the murdered boys had not been “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”. The facts of this case demonstrate that it was not complied with this basic procedural regulation.

Neither the material nor the formal aspect of the legal rules pertaining to detention had been observed in the detention of the four youths.

The IACtHR referred to the reasoning of the European Court of Human Rights (ECtHR) about the particular relevance of the promptness of judicial control of arrests for the prevention of arbitrary arrests: prompt judicial intervention allows the detection and prevention of menaces against life or grave ill-treatment that infringe essential guarantees enshrined in the ECHR (see ECtHR (Judgment) 25 May 1998, Reports of Judgments and Decisions 1998-III, p. 1185, *Kurt v. Turkey*, paras. 123-124; ECtHR (Judgment) 18 December 1996, Reports of Judgments and Decisions 1996-VI p. 2282, *Aksoy v. Turkey*, para. 76; ECtHR (Judgment) 29 November 1988, Series A no. 145-B, p. 32, *Brogan and Others*, para. 58). “*The protection of both the physical liberty of the individual and his personal safety are in play, in 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*” (para 135). The ECtHR had also remarked that the failure to acknowledge the arrest of an individual is a full negation of these guarantees and a very severe infringement of the disposition in question.

Therefore, the IACtHR concluded that the State had violated Article 7 ACHR, in relation to Article 1(1) (Obligation to Respect Rights) ACHR



“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

(“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, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition”),

to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes.

5. Violation of Article 4 (Right to Life) ACHR

Article 4 (Right to Life) ACHR enshrines the most fundamental of all human rights, i.e. the right to life. The paragraph 1 of this provision 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”.

In the instant case, the Court reiterated what has been declared time and time again in academic legal theory and in jurisprudence: “*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*” (para. 144). It is also undisputed that this right belongs to domain of *jus cogens* in international human rights law, and that it is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation.

However, the universal acknowledgement of the paramount importance of the right to life has principally referred to the traditional “negative” aspects of this right, that is to say the right of anyone not to be arbitrarily killed and the obligation on the State not to kill anybody.

The IACtHR went further, through a judicial interpretation of the “positive” aspects of the right to life, stressing “*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 instruments, that devolve to the State the obligation to adopt special measures of protection and assistance for the children within its jurisdiction*” (para. 146). In other words, the “negative” right of a person not to be arbitrarily deprived of his/her life turns into a State’s “positive” obligation to protect and preserve



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

that life taking all necessary measures to secure that that basic right is not violated, and practically into a State’s duty to investigate and prosecute with “due diligence” those responsible for violations of the right to life.

Since three of the victims in this case were children, the IACtHR affirmed the State’s need to adopt special measures for the protection and care of children and adolescents. Failure to do so implies State negligence bordering on actual complicity in the violations and gives rise to the *de facto* impunity that allows, and even encourages, the continuation of these violations. In this regard, the Joint Concurring Opinion on the present case by the Judges Cançado Trindade and Abreu-Burelli stated that “the duty of the State to take positive measures *is stressed* [original emphasis] precisely in relation to the protection of life of vulnerable and defenceless persons, in situation of risk, such as the children in the streets. This outlook conceptualizes the right to life as belonging, at the same time, to the domain of civil and political rights, as well as economic, social and cultural rights, thus illustrating the interrelation and indivisibility of all human rights” (para. 4). The precarious living conditions of children who live on the street – such as the subjects of this case – led the Court to emphasize the essential relevance for them not only of civil and political rights, but also of economic, social and cultural rights, especially the right to health and to education.

In the key paragraph of the judgment concerning the right to life, the IACtHR pointed out its broad definition of “life” that encompasses “life with dignity”: “[o]wing 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” (para. 144). In this way, the Court set an important jurisprudential precedent, in underlining the obligation of States to ensure the conditions necessary so that all human beings may enjoy and exercise this right.

In support and in confirmation of its considerations, the IACtHR quoted the UN Human Rights Committee (HRC) established by the ICCPR, which had specified that “[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



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

strictly control and limit the circumstances in which [a person] may be deprived of his life by such authorities” (see HRC, *General Comment No. 6: The right to life (Art. 6)*, 30 April 1982, para. 3; HRC, *General Comment No. 14: Nuclear weapons and the right to life (Art. 6)*, 9 November 1984, para. 1).

The Joint Concurring Opinion by the Judges Cançado Trindade and Abreu-Burelli elaborated this concept further. Such a comprehensive interpretation of the right to life under Article 4 ACHR, in connection with Article 1(1) ACHR, implies that “there are distinct ways to deprive a person arbitrarily of life: when his death is provoked directly by the unlawful act of homicide, as well as when circumstances are not avoided which likewise *lead* [original emphasis] to the death of persons as in the *cas d’espèce*. In the present [...] case, [...] there is the aggravating circumstance that the life of the children was already devoid of any meaning; that is, the victimized children were already deprived of creating and developing a project of life and even to seek out a meaning for their own existence” (para. 3). In this sense, “the project of life is consubstantial of the right to existence, and requires, for its development, conditions of life with dignity, of security and integrity of the human person” (para. 8).

As explained by the Judges themselves, whoever “in his childhood lives, as in so many countries of Latin America, in the humiliation of misery, without even the minimum condition of creating his project of life, experiences a state of suffering which amounts to a spiritual death; the physical death which follows to this latter, in such circumstances, is the culmination of the total destruction of the human being” (para. 9). Therefore, the arbitrary deprivation of physical life is not limited to the illicit act of homicide, but extends itself to the deprivation of the right to live with dignity: “[t]he needs of protection of the weaker, – such as the children in the streets, – require definitively an interpretation of the right to life so as to comprise the minimum conditions of life with dignity” (para. 7). When dealing with the right to life, it is very hard to divide the concerns of judicial order from those of moral order: “we are before an order of superior values, – *substratum* of legal norms –, which help us to seek out the meaning of the existence and of the destiny of each human being” (para. 11).

In the instant case, the IACtHR ascertained that the existence and the destiny of the five street children had execrably been struck down by the State endorsed violence, and concluded that Guatemala had violated Article 4 ACHR, in relation to Article 1(1) ACHR, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstram Aman Villagrán Morales.



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

6. Violation of Article 5(1), (2) (Right to Humane Treatment) ACHR

Article 5 (Right to Humane Treatment) ACHR provides 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”.

The Court considered the alleged violation of this article under two aspects: first, whether or not it had been violated to the detriment of the direct victims, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes; second, whether the families of the victims had been, themselves, subjected to cruel, inhuman and degrading treatment.

From the victim's perspective, the Court found that Guatemala had violated the right of the children to have their physical, mental and moral integrity respected, and also their right not to be subjected to torture or cruel, inhuman, or degrading treatment: before to be dying, they had been victims of serious ill-treatment and physical and psychological torture by members of the National Police Force. Although the exact nature of these injuries could not be corroborated due to the complete inadequacy of the Guatemalan autopsy reports and minimal forensic and photographic evidence collected by the State at the time of the homicides, circumstantial and corroborative evidence was provided by the Guatemalan background context of a systematic pattern of torture and mistreatment of children and youths who lived on the street at that time.

Moreover, an AI Report mentioned 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”.

With this in mind, the IACtHR asserted that, notwithstanding the lack of other evidence, given the violent nature of the victims’ kidnapping and the condition of their bodies found subsequently, abandoned in a wood, it was reasonable to infer that between 10 and 21 hours, during which they had been retained clandestinely by their abductors, the treatment they had received was “*extremely*



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW

“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

aggressive” (para. 162). Besides, isolated from the outside world and certainly conscious that their lives were in danger, it was sensible to deduce that they had experienced extreme psychological and moral suffering that had placed them in an aggravated position of vulnerability (see IACtHR (Judgment) 12 November 1997, Series C No. 35, *Suárez-Rosero v. Ecuador*, para. 90).

In this regard, the IACtHR recalled what it had stated on other occasion: the simple fact of being placed in the trunk of a car represents a violation of Article 5 ACHR, inasmuch as this behaviour alone must be considered as an infringement to the respect due to the inherent dignity of the human being, even if no other ill-treatment took place (see IACtHR (Judgment) 3 November 1997, Series C No. 34, *Castillo-Páez v. Peru*, para. 66).

In a similar way, the ECtHR had declared that the simple menace of an action that is forbidden by Article 3 ECHR, which corresponds to Article 5 ACHR, when it is enough actual and imminent, may in itself be in conflict with the respective norm: creating a menacing situation or menacing a person with torture may, on some conditions, constitute inhuman treatment (see ECtHR (Judgment) 25 February 1982, Series A no. 48 p. 12, *Campbell and Cosans*, para. 26).

The IACtHR also recalled that a person who is illegally detained feels himself in “*an exacerbated situation of vulnerability*” producing an actual risk that his/her other rights, such as the right to humane treatment and to be treated with dignity, will be infringed (see IACtHR (Judgment) 17 September 1997, Series C No. 33, *Loayza-Tamayo v. Peru*, para. 57).

The IACtHR adopted the presumption established by the ECtHR: the State is responsible for the ill-treatment of persons in the custody of State agents, unless the authorities can demonstrate that the agents did not engage in such behaviour (see ECtHR (Judgment) 18 December 1996, Reports of Judgments and Decisions 1996-VI p. 2282, *Aksoy v. Turkey*, para. 61; ECtHR (Judgment) 4 December 1995, Series A no. 336 p. 26 ss., *Ribitsch v. Austria*, para. 34; ECtHR (Judgment) 27 August 1992, Series A no. 241-A pp. 40-41, *Tomasi v. France*, paras. 108-111). The IACtHR believed that the ill-treatment and torture had been perpetrated by the same individuals that had seized and murdered the youths. By establishing that those responsible for these acts had been members of the National Police Force, it was appropriate to presume that the ill-treatment and torture, inflicted on the children in the time between their kidnapping and their homicides, had been carried out by State agents.

The IACtHR concluded that Guatemala had violated Article 5(1), (2) ACHR, in relation to Article 1(1) ACHR, to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes.



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

From the victims’ families’ perspective, the evidence made clear that the death of these boys had caused a good deal of pain, anxiety and distress to the next of kin. They had not formally been notified of the victims’ death and they had not been provided with information about the development of the inquiries. National authorities had not taken any measures to establish the identity of the victims, who stayed registered as “XX” until their relatives came in person to provide for their identification.

Amongst the behaviours of the State agents that had caused effects on the families, the Court stressed the ill-treatment of the corpses of the youths discovered in the San Nicolás Woods, in order to ascertain if Article 5 ACHR had been also violated from this point of view, and concluded that *“[t]hey 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 [...] 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”* (para. 174).

The IACtHR quoted again the Strasbourg jurisprudence. The ECtHR had issued an opinion on the condition of victim of inhuman and degrading treatment of the mother as a consequence of the detention and disappearance of her daughter at the hands of the authorities. So as to ascertain whether Article 3 ECHR had been violated or not, the ECtHR had evaluated the circumstances of the case, the seriousness of the ill-treatment and the fact of not having had official information to clarify the case. On the basis of that, and considering that it had been the mother of the victim of a human rights violation, the ECtHR had resolved that she had also been a victim and that the State had violated of Article 3 ECHR (see ECtHR (Judgment) 24 May 1998, Reports of Judgments and Decisions 1998-III p. 1187, *Kurt v. Turkey*, paras. 130-134).

In confirmation of the foregoing, the IACtHR also cited a previous decision, in which it had affirmed 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”* (see IACtHR (Judgment) 24 January 1998, Series C No. 36, *Blake v. Guatemala*, para. 115).

As the Judges Cançado Trindade and Abreu-Burelli stated in acute and eloquent way, it was impossible not to include, in the broad definition of victim, the mothers of the killed boys: “[t]he



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

children murdered in a street and in a wood (ironically the wood of San Nicolás, of so much symbolism to many children), did not have the opportunity to reconcile themselves with the idea of their surrender to eternity; the respect to the mortal remains of the children contributes to provide their mothers, at least, with the opportunity to maintain alive, within themselves, the memory of the sons prematurely disappeared” (para. 10).

According to the IACtHR, these acts of omission and commission altogether amounted to a violation of Article 5(2) ACHR, in relation to Article 1(1) ACHR, with respect to the victims’ mothers and grandmother.

7. Violation of Article 19 (Rights of the Child) ACHR

In this judgment, for the first time the Court considered a case with children – specifically street children – as victims of human rights violations, and interpreted Article 19 (Rights of the Child) ACHR. So it has represented the first finding of a violation of this article, which 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”.

The skeletal wording of Article 19 ACHR raised problems for the Court in order to determine exactly its content. Firstly, because of the lack of definition of the term “child”. Secondly, because of the lack of definition of the nature of the protection that is owed to minors. In both cases, the Court bypassed these gaps by drawing on universal human rights standards.

In conformity with Article 1 CRC, every human being who has not attained 18 years of age is considered to be a child, “unless, by virtue of an applicable law, he shall have attained his majority previously”. In accordance with the Guatemalan legislation in force at the time of the facts of the instant case, those who had not attained 18 years of age were also minors. Making use of these criteria, only three of the victims, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstram Aman Villagrán Morales, were children. All the same, in this judgment was using the colloquial expression “street children” to make reference to the five victims in this case, who lived on the streets and who were at risk.

The Court drawn the attention to the background context in Guatemala at the time the facts of this case occurred, which was characterized by a systematic practice of illegal acts against street children committed by State security agents; this common pattern of violence included harassment,



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW

“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

threats, arrests, persecution, cruel, inhuman and degrading treatment, torture, forced disappearance and homicide as means to counter juvenile delinquency and vagrancy. In the opinion of the Court, the events that culminated in the violent death of the three minors, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstram Aman Villagrán Morales, were connected to that background context.

In the light of Article 19 ACHR, the IACtHR described the situation of children and adolescents living in the streets as a situation involving a twofold violation of their rights, pointing out “*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’, 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*” (para. 191). In this paragraph, it is expressed the full meaning of the Court’s statement on the indivisibility and interrelationship of civil, political, economic, social and cultural rights, as incorporated in the CRC.

On one occasion, the IACtHR had specified that “*when interpreting a treaty, not only the agreements and instruments formally related to it should be taken into consideration (Article 31.2 of the Vienna Convention), but also the system within which it is (inscribed) (Article 31.3)*”, and it had explained 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” (see IACtHR (Advisory Opinion) OC-16/99, 1 October 1999, *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, paras. 113-114).

In line with this assertion, the IACtHR had also affirmed that “*by means of an authoritative interpretation, the member States of the Organization have signalled 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*” (see IACtHR (Advisory Opinion) OC-10/89, 14 July 1989, *Interpretation of the*



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, para. 43). Therefore, adopting such an evolutive interpretation of international human rights protection instruments, the Court enucleated the parameters defining the “measures of protection” referred to in Article 19 ACHR.

The IACtHR established that the ACHR and the CRC are part of a very comprehensive international *corpus juris* for protecting the rights of the child. This means that there is a substantive connection between the two treaties and that they should be applied together in cases pertaining to children and adolescents. Moreover, this broad international *corpus juris* should be useful in determining the content and scope of the general provision defined in the article in question.

With this object, the IACtHR referred to several provisions enshrined in the CRC, which were immediately relevant to this case, specifically Article 2 CRC

(“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, colour, 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 CRC

(“[...] 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 CRC

(“1. 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 CRC

(“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



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

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 CRC

(“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”)

and Article 37 CRC

(“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”).

To come to the point, the IACtHR stated: “*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*” (para. 196). Special protection obligations in favour of children imply the existence of an additional and complementary right of children, supported by the specificity of these obligations incumbent upon States. The protective measures referred to in Article 19 ACHR should include the principle of non-discrimination, particular care for children deprived of their family environment,



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW

“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

the guarantee of survival and development of the child, the right to adequate living conditions, and the social rehabilitation or reinsertion of all children who are victims of abandonment or exploitation. Hence, States have the duty to adopt every positive measure to ensure the full exercise of the child’s human rights.

With reference to the fact that one of the three minors in this case, Jovito Josué Juárez Cifuentes, had been registered in the “criminal archives” of the Identification Office of the National Police Force, the IACtHR underlined that, *“if the State has 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 and recurrence. When the State apparatus has to intervene in offences 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’”* (para. 197).

In the present case, it was evident that Guatemala had seriously transgressed these directives. In view of these considerations, the IACtHR found the State in violation of Article 19 ACHR, in relation to Article 1(1) ACHR, to the detriment of the three minors, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstram Aman Villagrán Morales.

8. Violation of Articles 25 (Right to Judicial Protection) and 8(1) (Right to a Fair Trial) ACHR

The Court also analyzed this case from the viewpoint of the alleged violations of Articles 25 (Right to Judicial Protection) ACHR

“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”)

and 8(1) (Right to a Fair Trial) ACHR



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

“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, labour, fiscal, or any other nature”).

According to a fundamental principle of law on the international responsibility of States, embodied in international human rights law, the conduct of any State organ is considered an act of that State under international law, thus every State is considered internationally responsible for any or all act or omission of any of its organs infringing international obligations (see ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, Article 4). Article 1(1) ACHR is essential in this regard, and Articles 25 and 8 ACHR define the scope of the aforesaid principle with reference to acts or omissions of domestic judicial authorities.

In order to ascertain whether Guatemala had violated its international obligations, the IACtHR examined all the domestic judicial proceedings so as to have a complete overview of these acts or omissions. In this respect, the ECtHR had suggested that the proceedings should be considered as a whole, comprising the decisions of the courts of appeal, and that the function of the international court is to establish if all the proceedings, and the manner in which the evidence was adduced, were fair (see ECtHR (Judgment) 16 December 1992, Series A no. 247-B pp. 34-35, *Edward v. the United Kingdom*, para. 34; ECtHR (Judgment) 22 April 1992, Series A no. 235-B pp. 32-33, *Vidal v. Belgium*, para. 33).

It's evident from Article 1(1) ACHR that the State has to investigate and punish any violation of the rights and freedoms guaranteed by the ACHR. In the present case, this obligation was related to the right of everyone to be heard by the courts and to act in the respective proceedings, and to the right of everyone to a simple, prompt and effective recourse to a competent court or judge for protection against acts that infringe his/her fundamental rights, arising from Articles 25 and 8 ACHR.

On other occasions, the IACtHR had pointed out that the duty to investigate should be carried out “*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*” (see IACtHR (Judgment) 20 January 1989, Series C No. 5, *Godínez-Cruz v. Honduras*, para. 188; IACtHR (Judgment) 29 July 1988, Series C No. 4, *Velásquez-Rodríguez v. Honduras*, para. 177).



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

Guatemala had conducted several judicial proceedings on the facts occurred, but those responsible for the unlawful acts referred to in this judgment had not been identified or penalized by the enforcement of judicial decisions, and consequently they had not been punished for their crimes. Just this ascertainment was enough to declare the violation of Article 1(1) ACHR. Investigations of the crimes of kidnapping and torture had entirely been omitted, evidence that could have been essential for the due elucidation of the homicides had not been ordered, practiced or evaluated, and some decisive testimonies had been refused as irrelevant and or totally or partially disqualified by the domestic courts. It was clear that the judges had fragmented the probative material, contravening to the principles of evaluating evidence, according to which the evidence has to be evaluated as a whole.

Therefore, the Court concluded that the State had violated Article 1(1) ACHR, in relation to Article 8 ACHR, because of the failure to comply with the obligation to undertake effective and adequate investigations of the corresponding facts.

More than once, the IACtHR had declared, “*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 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*” (see IACtHR (Judgment) 29 September 1999, Series C No. 56, *Cesti-Hurtado v. Peru*, para. 125; IACtHR (Judgment) 30 May 1999, Series C No. 52, *Castillo-Petruzzi et al. v. Peru*, para 185; IACtHR (Advisory Opinion) OC-9/87, 6 October 1987, *Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 American Convention on Human Rights)*, para. 24).

From the foregoing, Guatemala had also violated Article 1(1) ACHR, in relation to Article 25 ACHR, to the detriment of the youths Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes because, after their abduction by State agents, they had unlawfully and clandestinely been detained for several hours until they were killed on the following day. So, they had been prevented from exercising, either themselves or through their representatives, their right to an effective recourse before a competent domestic instance.



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

9. Violation of Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures to Prevent and Punish Torture) and 8 (Right to Impartial Examination, Investigation and Criminal Process of a Case) of the IACPPT

Finally, this case has represented the second finding by the IACtHR of a violation of the IACPPT (see IACtHR (Judgment) 8 March 1998, Series C No. 37, *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala*, para. 136), in particular of Article 1 (Obligation to Prevent and Punish Torture) IACPPT

(“The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention”),

Article 6 (Obligation to Take Effective Measures to Prevent and Punish Torture) IACPPT

(“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 offences 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”)

and Article 8 (Right to Impartial Examination, Investigation and Criminal Process of a Case) IACPPT

(“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”).

It was evident from the probative material that the Guatemalan administrative and judicial bodies had not adopted any formal decision to hold a criminal inquiry into the alleged perpetration of the crime of torture, and they had not inquired into it in the practice, though a lot of concurring



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

evidence had been collected on the merciless treatment and torture perpetrated against the victims, at the time in which the murders had been investigated.

In conformity with Article 8 IACPPT, the State has the obligation to proceed *ex officio* and at once in cases such as the present one. On several occasions, the IACtHR had affirmed that “*in proceedings on human rights violations, the State’s defence cannot rest on the impossibility of the plaintiff to obtain evidence that, in many cases, cannot be obtained without the State’s cooperation*” (IACtHR (Judgment) 21 January 1994, Series C No. 16, *Gangaram-Panday v. Suriname*, para. 49; IACtHR (Judgment) 20 January 1989, Series C No. 5, *Godínez-Cruz v. Honduras*, para. 141; IACtHR (Judgment) 29 July 1988, Series C No. 4, *Velásquez-Rodríguez v. Honduras*, para. 135).

Guatemala had not respected these provisions. Consequently, the Court concluded that the State had infringed Articles 1, 6 and 8 IACPPT to the detriment of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes.

10. The Full Significance of the Pioneering and Paradigmatic “Street Children” Case

The so-called “*Street Children*” case (*Villagrán Morales et al. v. Guatemala*) has been truly pioneering and paradigmatic for various reasons.

It has had an obvious symbolic and representative value for street children in general in terms of the legal precedents set. As said, it has been the first case implicating street children to come before an international adjudicatory body, signifying that international human rights litigation can be a powerful political tool to protect harassed, abused, exploited and victimized children worldwide.

This judgment has added to the relatively sparse international case law on children’s rights, by turning out crucial to the development of international jurisprudence, and it has been particularly appreciable in terms of assessment of the gravity of the rights violated. In effect, it has been the first children murder case in contentious international human rights law, the first arbitrary detention case involving children, the first case dealing with police brutality against street children before any international tribunal, and it has meant by far the most serious threshold of children torture.

This judgment has been a precedent not only for execrable crimes against children in Guatemala – i.e. the horrific torture, mutilation and killing of the five street children – but also for similar cases before courts worldwide and for the IACtHR itself. As a matter of fact, through this case, the Court had the possibility to express its views with regard to the *status* of children, and the principles set



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

out have been followed in the subsequent cases within its contentious jurisdiction, its advisory jurisdiction, and when adopting provisional measures.

This landmark decision has epitomized a lot of issues. Its implications for international human rights law have been immense, and the following ones, after due consideration, are those of a paramount importance.

Firstly, in the words of Judge Cançado Trindade, from the historical case of the “*Street Children*” can be inferred that the international juridical subjectivity of the individuals is nowadays an irreversible reality, and that the violation of their fundamental rights, emanated directly from the international legal order, brings about juridical consequences. In this case, some of those marginalized and forgotten by this world succeeded to resort to an international tribunal to vindicate their rights as human beings. This has given a clear and unequivocal testimony that the international law of human rights has achieved its maturity. In effect, the mothers of the murdered children (and the grandmother of one of them), as poor and abandoned as their sons (and grandson), had access to the international jurisdiction, appeared before the IACtHR, and through its judgment, could at least recover their faith in human justice.

Secondly, bearing out what already enunciated in previous occasions, in the *Villagrán Morales et al. v. Guatemala* case the Court established the juridical foundations of the enlargement of the notion of victim, till to include the close relatives of the direct victims. As the Joint Concurring Opinion by the Judges Cançado Trindade and Abreu-Burelli explained, offences such as those occurred in this case “render victims not only those who suffered them directly, in their spirit and in their body; they project themselves painfully into the persons dear to them, in particular into their mothers” (para. 9). In such circumstances, it was not possible not to comprise, in the broadened notion of victim, the mothers of the killed youths, in relation to the prohibition of cruel, inhuman or degrading punishment or treatment, as set forth in Article 5(2) (Right to Humane Treatment) ACHR. This understanding nowadays forms part of the IACtHR well-established jurisprudence.

Thirdly, even if there was no lack of academic literature calling for an expanded conception of the right to life, the novelty of the so-called “*Street Children*” case is that it has been the first case in international human rights jurisprudence to adopt this position concretely. Undoubtedly, the right to life is the foremost substantive right, and it is an intangible right. The IACtHR interpreted it in extremely clear, decisive and comprehensive way: it not only considered the “negative” aspects of this right – i.e. the right not to be arbitrarily killed and the obligation on the State not to kill –, but it also emphasized the “positive” ones – i.e. the State’s duty to investigate and prosecute with “due



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

diligence” those responsible for violations of the right to life, and the expanded definition of the “right to life” to include the “right to life with dignity”. Thus, this decision has reflected the state of evolution of the right to life in the framework of the international law of human rights in general, and under Article 4 (Right to Life) ACHR in particular, setting an important precedent for international human rights jurisprudence.

Fourthly, generally speaking, in contrast to civil and political rights, economic, social and cultural rights remain neglected and under-theorized in international human rights law. Because most of the deprivations that street children experience are economic, social and cultural in nature, the present case has had a real impact on the actual living conditions of street children, in terms of accessing economic social, and cultural rights, through the re-conceptualisation of the right to life as encompassing the “right to life with dignity” via positive State provision of a minimum level of economic, social and cultural standards, and by establishing a judicial implementation mechanism for the CRC. It is here that the *Villagrán Morales et al. v. Guatemala* case has carried much weight, both morally, by recognising the economic, social and cultural conditions of street children as irrespective of the right to life *per se* under its extensive definition, and practically, by bringing these rights down from academic theory into concrete juridical use. Unlike preceding occasions, in order to guarantee economic, social and cultural rights, in this case the IACtHR made an intentional moral declaration on the advancement of the law by plainly raising the fundamental needs indispensable for a life with dignity to a position of legal enforceability.

Fifth, for the first time Article 19 (Rights of the Child) ACHR has been the core argument of a case in the Inter-American System of Human Rights Protection (IASPHR). This article enshrines a sphere of special protection for the human rights of children and adolescents, dictated by their special conditions of vulnerability as subjects of rights. By founding the interpretation of the vague and indefinite content of Article 19 ACHR on the CRC, used as a yardstick, through a “normative combination”, the IACtHR established the world’s first international human rights mechanism by which to provide direct judicial access to the CRC’s provisions and to consider States responsible for their non-accomplishment, representing a really important attainment for children’s rights. This case has symbolized a first-rate example of regional case-law integrating the accomplishment mechanism of the CRC, which has a special relevance due to the fact that the CRC’s enforceability in international law is realistically inexistent: the direct accomplishment mechanism of the CRC is limited to the exam of the States Reports submitted every five years to the Committee. Consequently, the actual legal accomplishment of children’s rights depends on their incorporation into regional and national legislation, and jurisprudence. In this sense, the IACtHR proved a praise-



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

worthy, innovative and influential approach directed to the improvement and safeguarding of children’s rights.

Sixth, in this case the IACtHR advanced another concept, which has been fundamental to the subsequent development of its jurisprudence on children’s rights. It set out the idea that a *corpus juris* of human rights for children and adolescents exists, and ruled that the ACHR and the CRC are part of a broad international *corpus juris* for guaranteeing the rights of people aged below 18 years. This signifies that both instruments are substantively connected and that they should be jointly applied. As of a broad-spectrum perspective, the existence of this *corpus juris* is the result of evolution in international children’s human rights law, which is focused on the recognition of children and adolescents as persons with legal rights. Hence, the legal framework for the safeguard of children’s human rights is not confined to the requirements of Article 19 (Rights of the Child) ACHR, the text of the CRC and the decisions adopted by the UN Committee on the Rights of the Child in compliance with its mandate: it also embraces, for interpretive reasons, a range of provisions including those contained in the UN Declarations of the Rights of the Child of 1924 and 1959, the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules of 1985), the UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules of 1990), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines of 1990), and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules of 1990), in addition to the general international human rights instruments.

From a purely legal standpoint, this judgment has established precedent-setting interpretations of core international treaties affecting the rights of children: it has added to the body of regional jurisprudence on grave human rights transgressions and it has used all available treaties in the promotion and protection of human rights, to demonstrate that the IASPHR accepts cross-fertilisation of all accessible standards, and indirectly enhances receptivity of its own jurisprudence by fostering a general climate of reciprocity within the international human rights community. This approach has signified an important step forward, showing the existence not only of a jointed legal framework in international human rights law in matters related to children, but also of the reciprocal relationship between the different systems at the international level for safeguarding children’s human rights.

In effect, the analysis of the IACtHR has represented the source of inspiration for other bodies of human rights defence. In its *General Comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, para. 2; and 37, inter alia)*, the UN Committee on the Rights of the Child has explicitly made



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

reference to the Court’s highly important 2002 Advisory Opinion No. 17 on the *Juridical Condition and Human Rights of the Child*, mainly inspired to the case in question. The importation of the IASPHR’s standard of judgment into the UN System demonstrates the relevant role played by this regional Court with regard to the reinforcement and growth of the international law.

Finally, this landmark decision by the IACtHR is noteworthy not only for its “academic” relevance, but also for the “practical” one: it has focused international attention on plight of street children, and launched a signal to communities to do their best for economic, social and cultural wellbeing of all children, particularly those who are poor and living on the street. In addition to being the first case concerning the rights of street children to go before an international court, this case has signalled a welcome turning point for international human rights organizations in their effort to enforce international legal obligations pertaining to children, that is to say to force States to follow international legal obligations in which children are involved.

In other words, it has represented a turning point in the history of international law's engagement with poor children, suggesting a new willingness on the part of international human rights bodies to subject States' observance of their international legal obligations to intensified scrutiny whenever the interests of children are implicated. Hence, this judgment has sent a powerful message to the Guatemalan Government and other governments that have ratified international human rights treaties that they should not bear police ill-treatment of street children. Even so, litigation in an international tribunal should be regarded as an instrument of last resort, as one strategy to address the exploitation and victimization of street children. It can not substitute domestic policies and programs that focus on the core sources of this weighty and global problem, like systemic poverty, economic development and the effects of globalization, which have not done poor people good in many developing countries.

To conclude, the fully significance of the decision in the so-called “*Street Children*” case can be summarized into the contribution to the “de-legitimation” of State complicity in such atrocities, and into the elevation of the *status* of a particularly weak, vulnerable and marginalised group of rights holders, i.e. “at-risk children”, guaranteeing them their rights and respect for their personality at international level by means of the exercise of the right of international individual petition. As a result, the *status* of law in general as a protective, investigative, retributive and preventative instrument in the promotion and protection of children’s rights has been enhanced, through the moral weight and unambiguous findings of this powerfully worded judgment with implications of such obvious magnitude for the rights of children and an immense potential as a precedent to be cited in universal and regional cases involving children.



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

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UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

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UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
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