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 II**

Author: **SABRINA VANNUCCINI**

Judgment: IACtHR (Judgment) 26 May 2001, *Case of the "Street Children" (Villagrán-Morales* et al.*)* v. *Guatemala (Reparations and Costs)*, Series C No. 77.

Conventional Parameters: Article 1(1) ACHR; Article 2 ACHR; Article 19 ACHR; Article 63(1) ACHR; Article 68 ACHR.

Key Words: Obligation to make reparation; beneficiaries; pecuniary damage; non-pecuniary damage; other forms of reparation; costs and expenses; method of compliance.

A world which abandons its children in the streets has no future; it no longer renders it possible to create and develop a project of life. A world which neglects its elderly has no past; it no longer participates in the heritage of humankind. A world which only knows and values the ephemerous and escaping (and thereby desperating) present inspires no faith nor hope. A world which tries to ignore the precariousness of the human condition inspires no confidence. It is a world which has already lost sight of the temporal dimension of human existence. It is a world which ignores the intergenerational perspective, that is, the duties everyone has in relation to both those who have already gone through the path of their lives (our ancestors) as well as those who are still to do so (our descendants). It is a world wherein each one survives amongst a complete spiritual disintegration. It is a world that has become simply dehumanized, and which today needs urgently to awake to the true values.

(Judge A.A. Cançado Trindade)

1. Summary of the "*Street Children*" *Case* Background

On 19 November 1999, the Inter-American Court of Human Rights (IACtHR, Court) delivered judgment on the merits of the so-called *"Street Children"* case (*Villagrán Morales* et al. v. *Guatemala*).

As argued out in the first part of this paper (see S. VANNUCCINI *"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*, 29 October 2012, <diritti-cedu.unipg.it>), it has been the first ever case in the first 20 years of the IACtHR's history where the victims of a resolved case were children, and the first legal and moral pronouncement of the Court directly concerned with the rights of the child.

The background to the instant case stood out for a widespread lack of social and legal protection for children in Guatemala, a country that was among those at the bottom of the list of Latin American countries as regards illiteracy, malnutrition, child labour and trafficking of children. In fact, Guatemala had been signalled for illegal adoptions, violence against street children and deficiency of an adequate juvenile justice system.

As a State Party to the United Nations Convention on the Rights of the Child (CRC) since 26 January 1990, the State of Guatemala had been one of the first countries to commit itself to respecting the human rights of children, but that commitment has borne little fruit.

The so-called "*Street Children*" case has been an extreme expression of a structural neglect of minors' rights, an awful demonstration of a lack of State attention to their needs, especially of children who were at risk of "*callejización*" (taking to the street), a deplorable image of an amoral society.

The IACtHR had to deal with breaches of human rights with extremes of cruelty, committed against five street children – 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 Anstraum Aman Villagrán Morales (17 years of age) – by two policemen, and the failure of State mechanisms to respond appropriately to these breaches and provide the victims' families with access to justice.

The Court found the State of Guatemala in violation of several provisions of the American Convention on Human Rights (ACHR) due to the 1990 abduction, detention, torture and murder of

the five street children by members of the Guatemalan National Police Force, and for the failure of the jurisdictional organs of the State to handle suitably the investigations into these crimes and to deliver justice.

In detail, the IACtHR decided:

"*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 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, and 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" (para 3).

2. The Stage of Reparations: Procedural Aspects

On 9 February 2001, the President of the IACtHR issued an order in which he decided to summon the representatives of the victims' next of kin, the Inter-American Commission on Human Rights (IACommHR) and the State of Guatemala to a public hearing on reparations to be held at the seat of the Court in San José, Costa Rica – in accordance with Article 14(1) (Hearings, Deliberations and Decisions) of the Rules of Procedure of the IACtHR, in force at that time – on 12 March 2001. In this order, he summoned the witnesses, Ana María Contreras and Margarita Urbina, and the expert, Christian Salazar Volkmann.

Pursuant to Article 43 (Items) of the Rules of Procedure of the IACtHR,

"Items 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, when appropriate, in the document 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 parties are guaranteed the right of defence".

Under Article 44 (Procedure for Taking Evidence) of the Rules of Procedure of the IACtHR, at any stage of the case, the Court may

"1. Obtain, on is own motion, any evidence it considers helpful. In particular, it may hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems to be relevant. 2. Request the parties to provide any evidence within their reach or any explanation or statement that, in its opinion, may be useful. 3. Request any entity, office, organ or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. The documents may not be published without the authorization of the Court [...]".

In conformity with the coherent practice of the IACtHR, during the reparations stage, the parties must indicate the evidence that they will offer at the first occasion granted to them to make a written statement. Furthermore, the exercise of the Court's discretional powers, established in Article 44 of the Rules of Procedure, lets it to request the parties to provide additional elements of evidence to help it make a knowledgeable decision. All the same, this does not grant the parties another opportunity to expand or complete their arguments or offer new evidence on reparations, unless the Court so permits (see IACtHR (Judgment) 27 November 1998, Series C No. 43, *Castillo-Páez* v. *Peru*, para. 37).

The proceedings before the IACtHR are not subject to the same formalities as domestic proceedings. Besides, when including determined elements into the body of evidence, special attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties (see IACtHR (Judgment) 6 February 2001, Series C No. 74, *Ivcher-Bronstein* v. *Peru*, para. 65; IACtHR (Judgment) 2 February 2001, Series C No. 72, *Baena-Ricardo* et al. v. *Panama*, paras. 71 and 76).

This practice extends to the briefs in which the representatives of the injured parties or, when applicable, their next of kin, and the IACommHR formulate their claims for reparations and to the State's answering brief, which are the main documents at this stage and, in general, imply identical formalities with regard to the offer of evidence as the application.

On 12 March 2001, at the request of the President, the expert, Christian Salazar Volkmann, submitted copies of the following: a document entitled "Study of adoptions and rights of the child in Guatemala" (*"Estudio sobre Adopciones and Derechos de los Niños y las Niñas en Guatemala. Guatemala, 2000"*); a document entitled "Report on the situation of street children" (*"Aproximación situacional del niño, niña y adolescente de la calle"*); and a document entitled "Violation of the human rights of street children" (*"Violación a los Derechos Humanos de los Niños de la Calle"*).

In accordance with Article 44(1) of the Rules of the Procedure, the Court also incorporated into the body of evidence the following: a document entitled "Record of the Minimum Monthly Wage, by year: 1980-1995" (*"Historia del Salario Mínimo Mensual, según año 1980-1995"*); and a document entitled "Guatemala: Statistics on the Average Monthly Exchange Rate, 1996-2000" (*"Guatemala: Estadísticas del Tipo de Cambio Promedio Mensual, años 1996-2000"*), Economic Studies Department, Balance of Payments Section.

During the public hearing on 12 March 2001, the IACtHR received the statements of the witnesses proposed by the representatives of the victims' next of kin and the IACommHR, specifically: the testimony of Ana María Contreras, mother of Henry Giovanni Contreras; the testimony of Margarita Urbina, grandmother of Julio Roberto Caal Sandoval; the testimony of Reyna Dalila Villagrán Morales, sister of Anstraun Aman Villagrán Morales; the testimony of Marta Isabel Túnchez Palencia, mother of Federico Clemente Figueroa Túnchez.

On the same day, the IACtHR also received the reports of the experts proposed by the representatives of the victims' next of kin and the IACommHR, specifically: a) expert report of Ana Deutsch, clinical psychologist in transcultural psychotherapy, and the evaluation and treatment of the psychological consequences of trauma; b) expert report of Christian Salazar Volkmann, expert in the rights of the child; c) expert report of Emilio García Méndez, independent consultant and former adviser to the United Nations Children's Fund (UNICEF), expert on the rights of the child.

On 26 May 2001, after hearings with the families of the victims and international experts, the IACtHR delivered judgment on reparations in the so-called "*Street Children*" case, consistent with the violations found in the judgment on the merits.

3. Guatemala's Neglected Children: The Guatemalan Law

At the time when the events of the instant case took place, the Constitution of the Republic of Guatemala (*Constitución Política de la Republica de Guatemala*) and the Minors' Code were the primary sources of applicable domestic law in Guatemala. The Minors' Code was the principal source of the decisions of the minors' judges.

The Guatemalan Constitution, in force since 14 January 1986, provides extra protection to children. It mandates that all minors, defined as people under the age of eighteen, are "unimputable", that is they lack the capacity to be held criminally accountable for their actions. It also states that children who break the law be "treated" (rather than "punished") by "specialized

institutions and personnel", and their treatment "should be oriented toward an integrated education appropriate for children and youth". Furthermore, it provides for absolute prohibition on commingling minors with adult prisoners

> ("Artículo 20 (Menores de edad). Los menores de edad que transgredan la ley son inimputables. Su tratamiento debe estar orientado hacia una educación integral propia para la niñez y la juventud. Los menores, cuya conducta viole la ley penal, serán atendidos por instituciones y personal especializado. Por ningún motivo pueden ser recluidos en centros penales o de detención destinados para adultos. Una ley específica regulará esta materia").

Other relevant provisions of the Guatemalan Constitution comprise an equal protection clause, which stipulates that "[i]n Guatemala all human beings are free and equal in dignity and rights"

> ("Artículo 4 (Libertad e igualdad). En Guatemala todos los seres humanos son libres e iguales en dignidad y derechos. El hombre y la mujer, cualquiera que sea su estado civil, tienen iguales oportunidades y responsabilidades. Ninguna persona puede ser sometida a servidumbre ni a otra condición que menoscabe su dignidad. Los seres humanos deben guardar conducta fraternal entre sí"),

a specific protection of children and the elderly

> ("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"),

a particular protection of orphans and abandoned children, which is a matter of "national interest"

> ("Artículo 54 (Adopción). El Estado reconoce y protege la adopción. El adoptado adquiere la condición de hijo del adoptante. Se declara de interés nacional la protección de los niños huérfanos y de los niños abandonados"),

and the prohibition of child labour

> ("Artículo 102 (Derechos sociales mínimos de la legislación del trabajo). Son derechos sociales mínimos que fundamentan la legislación del trabajo y la actividad de los tribunales y autoridades: […] l. Los menores de catorce años no podrán ser ocupados en ninguna clase de trabajo, salvo las excepciones establecidas en la ley. Es prohibido ocupar a menores en

> trabajos incompatibles con su capacidad física o que pongan en peligro su formación moral. Los trabajadores mayores de sesenta años serán objeto de trato adecuado a su edad […]").

The Guatemalan Minors' Code of 1979 reflected the social perception of street children as objects in need of protection rather than individuals with rights. The preamble of the Minors' Code mandated that "[t]he family and youths require special protection and assistance from the State". The language used in the Minors' Code lacked the principle of "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family", as set forth in the preamble of the CRC.

UNICEF and the Institute of Juridical Studies (IJS) indicated that, unlike the CRC, the Minors' Code sought to defend society from street children by reproaching their disruptive behaviour rather than addressing the social reality that caused these children to live on the street. This purpose was reflected in Article 33 (Apprehension of Minors) of the Minors' Code, which stated:

> "in cases where a minor is arrested, regardless of the reason, he will be taken to a Judge for Minors who will hear the arresting officers and the minor in order to decide if the minor should be 'deposited' in an adequate place or released".

Children brought before the courts almost never had an attorney, and the State was under no obligation to provide one. The absence of a defence attorney meant that children's due process rights – such as the right to be present during the proceedings, the right to be heard, and the right to have their legal rights explained to them – were regularly flouted. In addition, indeterminate sentences were permitted and were routinely used by some of the minors' judges, who sentenced children to detention centres "until rehabilitated". Children detained under indeterminate sentences might spend years incarcerated, with little or no monitoring of their "rehabilitation", including therapy, education, and vocational training. What is more, the use of corporal punishment and isolation was the norm, and it was one of the most egregious of the numerous human rights abuses suffered by detained and incarcerated children.

The Minors' Code was founded on the so-called "doctrine of the irregular situation" and, according to this doctrine, the child victim of some act of abuse, violation or negligence and the youth who had allegedly infringed the law were in identical situation: it did not distinguish between the punitive treatment of juvenile delinquents and the protective treatment for children in irregular situation. UNICEF and IJS reported that wide definitions of children in irregular situation (Article 5) and children in danger (Article 48) led to contradictions within the Minors' Code, resulting in the arrests of non-delinquent street children.

Since an irregular conduct was not codified, this fostered arbitrariness, for example, as regards detentions. In Guatemala, adults were merged with adolescents and with child victims at different levels of the legal process, and this was totally conflicting with the Guatemalan Constitution and the international standards. In addition to this, another kind of illegal commingling took place in the Guatemalan justice system: young children were incarcerated together with older adolescents. The former were also exposed to great risks when put in jail with the latter: deleterious influence, danger of physical assault and rape.

According to the expert, Emilio García Méndez, the Minors' Code was unconstitutional, owing to the technical and systematic transgressions of the general principles of law contained in the Guatemalan Constitution. Although the provisions of the Minors' Code were supposed to favour minors, the latter were not recognized the rights granted to them by the Guatemalan Constitution. Moreover, there were several reports claiming that the Minors' Code was not consistent with the CRC. Hence, this law required a number of substantive reforms in order for it to comply with the international obligations set forth in the CRC.

In September 1996, the Guatemalan legislature approved, by *consensus*, a new and long-awaited minors' code, the Children and Youth Code (*Código de la niñez y la juventud*), modelled after the CRC, in place of the eighteen-year-old code. Guatemalan Congress delayed indefinitely the entry into force of the Children and Youth Code, because of the public discussion generated by whether this law respected paternal authority and whether it was consonant with Guatemalan cultural values.

Besides abolishing the so-called "doctrine of the irregular situation", the Children and Youth Code made several positive changes:

- establishment of four new courts – Children and Youth Courts (*Juzgados de la Niñez y Juventud*), responsible for cases where children's rights or well-being are threatened, as well as for cases of children under twelve accused of criminal wrongdoing; Youth in Conflict with the Law Courts (*Juzgados de Jovenes en Conflicto con la Ley Penal*), responsible for cases in which children aged between twelve and seventeen are accused of criminal wrongdoing; the Oversight Court for the Application of Measures (*Juzgado de Control de Ejecución de Medidas de la Niñez y Juventud)*, responsible both for ensuring that children's rights are protected during detention or during other applicable measures, and for periodic review of the measures imposed by the trial court; the Second Instance Tribunal for Children and Youth (*Tribunal de Segunda Instancia de la Niñez y Juventud*), responsible for hearing

appeals – and requirement of specialized training for minors' judges or prosecutors in the area of children's law and human rights law (Articles 124-133);

- prohibition of the placement of children in protective custody juvenile detention centres (Articles 140 and 143);
- compliance with all relevant international instruments ratified by Guatemala, including the CRC, and interpretation and application of the Children and Youth Code "in harmony with" international standards (Articles 8, 167 and 169);
- minors charged with criminal wrongdoings have an explicit right to a defence attorney; if they can not afford an attorney, the Government will provide one (Articles 181, 182 and 194);
- prohibition of the imposition of indeterminate sentences (Article 185);
- abolition of deprivation of liberty for children in those cases where such a penalty could not be applied to adults: that is, the Children and Youth Code abolished imprisonment for status offences or misdemeanours (Article 275);
- incarcerated youth and children have the right to receive information regarding: facility rules and disciplinary measures; their rights in relation to facility staff; the individualized plan for their reinsertion into society; the manner and means of communicating with the outside world; the right to petition authorities and receive a response; the right not to be held in isolation; and the right not to receive corporal punishment. When isolation is necessary to prevent acts of violence, this is to be communicated to the Oversight Court for the Application of Measures and to the Human Rights Ombudsman (Article 281);
- establishment, by the National Policy, of a special "children and youth" unit, responsible for training all police officers regarding the rights of children, including rights protected by the CRC and the due process protections of the Guatemalan Minors' Code (Articles 107-108);
- strengthening of the penalties for crimes committed against children by Government and private security force members, including the penalties for assassination, homicide, forced disappearance, torture, cruel, inhuman and degrading treatment, illegal arbitrary detention, irregular internment, irregular recruitment, discrimination, exploitation and slavery (Transitional Dispositions, Article 17).

The Guatemalan Congress' passage of the Children and Youth Code of 1996 was clearly destined for bringing Guatemalan law into compliance with the standards of protection established in Article 19 (Rights of the Child) ACHR, CRC and all the instruments that include the so-called United Nations (UN) integral protection doctrine, that is 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).

Nevertheless, on 26 May 2001, eleven years after the brutal homicide of the five youths – who were the subject of the so-called "*Street Children*" case – when the IACtHR finally rendered justice in the form of reparations, the Children and Youth Code of 1996 had not come into force yet.

4. Obligation to Make Reparation

The States Parties to the ACHR have undertaken an international obligation to safeguard the rights delineated in the treaty, in conformity with Article 1 (Obligation to Respect Rights) ACHR

> ("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"),

and to provide reparation to the injured parties if they infringe those rights.

If the State charged with the breach of the ACHR accepts responsibility or the IACtHR attributes responsibility for the breach to the State, the IACtHR may then order the State to make reparation to the individual in conformity with the ACHR.

Under Article 63(1) ACHR,

> "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the

measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party".

This provision confers a broad mandate to the Court on the treatment of reparations for violations of the rights and freedoms protected by the ACHR, exalting the supranational stature of the Court as an autonomous judicial institution.

The legislative history of Article 63(1) ACHR discloses that just the Guatemalan representative successfully proposed strengthening and broadening the content of the original draft provision, which had merely authorized the IACtHR to determine compensation. Under the Guatemalan proposal, which was fundamentally the provision as it stands today, if the Court found that there had been a violation of the ACHR, it could provide "[t]hat the consequences of the decision or measure that has impaired those rights be stopped; [t]hat the injured party be guaranteed the enjoyment of his violated right or freedom, and [t]he payment of just compensation to the injured party".

In its well-established jurisprudence, the IACtHR has restated that it is a basic principle of international law that any violation of an international obligation that has caused damage entails the obligation to make adequate reparation (see IACtHR (Judgment) 6 February 2001, Series C No. 74, *Ivcher-Bronstein* v. *Peru*, para. 177; IACtHR (Judgment) 2 February 2001, Series C No. 72, *Baena-Ricardo* et al. v. *Panama*, para. 201; IACtHR (Judgment) 31 January 2001, Series C No. 71, *The Constitutional Court* v. *Peru*, para. 118; IACtHR (Judgment) 22 January 1999, Series C No. 48, *Blake* v. *Guatemala*, para. 33; IACtHR (Judgment) 20 January 1999, Series C No. 44, *Suárez-Rosero* v. *Ecuador*, para. 40; IACtHR (Judgment) 27 November 1998, Series C No. 43, *Castillo-Páez* v. *Peru*, para. 50; IACtHR (Judgment) 27 November 1998, Series C No. 42, *Loayza-Tamayo* v. *Peru*, para. 84; IACtHR (Judgment) 29 January 1997, Series C No. 31, *Caballero-Delgado and Santana* v. *Colombia*, para. 15; IACtHR (Judgment) 19 September 1996, Series C No. 29, *Neira-Alegría et al.* v. *Peru*, para. 36; IACtHR (Judgment) 14 September 1996, Series C No. 28, *El Amparo* v. *Venezuela*, para. 14; IACtHR (Judgment) 10 September 1993, Series C No. 15, *Aloeboetoe* et al. v. *Suriname*, para. 43. See also, PCIJ (Judgment) 1928, Series A No. 17, *Factory at Chorzów* (Merits), p. 29; PCIJ (Judgment) 1927, Series A No. 9, *Factory at Chorzów* (Jurisdiction), p. 21).

The reparation of the damage resulting from the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the return to the state of affairs prior to the infringement. If this is not feasible, as it happens in the majority of

cases – the instant case among others – the international court must determine the measures, which, in addition to guaranteeing the rights that have been affected, make reparation for the consequences of the infringements, and must also order the payment of an indemnity as compensation for the damage caused (see IACtHR (Judgment) 6 February 2001, Series C No. 74, *Ivcher-Bronstein* v. *Peru*, para. 178; IACtHR (Judgment) 2 February 2001, Series C No. 72, *Baena-Ricardo* et al. v. *Panama*, para. 202; IACtHR (Judgment) 31 January 2001, Series C No. 71, *The Constitutional Court* v. *Peru*, para. 119).

The respondent State may not invoke its domestic law so as to modify or fail to comply with the obligation to make reparation, all aspects of which (scope, nature, means, forms and determination of the beneficiaries) are regulated by international law (see IACtHR (Judgment) 22 January 1999, Series C No. 48, *Blake* v. *Guatemala*, para. 32; IACtHR (Judgment) 20 January 1999, Series C No. 44, *Suárez-Rosero* v. *Ecuador*, para. 42; IACtHR (Judgment) 27 November 1998, Series C No. 43, *Castillo-Páez* v. *Peru*, para. 49). In this respect, international law reigns supreme over domestic law.

As the Court has indicated, Article 63(1) ACHR codifies a rule of custom, which is one of the fundamental principles of contemporary international law regarding the responsibility of States (see IACtHR (Judgment) 22 January 1999, Series C No. 48, *Blake* v. *Guatemala*, para. 33; IACtHR (Judgment) 20 January 1999, Series C No. 44, *Suárez-Rosero* v. *Ecuador*, para. 40; IACtHR (Judgment) 27 November 1998, Series C No. 43, *Castillo-Páez* v. *Peru*, para. 50). Upon the occurrence of an internationally unlawful act that may be imputable to a State, the international liability of such State is immediately engaged for the violation of an international obligation, with the consequent duty to make reparation and to put an end to the consequences of the violation.

Reparations are measures tending to eliminate the effects of the breaches that were committed. Their nature and amount depend on the characteristics of the breaches and on the damage caused at both the pecuniary and non-pecuniary level. Reparations are not supposed to enrich or impoverish the victim or his heirs (see IACtHR (Judgment) 22 January 1999, Series C No. 48, *Blake* v. *Guatemala*, para. 34; IACtHR (Judgment) 27 November 1998, Series C No. 43, *Castillo-Páez* v. *Peru*, para. 53; IACtHR (Judgment) 27 August 1998, Series C No. 39, *Garrido and Baigorria* v. *Argentina*, para. 43).

5. Determination of Beneficiaries

The term "injured party", in the words of Article 63(1) ACHR, is synonymous with the term "victim", signifying the individual or individuals affected by the violation.

The violations of the ACHR, which the IACtHR had ascertained in its judgment on the merits of this case, had been committed towards Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Aman Villagrán Morales, and also towards Ana María Contreras, Matilde Reyna Morales García, Rosa Carlota Sandoval, Margarita Urbina, Marta Isabel Túnchez Palencia and Noemí Cifuentes.

All these persons were included in the category of those who were entitled to receive reparations. It follows that the Court considered the mothers and a grandmother of the murdered youths to be a direct victim of the State's wrongdoing. It clarified that on the one hand, they had to be considered beneficiaries of reparations as the successors of their deceased next of kin, and on the other, as victims of the violation of Articles 5(2) (Right to Humane Treatment) ACHR

> ("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"),
>
> 8(1) (Right to a Fair Trial) ACHR
>
> ("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")
>
> and 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"),

as the judgment on the merits found.

The IACtHR employed the presumption that an individual's death brings about non-pecuniary damage to his close relatives. It reiterated that, in the case of the victims who are dead, the reparations established in their favour are transmitted by succession to their heirs (see IACtHR (Judgment) 19 September 1996, Series C No. 29, *Neira-Alegría* et al. v. *Peru*, para. 60; IACtHR (Judgment) 14 September 1996, Series C No. 28, *El Amparo* v. *Venezuela*, para. 40; IACtHR (Judgment) 10 September 1993, Series C No. 15, *Aloeboetoe* et al. v. *Suriname*, para. 62).

The IACtHR also held that the injury caused to other members of the victim's family or to third parties, due to the death of the victim, can be claimed in their own right (see IACtHR (Judgment) 27 November 1998, Series C No. 43, *Castillo-Páez* v. *Peru*, para. 59; IACtHR (Judgment) 27 August 1998, Series C No. 39, *Garrido and Baigorria* v. *Argentina*, para. 50; IACtHR (Judgment) 10 September 1993, Series C No. 15, *Aloeboetoe* et al. v. *Suriname*, para. 54), under certain conditions that encompass the existence of a relationship of effective, regular financial support between the victim and the claimant, and the possibility of reasonably assuming that this support would have continued if the victim had not died (see IACtHR (Judgment) 10 September 1993, Series C No. 15, *Aloeboetoe* et al. v. *Suriname*, paras. 67 and 68). In regard to such claimants, the *onus probandi* corresponds to them, whether or not they are members of the victim's family. The expression "victim's family" should be comprehended in a far-reaching form that includes all those persons intimately related to him; that is to say, his children, parents and siblings, who could be considered next of kin and have the right to receive a compensation, provided that they satisfy the requirements set up by the Inter-American jurisprudence (see IACtHR (Judgment) 27 November 1998, Series C No. 42, *Loayza-Tamayo* v. *Peru*, para. 92; IACtHR (Judgment) 27 August 1998, Series C No. 39, *Garrido and Baigorria* v. *Argentina*, para. 52; IACtHR (Judgment) 10 September 1993, Series C No. 15, *Aloeboetoe* et al. v. *Suriname*, para. 71).

In the present case, testimonial and expert evidence was very consistent and defended the idea that the five youngsters were definitely the material and economical support of their families, and that they were of special value for their mothers: "[t]he only possessions of the poor are their children. They are the only things they create and possess and, to some degree, a means of security for the future" (expert report of Ana Deutsch).

Moreover, in the opinion of the IACtHR, it may be presumed that the death of an individual produces non-pecuniary damage to his siblings (see IACtHR (Judgment) 25 May 2001, Series C No. 76, *Case of the "White Van" (Paniagua-Morales* et al.*)* v. *Guatemala*, para. 110). This

presumption removes the necessity for the Court to evaluate evidence referring to the relationship between siblings and the victim, if the State does not produce evidence to disprove a close relationship.

For the effects of the instant case, in order to determine the measures of reparation, the Court examined the circumstances of each of the victims, the arguments of the parties and the body of evidence, that is to say the facts admitted as proven in the judgment on the merits, and the new elements of evidence that the parties submitted to the Court at the stage of reparations, so as to show the existence of complementary facts that were pertinent for deciding the measures of reparation.

6. The Historic Reparations Awarded by the IACtHR to the Families of the Killed Street Children: *a)* Pecuniary Damage (Material Damage)

By applying the second sentence of Article 63(1) ACHR, the Court has generally ordered the State to pay the injured party "fair compensation" for pecuniary damage, which is one of the categories of damage identified by the Court that are part of the classical international tradition in this matter.

Usually, the expression "pecuniary damage" or "material damage", may comprise loss of, or detriment to, the income of the victim, the medical expenses of the victim and family members, the costs incurred in searching for the victim when State authorities fail to investigate, and other expenses of economic character that are caused by the violation. In other words, this expression includes both *dannum emergens* and *lucrum cessans*: the first relates to the loss really sustained as the consequence of the infringement of a right; the second relates to the loss of prospective income subsequent to the damage undergone.

In the present case, the IACtHR decided unanimously that the State of Guatemala had to pay compensation to the next of kin of the victims for the pecuniary damage resulting from the deaths of the five street children, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraum Aman Villagrán Morales.

In regard to loss of earnings, due to the shortage of exact information on the actual salary of the victims, the IACtHR based its calculations on the minimum wage for non-agricultural activities in Guatemala (see IACtHR (Judgment) 19 September 1996, Series C No. 29, *Neira-Alegría* et al. v. *Peru*, para. 49; IACtHR (Judgment) 14 September 1996, Series C No. 28, *El Amparo* v. *Venezuela*,

para. 28; IACtHR (Judgment) 10 September 1993, Series C No. 15, *Aloeboetoe* et al. v. *Suriname*, paras. 88 and 89), even though the victims had not regularly been employed at the time of their deaths.

In regard to the expenses incurred due to the events in the instant case, the Court considered that, according to the principle of equity, it was essential to order the following compensation payments: *"with regard to Julio Roberto Caal Sandoval, an amount corresponding to the expenses that his next of kin estimate they incurred in their search in different agencies; with regard to Henry Giovanni Contreras, an amount corresponding to the expenses that his next of kin estimate they incurred in their search in different agencies and the expenses incurred by Ana María Contreras, the victim's mother, for medical treatment and medicines as a result of a facial paralysis; and with regard to Anstraun Aman Villagrán Morales, an amount corresponding to the estimated costs of the funeral service and the expenses incurred by Matilde Reyna Morales García, the victim's mother, for medical treatment and medicines as a result of the diabetes she is suffering from and which was made worse by the facts of this case. As regards Marta Isabel Túnchez Palencia, mother of Federico Clemente Figueroa Túnchez, and Margarita Urbina, grandmother of Julio Roberto Caal Sandoval, they stated during the public hearing that they had certain ailments that originated or had been made worse as a result of the facts of the case […]. In this respect, the Court accepts the statements of these persons as true, owing to the nature of the facts of the instant case and considers that it is also fair to grant them compensation"* (para. 80).

The Court remarked that the minimum wage for non-agricultural activities was Q348.00 (three hundred and forty-eight quetzales) at the date of the death of the victims, which, at the June 1990 exchange rate, was equivalent to US$ 80.93 (eighty United States dollars and ninety-three cents) as the monthly wage that would have corresponded to each of them. The Court calculated the earnings that they would have not longer perceived, on the basis of 12 wages a year, plus the corresponding annual bonuses under Guatemalan legislation. This would have yield the earnings that each victim would have most likely enjoyed during his probable life – the period between his age at the time the events of the present case occurred and the end of his life expectancy in 1990, the year of the facts.

The Court based its calculation of the victims' life expectancy on official tables – "Guatemala: Summary Mortality Tables (1990-1995)" (*"Guatemala: Tablas Abreviadas de Mortalidad (Período 1990-1995)"*), produced by the National Institute of Statistics of Guatemala (INE) – which estimated the number of additional years the victims would have lived had they died a natural death, and on evidence of the victims' age, sex and geographical zone of residence. 25% had to be deducted from this amount for personal expenses. The remaining amount had to be adjusted to its

current value at the date of the judgment: to this end, the Court used a 6% annual rate of interest.

From the foregoing, the IACtHR determined the following amounts as payment for the material damage consequential to the human rights abuse found in the judgment on the merits:

Reparation for pecuniary damage			
Victim	**Expenses**	**Loss of income**	**Total**
Anstraun Aman Villagrán Morales	US$ 150.00 US$ 4,000.00	US$ 28,136.00	US$ 32,286.00
Henry Giovanni Contreras	US$ 400.00 US$ 2,500.00	US$ 28,095.00	US$ 30,995.00
Julio Roberto Caal Sandoval	US$ 400.00 US$ 2.500.00	US$ 28,348.00	US$ 31,248.00
Federico Clemente Figueroa Túnchez	US$ 2,500.00	US$ 28,004.00	US$ 30,504.00
Jovito Josué Juárez Cifuentes		US$ 28,181.00	US$ 28,181.00

The lost earnings of the deceased victims are paid to the successors, as beneficiaries, of the victims. In the instant case, the Court decided that the aforesaid compensatory amounts had to be distributed as follows:

"a) the total amount corresponding to Anstraun Aman Villagrán Morales shall be given to his mother, Matilde Reyna Morales García;

b) the total amount corresponding to Henry Giovanni Contreras shall be given to his mother, Ana María Contreras;

c) the total amount corresponding to Julio Roberto Caal Sandoval shall be given to his grandmother, Margarita Urbina;

d) the total amount corresponding to Federico Clemente Figueroa Túnchez shall be given to his mother, Marta Isabel Túnchez Palencia; and

e) the total amount corresponding to Jovito Josué Juárez Cifuentes shall be given to his mother, Noemí Cifuentes" (para 83).

7. *b)* Non-Pecuniary Damage (Moral Damage)

Likewise other international tribunals, the IACtHR has repeatedly pointed out that a condemnatory judgment may be, *per se*, a form of compensation for non-pecuniary damage (see IACtHR (Judgment) 6 February 2001, Series C No. 74, *Ivcher-Bronstein* v. *Peru*, para. 183; IACtHR (Judgment) 2 February 2001, Series C No. 72, *Baena-Ricardo* et al. v. *Panama*, para. 206; IACtHR (Judgment) 31 January 2001, Series C No. 71, *The Constitutional Court* v. *Peru*, para. 122; IACtHR (Judgment) 22 January 1999, Series C No. 48, *Blake* v. *Guatemala*, para. 55).

According to the Court, the expression "non-pecuniary damage" or "moral damage" stands for *"those harmful effects of the facts of the case that are of neither a financial nor patrimonial nature and, therefore, cannot be assessed in monetary terms. This non-pecuniary damage may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms"* (para. 84).

The five street children of the instant case had been denied the basic measures of safety owed to them as at-risk children, and the opportunity to grow up and live with dignity. The representatives of the victims' next of kin had emphasized the inherent, autonomous value of the right to life: *"[t]he guarantee of the right to life in the Convention requires that it be granted an autonomous value. This concept is superimposed on what the Commission calls the life plan"* (para. 85(g)). The elimination and reduction of the "project of life" (or "plan of life") of the five youngsters, due to the human rights violations that constituted the facts of this case, had restricted their freedom and entailed the loss of a valuable possession. It was at stake the destruction of the "project of life" of those who were in close, affective contact with them as well.

In this regard, the victims' representatives and the IACommHR had alluded to different types of non-pecuniary damage: *"the physical and mental suffering experienced by the direct victims and their families; the loss of life, considering life to be a value in itself, or an autonomous value; the destruction of the life plan of the youths who were assassinated and that of their next of kin, and the damage suffered by three of the direct victims, owing to their status as minors, by having been deprived of the special measures of protection that the State should have provided to them"* (para. 89).

"What is the price of a human life? What is the price of the integrity of the human person? What is the price of the liberty of conscience, or of the protection of the honour and of the dignity? What is the price of the human pain or suffering?" (para. 36). "The life and the integrity of each human being

effectively have no price. The liberty of conscience, the protection of the honour and of the dignity of the human person have no price either. And nor does human pain or suffering" (para. 38), observed Judge Cançado Trindade in his Separate Opinion on the present judgment on reparations.

A shared characteristic of the different forms of moral damage is that, since it is not feasible to assign them an exact financial equivalent because they are not economic in nature, in order to make integral reparation to the injured parties they may only be compensated and, according to the Court, there are two ways of doing that. The first is "*by the payment of a sum of money or the assignment of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity*" (para 84).

Accounting the serious circumstances of the present case, the graveness of the human rights violations marked by extreme violence, the high intensity of human anguish that the respective facts had brought about to the direct victims, the psychological and emotional distress of their families, and the other non-material consequences in the living conditions of the latter, the IACtHR considered that the judgment of condemnation could not be, *per se*, the only non-pecuniary damage awarded for the moral harm suffered, which deserved payment of fair compensation (see IACtHR (Judgment) 6 February 2001, Series C No. 74, *Ivcher-Bronstein* v. *Peru*, para. 183; IACtHR (Judgment) 2 February 2001, Series C No. 72, *Baena-Ricardo* et al. v. *Panama*, para. 206; IACtHR (Judgment) 31 January 2001, Series C No. 71, *The Constitutional Court* v. *Peru*, para. 122).

The Separate Opinion by Judge De Roux Rengifo, which accompanied this judgment on reparations, commented the Court's statement, and merits to be quoted at length: "when compensation is defined in pecuniary terms, as the Court usually does – in other words, when a State is condemned to pay a sum of money to compensate a *non-pecuniary damage* – the intention is not that this payment should fill a vacuum of the same nature and size as that generated by the effects of the damaging fact. What is being sought, modestly but sensibly, is to palliate and alleviate such effects, insofar as possible, in the awareness that they belong to a type of circumstance that eludes any precise monetary assessment. […] It is laudable to explicitly recognize that the victims of human rights violations suffer affective and emotional damages and, in this and other ways, see assets and values violated that cannot be fully assessed in monetary terms. But if the courts send them away empty-handed, because they do not wish to reduce such assets and values of a superior nature to a vulgar, pecuniary assessment, in practical terms, they are merely showing evidence of insensitivity in the face of the suffering caused to the victims by the situation in which they find themselves owing to the damaging facts. Fortunately, the Inter-American Court has not proceeded in this way, either in the Street Children case or in other similar cases. Thus, when the Court

establishes, in fairness, the monetary compensation for a *non-pecuniary damage*, it tries to build a bridge between situations and values of a non-material nature and sums of money or assets that may be directly assessed in money".

Thus, the IACtHR considered the various aspects of non-pecuniary damage that had been submitted as evidence by the victims' representatives and the IACommHR, in establishing the value of the compensation for non-pecuniary damage that the State had to paid to each of the direct victims and their immediate next of kin.

All the same, as remarked by Judge De Roux Rengifo in his Separate Opinion, "the Court performed the operation of assessing the *non-pecuniary damage, en bloc*, as it were. It dedicated one of its *considering paragraphs* to asserting the various types of *non-pecuniary damage* alleged by the victims' representatives and the Commission […]. Abstaining from pronouncing itself on each of these 'aspects' of the damage in question, the Court proceeded to indicate that it would bear them in mind, 'insofar as they are pertinent and respond to the particularities of each individual case', in order to establish the amount of the respective compensatory payments".

The IACtHR explained that, in determining the amount of the compensation for non-pecuniary damage, it had also taken into account *"the overall adverse conditions of abandonment endured by the five street children, who were in a high-risk situation and without any protection as regards their future"* (para. 90).

The living conditions of the brutally victimized youths were eloquently described by Judge Cançado Trindade in his Separate Opinion: "the five direct victims, before being cruelly and arbitrarily deprived of their lives, were already deprived of creating and developing a project of life (and of seeking a meaning for their existence). They used to stay in the streets in a situation of high risk, vulnerability and defencelessness, amidst the humiliation of misery and a state of suffering amounting to a spiritual death, – like millions of other youngsters (in growing numbers) in all Latin America and all over the 'globalized' – more precisely, dehumanized – world of this beginning of the XXIst century" (para. 33).

The Court also took into consideration the particular circumstances of each of the direct victims:

> *"a)with regard to Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes, that they were forcibly retained in secret, isolated from the external world and subjected to extremely violent*

treatment, including severe abuse and physical and psychological torture before being assassinated; and

b) with regard to Anstraum Aman Villagrán Morales, Julio Roberto Caal Sandoval and Jovito Josué Suárez Cifuentes, that they were minors […] and, consequently, there were particularly vulnerable and should have been the object of special protection by the State" (para 91).

Furthermore, in reference to their immediate next of kin, the Court considered that:

"a) the mothers of Anstraun Aman Villagrán Morales, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes and the grandmother of Julio Roberto Caal Sandoval, as heirs, should receive the compensation for non-pecuniary damage caused to each of the youths;

b) the mothers of the five youths and the grandmother of Julio Roberto Caal Sandoval suffered two types of non-pecuniary damage: first, because they were affected by the disappearance, torture and death of their sons and grandson, and second, because they themselves were the object of the violation of Articles 5(2), 8(1) and 25 of the Convention, as established in the judgment on merits in this case. The compensation for such damage should be paid directly to each of them, with the exception of the amount owed to Rosa Carlota Sandoval and, since she has died, this should be given to her mother, Margarita Urbina; and

c) the siblings of Anstraun Aman Villagrán Morales, Henry Giovanni Contreras and Federico Clemente Figueroa Túnchez suffered non-pecuniary damage because they were affected by the disappearance, torture and death of the latter, and because they were the object of the violation of Articles 8(1) and 25 of the Convention, according to the findings of the judgment on merits. It was not proved that Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes had siblings" (para. 92).

In view of the foregoing, the IACtHR decided to award the following amounts as compensation for the moral injuries suffered by the deceased victims (as the subjects of the present case), and the amounts as compensation for the emotional pain and other violations suffered by their mothers and grandmother directly, as well as by their siblings, as indicated in this table:

Reparation for non-pecuniary damage	
Direct victims	**Amount**
Anstraun Aman Villagrán Morales	US$ 23,000.00
Henry Giovanni Contreras	US$ 27,000.00
Julio Roberto Caal Sandoval	US$ 30,000.00
Federico Clemente Figueroa Túnchez	US$ 27,000.00
Jovito Josué Juárez Cifuentes	US$ 30,000.00
Mothers and grandmother	**Amount**
Matilde Reyna Morales García	US$ 26,000.00
Ana María Contreras	US$ 26,000.00
Rosa Carlota Sandoval	US$ 26,000.00
Margarita Urbina	US$ 26,000.00
Marta Isabel Túnchez Palencia	US$ 26,000.00
Noemí Cifuentes	US$ 26,000.00
Siblings	**Amount**
Reyna Dalila Villagrán Morales	US$ 3,000.00
Lorena Dianeth Villagrán Morales	US$ 3,000.00
Gerardo Adoriman Villagrán Morales	US$ 3,000.00
Mónica Renata Agreda Contreras	US$ 3,000.00
Shirley Marlen Agreda Contreras	US$ 3,000.00
Osman Ravid Agreda Contreras	US$ 3,000.00
Guadalupe Concepción Figueroa Túnchez	US$ 3,000.00
Zorayda Izabel Figueroa Túnchez	US$ 3,000.00

In this respect, the observation made by Judge De Roux Rengifo in his Separate Opinion is very interesting: the Court determined the value of the respective compensatory payments "assessing them in amounts that are generally higher than those of the penalties imposed on States for reparation of *non-pecuniary damage* in cases previously decided by the Court", in confirmation of the fact that the instant ruling on reparations has gone to the core of the history of the IACtHR, not only as to the condemnation of Guatemala for the horrendous crimes against street children, but also as to the amounts of damage awarded.

8. *c)* Other Forms of Reparation.

"If the indemnizations are paid, would the 'problem' be 'resolved'?" (para. 36), wondered Judge Cançado Trindade in his Separate Opinion. In his view, "one ought to focus the whole theme of the reparations for violations of human rights as from the integrality of the personality of the victims, discarding any attempt of mercantilization – and the resulting trivialization – of such reparations. It is not a question of denying importance to the indemnizations, but rather of warning for the risks of *reducing* the wide range of reparations to simple indemnizations. It is not by mere chance that contemporary legal doctrine has been attempting to devise distinct *forms* of reparation – *inter alia*, *restitutio in integrum*, satisfaction, indemnizations, guarantees of non-repetition of the wrongful acts – *from the perspective of the victims*, so as to fulfil their needs and claims, and to seek their full rehabilitation" (para. 28).

Article 63(1) ACHR, to quote again Judge Cançado Trindade, "requires that reparations be enlarged, and not reduced, in their multiplicity of forms. The fixing of reparations ought to be based on the consideration of the victim as an integral human being, and not on the degraded perspective of the *homo oeconomicus* of our days" (para. 37).

As disclosed in the preceding pages, besides the payment of a sum of money, the IACtHR also indicated a second way to compensate non-pecuniary or moral damage: "*by the execution of acts or works of a public nature or repercussion, which have effects such as recovering the memory of the victims, re-establishing their reputation, consoling their next of kin or transmitting a message of official condemnation of the human rights violations in question and commitment to the efforts to ensure that they do not happen again*" (para. 84).

To this end, the Court decided to award what it called "other forms of reparation", i.e. measures of satisfaction and guarantees of non-repetition, which are monetary substitutes.

It is from these "other forms of reparation" that the consequences of non-compliance with Article 2 (Domestic Legal Effects) ACHR

> ("Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms")

derive. This provision enshrines the general obligation to bring the domestic law in line with the obligations resulting from the treaty protecting human rights, which the State must comply with, just because it has ratified the said legal instrument (see IACtHR (Judgment) 27 August 1998, Series C No. 39, *Garrido and Baigorria* v. *Argentina*, para. 68).

In the judgment on the merits of the instant case, the Court did not establish that Guatemala had violated this provision. All the same, in the judgment on reparations, it held that the State had a duty to implement, in its domestic legislation, the legislative, administrative or whatever other measures that were necessary to adapt Guatemalan legislation to protect the rights of the child as set forth in Article 19 (Rights of the Child) ACHR

> ("Every 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"),

in order to guarantee the non-repetition of the events such as those under consideration.

Incidentally, it should be remarked that the ACHR gives children special protection, which is provided for Article 19 (Rights of the Child) and reinforced by Article 27(2) (Suspension of Guarantees), under which the State's obligation vis-à-vis the rights of children can not be suspended, even in times of war, public danger or other states of emergency. The ACHR is the only binding international legal instrument in the field of human rights to prohibit the suspension of the obligations undertaken by the States Parties relating to the human rights of children. They are put in the special category of non-derogable rights, and have a unique place within the text of the ACHR, which is echoed in the CRC.

The representatives of the victims' next of kin had requested the implementation of specific legislation. Nevertheless, the Court affirmed that it could not establish the content of the legislative measures the State had to take to fulfil the requirements of the ACHR, and that it could not give the State concrete indications, to say whether these measures had to consist in derogating the Minors' Code of 1979 or bringing into force the Children and Youth Code of 1996 and the Plan of Action for Street Children (*Plan de Acción a Favor de Niños, Niñas y Jóvenes de la Calle*) of 1997. Therefore, the Court's order to Guatemala that it had to conform its domestic laws to the ACHR was general in nature, leaving the details to the Guatemalan Congress.

Generally speaking, non-pecuniary or moral reparations to remedy the consequences of a human rights violation also include, but are not limited to: the victim's right to truth; the State's duty to investigate, try, and punish; the State's duty to prevent future abuses; the restoration of the legal

order; the State's duty to publicize the Court's judgments; the State's public acceptance of responsibility for human rights abuses and a corresponding apology; the restoration of affected communities; the next of kin's right to know the location of the victim's remains; the State's duty to establish memorials and erect monuments to honour the victims.

In conformity with the eight operative paragraph of the judgment on the merits in the present case, Guatemala had to investigate the facts of the human rights violations declared in that judgment, determine those responsible and, when appropriate, punish them. Recalling what it had stated in other occasions, the IACtHR asserted that the obligation to guarantee and ensure effective exercise of the rights and freedoms established in the ACHR is independent of and different from the obligation to make reparation. While the State is obliged to thoroughly investigate the facts of the case and to identify, prosecute and punish the violators, the victim or, in his absence, his next of kin, may waive the measures of reparation for the damage caused (see IACtHR (Judgment) 27 August 1998, Series C No. 39, *Garrido and Baigorria* v. *Argentina*, para. 72). As a result, the State that does not comply with the duty not to leave human rights violations unpunished would also be failing to comply with its general obligation to ensure the free and full exercise of the rights of the persons subject to its jurisdiction (see IACtHR (Judgment) 25 November 2000, Series C No. 70, *Bámaca-Velásquez* v. *Guatemala*, para. 129; IACtHR (Judgment) 8 March 1998, Series C No. 37, *Case of the "White Van" (Paniagua-Morales* et al.*)* v. *Guatemala*, para. 178 and sixth operative paragraph).

The Court also reiterated the right of the victims' next of kin to know all the facts (see IACtHR (Judgment) 10 September 1993, Series C No. 70, *Aloeboetoe* et al. v. *Suriname*, para. 109; IACtHR (Judgment) 20 January 1989, Series C No. 5, *Godínez-Cruz* v. *Honduras*, para. 191; IACtHR (Judgment) 29 July 1988, Series C No. 4, *Velásquez-Rodríguez* v. *Honduras*, para. 181) and the identity of the State agents responsible for the acts. The State's duty to investigate the human rights violations must to be undertaken seriously and not as a mere formality (see IACtHR (Judgment) 22 January 1999, Series C No. 48, *Blake* v. *Guatemala*, para. 65; IACtHR (Judgment) 20 January 1999, Series C No. 44, *Suárez-Rosero* v. *Equador*, paras. 79 and 80; IACtHR (Judgment) 14 September 1996, Series C No. 28, *El Amparo* v. *Venezuela*, para. 61).

Furthermore, the Court pointed out that the State has the obligation to combat impunity, by using all available legal means because, if unchecked, impunity fosters the chronic reiteration of human rights breaches and the absolute defencelessness of the injured parties and their relatives (see IACtHR (Judgment) 6 February 2001, Series C No. 74, *Ivcher-Bronstein* v. *Peru*, para. 186; IACtHR (Judgment) 31 January 2001, Series C No. 71, *Case of the Constitutional Court* v. *Peru*,

para. 123; IACtHR (Judgment) 8 March 1998, Series C No. 37, *Case of the "White Van" (Paniagua-Morales* et al.*)* v. *Guatemala*, para. 173).

According to lawyers at Casa Alianza – who brought this case to the IACommHR against the State of Guatemala, in association with Centre for Justice and International Law (CEJIL) –, regardless of innumerable abuses inflicted upon Guatemalan street children, prompt and thorough investigations were rare and prosecutions had been occasional. The Guatemalan justice system was slow, ineffective, and extremely susceptible to corruption and intimidation, resulting in a high level of impunity and a small number of guilty verdicts for human rights violations. The utmost obstacle to convictions was the dearth of investigation by the Public Ministry, resulting in the dearth of adequate evidence for prosecution. Therefore, police officers continued their wrongdoings and were not held responsible for their acts.

Where impunity persists, the victims' right to reparations for gross violations of human rights is presumably to become deceptive. Consequently, the IACtHR restated that Guatemala was obliged to investigate the circumstances that had produced the violations of the ACHR in the instant case, and to determine the individual responsibilities, so that the authors of the violations received appropriate punishment.

As further measure of satisfaction, the IACtHR ordered Guatemala to exhume the body of Henry Giovanni Contreras and to adopt the necessary measures to transfer the mortal remains of this victim to the place chosen by his next of kin, without any cost to them, in order to satisfy their desire to give them appropriate burial, an act of overwhelming importance in their life, according to their religious beliefs and customs.

Another measure of satisfaction ordered by the IACtHR was the designation of an educational centre with a name allusive to the murdered street children, and the placement, in this centre, of a plaque with the names of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraun Aman Villagrán Morales. This was a measure not only of a symbolic value, in order to attach importance to the memory of the victims and to keep it alive, but also of a deterrent effect, in order to raise awareness and avoid that the type of violations such as those that occurred in the present case were repeated in the future (see IACtHR (Judgment) 19 June 1998, Series C No. 38, *Benavides-Ceballos* v. *Equador*, paras. 48.5 and 55; IACtHR (Judgment) 10 September 1993, Series C No. 70, *Aloeboetoe* et al. v. *Suriname*, para. 96).

The idea of reparation is part of the current trend to see to it that the international law of human rights becomes the protector of the person: "it is the International Law of Human Rights that, clearly and decidedly, comes to rescue the central position of the victims, as it is oriented towards their protection and the satisfaction of their needs" (para. 15), asserted Judge Cançado Trindade in his Separate Opinion. In the case at issue, the Court proved its victim-centric approach; it emphasized the perspective of the centrality of the position of the victims so as to shape adequate non-monetary remedies. In other words, it used an innovative and forward-looking approach to non-pecuniary reparations, which were centred on the fact that the injured parties were children, and adapted to illustrate their protected *status*, in an attempt to address the psychological, moral, and symbolic elements of the violations.

9. Determination of Costs and Expenses

Under Article 55 (Contents of the Judgment) of the Rules of Procedure of the IACtHR,

"1. The judgment shall contain: […] h. the decision, if any, on reparations and costs".

Therefore, the Court may order the State to pay costs and expenses to the successful injured party who requests them. These should be understood within the concept of reparation established in Article 63(1) ACHR, because they are a natural consequence of the actions taken by the victim or victims, their successors or their representatives to have access to international justice, and to obtain a court judgment that holds the State liable for human rights abuse and for the obligation to make reparation. That implies outlays and commitments of a monetary nature, which should be reimbursed when passing the judgment of condemnation.

This reasoning had led the IACtHR to state, on other occasions, that the costs referred to in Article 55(1)(h) of the Rules of Procedure also encompass the necessary and reasonable expenses that the victim or victims incurred to have access both to the domestic courts and to the Inter-American System of Human Rights Protection (IASPHR) before the two instances – the IACommHR and the IACtHR – including the fees of those who provide legal assistance. Hence, the IACtHR must assess carefully the scope of the costs and expenses, considering the specific circumstances of the case, the nature of the international jurisdiction for the human rights protection and the features of the respective proceeding, which are different from those of other national or international proceedings (see IACtHR (Judgment) 27 November 1998, Series C No. 42, *Loayza-*

Tamayo v. *Peru*, paras. 176, 177 and 178; IACtHR (Judgment) 27 August 1998, Series C No. 39, *Garrido and Baigorria* v. *Argentina*, paras. 79, 80, 81 and 82).

In the instant case, the Court recognized to the representatives of the victims' next of kin the amount of US$ 27,651.91 (twenty seven thousand six hundred and fifty-one United States dollars and ninety-one cents) for Casa Alianza and the amount of US$ 11,000.00 (eleven thousand United States dollars) for CEJIL, in reimbursement of the expenses and costs generated in the domestic jurisdiction and in the Inter-American jurisdiction.

10. Method of Compliance

Article 68 ACHR provides that

> "1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties. 2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state".

In the present case, as for the manner in which the State had to comply with the judgment on reparations, the IACtHR decided that Guatemala had to pay the compensations, reimburse the costs and expenses and take the other measures that were ordered, within six months of the notification of the judgment.

The amount of the compensations awarded by the Court to the adult next of kin of the injured parties had to be paid directly to them in each case. If any named beneficiary had died, the payment would have been made to the heirs.

If, for any reason, the beneficiaries had not received the compensations within the six-months deadline, Guatemala would have had to deposit these amounts in their favour in an account or a deposit certificate in a Guatemalan bank of recognized solvency, in United States dollars or in the equivalent amount in Guatemalan currency, within the term of six months, and under the most favourable financial conditions allowed by the law and banking practice. If, after ten years, the compensation had not been claimed, these amounts would have been returned to the State, with the interest earned.

In reference to the compensation for the minor beneficiary, Osman Ravid Agreda Contreras, Guatemala had to open an account or invest in a deposit certificate in a Guatemalan bank of recognized solvency, in United States dollars or in the equivalent amount in Guatemalan currency, within the term of six months, and under the most favourable financial conditions allowed by the law and banking practice. The interest earned would have been accumulated, and the entire amount would have been given to the minor when he had reached the age of majority or when he had married. In case of his death, the right would have been conveyed to his heirs.

The State had to make payments in United States dollars or in the equivalent amount in Guatemalan currency, using the exchange rate between the two currencies in force in the New York, United States, market the day before the payment, so as to make the respective calculation.

The IACtHR-ordered compensations had to be free from any tax. If the State had not made payments during the time period established by the IACtHR, it would have paid interest on the amounts owed, equivalent to the banking interest on overdue payments in Guatemala.

11. Final Remarks

In addition to what has been argued out in the first part of this paper (see S. VANNUCCINI *"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*, 29 October 2012, <diritti-cedu.unipg.it>), it should be noted that the so-called "*Street Children*" case, which has marked the first time that the IACtHR has condemned a Member State for violating children's rights through severe harsh treatments and loss of their lives, has been truthfully pioneering and paradigmatic as to the reparations phase as well.

It has signalled the first time that a judgment has involved legal, social, economic and educational remedies. It has made clear that the reparations of human rights abuses ought to be determined from the gravity of the facts and the consequent profound and devastating impact upon the direct victims and the indirect ones, that is to say the intensity of human suffering and the trauma of what happened, which had been so deep and pervasive that the close relatives of the killed victims could never return to who they were before. It has already had the seed of the concept of "aggravated responsibility" that has been elaborated in the subsequent cases concerning children, which have been dealt with by the Court, under the State responsibility doctrine for gross violations of the human rights of these vulnerable subjects.

The so-called "*Street Children*" case has been a terrible example of unprecedented number of grievous human rights breaches committed against these very underprivileged children, among which the gross violation of the right to life stands out. This case has compelled the Court to reflect as for the significance and the scope of the right to life and as for the State's duties towards the drama of children who came from disadvantage backgrounds, lived on the streets of Guatemala and were considered as a social plague.

From the viewpoint of reparations, the deprivation of life of youths has its implication, in view of the fact that compensation for loss of life has usually been calculated on the basis of the notion of loss of earnings and, consequently, on the basis of the concept of "*homo oeconomicus*". When the victims are adults who have died as a result of the human rights violation, the calculation of lost wages is founded on evidence of the victims' age, life expectancy in their society at the time of death – taking into account the period during which they would have been working or been economically active – and the victims' actual salary. Nevertheless, children as such are not "bread earners", are not regularly employed, and have not finished their education.

The assessment of *quantum* for deprivation of life in cases of children, based on the notion of "the inherent value of life" – rather than on the concept of "*homo oeconomicus*" – that does not fall under the heading of *dannum emergens* or *lucrum cessans*, has found its first instance in the *Villagrán Morales* et al. v. *Guatemala* case. The developing notion of "the inherent value of life" as echoed in the jurisprudence of the IACtHR, does not admit that the life of a person is valueless unless he/she makes money or has the possibility of making it. Moreover, the aforesaid notion has brought in the idea that, at all events, even for the most needy human being, the curtailment of his/her fundamental right to life involves a loss – amounting to the deprivation of the life itself – properly able of being converted into financial terms, under moral damage.

In their Joint Concurring Opinion on the judgment on the merits of the present case, the Judges Cançado Trindade and Abreu-Burelli underlined that "the damage to the project of life ought to be integrated to the conceptual universe of reparations under Article 63.1 of the American Convention" (para. 8). Accepting this reasoning, the consequence is that the "aggravated responsibility" the State incurred for violations of children's rights entails that the concept of harm to the "project of life" (or "plan of life") has to be included in a holistic way into the jurisprudence of the IACtHR, comprising this in its calculation of *quantum* for pecuniary and non-pecuniary damage.

As a result, even though financial reparations normally remedy a quantifiable loss suffered by the victim or victims, the Court expanded the concept of financial compensation so as to provide

redress for injuries that were harder to quantify. In a unanimous decision, the IACtHR ordered the Guatemalan Government to pay a total of U.S.$ 508,865.91 in monetary compensation for the surviving relatives of the murdered youngsters and for the legal expenses of both Casa Alianza and CEJIL. It has been a question of "compensatory reparation", by paying indemnifications as compensation for pecuniary and non-pecuniary damage, costs and expenses, which are not equivalent to the injury, but they adjust to it.

It must be considered, however, that monetary reparation alone is not adequate when dealing with brutal human rights breaches and atrocities, such those against the five adolescents of this case, which defy monetary dimension and call for action that goes beyond the financial sphere. The abduction, detention, torture and murder of street children by the State agents are not just crimes: they are actions that strip away people's dignity and rights as human beings. In the circumstances, there is no real or full reparation possible, in the literal meaning of the term.

In spite of the inherent limitations to reparations, the Court went far beyond ordering just monetary reparation to the members of the victims' families. As said, it also ordered the State "other forms of reparation" – to say those measures of satisfaction aimed at redressing non-pecuniary damage, and guarantees of non-repetition aimed at avoiding the occurrence of events similar to those that had been denounced – of the kind of the obligations of doing, abiding by the request of the representatives of the relatives of the victims. Guatemala was required to conduct prompt, impartial and effective investigation, prosecution and punishment of those persons that had committed the human rights violations; to designate an educational centre in the name of the victims, complete with a memorial plaque; to exhume and transfer to the family the mortal remains of one of the victims, enabling the family to give them a proper burial.

The IACtHR also reaffirmed that the sentence itself was a *per se* form of reparation to the victims because it brought out the truth. This was particularly significant and important for vindicating the memory of the injured parties, such as in the instant case where the killed street children were labelled juvenile delinquents. It has been a question of "honorific reparation". The Court commemorated the life of the victims, paid tribute to the victims' contribution to their community, and attempted to redress the past violations and modify the future, both for the individual victims and their families, and for the society at large.

The judgment in question also ordered Guatemala another measure of reparation, which was designed to change the legal structure, by bringing the internal laws and any administrative procedures regarding children into accordance with Article 19 (Rights of the Child) ACHR. It has

been a question of "preventive reparation", by requiring legislative review that entails – according to the general obligation of the State as provided by Article 2 (Domestic Legal Effects) ACHR, and the Court's well-reasoned and statutorily justifiable position in this respect – "*the adoption of measures to suppress laws and practices of any kind that imply a violation of the guarantees established in the ACHR, and also the adoption of laws and the implementation of practices leading to the effective observance of the said guarantees*".

In brief, the purposes of the reparative measures ordered by the IACtHR were to ensure the safeguard of children's rights, to uncover the truth, to know what happened and the identity of the State agents responsible for the acts, to combat impunity, to restore dignity to the victims, to prevent violations such as those under consideration from occurring in the future. In this regard, it should be observed that, while in the past the focus of the remedies was on the damages that had already been brought about to the individual victim by the violation, the law has developed to comprise in the remedies of the consequences of the violation a duty of deterring future human rights violations.

The advent of moral or non-pecuniary reparations ushered in a new phase in the Inter-American jurisprudence on reparations. In the case under consideration, the IACtHR did not confine its reparations awards to persons who had directly suffered pecuniary or non-pecuniary harm. On the contrary – as just pondered in the first part of this paper (see S. VANNUCCINI *"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*, 29 October 2012, <diritti-cedu.unipg.it>) – the Court expanded the notion of victim by including the immediate next of kin of the direct victims. As a result, the members of the victims' families were entitled to reparations as a veritable subjective right: not only the reparations owed by the State following the violation of the rights of the direct victims were totally transferable, but also the members of the families of the deceased victims were victims in their own right.

Moreover, the IACtHR began to recognize that mass human rights breaches bring about suffering that is not limited to persons, because entire communities fall victim to the State's failure to defend human rights. In his Separate Opinion, Judge Cançado Trindade poignantly stated: "the human being represents the creative force of the whole community. Human suffering has a dimension which is both personal and social. Thus, the damage caused to each human being, however humble he might be, affects the community itself as a whole. As the present case discloses, the victims are multiplied in the persons of the surviving close relatives, who, furthermore, are forced to live with the

great pain inflicted by the silence, the indifference and the oblivion of the others" (para. 22). As a consequence of this line of thought, one may infer that collective harm merits collective redress.

As a matter of fact, the decision at issue has been also considered a prominent example of the concept of collective reparations (reparations with a collective dimension) envisaged by the IACtHR, which allowed it to force the State to make amends for human rights breaches that had affected an entire community. Since collective reparations can potentially include large numbers of victims, monetary compensation alone is not always a possible means for redress. That is the reason why, instead of relying solely on money to relieve the claimants' distress, the State liable for human rights violations was required to adopt the so-called "other forms of reparation", that is to say public or publicly visible measures.

The *Villagrán Morales* et al. v. *Guatemala* case has sent a warning to all Member States that they may be held responsible for similar crimes perpetrated against children who come within their jurisdiction, and it has been an important example of how human rights violations can be pursued within the IASPHR, when domestic judicial proceedings in order to obtain an integrated vision of the facts are riddled with irregularities, or when cases fail to make progress after years of prompting by the complaining parties. The murdered victims of this case were poor youngsters, whose surviving close relatives had suffered for so many years trying to get justice. The IACtHR offered them an alternative legal recourse to seek justice and obtain redress, by contemplating integral reparations where material and moral damage were awarded not just in an economical way but also through the symbolic one given by the public suffering recognition.

This leading case has marked another phase in the evolution and strengthening of the IASPHR, which is crucial to the advancement of the rule of law and as deterrent of human rights abuse by State agents acting with impunity. It has represented a historic instance of the Court's delivering controversial, well-considered, impartial decisions, which have the consequence of "de-politicising" contentious questions in a politically unstable area with tremendous societal problems, and creating a climate in which compliance with a judicial decision legitimizes governmental conduct and where non-compliance makes governmental action illegitimate.

In the decade that has passed since the events of this case occurred, there has been a considerable decrease in levels of violent behaviour against street children in Guatemala. The 2001 judgment on reparations has reflected an increase in the respect for and enforcement of children's rights, not only in Guatemala, but also in all of the Americas, even if similar incidents of abuse have

persisted, taking into account the limitations of legal decisions to produce immediate and tangible effect.

For certain, through this landmark ruling, the Court took an incredible step in creating a more structural guarantee for the protection of children, by ordering ground-breaking and far-reaching remedies, which have invoked action not only by the State's executive, but also by the legislature and national tribunals. Hence, this decision on reparations has compelled Guatemala to solve the concern of how it is possible to make the respect of such rights come real, as they are recognized in the ACHR, and how to comply not only with the latter but also with the very comprehensive international *corpus juris* for the protection of the rights of the child, of which the ACHR forms part.

The present judgment on reparations has contributed to raise the standards of human behaviour in regard to the dispossessed, and to combat a climate of impunity and institutionalised aggression against the most vulnerable at the edge. It has also served of encouragement to all those who, especially in the developing countries of Latin America, have experienced the psychological and emotional distress of losing a beloved person in analogous circumstances of pain, affliction and humiliation, worsened by the social unresponsiveness.

"The evil committed […] does not disappear: it is only fought against, and mitigated. The reparations granted render the life of the surviving relatives perhaps bearable, by the fact that, in the *cas d'espèce*, the silence and the indifference and the oblivion have not succeeded to cover the atrocities, and that the evil perpetrated has not prevailed over the perennial search for justice (proper of the spirit). In other words, the reparations granted mean that, in the concrete case, the *human conscience* has prevailed over the impulse of destruction. In *this sense*, the reparations, although not full, are endowed with an unquestionable importance in the work of safeguard of the rights inherent to the human being" (para. 43), finalized Judge Cançado Trindade in his Separate Opinion.

Precedents

IACtHR (Judgment) 25 May 2001, Series C No. 76, *Case of the "White Van" (Paniagua-Morales* et al.*)* v. *Guatemala*.

IACtHR (Judgment) 6 February 2001, Series C No. 74, *Ivcher-Bronstein* v. *Peru*.

IACtHR (Judgment) 2 February 2001, Series C No. 72, *Baena-Ricardo* et al. v. *Panama*.

IACtHR (Judgment) 31 January 2001, Series C No. 71, *The Constitutional Court* v. *Peru*.

IACtHR (Judgment) 25 November 2000, Series C No. 70, *Bámaca-Velásquez* v. *Guatemala*.

IACtHR (Judgment) 19 November 1999, Series C No. 63, *Case of the "Street Children" (Villagrán-Morales* et al.*)* v. *Guatemala*.

IACtHR (Judgment) 22 January 1999, Series C No. 48, *Blake* v. *Guatemala*.

IACtHR (Judgment) 20 January 1999, Series C No. 44, *Suárez-Rosero* v. *Ecuador*.

IACtHR (Judgment) 27 November 1998, Series C No. 43, *Castillo-Páez* v. *Peru*.

IACtHR (Judgment) 27 November 1998, Series C No. 42, *Loayza-Tamayo* v. *Peru*.

IACtHR (Judgment) 27 August 1998, Series C No. 39, *Garrido and Baigorria* v. *Argentina*.

IACtHR (Judgment) 19 June 1998, Series C No. 38, *Benavides-Ceballos* v. *Equador*.

IACtHR (Judgment) 8 March 1998, Series C No. 37, *Case of the "White Van" (Paniagua-Morales* et al.*)* v. *Guatemala*.

IACtHR (Judgment) 11 September 1997, Series C No. 32, *Case of the "Street Children" (Villagrán-Morales* et al.*)* v. *Guatemala*.

IACtHR (Judgment) 29 January 1997, Series C No. 31, *Caballero-Delgado and Santana* v. *Colombia*.

IACtHR (Judgment) 19 September 1996, Series C No. 29, *Neira-Alegría* et al. v. *Peru*.

IACtHR (Judgment) 14 September 1996, Series C No. 28, *El Amparo* v. *Venezuela*.

IACtHR (Judgment) 10 September 1993, Series C No. 15, *Aloeboetoe* et al. v. *Suriname*.

IACtHR (Judgment) 20 January 1989, Series C No. 5, *Godínez-Cruz* v. *Honduras*.

IACtHR (Judgment) 29 July 1988, Series C No. 4, *Velásquez-Rodríguez* v. *Honduras*.

Domestic Law

Constitution of the Republic of Guatemala

Guatemalan Minors' Code of 1979

Guatemalan Children and Youth Code of 1996

Bibliographical References

M. BELOFF, *"Cuando un caso no es 'el caso'. Comentario a la sentencia Villagrán Morales y otros (Caso de los 'Niños de la calle')"*, in *Los derechos del niño en el sistema interamericano* (Buenos Aires, Editores del Puerto, 2004).

A.A. CANÇADO TRINDADE, *"International Law for Humankind: Towards a New* Jus Gentium *– General Course on Public International Law – Part I"*, *316 Recueil des cours* (2005).

A.A. CANÇADO TRINDADE, *"The Case-Law of the Inter-American Court of Human Rights: An Overview"*, in *Studi di diritto internazionale in onore di Gaetano Arangio-Ruiz III* (Napoli, Editoriale Scientifica 2004).

L. BURGORGUE-LARSEN, A. ÚBEDA DE TORRES, *The Inter-American Court of Human Rights: Case-Law and Commentary* (Oxford, Oxford University Press 2011).

CASA ALIANZA, *"Inter American Court of Human Rights Makes Historic Awards to Families of Murdered Guatemalan Street Children"*, 13 June 2001, <www.essex.ac.uk/armedcon/Countries/Americas/Future/Text/Guatemala006.htm>.

G. CITRONI, T. SCOVAZZI, *"Vos vas a aparecer muerto como aparecieron tus amigos, los demás"*, in PINESCHI (a cura di), *La tutela internazionale dei diritti umani – Norme, garanzie, prassi* (Milano, Giuffrè Editore 2006).

U. EWELUKWA, *"Litigating the Rights of Street Children in Regional or International* Fora: *Trends, Options, Barriers and Breakthroughs"*, *9 Yale Human Rights and Development Law Journal* (2006).

M. FERIA TINTA, *The Landmark Rulings of the Inter-American Court of Human Rights on the Rights of the Child: Protecting the Most Vulnerable at the Edge* (Leiden, Martinus Nijhoff Publishers 2008).

HUMAN RIGHTS WATCH, *"Guatemala's Forgotten Children: Police Violence and Abuses in Detention"*, July 1997, <www.hrw.org/hrw/reports/1997/guat1>.

B. MAYEUX, J. MIRABAL, *"Collective and Moral Reparations in the Inter-American Court of Human Rights"* (Human Rights Clinic, University of Texas, November 2009).

NATIONAL INSTITUTE OF STATISTICS OF GUATEMALA, *"Guatemala: Summary Mortality Tables (1990-1995)"*.

ORGANIZATION OF AMERICAN STATES, *"Annual Report of the Inter-American Court of Human Rights"*, OEA/Ser.L/VIII.54, Doc. 4, 18 February 2000.

ORGANIZATION OF AMERICAN STATES, *"Observations by the Governments of the Member States on the Draft Inter-American Convention on Protection of Human Rights: Guatemala"*, OEA/Ser.K/XVI/1.1, Doc. 24, 8 November 1969.

Y. OTÁROLA ESPINOZA, *"El respeto a los derechos fundamentales reconocidos en tratados internacionales. Los niños de la calle"*, *33 Revista Chilena de Derecho* (2006).

J.M. PASQUALUCCI, *The Practice and Procedure of the Inter-American Court of Human Rights* (Cambridge, Cambridge University Press 2003).

S. VANNUCCINI *"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*, 29 October 2012, <diritti-cedu.unipg.it>.

M. WERNHAM, *"International Human Rights Law in Evolution: The Implication of* Villagrán Morales et al. v. Guatemala *(The 'Street Children' Case, Inter-American Court of Human Rights) for International Human Rights Law"* (Institute of Commonwealth Studies, University of London, 15 September 2000).

I. ZARIFIS, *"Guatemala: Children Rights Case Wins Judgment at Inter-American Court of Human Rights"*, *9 Human Rights Brief* (2001).

(28 February 2013)