

Inter-American Court of Human Rights

Case of the "Street Children" (Villagrán-Morales *et al.*) v. Guatemala

Judgment of May 26, 2001 (Reparations and Costs)

In the "Street Children" case (Villagrán Morales et al. vs. Guatemala),
the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") composed of the following judges*:

Antônio A. Cançado Trindade, President
Hernán Salgado Pesantes, Judge
Oliver Jackman, Judge
Alirio Abreu Burelli, Judge
Sergio García Ramírez, Judge
Carlos Vicente de Roux Rengifo, Judge

also present:

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

in accordance with Articles 29, 55 and 56 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and in compliance with the judgment of November 19, 1999, delivers this judgment on reparations.

I COMPETENCE

1. As established in Articles 62 and 63(1) of the Convention, the Court has competence to decide on reparations and expenses in the instant case, because on May 25, 1978, the Republic of Guatemala (hereinafter "Guatemala" or "the State")

* Judge Máximo Pacheco Gómez informed the Court that, owing to circumstances beyond his control, he was unable to attend the Fifty-first Regular Session of the Court; therefore, he did not take part in the deliberation and signature of this judgment.

ratified the American Convention and on March 9, 1987, it accepted the contentious jurisdiction of the Court.

II BACKGROUND

2. This case was submitted to the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") in an application of January 30, 1997, accompanied by Report No. 33/96 of October 16, 1996. It originated with a petition (No. 11,383) against Guatemala received by the Secretariat of the Commission on September 15, 1994.

3. On November 19, 1999, the Court delivered judgment on the merits of the case, in which it 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 Anstram 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 Anstram 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 Anstram 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.

III PROCEEDINGS AT THE REPARATIONS STAGE

4. On January 20, 2000, the President of the Inter-American Court (hereinafter "the President"), in compliance with the provisions of the ninth operative paragraph of the judgment on merits, decided:

1. To grant the next of kin of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstrau[n] Aman Villagrán Morales or, if appropriate, their legal representatives until March 20, 2000, to submit, for themselves or in representation of the dead victims, the arguments and evidence at their disposal, for the determination of reparations and costs.

2. To instruct the Secretariat of the Court to transmit to the Inter-American Commission on Human Rights all the briefs and evidence received, once the period referred to in the preceding paragraph has expired.

3. To grant the Inter-American Commission on Human Rights a two-month period, as of the date of receipt of the said briefs and evidence, to submit the comments it deems pertinent concerning reparations and costs.

4. To instruct the Secretariat of the Court to transmit to the State of Guatemala all the briefs and evidence submitted, once the period referred to in the previous paragraph has expired.

5. To grant the State of Guatemala a two-month period as of the date of receipt of the briefs and evidence referred to in the previous operative paragraph to submit its observations and the evidence at its disposal for the determination of reparations and costs in the instant case.

6. To summon the next of kin of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstrau[n] Aman Villagrán Morales or, if appropriate, their legal representatives, the Inter-American Commission on Human Rights and the State of Guatemala to a public hearing to be held on a date that will be announced in due course, once the written stage of the procedure concludes.

5. On March 14, 2000, the representatives of the victims' next of kin requested the Court to extend by 45 days the period for submitting its brief on reparations, which the Court had established in its order of January 20, 2000.

6. On March 15, 2000, the President extended the period granted to the victims' next of kin until May 5 that year.

7. On April 7, 2000, the State informed the Court that it had appointed José Alberto Briz Gutiérrez, Chargé d'Affaires a. i. of the Embassy of Guatemala in the Republic of Costa Rica, as its agent.

8. On May 5, 2000, the representatives of the victims' next of kin submitted their brief on reparations.

9. On July 7, 2000, the Commission requested the Court to extend until August 4, 2000, the period that had been established until July 12 that year for submitting its brief on reparations. The same day, the President granted the requested extension. On August 2, 2000, the Commission requested a further extension until August 21 that year, because it had "to seek certain information and documents

from the next of kin in Guatemala to complete [the] list of beneficiaries." On August 3, 2000, the President granted the extension until the date requested.

10. On August 21, 2000, the Inter-American Commission submitted its brief on reparations in the instant case in English with its annexes.

11. On August 23, 2000, the Secretariat requested the Commission to present the brief on reparations in Spanish, since the case was being processed in that language.

12. On September 14, 2000, the Spanish version of the Commission's brief on reparations was received. The Commission submitted three additional annexes with the said brief (*infra* para. 44).

13. On September 28, 2000, on the instructions of the President, the Secretariat requested the representatives of the victims' next of kin and Guatemala to submit their comments on the request to incorporate the additional annexes submitted by the Commission and granted them until October 30, 2000, to do so.

14. On October 27, 2000, the representatives of the victims' next of kin informed the Court that they had no objections or comments on the additional annexes submitted by the Commission.

15. On November 7, 2000, the State requested the Court to grant a 90-day extension to the period established for formulating its observations on the briefs on reparations submitted by the representatives of the victims' next of kin and the Commission, as well as on the admission of the documents contained in the three additional annexes to the Commission's brief on reparations. On November 15, 2000, the Secretariat advised Guatemala that the period for submitting the said comments had been extended until January 13, 2001.

16. On November 13, 2000, the State informed the Court that it had appointed Jorge Mario García Laguardia, Ambassador of Guatemala to Costa Rica, as its agent.

17. On November 15, 2000, the Court decided to request the State to remit any information that it had available on the current place of residence or work, or any other place, where the next of kin of Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes could be found. It also decided to ask the State to inform the said persons who are under its jurisdiction, through the mass media (the press, radio and television), that the Court had delivered judgment on the merits of the case and that they should communicate with the Court as soon as possible.

18. On November 24, 2000, the Secretariat requested the Commission to provide a final list of the witnesses and experts who would appear at the public hearing on reparations to be held in the instant case.

19. On November 30, 2000, the State forwarded information that the publications in the media required by the order of November 15, 2000, had been completed.

20. On December 14, 2000, the State remitted photocopies of the announcements published in the newspapers, *La Hora*, and *Diario de Centro América*; a audio-cassette with the spot broadcast on *Emisoras Unidas*, and a

videotape containing the announcement shown on NOTI-7 of the Guatemalan national television service.

21. On January 12, 2001, Guatemala submitted its observations on the briefs on reparations submitted by the representatives of the victims' next of kin and the Commission.

22. On January 30, 2001, the Secretariat again requested the representatives of the victims' next of kin and the Commission to provide the final list of the witnesses and experts who would appear at the public hearing on reparations to be held by the Court.

23. On February 7, 2001, the representatives of the victims proposed Christian Salazar Volkmann and Emilio García Méndez as experts, the latter in substitution for Bruce Harris, who had been proposed originally and who, for personal reasons, could not appear before the Court; on February 8 that year, they forwarded the *curriculum vitae* of Mr. García Méndez.

24. On February 7, 2001, the Commission submitted the list of the witnesses and experts that it wished to be summoned to the respective public hearing. In this note, it proposed Margarita Urbina, Ana María Contreras and Marta Isabel Túnchez Palencia as witnesses and Ana Deutsch as an expert. It also said that it would propose a member of the family of Anstraun Aman Villagrán Morales, without indicating a name. Moreover, it advised that, following the publication of the announcements ordered by the Court, Marta Isabel Túnchez Palencia, the mother of Federico Clemente Figueroa Túnchez, had presented herself at the offices of the *Asociación Casa Alianza/América Latina* (hereinafter "*Casa Alianza*") and had stated that she wished to take part in the proceeding. On February 8 that year, the Commission forwarded the *curriculum vitae* of Ana Deutsch.

25. On February 9, 2001, the Secretariat sent a letter to the Commission acknowledging the witnesses and expert it had proposed and, on the instructions of the President, informed the Commission, *inter alia*, that, pursuant to Article 27(2) of the Rules of Procedure, the parties who enter a case at a later stage of the proceeding shall take up the proceedings at that stage and that the period for the victims' next of kin or their representatives to submit arguments on reparations had already expired. It also informed the Commission that, should Mrs. Túnchez Palencia or her representative submit her claims with regard to reparations, "the Court [would] evaluate them, taking into consideration the circumstances of the case and [would] decide on their admissibility."

26. On February 9, 2001, the President issued an order in which, on the one hand, he considered "[...that] with regard to the witnesses and expert witnesses proposed by the representatives of the victims' next of kin and the Commission who ha[d] not been summoned by this order, [he would] evaluate the pertinence of summoning them when he ha[d] consulted the other parties to the case" and, on the other, he decided to summon the representatives of the victims' next of kin, the Inter-American Commission and Guatemala to a public hearing on reparations to be held at the seat of the Court on March 12, 2001. In this order, he summoned the witnesses, Ana María Contreras and Margarita Urbina, and the expert, Christian Salazar Volkmann.

27. On February 9, 2001, on the instructions of the President, the Secretariat requested the representatives of the victims' next of kin and the State to forward their comments on the notes submitted by the Commission on February 7 and 8 that year. The same day, the Secretariat requested the Commission and the State to forward their comments on the notes submitted by the representatives of the victims' next of kin on February 7 and 8, 2001.

28. The same day, the Commission requested the Court to summon Reyna Dalila Villagrán Morales, sister of Anstraun Aman Villagrán Morales, to declare as a witness. On February 12, 2001, on the instructions of the President, the Secretariat requested comments on this request from the representatives of the victims' next of kin and the State, but they did not submit them.

29. On February 21, 2001, the President summoned the witnesses, Marta Isabel Túnchez Palencia and Reyna Dalila Villagrán Morales, and the experts, Emilio García Méndez and Ana Deutsch, to make their statements during the public hearing on reparations to be held at the seat of the Court on March 12, 2001.

30. On March 2, 2001, on the instructions of the President, the Secretariat requested the representatives of the victims' next of kin and the Commission to submit the birth certificates of Reyna Dalila and Gerardo Adoriman Villagrán Morales, pursuant to Article 44 of the Rules of Procedure.

31. On March 12, 2001, the representatives of the victims' next of kin submitted two powers of attorney in which Reyna Dalila Villagrán Morales and Marta Isabel Túnchez Palencia granted full powers of representation to the Center for Justice and International Law (hereinafter "CEJIL") and *Casa Alianza*.

32. On March 12, 2001, the Court held a public hearing on reparations.

There appeared before the Court:

for the representatives of the victims' next of kin:

Viviana Krsticevic
Héctor Dionisio
Luguely Cunillera
Soraya Long, and
Juan Carlos Gutiérrez.

for the Inter-American Commission:

Claudio Grossman, delegate, and
Elizabeth Abi-Mershed, lawyer

for the State of Guatemala:

Cruz Munguía Sosa, and
Carlos Roberto Sandoval Aldana.

Experts proposed by the victims' next of kin:

Christian Salazar Volkmann, and
Emilio García Méndez.

Witnesses proposed by the Inter-American Commission:

Ana María Contreras
Margarita Urbina
Reyna Dalila Villagrán Morales, and
Marta Isabel Túnchez Palencia.

Expert proposed by the Inter-American Commission:

Ana Deutsch.

33. The same day, during the public hearing and at the request of the President, the expert, Christian Salazar Volkmann, submitted copies of the following: a document entitled "*Estudio sobre Adopciones and Derechos de los Niños y las Niñas en Guatemala. Guatemala, 2000*" (Study of adoptions and rights of the child in Guatemala); a document entitled "*Aproximación situacional del niño, niña y adolescente de la calle*" (Report on the situation of street children); and a document entitled "*Violación a los Derechos Humanos de los Niños de la Calle*" (Violation of the human rights of street children) (*infra* paras. 46 and 52).

34. On March 28, 2001, on the instructions of the President, the Secretariat requested the representatives of the victims' next of kin and the Commission to present the duly authenticated birth certificates or appropriate documents of Guadalupe Concepción and Zorayda Izabel Figueroa Túnchez, as evidence that would be helpful, pursuant to Article 44 of the Rules of Procedure.

35. On April 19, 2001, the representatives of the victims' next of kin submitted copies of the birth certificates of Gerardo Adoriman Villagrán Morales, Reyna Dalila Villagrán Morales, Guadalupe Concepción Figueroa Túnchez and Zorayda Izabel Figueroa Túnchez and on May 7, 2001, they forwarded a copy of the birth certificate of Federico Clemente Figueroa Túnchez.

IV EVIDENCE

GENERAL CONSIDERATIONS ON EVIDENCE

36. Before examining the evidence received, the Court will define the general criteria for evaluating evidence and will make some observations that are applicable to this specific case, most of which have been developed previously by the jurisprudence of this Court.

37. Article 43 of the Rules of Procedure establishes that:

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 defense.

38. Article 44 of the Rules of Procedure indicates that at any stage of the case, the Court may:

1. Obtain, on its 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.

[...]

39. According to the consistent practice of the Court, 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. Moreover, the exercise of the Court's discretionary powers, stipulated in Article 44 of its Rules of Procedure, allows it to request the parties to provide additional elements of evidence to help it make a more informed decision; however, this does not grant the parties another opportunity to expand or complete their arguments or offer new evidence on reparations, unless the Court so allows¹.

40. The Court has indicated previously that the proceedings before it are not subject to the same formalities as domestic proceedings and that, when incorporating determined elements into the body of evidence, particular 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 parties². International jurisprudence has upheld the power of the courts to evaluate the evidence within the limits of sound judicial discretion and has always avoided making a rigid determination of the amount of evidence required to support a judgment³.

41. This practice extends to the briefs in which the representatives of the victims or, when applicable, their next of kin, and the Inter-American Commission formulate their claims for reparations and to the State's answering brief, which are the principal documents at this stage and, in general, entail the same formalities with regard to the offer of evidence as the application.

¹ *cf. Castillo Páez case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 37.

² *cf. Ivcher Bronstein case*. Judgment of February 6, 2001. Series C No. 74, para. 65; "*The Last Temptation of Christ*" case (*Olmedo Bustos et al.*). Judgment of February 5, 2001. Series C No. 73, paras. 49 and 51; and *Baena Ricardo et al. case*. Judgment of February 2, 2001. Series C No. 72, paras. 71 and 76.

³ *cf. Castillo Páez case. Reparations, supra note 1, para. 38; Fairén Garbí and Solís Corrales case*. Judgment of March 15, 1989. Series C No. 6, para. 130; *Godínez Cruz case*. Judgment of January 20, 1989. Series C No. 5, para. 133; and *Velásquez Rodríguez case*. Judgment of July 29, 1988. Series C No. 4, para. 127. See also, the International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, p. 14, para. 60.

42. On this basis, the Court will proceed to examine and evaluate all the elements that make up the body of evidence in this case, according to the rule of sound judicial discretion⁴, within the legal framework of the instant case.

A) DOCUMENTARY EVIDENCE

43. When submitting their brief on reparations, the representatives of the victims' next of kin attached, as evidence, eight annexes with 34 documents⁵ and numerous documents supporting expenses.

44. The Inter-American Commission attached six annexes, containing six documents, as evidence with its brief on reparations⁶. When submitting the Spanish version of this brief, it attached three more documents⁷.

⁴ cf. *Ivcher Bronstein case*, supra note 2, para. 69; "*The Last Temptation of Christ*" case (*Olmedo Bustos et al.*), supra note 2, para. 54; and *Baena Ricardo et al. case*, supra note 2, paras. 70 and 72.

⁵ cf. annex 1, copy of the birth certificate of Julio Roberto Caal Sandoval; certified copy of identity card (*cédula de vecindad*) No. 462617, of Margarita Urbina; and sworn declaration by Margarita Urbina of April 6, 2000; annex 2, copy of the birth certificate of Henry Giovanni Contreras; copy of the birth certificate of Mónica Renata Agreda Contreras; copy of the birth certificate of Shirley Marlen Agreda Contreras; copy of the birth certificate of Osman Ravid Agreda Contreras; certified copy of identity card No. 33327, of Ana María Contreras; copy of primary education certificate of Henry Giovanni Contreras from the National Urban Coeducational School (*Escuela Nacional Urbana Mixta*) dated October 26, 1981; copy of primary education certificate of Henry Giovanni Contreras from the National Urban Coeducational School "*Heriberto Gálvez Barrios*" dated October 29, 1982; copy of primary education certificate of Henry Giovanni Contreras from the National Urban School #7 "*Francisco Marroquín*" dated October 31, 1983; copy of the 1983 second grade report of Henry Giovanni Contreras from the National Urban School #7 "*Francisco Marroquín*"; copy of the 1984 third grade report of Henry Giovanni Contreras from the National School No. 71 "*German Alcántara*"; certificate that Henry Giovanni Contreras worked for the company, *Técnica Nacional* dated April 7, 2000; copy of a page, handwritten by José Rafael Palencia, dated March 14, 2000; certificate that Henry Giovanni Contreras studied typing at the *Academia Comercial de Mecanografía "Superación"* dated March 22, 2000; sworn declaration by Ana María Contreras dated April 6, 2000; and copy of sports identity card of Henry Giovanni Contreras; annex 3, copy of birth certificate of Anstraun Aman Villagrán Morales; copy of the certification of the birth of Anstraun Aman Villagrán Morales issued by the Guatemala Registry Office on January 9, 1975; copy of the death certificate of Anstraun Aman Villagrán Morales of April 5, 1991; copy of identity card No. 798483 of Lorena Dianeth Villagrán Morales; copy of identity card No. 19874 of Matilde Reyna Morales García; receipt dated April 6, 2000, from "Funerales San Rafael" for funeral service for Anstraun Aman Villagrán Morales; receipt dated May 6, 1990, from Dr. David Ricardo Del Cid for treating the diabetes of Matilde Morales García; certificate of the medical record of Matilde Reyna Morales García issued on April 6, 1990, by Dr. David Ricardo Del Cid; sworn declaration by Matilde Reyna Morales García of April 6, 2000; and certificate issued by the Director of Official Boys' School No. 72 "*Reino de Bélgica*", dated April 11, 2000, with regard to Anstraun Aman Villagrán Morales; annex 4, copy of information from the Ministry of Labor and Social Insurance on the minimum wages established by law in Guatemala for 2000; annex 6, copy of the "*Plan de Acción en Favor de los Niños y Niñas de la Calle*" (Plan of Action for Street Children) produced by the Secretariat of Social Works of the Wife of the President, Municipality of Guatemala, Presidency of the Republic, Guatemala, February 1997; annex 7, copy of the Children and Youth Code adopted by Decree No. 78-96 of the Congress of the Republic of Guatemala; and annex 8, article from the newspaper, *Siglo Veintiuno*, entitled "*Suspenderán indefinidamente vigencia del Código de la Niñez*" published on February 17, 2000; article from the newspaper, *Guatemala*, entitled "*Una ley que nunca fue*" published on February 1, 2000; article from the newspaper, *Guatemala*, entitled "*Las cuentas que no cuadran*" published on February 2, 2000; and article from the newspaper, *La Hora*, entitled "*Código de la Niñez y la Juventud*" published on February 11, 2000; and annex 5, numerous documents supporting expenses before the inter-American system.

⁶ cf. annex 1, table of calculations prepared by the Inter-American Commission on Human Rights on the loss of earnings applicable to each victim; annex 2, copy of document of the National Institute of Statistics of Guatemala (INE): "*Tablas Abreviadas de Mortalidad (Período 1990-1995)*"; annex 3, copy of articles 100-107 of the Guatemalan Labor Code; annex 4, copy of the document entitled "*Situación sobre los compromisos laborales de los Acuerdos de Paz*", MINUGUA, Guatemala City, June 2000; annex 5, copy with information from the *Banco de Guatemala*: Table of Interest Rates 1980-1999, drawn up by the Economic Studies Department of the *Banco de Guatemala*; and annex 6, copy of the table entitled

45. The State attached one piece of documentary evidence to its brief with comments on the briefs on reparations of the representatives of the victims' next of kin and the Commission⁸.

46. At the request of the President, the expert witness, Christian Salazar Volkmann, submitted copies of three documents⁹ during the public hearing on reparations.

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47. In this case, the Court admits the value as evidence of those documents that were submitted by the parties at the appropriate time, that were not contested or opposed and the authenticity of which was not disputed¹⁰.

48. With regard to the annexes forwarded by the representatives of the victims' next of kin to show that Anstraun Aman Villagrán Morales, Henry Giovanni Contreras (evidence of employment) and Julio Roberto Caal Sandoval worked, the State alleged that they were not reliable and lacked the necessary legal requirements to be admitted as evidence. Likewise, with regard to the sworn declarations of Margarita Urbina¹¹, Ana María Contreras and Matilde Reyna Morales García made before the notary, Gustavo Rodolfo de León Rodas on April 6, 2000, the State objected to them and requested that they be declared inadmissible, because it considered that the witnesses were not qualified to "emit opinions with regard to their own family members, since their arguments could be entirely biased" and "they merely state that their respective family members were employed before they died". The State added that such declarations lacked the necessary formal elements. In this regard, this Court considers that, in accordance with the criteria of flexibility in receiving evidence mentioned above, such annexes and declarations should be admitted and

"Información del mercado bancario. Operaciones del 17 de agosto del 2000" prepared by the *Banco de Guatemala*.

⁷ cf. sworn declaration by Ana María Contreras of August 24, 2000; copy of the school record of Wilson Ravid Agreda Vásquez at the Official Urban Coeducational School "*La Brigada*", dated October 31, 1997; and copy of the birth certificate of Wilson Ravid Agreda Vásquez.

⁸ cf. copy of the "*Plan de Acción a Favor de los Niños, Niñas y Jóvenes de la Calle*" prepared by the Social Welfare Secretariat, Forum for the Protection of Street Children and Youth" and COPREDEH.

⁹ cf. document entitled "*Estudio sobre Adopciones y Derechos de los Niños y las Niñas en Guatemala. Guatemala, 2000*" prepared by the Latin American Institute for Education and Communication (ILPEC); document entitled "*Aproximación situacional del niño, niña y adolescente de la Calle*" prepared by the Social Work Secretariat of the Wife of the President -SOSEP-, Guatemala, October 1998; and document entitled "*Violación a los Derechos Humanos de los Niños de la Calle*", Impunity Report, 1990-1998, prepared by *Asociación Casa Alianza/Guatemala*, 1999.

¹⁰ cf. *Ivcher Bronstein case*, *supra* note 2, para. 73; "*The Last Temptation of Christ*" case (*Olmedo Bustos et al.*), *supra* note 2, para. 55; and *Baena Ricardo et al. case*, *supra* note 2, para. 74.

¹¹ In the judgment on merits in this case, the name of the grandmother of the victim, Julio Roberto Caal Sandoval, was said to be Margarita Sandoval Urbina; however, the body of evidence collected at the reparations stage contains reliable documents that allow us to establish that her correct name is Margarita Urbina.

reserves the right to evaluate their value as evidence, applying the rule of sound judicial discretion, and within the context of the body of evidence¹².

49. Regarding the additional evidence forwarded by the Commission with the Spanish version of its brief on reparations (*supra* para. 44), the Court considers that, in principle, it is useful for deciding the instant case and, therefore, adds it to the body of evidence in application of the provisions of Article 44(1) of the Rules of Procedure. Nonetheless, it should be pointed out that the said documentation refers to the child, Wilson Ravid Agreda Vásquez, who is the son of Henry Giovanni Contreras, according to the sworn declaration made by Ana María Contreras on August 24, 2000, and her statement at the public hearing. However, the copy of the birth record of Wilson Ravid Agreda Vásquez states that he is the son of María del Rosario Vásquez Escobar and Ravid Lorenzo Agreda Orellana. Since the latter is a public document and there is no document of the same standing in the file that contradicts it, this Court cannot recognize that the person in question is the son of Henry Giovanni Contreras.

50. On April 19, 2001, the representatives of the victims' next of kin submitted copies of the birth certificates of Gerardo Adoriman Villagrán Morales, Reyna Dalila Villagrán Morales, Guadalupe Concepción Figueroa Túnchez and Zorayda Izabel Figueroa Túnchez and, on May 7, 2001, they submitted the birth certificate of Federico Clemente Figueroa Túnchez, as evidence to help it make a more informed decision, in compliance with the President's request (*supra* para. 34). These documents are therefore admitted and will be evaluated within the body of evidence submitted in the instant case, in accordance with Article 44(1) of the Rules of Procedure.

51. The Commission added to the file a document produced by the National Institute of Statistics of Guatemala (INE) entitled "*Guatemala: Tablas Abreviadas de Mortalidad (Período 1990-1995)*" (Guatemala: Summary Mortality Tables (1990-1995)) to show the life expectancy of the victims. This Court will bear in mind the relevant information when determining the life expectancy of the victims – this is understood to be the number of additional years that each victim might have lived – and it will also take into consideration data such as the age, sex and geographical zone of residence.

52. With regard to the documents submitted by the expert, Christian Salazar Volkmann, during the public hearing, at the request of the President (*supra* para. 46), the Court considers that they are useful within the context of the body of evidence and incorporates them, in accordance with Article 44(1) of the Rules of Procedure. It proceeds in the same way with regard to the following documents: "*Historia del Salario Mínimo Mensual, según año 1980 - 1995*" (Record of the Minimum Monthly Wage, by year: 1980-1995) and "*Guatemala: Estadísticas del Tipo de Cambio Promedio Mensual, años 1996 - 2000*" (Guatemala: Statistics on the Average Monthly Exchange Rate, 1996-2000), Economic Studies Department, Balance of Payments Section.

53. It should also be pointed out that the body of evidence of a case is unique and cannot be separated and is made up of the evidence submitted at all stages of

¹² *cf. Loayza Tamayo case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 57.

the proceeding¹³; thus, the statements made by Ana María Contreras, Matilde Reyna Morales García, Rosa Angélica Vega, Julia Griselda Ramírez López, Oselví Arcadio Joaquín Tema, Delfino Hernández García, Roberto Marroquín Urbina and Ayende Anselmo Ardiano Paz and the expert reports of Roberto Carlos Bux and Alberto Bovino during the public hearing held by this Court on the merits of the case on January 28 and 29, also form part of the evidence that will be considered during this stage.

B) TESTIMONIAL EVIDENCE

54. During the public hearing on March 12, 2001, the Court received the statements of the witnesses proposed by the representatives of the victims' next of kin and the Inter-American Commission. These statements are summarized below:

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

Henry Giovanni was a child who was devoted to his home and who went to school up to fourth year. His father had already died when he was born.

She has three other children, all of them younger than Henry Giovanni: Shirley Marlen Agreda Contreras, 20 years of age, Mónica Renata Agreda Contreras, 18, and Osman Ravid Agreda Contreras, 16. The first two completed secretarial and computer training, respectively, and currently work selling lots; the youngest is studying in the third year of basic studies. The victim had an affectionate relationship with his siblings. One year before his death, the witness found out that Henry Giovanni had a son, Wilson Ravid Agreda Vázquez, and she took charge of the latter when his mother gave him to her. The child's mother never came back for him. At that time, the child was two years of age and he is now 12. The witness has paid for his studies and his medical expenses since he was two, and it has been difficult to raise him, but he has been educated just as if he was another son of the family. Currently, she pays all his school expenses. Wilson suffers from his father's absence. The reason why he does not appear as Henry Giovanni's son on the birth record is that Henry Giovanni had not attained 18 years of age in order to recognize paternity; therefore, after he died, the father of his half-brothers, the witness's husband, recognized the child as his son.

Henry Giovanni lived at home officially until he was approximately 14 years of age, after which he began to live on the street, during irregular periods of time. The witness looked for him on the streets when a certain time had passed and he had not returned home, because she was concerned about him. Her husband - Henry Giovanni's stepfather - humiliated him, particularly after his other three children were born, and this was the main reason that Henry Giovanni left the house. In the months before his death, the victim was already living at home again and *Casa Alianza* had found him a permanent, stable job in a printing shop, where he worked for five months for a monthly wage of 60 or 70 quetzales. Henry Giovanni began working when he was about 11 years of age in carpentry, plumbing, as a mechanic,

¹³ *cf. Blake case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 28.

or selling food and handicrafts in the street. He wanted to continue studying and work for his family. When Henry Giovanni began to study again, he helped her take care of his siblings, while she went to work as a "maid." From the age of 14, the victim helped his family materially and financially, constantly and regularly. At that time he earned about 15 or 20 quetzales, and he gave his mother up to half of this amount or brought home food and clothes, and this represented almost half the household expenses, including the expenses of the siblings. Even when he left the house, he contributed something every month or two. When the victim died, the family's financial situation was constrained. In Guatemala, it is usual for children to contribute towards the household needs and, when they leave the home, they are free to continue supporting their parents in their old age or not.

When she found out about the death of her son, she suffered from neuralgia and facial paralysis for almost two years, and she received no specific treatment for this. At present, she also suffers from gastritis. She still has these health problems, but she has not been able to receive medical attention owing to lack of money or due to her work. During that period she almost abandoned her other children. Six or seven months after the death, her home disintegrated because "she threw" her husband out of the house. Owing to lack of money, she could not organize the type of wake and burial that she wanted for her son. Neither could she have his body exhumed, and he is still buried as XX. She would still like to formally bury him with a gravestone. She and her family still feel the presence of Henry Giovanni in their lives. It would be important to know that those responsible for the death of her son had been punished. As a result of the proceeding before the Court, she expects justice and some measure such as a school for street children, where they can be safe during the day. The witness believes that the State of Guatemala has not guaranteed her rights.

b) Testimony of Margarita Urbina, grandmother of Julio Roberto Caal Sandoval

Since Julio Roberto died, his mother, Rosa Carlota Sandoval, who was her daughter, has also died. Julio Roberto had no siblings. From an early age, he lived with the witness and occasionally with his mother, because his stepfather mistreated him. Julio Roberto never knew his father. He was a well-behaved child.

They were very poor and she sent him out to shine shoes, sell candies or extract sand from the hillside to sell to the "big houses". From the age of six, he worked to help her and to improve their living conditions. He bought food for her every day. Julio Roberto did not attend school because they were too poor to pay for his schooling. When they had nowhere to live, they lived on the street.

Julio Roberto talked to her about his expectations for the future and about his wish to continue working in order to improve their financial situation. Julio Roberto's death was extremely painful for her. Moreover, he was her only financial support, and since then she has had virtually nowhere to live.

At present she lives on a lot "covered by nylon" and there is no one who can help her. She extracts sand and sells it to make a living.

c) Testimony of Reyna Dalila Villagrán Morales, sister of Anstraun Aman Villagrán Morales

Her mother is Matilde Reyna Morales García. She has three siblings: Lorena Dianeth Villagrán Morales, Gerardo Adoriman Villagrán Morales and Blanca Elisa Albizurú Morales. The latter is only her sister on her mother's side, and Anstraun Aman did not know her. Her father abandoned them when the witness was seven years of age. She has been working since she was nine years of age, owing to the family's financial situation at that time. She has four daughters and one son and they all go to school.

Anstraun Aman was a hardworking, studious, obedient, well-mannered and unassuming child. She had a very good relationship with him, because he looked after his siblings while their mother worked during the day to maintain the family. Anstraun Aman worked in the mornings from the age of eight or nine; he studied in the afternoon and had reached sixth grade of primary school. At the time of the events, he was studying in "basic primary" at night. He had lived on the street since he was 14 or 15 years of age, he worked and, every week, he gave part of what he earned to his mother. The most he earned was 65 quetzales a week. This financial support was very important to the family. He returned to his home almost every day, except on some occasions when he remained on the street for a longer period. His family was concerned about his welfare and safety, and went out looking for him when he did not return home. *Casa Alianza* assisted Anstraun Aman and found him work in a kiosk where he helped to clean up and lift heavy loads; this improved his behavior and he returned home more often.

In Guatemala – in the social environment to which they belonged – it is usual for children to contribute to the living expenses of their parents and siblings until the age of 18 and, if they are not married by that age, they can continue helping their families. When their parents are old, the children once again help them financially.

When her brother died, the witness was 20 or 21 years of age. For her, the most difficult result of his death was to see her mother in a lamentable physical and psychological state. She developed diabetes and almost ceased speaking. At that time, the witness's mother was pregnant, suffered several complications and almost lost the baby. It was only five or six years ago that the illness she suffered from was diagnosed, because she almost died owing to a diabetic coma. At that time, the doctor who attended her explained to them that the origin of the illness must have been a "fright" or a serious problem that she had experienced, and the only problem that she had experienced was the death of Anstraun Aman. At present, her mother does not receive any medical treatment, as there is no money for this, although she works in a place that sells food. The witness and her sister help her in her work, because she is really not able to work now. To this day, her mother suffers the consequences of Anstraun Aman's death, because she has not been able to overcome the emotional pain either. Although her mother could not keep Anstraun Aman in the house when he was a child, the events affected her profoundly and, to this day, she feels a certain guilt for having left her children in order to work.

They were able to bury her brother by borrowing money. It was only a year and a half ago that her mother was able to finish paying off this loan. She visits her brother's grave regularly but her mother cannot do so because it affects her too much. No financial reparation will be able to lessen the family's grief.

Neither the witness nor her family have taken any steps before the Guatemalan authorities to see that the events in which her brother lost his life are investigated and that those responsible are punished, or for the authorities to provide some type

of financial, medical or social help to her mother, because there are no programs for this.

d) Testimony of Marta Isabel Túnchez Palencia, mother of Federico Clemente Figueroa Túnchez

She has two other children, Guadalupe Concepción Figueroa Túnchez, 45 years of age, who "*arregla papeles de carro*" (helps people get the necessary documents for their cars), and Zorayda Izabel Figueroa Túnchez, 32 years of age, who works in a bakery. She lives with the latter, who has two daughters. Federico Clemente took care of one of his nieces, Alejandra Isabel. He was the second child and had a good relationship with them, he even helped provide his sisters with school materials.

She had a good mother-son relationship with Federico Clemente. Her husband used to hit her and when Federico Clemente intervened, her husband hit him also. Consequently, Federico Clemente used to leave the house for a few days and then return. Her son began to live on the street when he was nine years of age for irregular periods of time. Federico Clemente had worked since he was eight years of age. He made and sold bracelets and key rings with indigenous motifs. He also worked unloading trucks of "gravel" and sand, cleaning houses, cars and windows, and shining shoes; he learned to read, but never went to school. He helped the witness financially and with food, which was a great help to the family.

One day her Federico Clemente did not return home and after eight days she went to look for him until, finally, in the identification office they showed her photographs of her dead son, with no eyes and with his mouth open. When she found out what had happened, she could not believe it and did not leave her house; she became ill, her blood pressure went up, she had a stroke and her weight went down to 105 pounds. Her husband also became ill when his son did not return and he died of a heart attack, after Federico Clemente's death. She feels that her son is still alive and still wonders what really happened.

With the help of her friends, she was able to arrange the wake for her son. None of the State authorities explained what had happened or provided any help for the burial. The witness feels that, of Federico Clemente's two sisters, Zorayda was the one most affected by his death.

The witness received threats. One night, two men came to her house to look for her and, with a threatening attitude, told her that she should not go and make a statement in court. She therefore went to live in another place. Two months later, at about 2.00 a.m., three other men in a black pick-up truck, with their heads covered, came to look for her; they took her away in the car and asked her not to make a statement in any court. When she complained, they hit her and cut one of her fingers. She lived with her mother for some time. About a year ago, two men again came to find her, but she did not see them. Two years ago, they threw a lighted object at her from a car that caused burns on the front of her body and on her wrist. She still has sores, but cannot afford medicines. Owing to this persecution, she has hidden in many places and *Casa Alianza* could not find her. She is frightened about what could happen. She never informed any authorities in her country about these events, out of fear and owing to her illness.

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55. The Court admits the testimony given by Ana María Contreras, Margarita Urbina, Reyna Dalila Villagrán Morales and Marta Isabel Túnchez Palencia, in the public hearing on reparations held in the instant case, only insofar as it adheres to the purpose of the questionnaire proposed by the Commission. In this respect, this Court considers that as they are close relatives and have a direct interest in the case, the evaluation of their statements must be rigorously subjected to the criterion that consists in evaluating each piece of evidence in relation to the whole body of evidence. In these circumstances, the statements of Mrs. Contreras, Mrs. Urbina, Mrs. Villagrán Morales and Mrs. Túnchez Palencia have a particular value, insofar as they can provide important information on the consequences of the violations that were perpetrated¹⁴. The statements referred to are incorporated into the body of evidence, in accordance with the said considerations.

C) EXPERT EVIDENCE

56. At the public hearing held on March 12, 2001, the Court received the reports of the experts proposed by the representatives of the victims' next of kin and the Inter-American Commission. The statements of these experts are summarized below:

a) Expert report of Ana Deutsch, clinical psychologist in transcultural psychotherapy, and the evaluation and treatment of the psychological consequences of trauma

She met with Ana María Contreras, Margarita Urbina, Reyna Dalila Villagrán Morales and Marta Isabel Túnchez Palencia in order to conduct three group interviews of approximately one hour and a half each, and then met individually with each of them on two occasions, for approximately one hour each time. All the meetings were held over two days.

If a person who has been abducted, secretly and unlawfully detained and tortured survives such a situation, he experiences a devastating impact, which to a great extent destroys his mental defenses and his personality, and causes him considerable mental and emotional pain. In psychiatric terms, the situation that results from this type of experience is classified or diagnosed as post-traumatic stress syndrome.

In this case, the impact is distinct, because children or adolescents have less mental strength to tolerate abduction and torture. The impact is also devastating for their next of kin; even though the latter have not been subject to physical ill treatment. The pain could be mitigated slightly if justice is done and those responsible are punished, and this could assist in the process of overcoming the symptoms that such an experience may cause. In this case, where those responsible were police agents, there is more emotional pain and it is more difficult to realize what has happened, because Government agents should protect the population.

¹⁴ cf. *Ivcher Bronstein case*, *supra* note 2, para. 75; *Cantoral Benavides case*. Judgment of August 18, 2000. Series C No. 69, para. 59; and *Durand and Ugarte case*. Judgment of August 16, 2000. Series C No. 68, para. 53.

When death is not natural, but rather the result of "extrajudicial executions", the mourning process of the surviving next of kin is different. There are four stages to the normal mourning process: denial of the death, anger, depression and acceptance. In cases of deaths due to natural causes, this is explained in keeping with the ideological and cultural resources of each individual. When death corresponds to an extrajudicial execution, this circumstance intensifies, interferes with or prevents the mourning process. Consequently, the mourning process may last a lifetime or may never happen; all the states and emotions described above remain "locked up" and appear, alternately, at different moments.

It can be scientifically shown that, during the normal course of life, there are different effects when parents have to confront the death of a child; this situation is always more difficult to get over than the death of parents. For the siblings, the effect takes a different form. They may put themselves in the place of the brother or sister who died and think that the same could happen to them; that could produce some type of dysfunctionality, which may be momentary, and is a source of suffering.

The emotional effects of a trauma of this nature may possibly exacerbate a physical or mental illness, owing to the unitary nature of the human being. Traumatic events that unbalance the mental system eventually have repercussions on the organism. Research has been conducted on the neuro-physiological and biological effects of trauma that impact different functions of the organism and which can generate, produce or awaken new or latent conditions. This is the case of diabetes or a psychosis, whether or not the persons has a family history of such ailments.

The 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. Generally, such people do not have access to the formal labor market, do not retire and do not have a pension, and they expect that their children will help them when they grow older. The situation of poverty does not interfere in any way in the family ties between mothers and their children. The psychological dynamic within families with children who live on the street, is no different from any other psychological dynamic, because the children seek the street as a social center and in order to work. Poverty intensifies the family ties with the children, because they are all that the parents have and children occupy a very special place in the lives and emotions of the poor.

During the interviews conducted with the witnesses, similarities or common patterns were detected in the reaction of the families to the violations and the loss of their loved ones.

Ana María Contreras knows what it is to live on the street. She was abandoned by her mother or placed in a house where she had to do housework. She was mistreated in that house and, at the age of 13, she left it. She went to school in the evening. She is a fairly reliable, very intelligent person, full of energy and the desire to educate her children and improve their financial status. Henry Giovanni was born when she was 17 years of age. At this age, having a child and not having anything else, creates an extremely special, very profound relationship. Henry Giovanni was her preferred child, although she did not say as much, and she had placed great hopes in him. She believes that it was because of his stepfather that the victim

sought the street on many occasions, since he did not accept the former as a father. She experienced a period of depression that lasted two years. She emerged from her depression by thinking about her other children and decided to look for formal work, which has made a significant change in her life and in the lives of her children. She suffered facial paralysis, which is common in situation of great "stress."

Margarita Urbina was also born and raised on the street. She says that her grandson, Julio Roberto Caal Sandoval, did not get on well with his mother and his stepfather and, therefore, went to live with her. She says proudly that Julio Roberto contributed money to buy food for her. She feels the loss of Julio Roberto very deeply. She is a person who, at 64 years of age, has never seen a doctor. The symptoms she presents are related to her living conditions, the death of Julio Roberto and concern about her age. She requires medical attention.

Reyna Dalila Villagrán Morales is a very positive person. She is extremely sociable, with a very upright personality and very solid principles. Reyna Dalila took care of her brother, Anstraun Aman, when her mother went out to work to feed the children. In some ways, she played the role of mother to Anstraun Aman. She is currently very concerned about her own mother's health. She supports her mother and this contributes to helping her cover up or channel her own concerns or emotional suffering about her brother's death.

Marta Isabel Túnchez has never been to school. She has very low self-esteem. She has suffered a great deal during her life and had put her hopes in her son, Federico Clemente. Marta's reaction with regard to her son's death is very interesting. She says that the person who suffered most from the death of her son was her husband, who was an alcoholic and died, possibly due to a combination of a heart attack and alcohol abuse. She has created the fantasy that Federico Clemente accompanies her and, in some way, is going to help her to continue on. She feels that, in his short life, he was concerned for her health and welfare. As for some physical symptom or impact that she can relate to the assassination of her son, she says that her blood pressure went up and she had a "mini-stroke", which left her face a little lopsided. But, the most important factor was the depression that continued and the conflict in the family, because she says her daughter distanced herself after the death of Federico Clemente.

Other members of each nuclear family suffered damage as a result of the events. Even though the expert did not meet them, based on the comments of those interviewed and her own assumptions, she could affirm that the victims' siblings were deeply affected. For the families, it would be important that the measures of reparation in the case allow them to carry out their wish to give the remains of their family members an appropriate wake and burial, as a kind of closure to the mourning process or, at least, a step forward in becoming reconciled to the idea that these children have died.

These families need psychological assistance to help them deal with these events. The consequence of not receiving this help is that the trauma will remain "locked up" and generate symptoms or deeper depression in the future. Furthermore, they all need medical attention and financial assistance in order to achieve minimum living conditions.

Prevention programs are necessary so that other children do not meet the same end. Symbolic measures of reparation are equally important.

b) Expert report of Christian Salazar Volkman, expert in the rights of the child

There is a widespread lack of social protection for children in Guatemala. In general, this country is among those at the bottom of the list of Latin American countries as regards illiteracy and basic education, health and malnutrition, and child labor. There is also a lack of legal protection: the legislation on minors in force in the country violates the Convention on the Rights of the Child.

The illiteracy rate is approximately 30% of the population. Only 84% of school-age children are enrolled in primary school and not all of them finish. The level of State investment in public education is one of the lowest in Latin America. Also, the levels of nutrition are very low; this is a cause of great concern, because damage to the brain and to the physical and psychological development of the child during its first years due to malnutrition is irreversible. According to recent data, in Guatemala, 34% of children between 7 and 14 years of age work and this has consequences on their education.

In Guatemala almost all the adoptions are international and extrajudicial; in other words, there is no State control over them. The United Nations Children's Fund (hereinafter "UNICEF") has detected a series of irregularities. A study by this agency shows that the majority of children who are adopted come from crèches or families. The lawyers who process adoptions pay women to take care of the babies, who are generally under 18 months old. The United Nations Mission for the Verification of Human Rights in Guatemala (hereinafter "MINUGUA") has learned of the existence of networks that traffic children and, in its report on children for 2000, indicates that the State continues to fail to comply with its legal obligation to prevent, investigate and punish crimes related to the trafficking of children.

These examples of lack of attention to the rights of the child reveal two issues: first, that cases such as that of the San Nicolás Woods are probably extreme expressions of a structural neglect of the rights of the child and, second, that the number of children who are at risk of "*callejización*" (taking to the street), owing to this social neglect in Guatemala, is very high; the families and the children of the population living in poverty, which is more than 80% of the total population, are at risk.

Generally, street children maintain some links with their families and very often make financial contributions to them. Also, there is a high degree of fluctuation; that is, children continually go onto and leave the street, which suggests that the number of children and adolescents with street experience is very high. According to a 1999 Government report, street children have three basic problems: ill-treatment (within their families and by the State's security forces), drug addiction, and lack of State attention to their needs. And, in this report, these children very clearly reveal their desires: they all want to study, play, learn a trade and work.

In Guatemala, it is difficult to establish what happens when street children reach a certain age, for example, 18 years of age or similar. A percentage of the youth really try to leave the street at all costs. There is a group of children and adolescents who enter the reintegration programs of civil society organizations, as of a result of which they are reincorporated into the family and find a job. Other children die on the way, from serious diseases or acts of violence. The problems of drugs and AIDS, to which street children are particularly vulnerable, have increased

in recent years. There is also another percentage who form the basis for organized crime, because these youths become small-time criminals.

Impunity is a widespread topic in Guatemala, for both adults and children. 87% of cases involving children are not resolved, even though the situation has improved slightly in recent years.

The Minors Code currently in force dates from 1979 and there are a series of reports claiming that this law is not consistent with the Convention on the Rights of the Child. The Code is based on the concept of irregular situation, and according to this concept, the child victim of some act of abuse, violation or negligence and the youth who has allegedly broken the law, are in the same situation. As an irregular conduct is not codified, this leaves the door open to arbitrariness, for example, as regards detentions. In Guatemala, adults are merged with adolescents and with child victims at various points of the legal process and this is completely contrary to international standards.

Congress has delayed indefinitely the entry into force of the Children and Youth Code, adopted by consensus in 1996, owing to the public discussion generated by whether this law respects paternal authority and whether it is consonant with Guatemalan cultural values. The proposed law complies with the standards of protection established in both Article 19 of the American Convention and the Convention on the Rights of the Child. There is consensus on this point and applying the law would be one of the most important strategic steps for the protection of the rights of the child in Guatemala.

Regarding the recommendations that he would make for improving the situation in Guatemala, the expert stated: first, a profound legislative reform would be necessary, commencing with the entry into force of the Children and Youth Code. Second, greater efforts should be made in the area of social policies, above all, in the universalization of primary education and the fight against child malnutrition. And, third, there is a need for a policy of attention and, in particular, prevention for street children, which should include a significant increase in the budget of the Social Welfare Secretariat.

c) Expert report of Emilio García Méndez, independent consultant and former adviser to UNICEF, expert on the rights of the child

There are three countries in Latin America where we can speak of systematic violence against the children who, from a qualitative and quantitative point of view, are at greatest risk: Colombia, Brazil and Guatemala. It is not that there is a deliberate policy of violation of the rights of the child from a subjective viewpoint, but there is from an objective perspective, because the levels of social expenditure on basic social policies for health and education are extremely low.

Guatemala has a Minors Code that was adopted in 1979. In 1990 and 1991, it ratified and promulgated the International Convention on the Rights of the Child; as a result, two laws regulating the same matter, which are antagonistic in nature, are in force at the same time. From the technical and juridical point of view, it would appear that the ratification and promulgation of the Convention has invalidated the 1979 Minors Code, but the latter is still in force because, in fact, it constitutes the principal source of the decisions of the judges of minors. Technically, this Code is also unconstitutional. All the general principles of law contained in the Guatemalan Constitution and in the above-mentioned Convention are technically and

systematically violated by the 1979 Code. Although its provisions are supposed to favor minors, the latter are not recognized the rights that the Constitution and the Convention on the Rights of the Child grant them. The Code affirms the so-called "doctrine of the irregular situation", which makes no distinction between a child who is the victim of the failure of social policies, who falls outside the institutional circuits – for example, the school – and the child who is the active subject of violence, so that both can be subjected to the same measures in the same institutions. Therefore, by applying the law, the police force is, on the one hand, strictly complying with one of the Code's mandates and, on the other, flagrantly violating both the Convention and the Constitution itself. The Code is a law that overwhelmingly criminalizes poverty because, following a detention, there is a "declaration of the state of abandon", which is a legal proceeding that severs the links between the biological family and the child. By failing to establish a difference between the family that really expels the child and the one that is unable to maintain him, it is technically possible to take a child away from his family merely for the lack or absence of material resources.

Generally, two things happen to such children. If they are very young, they often enter the sphere of national and international adoption. If they are older than the usual age for adoption, that is, if they are more than 5, 6 or 7 years of age, these children permanently aliment the circuit of children's institutions. And there is a very strong relationship between passage through these institutions and recidivism and reclusion in adult prisons.

The Children and Youth Code adopted by the Guatemalan Congress in 1996, which is in suspense, corresponds to what could be called a substantial adaptation to the Convention on the Rights of the Child, and to all the instruments that comprise the so-called United Nations integral protection doctrine, the Beijing rules and the Riad rules.

The legislative modifications and the measures necessary to grant protection to children in general, adapted to international standards for children in general and, in particular, street children or those at risk in Guatemala are: application of the parameters established by the International Convention; granting constitutional rank to laws and policies on children; bringing into force the 1996 Code; the reform of the institutions that apply the law; and, breaking and halting the cycle of the impunity of the violations committed against minors. All the foregoing accompanied by an increase in public expenditure on the so-called basic social policies of health and education, and in the so-called special protection policies, which are those addressed to the percentage of children at risk or at high risk.

It would be appropriate to execute acts of symbolic reparation. The measure requested to give the names of the victims to a school, is a real, significant symbolic measure and would be an extraordinary act to send a very strong message to break the cycle of impunity, and to recall that those deaths did not occur in vain.

V

OBLIGATION TO MAKE REPARATION

57. In the ninth operative paragraph of the judgment on merits of November 19, 1999, the Court decided to open the reparations and costs stage and to authorize

the President to adopt the corresponding procedural measures. The Court will decide these matters in this judgment.

58. Article 63(1) of the American Convention *in fine*, applies to reparations; it establishes:

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 (the original is not underlined).

59. In its consistent jurisprudence, this Court has reiterated that it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to make adequate reparation¹⁵.

60. Reparation of the damage resulting from the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international court must determine a series of measures, which, in addition to guaranteeing the rights that have been violated, make reparation for the consequences of the violations, and must also order the payment of an indemnity as compensation for the caused¹⁶.

61. The respondent State may not invoke provisions of domestic law in order to modify or fail to comply with the obligation to make reparation – all aspects of which (scope, nature, forms and determination of the beneficiaries) are regulated by international law¹⁷.

62. As the Court has indicated, Article 63(1) of the American Convention codifies a rule of common law that is one of the fundamental principles of contemporary international law on State responsibility¹⁸. When an unlawful act occurs that may be

¹⁵ cf. *Ivcher Bronstein case*, supra note 2, para. 177; *Baena Ricardo et al. case*, supra note 2, para. 201; *The Constitutional Court case*. Judgment of January 31, 2001. Series C No. 71, para. 118; *Blake case. Reparations*, supra note 13, para. 33; *Suárez Rosero case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 40; *Castillo Páez case. Reparations*, supra note 1, para. 50; *Loayza Tamayo case. Reparations*, supra note 12, para. 84; *Caballero Delgado and Santana case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 31, para. 15; *Neira Alegría et al. case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, para. 36; *El Amparo case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 14; *Aloeboetoe et al. case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C. No 15, para. 43. See also, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *I.C.J. Reports* 1949, p. 184; *Factory at Chorzów*, Merits, Judgment No. 13, 1928, *P.C.I.J.*, Series A, No. 17, p. 29; and *Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, *P.C.I.J.*, Series A, No. 9, p. 21.

¹⁶ cf. *Ivcher Bronstein case*, supra note 2, para. 178; *Baena Ricardo et al. case*, supra note 2, para. 202; and *The Constitutional Court case*, supra note 15, para. 119.

¹⁷ cf. *Blake case. Reparations*, supra note 13, para 32; *Suárez Rosero case. Reparations*, supra note 15, para. 42; and *Castillo Páez case. Reparations*, supra note 1, para. 49.

¹⁸ cf. *Blake case. Reparations*, supra note 13, para. 33; *Suárez Rosero case. Reparations*, supra note 15, para. 40; *Castillo Páez case. Reparations*, supra note 1, para. 50. See also, *Reparation for*

attributed to a State, the international responsibility of the latter is immediately engaged for the violation of an international law, with the resulting obligation to make reparation and to ensure that the consequences of the violation cease.

63. As the word indicates, reparations consists in the measures that are intended to eliminate the effects of the violations that were committed. Their nature and amount depend on the damage caused at both the pecuniary and the non-pecuniary level. Reparations are not supposed to enrich or impoverish the victim or his heirs¹⁹.

64. The reparations established in this judgment must be consistent with the violations found in the judgment on merits delivered by the Court on November 19, 1999 (*supra* para. 3).

VI BENEFICIARIES

65. The Court now proceeds to determine the persons who should be considered "injured party" in the words of Article 63(1) of the American Convention. Since the violations of the Convention that the Court established in its judgment of November 19, 1999, were committed with regard to Anstraun Aman Villagrán Morales, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes, and also against Ana María Contreras, Matilde Reyna Morales García, Rosa Carlota Sandoval, Margarita Urbina, Marta Isabel Túnchez Palencia and Noemí Cifuentes, it should be considered that they are all included in this category and are eligible for the reparations that the Court establishes. In the case of the victims who died, it will also be necessary to determine whether the reparations established in their favor may be transmitted by succession to their next of kin, and which of the latter.

66. No one disputes that Ana María Contreras, mother of Henry Giovanni Contreras; Matilde Reyna Morales García, mother of Anstraun Aman Villagrán Morales; Rosa Carlota Sandoval and Margarita Urbina, respectively mother and grandmother of Julio Roberto Caal Sandoval; Marta Isabel Túnchez Palencia, mother of Federico Clemente Figueroa Túnchez; and Noemí Cifuentes, mother of Jovito Josué Juárez Cifuentes, are beneficiaries. The Court considers that granting them this condition is in keeping with the Court's jurisprudence, because, on the one hand, they must be considered beneficiaries of reparations as the successors of their next of kin who are dead and, on the other, as victims of the violation of Articles 5.2, 8(1) and 25 of the Convention, as the judgment on merits found. It should also be recalled that the Court presumes that a person's death causes non-pecuniary damage to his parents.

67. The Court has indicated, and once again repeats, that the right to compensation for the damage that the victims suffered until the time of their death is transmitted by succession to their heirs. As this Court has stated:

Injuries Suffered in the Service of the United Nations, Advisory Opinion, *I.C.J. Reports* 1949, p. 184; *Factory at Chorzów*, Merits, Judgment No. 13, 1928, *P.C.I.J.*, Series A, No. 17, p. 29; and *Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, *P.C.I.J.*, Series A, No. 9, p. 21.

¹⁹ *cf. Blake case. Reparations*, *supra* note 13, para. 34; *Castillo Páez case. Reparations*, *supra* note 1, para. 53; and *Garrido and Baigorria case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 43.

[i]t is a norm common to most legal systems that a person's successors are his or her children. It is also generally accepted that the spouse has a share in the assets acquired during a marriage; some legal systems also grant the spouse inheritance rights along with the children. If there is no spouse or children, private common law recognizes the ascendants as heirs. It is the Court's opinion that these rules, generally accepted by the community of nations, should be applied in the instant case, in order to determine the victims' successors for purposes of compensation²⁰.

68. On the other hand, the damage caused to other members of the victim's family or to third parties, due to the death of the victim, may be claimed in their own right²¹. However, this Court has indicated that certain conditions must be met in order to constitute a damage and the resulting right to reparation; these include the existence of a relationship of effective, regular financial support between the victim and the claimant and the possibility of realistically presuming that this support would have continued if the victim had not died²². With regard to such claimants, the *onus probandi* corresponds to them, whether or not they are members of the victim's family – and the expression "victim's family" should be understood in an extensive form that covers all those persons closely related to him; in other words, his children, parents and siblings, who could be considered next of kin and have the right to receive a compensation, provided that they fulfill the requirements established by this Court's jurisprudence²³. It should also be recalled that, according to the most recent jurisprudence of the court, it may be presumed that the death of a person results in non-pecuniary damage to his siblings²⁴. For the effects of the case *sub judice*, the reparations to the next of kin will be examined in the corresponding section, according to the circumstances of each of the victims and of the body of evidence that the parties have submitted to this Court.

VII PROVEN FACTS

69. The Court will base itself on the facts admitted as proven in the judgment of November 19, 1999, in order to determine the measures of reparation that are in order in this case. Moreover, at this stage of the proceeding, the parties have submitted new elements of evidence in order to demonstrate the existence of complementary facts that are relevant for determining the measures of reparation. The Court has examined these elements and the arguments of the parties and finds that the following facts have been proved:

1) Concerning Anstrau Aman Villagrán Morales:

²⁰ *Aloeboetoe et al. case. Reparations, supra note 15, para. 62. Also, cf. Neira Alegría et al. case. Reparations, supra note 15, para. 60; and El Amparo case. Reparations, supra note 15, para. 40.*

²¹ *cf. Castillo Páez case. Reparations, supra note 1, para. 59; Garrido and Baigorria case. Reparations, supra note 19, para. 50; and Aloeboetoe et al. case. Reparations, supra note 15, para. 54.*

²² *Aloeboetoe et al. case. Reparations, supra note 15, paras. 67 and 68.*

²³ *cf. Loayza Tamayo case. Reparations, supra note 12, para. 92; Garrido and Baigorria case. Reparations, supra note 19, para. 52; and Aloeboetoe et al. case. Reparations, supra note 15, para. 71.*

²⁴ *cf. Paniagua Morales et al. case. Reparations (Article 63(1) de the American Convention de Derechos Humanos). Series C No. 76, para. 110.*

- a) he was born on September 23, 1972, and died on June 26, 1990, in a sector known as "Las Casetas", on 18th Street, in Bolívar Square, Zone One of Guatemala City. He was 17.8 years of age at the time²⁵;
- b) he had studied until sixth grade of primary education at Official Boys' School No. 72 "Reino de Bélgica"²⁶;
- c) he worked in a butcher's shop in the La Parroquia Market in Zone Six of Guatemala City, and in a "sale's kiosk", helping to clean up and lift "loads"²⁷;
- d) his parents are Venancio Villagrán Hernández and Matilde Reyna Morales García and his siblings are Lorena Dianeth, Reyna Dalila, Gerardo Adoriman Villagrán Morales and Blanca Elisa Albizurú Morales. The latter was born after Anstraun Aman's death²⁸;
- e) as a result of the facts of the instant case, Matilde Reyna Morales García suffered health problems, and their treatment entailed a series of medical expenses²⁹;
- f) the family suffered pecuniary and non-pecuniary damage owing to the death of Anstraun Aman Villagrán Morales³⁰;
- g) the members of the family took steps to seek the victim and undertook the appropriate legal measures under domestic law.

²⁵ cf. copy of the birth certificate of Anstraun Aman Villagrán Morales; and copy of the death certificate of Anstraun Aman Villagrán Morales dated April 5, 1991.

²⁶ cf. certificate from the Director of Official Boys' School No.72 "Reino de Bélgica" dated April 11, 2000; testimony of Matilde Reyna Morales García given before the Court on January 28, 1998; and testimony of Reyna Dalila Villagrán Morales given before the Court on March 12, 2001.

²⁷ cf. copy of the death certificate of Anstraun Aman Villagrán Morales dated April 5, 1991; testimony of Matilde Reyna Morales García given before the Court on January 28, 1998; testimony of Reyna Dalila Villagrán Morales given before the Court on March 12, 2001; and sworn declaration by Matilde Reyna Morales García made on April 6, 2000.

²⁸ cf. copy of identity card No. 798483 of Lorena Dianeth Villagrán Morales; certified copy of identity card No. 19874 of Matilde Reyna Morales García; copy of the birth certificate of Anstraun Aman Villagrán Morales; copy of the death certificate of Anstraun Aman Villagrán Morales dated April 5, 1991; copy of the birth certificate of Gerardo Adoriman Villagrán Morales; copy of the birth certificate of Reyna Dalila Villagrán Morales; testimony of Reyna Dalila Villagrán Morales given before the Court on March 12, 2001; and sworn declaration by Matilde Reyna Morales García made on April 6, 2000.

²⁹ cf. testimony of Reyna Dalila Villagrán Morales given before the Court on March 12, 2001; expert report of Ana Deutsch given before the Court on March 12, 2001; certificate of the medical record of Matilde Reyna Morales García issued on April 6, 1990, by Dr. David Ricardo Del Cid; and sworn declaration by Matilde Reyna Morales García made on April 6, 2000.

³⁰ cf. testimony of Matilde Reyna Morales García given before the Court on January 28, 1998; testimony of Reyna Dalila Villagrán Morales given before the Court on March 12, 2001; expert report of Ana Deutsch given before the Court on March 12, 2001; and sworn declaration by Matilde Reyna Morales García made on April 6, 2000.

Subsequently, their representatives resorted to the inter-American human rights system, all of which generated expenses³¹;

h) the family has been represented before the Commission and the Court by members of CEJIL and *Casa Alianza*³²; and

i) the life expectancy of a young man of 17.8 years of age was 50.04 years in Guatemala in 1990³³.

2) Concerning Henry Giovanni Contreras:

a) he was born on April 3, 1972, and died at 18.2 years of age on June 16, 1990³⁴;

b) he had studied until second grade of primary education at the National Urban Coeducational School and attended typing classes in March, April and May 1990³⁵;

c) he worked at a printing shop and as a mechanic, did carpentry and plumbing, and sold food and handicrafts³⁶;

d) his mother is Ana María Contreras and his siblings are Mónica Renata, Shirley Marlen and Osman Ravid Agreda Contreras³⁷;

³¹ cf. testimony of Matilde Reyna Morales García given before the Court on January 28, 1998; proven facts during the judgment on merits delivered by the Court on November 19, 1999; and documents supporting expenses.

³² cf. power of attorney granted by Matilde Reyna Morales García to Gustavo Rodolfo de León Rodas, Raquel Aldana, María Claudia Pulido, Luguely Cunillera and Viviana Krsticevic on December 9, 1998; and power of attorney granted by Reyna Dalila Villagrán Morales on March 12, 2001, to Casa Alianza and CEJIL; and measures that appear in the Court's file taken by those with power of attorney.

³³ cf. National Institute of Statistics of Guatemala (INE). *Tablas Abreviadas de Mortalidad (período 1990-1995)*. Data such as age, sex and geographical zone of residence were also considered.

³⁴ cf. copy of the birth certificate of Henry Giovanni Contreras; expert report of Roberto Carlos Bux given before the Court on January 29, 1998; testimony of Ana María Contreras given before the Court on January 28, 1998; testimony of Ana María Contreras given before the Court on March 12, 2001; and sworn declaration by Ana María Contreras made on April 6, 2000.

³⁵ cf. copy of primary education certificate of Henry Giovanni Contreras from the National Urban Coeducational School dated October 26, 1981; copy of primary education certificate of Henry Giovanni Contreras from the National Urban Coeducational School "Heriberto Gálvez Barrios" dated October 29, 1982; copy of primary education certificate of Henry Giovanni Contreras from National Urban School #7 "Francisco Marroquín" dated October 31, 1983; copy of the 1983 school report of Henry Giovanni Contreras for second grade at National Urban School #7 "Francisco Marroquín"; certificate of typing studies of Henry Giovanni Contreras issued by the Academia Comercial de Mecanografía "Superación" on March 22, 2000; and sworn declaration by Ana María Contreras made on April 6, 2000.

³⁶ cf. certificate that Henry Giovanni Contreras worked at the company, Técnica Nacional dated April 7, 2000; testimony of Ana María Contreras given before the Court on January 28, 1998; testimony of Ana María Contreras given before the Court on March 12, 2001 and sworn declaration by Ana María Contreras made on April 6, 2000.

³⁷ cf. copy of the birth certificate of Mónica Renata Agreda Contreras; copy of the birth certificate of Shirley Marlen Agreda Contreras; copy of the birth certificate of Osman Ravid Agreda Contreras; testimony of Ana María Contreras given before the Court on January 28, 1998; testimony of Ana María Contreras given before the Court on March 12, 2001; and sworn declaration by Ana María Contreras made on April 6, 2001.

- e) the family suffered pecuniary and non-pecuniary damage owing to the death of Henry Giovanni Contreras³⁸;
- f) the family started looking for him in several police stations and undertook the appropriate legal measures, under domestic law. Subsequently, their representatives resorted to the inter-American human rights system, all of which generated expenses³⁹;
- g) the family has been represented before the Commission and the Court by members of CEJIL and *Casa Alianza*⁴⁰; and
- h) the life expectancy of a young man of 18.2 years of age was 49.15 years in Guatemala in 1990⁴¹.

3) Concerning Julio Roberto Caal Sandoval:

- a) he was born on November 25, 1974, and died at 15.6 years of age on June 16, 1990⁴²;
- b) he had several jobs, in particular, selling toys in the La Parroquia Market and in El Colón, and as a shoe-shiner and selling candies⁴³;
- c) his mother was Rosa Carlota Sandoval, who died on July 25, 1991, and his grandmother is Margarita Urbina⁴⁴;
- d) the family suffered pecuniary and non-pecuniary damage owing to the death of Julio Roberto Caal Sandoval⁴⁵;

³⁸ cf. testimony of Ana María Contreras given before the Court on January 28, 1998; testimony of Ana María Contreras given before the Court on March 12, 2001; expert report of Ana Deutsch given before the Court on March 12, 2001; and sworn declaration by Ana María Contreras made on April 6, 2001.

³⁹ cf. documents supporting expenses; and facts proven during the judgment on merits delivered by the Court on November 19, 1999.

⁴⁰ cf. power of attorney granted by Ana María Contreras to Gustavo Rodolfo de León Rodas, Raquel Aldana, María Claudia Pulido, Luguely Cunillera and Viviana Krsticevic on December 9, 1998; and measures that appear in the Court's file taken by those with power of attorney.

⁴¹ cf. National Institute of Statistics of Guatemala (INE). *Tablas Abreviadas de Mortalidad (período 1990-1995)*. Data such as age, sex and geographical zone of residence were also considered.

⁴² cf. copy of the birth certificate of Julio Roberto Caal Sandoval; expert report of Roberto Carlos Bux given before the Court on January 29, 1998; and sworn declaration by Margarita Urbina made on April 6, 2000.

⁴³ cf. testimony of Margarita Urbina given before the Court on March 12, 2001; and sworn declaration by Margarita Urbina made on April 6, 2000.

⁴⁴ cf. copy of the death certificate of Rosa Carlota Sandoval of August 27, 1991; testimony of Margarita Urbina given before the Court on March 12, 2001; and sworn declaration by Margarita Urbina made on April 6, 2000.

⁴⁵ cf. testimony of Margarita Urbina given before the Court on March 12, 2000; expert report of Ana Deutsch given before the Court on March 12, 2001; and sworn declaration by Margarita Urbina made on April 6, 2000.

- e) the family started looking for him in several police stations and undertook judicial measures, under domestic law. Subsequently, their representatives resorted to the inter-American human rights system, all of which generated expenses⁴⁶;
- f) the family of Julio Roberto Caal Sandoval has been represented before the Commission and the Court by members of CEJIL and *Casa Alianza*⁴⁷; and
- g) the life expectancy of a young man of 15.6 years of age was 51.92 years in Guatemala in 1990⁴⁸.

4) Concerning Federico Clemente Figueroa Túnchez:

- a) he was born on October 7, 1970, and died at 19.7 years of age on June 16, 1990⁴⁹;
- b) he had various jobs and, in particular, he made handicrafts, shined shoes, unloaded trucks, cleaned cars and windows⁵⁰;
- c) his mother is Marta Isabel Túnchez Palencia, his father was Federico Facundo Figueroa Fernández and his siblings are Guadalupe Concepción Figueroa Túnchez and Zorayda Izabel Figueroa Túnchez⁵¹;
- d) the family suffered pecuniary and non-pecuniary damage owing to the death of Federico Clemente Figueroa Túnchez⁵²;
- e) members of CEJIL and *Casa Alianza* have taken steps to help the next of kin of Federico Clemente Figueroa Túnchez⁵³. In the proceeding before the Court, the next of kin have been represented by CEJIL and *Casa Alianza* as of March 12, 2001⁵⁴, and this has generated a series of expenses⁵⁵; and

⁴⁶ cf. documents supporting expenses; and facts proven during the judgment on merits delivered by the Court on November 19, 1999.

⁴⁷ cf. power of attorney granted by Margarita Urbina to Gustavo Rodolfo de León Rodas, Raquel Aldana, María Claudia Pulido, Luguely Cunillera, and Viviana Krsticevic on December 9, 1998; and measures that appear in the Court's file taken by those with power of attorney.

⁴⁸ cf. National Institute of Statistics of Guatemala (INE). *Tablas Abreviadas de Mortalidad (período 1990-1995)*. Data such as age, sex and geographical zone of residence were also considered.

⁴⁹ cf. copy of the birth certificate of Federico Clemente Figueroa Túnchez; and expert report of Roberto Carlos Bux given before the Court on January 29, 1998.

⁵⁰ cf. testimony of Marta Isabel Túnchez Palencia given before the Court on March 12, 2001.

⁵¹ cf. copy of the birth certificate of Federico Clemente Figueroa Túnchez; copy of the birth certificate of Guadalupe Concepción Figueroa Túnchez; copy of the birth certificate of Zorayda Izabel Figueroa Túnchez; and testimony of Marta Isabel Túnchez Palencia given before the Court on March 12, 2001.

⁵² cf. testimony of Marta Isabel Túnchez Palencia given before the Court on March 12, 2001; and expert report of Ana Deutsch given before the Court on March 12, 2001.

⁵³ cf. measures that appear in the Court's file taken by those holding power of attorney.

⁵⁴ cf. power of attorney granted by Marta Isabel Túnchez Palencia to *Casa Alianza* and CEJIL on March 12, 2001.

f) the life expectancy of a young man of 19.7 years of age was 48.26 years in Guatemala in 1990⁵⁶.

5) Concerning Jovito Josué Juárez Cifuentes:

a) he died on June 16, 1990, at 17 years of age⁵⁷;

b) his mother is Noemí Cifuentes⁵⁸;

c) members of CEJIL and *Casa Alianza* have taken steps before the Commission and the Court for the next of kin of Jovito Josué Juárez Cifuentes, which have generated a series of expenses⁵⁹; and

d) the life expectancy of a young man of 17 years of age was 50.04 years in Guatemala in 1990⁶⁰.

**VIII
REPARATIONS**

A) *PECUNIARY DAMAGE*

Arguments of the representatives of the victims' next of kin

70. The representatives of the victims' next of kin⁶¹ requested that Guatemala should compensate the members of the families of Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraun Aman Villagrán Morales. In this respect, they indicated:

⁵⁵ *cf. documents supporting expenses.*

⁵⁶ *cf. National Institute of Statistics of Guatemala (INE). Tablas Abreviadas de Mortalidad (período 1990-1995). Data such as age, sex and geographical zone of residence were also considered.*

⁵⁷ *Facts proven during the judgment on merits delivered by the Court on November 19, 1999; and expert report of Roberto Carlos Bux given before the Court on January 29, 1998.*

⁵⁸ *Facts proven during the judgment on merits delivered by the Court on November 19, 1999.*

⁵⁹ *cf. the briefs of the victims' representatives that appear in the file, in particular, the measures on behalf of the next of kin of Jovito Josué Juárez Cifuentes.*

⁶⁰ *cf. National Institute of Statistics of Guatemala (INE). Tablas Abreviadas de Mortalidad (período 1990-1995). Data such as age, sex and geographical zone of residence were also considered.*

⁶¹ As has already been indicated in this judgment, the next of kin of four of the direct victims took part in the reparations stage.

a) in order to calculate loss of earnings, the age of the victim at the date of his death⁶², the years he might have lived in accordance with his life expectancy⁶³, the job he was doing at the time of the facts, the financial improvements that he might have been able to obtain, and his earnings must be taken into account. In this case, the real wage would be applied or, in the absence of information on the real wages of the victims, the minimum wage for non-agricultural activities in Guatemala would be applied⁶⁴. These earnings must be calculated on the basis of 12 monthly wages each year; the two months of additional wages each year established in Guatemala legislation should also be considered, together with the corresponding interest; and

b) with regard to consequential damage, in cases such as this, which relate to "extrajudicial executions", expenses related to the search for the remains of the victims⁶⁵, funeral services⁶⁶, medical treatment and medicines for the next of kin of the victims⁶⁷ should be included.

71. In view of the foregoing, the representatives of the victims' next of kin consider that the State should pay the next of kin of the direct victims the amounts indicated in the following table:

Reparation for pecuniary damage		
Victim	Consequential damage	Loss of earnings
Anstraun Aman Villagrán Morales	US\$ 161.66 US\$ 2,392.20 US\$ 1,500.00	US\$ 50,563.47
Henry Giovanni Contreras	US\$ 350.00 US\$ 2,500.00	US\$ 50,149.43
Julio Roberto Caal Sandoval	US\$ 399.02	US\$ 51,376.70
Federico Clemente Figueroa Túnchez		US\$ 50,149.43
Jovito Josué Juárez Cifuentes		US\$ 51,223.29

⁶² The representatives of the victims' next of kin indicated that the youths, Anstraun Aman Villagrán Morales, Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Federico Clemente Figueroa Túnchez, and Jovito Josué Juárez Cifuentes, were 17, 18, 16, 18 and 17 years of age, respectively.

⁶³ According to the representatives of the victims' next of kin, the life expectancy was 64.7 years for boys in Guatemala in 1999 (according to the 1999 Human Development Report of the United Nations Economic Commission for Latin America and the Caribbean/ECLAC).

⁶⁴ According to the representatives of the victims' next of kin, the said wage was US\$ 102 in 2000. The exchange rate was Q7.72 to the US\$ 1.00, according to information provided by the *Banco Central de Costa Rica*.

⁶⁵ In the case of Julio Roberto Caal Sandoval and Henry Giovanni Contreras.

⁶⁶ In the case of Anstraun Aman Villagrán Morales.

⁶⁷ In the case of the mothers of Henry Giovanni Contreras and Anstraun Aman Villagrán Morales.

72. The said representatives consider that the following persons should be the beneficiaries of the compensation for pecuniary damage:

- a) in the case of Anstraun Aman Villagrán Morales, they requested that half the compensation established for pecuniary damage be awarded to his mother, Matilde Reyna Morales García, and the other half to his sister, Lorena Dianeth Villagrán Morales;
- b) with regard to Henry Giovanni Contreras, they requested that half the compensation established for pecuniary damage be awarded to his mother, Ana María Contreras, and a third of the remaining half to each of his siblings, Mónica Renata, Shirley Marlen and Osman Ravid Agreda Contreras;
- c) regarding Julio Roberto Caal Sandoval, they requested that all the compensation established for pecuniary damage be awarded to his grandmother, Margarita Urbina;
- d) with regard to Federico Clemente Figueroa Túnchez, they requested that all the compensation established for pecuniary damage be awarded to his mother, Marta Isabel Túnchez Palencia; and
- e) in the case of Jovito Josué Juárez Cifuentes, they requested that all the compensation established for pecuniary damage be awarded to his mother, Noemí Cifuentes.

73. During the public hearing, the said representatives opposed the State's assertion that, according to the circumstances of the case, a "close" financial collaboration between the victims and their next of kin did not exist. They also requested an amount for medical and psychological attention to the victims' next of kin, in order to help them overcome the damage suffered and bring closure to the mourning process. Lastly, they supported the calculation of loss of earnings proposed by the Commission, because they considered it more comprehensive than the one set out in the brief on reparations.

The Commission's arguments:

74. The Commission argued:

- a) that, with regard to loss of earnings, in this case it had been proved that the victims provided emotional, affective and financial support to their next of kin and that the fact that they were street children does not preclude the obligation to provide compensation for loss of earnings. It added that this concept cannot be eliminated because the victims did not work all the time. It also indicated that, when calculating the loss of earnings, and in order to estimate the loss of earnings corresponding to the requirements and circumstances of this case, the following factors should be taken into consideration: life expectancy⁶⁸; the age of the victims; wages that would not

⁶⁸ According to the Commission, indicators produced by the National Institute of Statistics for 1990-1995, indicate that "the average remaining life expectancy for men from 15 to 19 years of age would have been 50.04 years". In view of the similarities in ages (which ranged from 15 to 20 years) and circumstances of the victims, "the Commission has made a single calculation and considers that it should be applied to each of them."

be received, based on the minimum wage for non-agricultural activities⁶⁹; interest on past losses⁷⁰; and discount to the current value⁷¹; and

b) that it supported the requests submitted by the petitioners with regard to the damage suffered by the next of kin of Henry Giovanni Contreras, Julio Roberto Caal Sandoval and Anstraun Aman Villagrán Morales, as a result of the search for the victims, medical expenses, funeral services and expenses related to the legal proceedings. With regard to the next of kin of Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes, it requested the Court to determine the compensation for such losses fairly, taking into account the circumstances of the case and all available information.

75. In view of the foregoing, the Inter-American Commission considers that the State should pay the next of kin of the direct victims the amounts indicated in the following table:

Reparation for pecuniary damage		
Victim	Consequential damage	Loss of earnings
Anstraun Aman Villagrán Morales	US\$ 161.66 US\$ 2,392.20 US\$ 1,500.00	US\$ 89,676.58
Henry Giovanni Contreras	US\$ 350.00 US\$ 2,500.00	US\$ 89,676.58
Julio Roberto Caal Sandoval	US\$ 399.02	US\$ 89,676.58
Federico Clemente Figueroa Túnchez		US\$ 89,676.58
Jovito Josué Juárez Cifuentes		US\$ 89,676.58

76. According to the Commission, the following persons should be considered beneficiaries of the compensation payments:

⁶⁹ According to the Commission, reference to the minimum legal wage for workers in the non-agricultural sector is an appropriate minimum limit for calculations in this case, in accordance with the provisions of Article 103 of the Labor Code, with the legal bonuses (Q0.30 per hour) and the periodic modifications to the minimum wages in force. The Commission traced the increase in the minimum wages from the time of the events up until 1999 and established that the average annual increase for that period had been 6.9%; it then applied this increase to the projection for non-perceived future wages.

⁷⁰ The Commission has applied the rate of passive compound interest in force for each year, published by the *Banco de Guatemala*.

⁷¹ The Commission used a discount rate of 3% for calculating the current value of the loss of earnings.

- a) with regard to Anstraun Aman Villagrán Morales, his mother, Matilde Reyna Morales García, and his siblings, Lorena Dianeth, Reyna Dalila and Gerardo Villagrán Morales;
- b) with regard to Henry Giovanni Contreras, his mother, Ana María Contreras, and his siblings, Mónica Renata Agreda Contreras, Shirley Marlen Agreda Contreras and Osman Ravid Agreda Contreras. The Commission also includes Wilson Ravid Agreda Vásquez, who it indicates is the victim's son;
- c) with regard to Julio Roberto Caal Sandoval, his grandmother, Margarita Urbina;
- d) with regard to Federico Clemente Figueroa Túnchez, his mother, Marta Isabel Túnchez Palencia, his father, Federico Facundo Figueroa, and his siblings, if there are any; and
- e) with regard to Jovito Josué Juárez Cifuentes, his mother, Noemí Cifuentes, his father, Jorge Juárez, and his siblings, if there are any.

The State's arguments

77. On this point, the State indicated that:

- a) with regard to pecuniary damage, the judgment on reparations should take into account those who had suffered violations and, when this was not feasible, the direct next of kin. Therefore it recognizes as direct victims: Anstraun Aman Villagrán Morales, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes and, consequently, as a result of the violations that they suffered directly, Ana María Contreras, Matilde Reyna Morales García, Rosa Carlota Sandoval, Margarita Urbina, Marta Isabel Túnchez Palencia and Noemí Cifuentes. The State does not recognize that any other person has a right to receive reparations;
- b) the Commission did not provide hard evidence to prove that those who died had held continuous, stable and permanent employment. The same loss of earnings criterion should not be applied to all those who died, as the Commission has done, without taking into account their real age and hard evidence to demonstrate their working activities. Accordingly, it opposes the Commission's calculation for this item. Moreover, the Court should accept as proved that the victims and their families did not have a close emotional relationship, so that it cannot be claimed that there was a financial collaboration between them: and
- c) the calculations should be made on the basis of the concept of 'life expectancy [...]', based on the concept of 'life expectancy at birth', less the years of life of the victims⁷², and it is therefore necessary to take into

⁷² According to the State, information provided by the National Institute of Statistics of Guatemala (INE) should be used; according to this, the life expectancy at birth for the years 1990-1995 was 59.78 years for men, and for the effects of this brief, is rounded up to 60 years.

consideration their age⁷³, the corresponding interest⁷⁴ and apply a discount rate to calculate the current value of future earnings⁷⁵. It is not appropriate for the Court to use the legal minimum wage for workers in the non-agricultural sector⁷⁶; this could only be used as the maximum ceiling of earnings that the victims might have perceived during their lifetime. The State would agree to the Court establishing the amount under this heading based exclusively on the fact that all human beings need a minimum income to survive.

The considerations of the Court

78. Bearing in mind the information received during this proceeding, the facts that are considered proved and its consistent jurisprudence, the Court finds that compensation for pecuniary damage in this case should include the items indicated in this section.

79. With regard to loss of earnings, the representatives of the victims' next of kin and the Commission agree that, in order to make its calculation, the Court should take into account the minimum wage for non-agricultural activities in Guatemala. The State, on the other hand, is opposed to using this basis and argues that the victims did not hold permanent, continuous employment. As it has on other occasions⁷⁷, this Court considers that, in view of the lack of precise information on the real earnings of the victims, it should use the minimum wage for non-agricultural activities in Guatemala as a basis.

80. Regarding expenses, the Court considers that, in equity, it is necessary 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

⁷³ The State indicated that Anstraun Aman Villagrán Morales, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes were 17, 18, 20, 17 and 15 years of age, respectively

⁷⁴ The State indicated that the average passive rate of interest for the years 1990-1999 should be applied.

⁷⁵ Guatemala considered that the applicable discount rate is 5% in order to determine the current net value of the amounts of the financial reparations.

⁷⁶ Guatemala also indicated that, in this case, neither the bonus of Q0.30 an hour nor the calculation made by the Commission on the variations in the minimum wage should be applied.

⁷⁷ cf. *Neira Alegría et al. case. Reparations, supra* note 15, para. 49; *El Amparo case. Reparations, supra* note 15, para. 28; and *Aloboetoe et al. case. Reparations, supra* note 15, paras. 88 and 89.

ailments that originated or had been made worse as a result of the facts of the case (*supra* para. 54.d and 54.b). 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.

81. The Court observes 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 in this case, which, at the June 1990 exchange rate, is equal to US\$ 80.93 (eighty United States dollars and ninety-three cents) as the monthly wage that would correspond to each of them. The calculation of the earnings that they will no longer perceive will be made on the basis of 12 wages a year, plus the corresponding annual bonuses under Guatemalan legislation. This will yield the earnings that each victim could presumably have enjoyed during his probable life – the period between his age at the time of the events and the end of his life expectancy in 1990, the year of the facts (*supra* para. 69.1.i, 69.2.h, 69.3.g, 69.4.f and 69.5.d)⁷⁸. 25% must be subtracted from this amount for personal expenses. The remaining amount must be adjusted to its current value at the date of the judgment⁷⁹.

82. Based on the foregoing, the Court establishes the following amounts as compensation for the pecuniary damage resulting from the violations found in the judgment of November 19, 1999:

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

83. The compensatory amounts indicated above shall 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;

⁷⁸ To calculate life expectancy, the Court took into account the document entitled "*Guatemala: Tablas Abreviadas de Mortalidad (Período 1990-1995)*"; it also considered data such as age, sex and geographical zone of residence.

⁷⁹ To this end, the Court used a 6% annual rate of interest.

- 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.

B) NON-PECUNIARY DAMAGE

84. The Court will now consider 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. A common feature of the different forms of non-pecuniary damage is that, since it is not possible to assign them a precise monetary equivalent, for the purposes of making integral reparation to the victims they may only be compensated and this can be done in two ways. First, 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. And, second, 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.

The arguments of the representatives of the victims' next of kin

85. The representatives of the victims' next of kin indicated that:

- a) the mothers of the victims and the other members of their immediate families underwent great suffering when they died;
- b) the suffering of the mothers of Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes is not limited to the pain they suffered due to the death of their sons, but they were also affected by the treatment to which the latter were submitted before they died, because their sons were detained incommunicado, abused and tortured, physically and psychologically, all by agents of the State. According to the jurisprudence of the Court, the mothers and the grandmother of Julio Roberto Caal Sandoval have a right to be compensated for such suffering;
- c) the mothers, as ascendant relatives of the victims in the instant case, are also considered direct victims of cruel and inhuman treatment, owing to the State's negligence. Moreover, the authorities did not make adequate efforts to locate the immediate families of the victims and notify them of their deaths, deliver the bodies to them and, when appropriate, give the next of kin the opportunity to bury the victims and keep them informed about the progress of the investigations. The said next of kin were unable to learn the

identity of those responsible, because the corresponding authorities did not investigate the crimes and punish them;

d) the sum of US\$ 150,000.00 (one hundred and fifty thousand United States dollars) should be paid for the non-pecuniary damage caused to each of the victims, and this amount should be given to their heirs; and the sum of US\$ 100,000.00 (one hundred thousand United States dollars) should be paid to each of the following: Ana María Contreras, Matilde Reyna Morales García, Marta Isabel Túnchez Palencia, Noemí Cifuentes and Margarita Urbina for the non-pecuniary damage they have suffered;

e) the sum of US\$ 6,000.00 (six thousand United States dollars) should be paid for non-pecuniary damage to Lorena Dianeth Villagrán Morales, sister or Anstraun Aman Villagrán Morales, and to each of the following siblings of Henry Giovanni Contreras: Mónica Renata Agreda Contreras, Shirley Marlen Agreda Contreras and Osman Ravid Agreda Contreras;

f) the following persons should be considered beneficiaries of the payment of compensation for non-pecuniary damage caused directly to the five youths who were deprived of their lives;

f.i) with regard to Julio Roberto Caal Sandoval, his grandmother, Margarita Urbina;

f.ii) with regard to Henry Giovanni Contreras, his mother, Ana María Contreras;

f.iii) with regard to Anstraun Aman Villagrán Morales, his mother, Matilde Reyna Morales García;

f.iv) with regard to Federico Clemente Figueroa Túnchez, his mother, Marta Isabel Túnchez Palencia;

f.v) with regard to Jovito Josué Juárez Cifuentes, his mother, Noemí Cifuentes;

g) the concept of reparation "should not be reduced merely to the sum of loss of earnings + consequential damage + non-pecuniary damage, because the value of the essential asset - life - would remain uncompensated." International human rights law and most legislations have understood this. The 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. It is not a right of the heirs but of the victim himself, which is then transferred to his estate. Therefore, they requested the Court to establish a fair value, and the measures that, in its opinion, would constitute reparation for this concept.

h) As minors, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstraun Aman Villagrán Morales had the right to special guarantees of protection under Article 19 of the Convention and this right was violated, owing to the arbitrary deprivation of life and the right to adequate living conditions. Therefore, they requested the Court to establish this value and the measures that, in its opinion, would constitute fair reparation; and

- i) during the public hearing, the representatives of the next of kin stated that, in this case, several life plans – those of the victims and of their next of kin - were destroyed.

The Commission's arguments

86. The Commission indicated that:

- a) with regard to non-pecuniary damage, compensation should be granted in order to make reparation for the suffering that the five young victims endured and also the suffering experienced by Ana María Contreras, Matilde Reyna Morales García, Rosa Carlota Sandoval, Margarita Urbina, Marta Isabel Túnchez Palencia, Noemí Cifuentes and the other immediate next of kin of the victims. The Commission indicated the same persons that it had named as beneficiaries for pecuniary damage (*supra* para. 76) as beneficiaries of the compensation for non-pecuniary damage;
- b) the five youths were deprived of the basic measures of safety and protection that the State should have provided to them as at-risk children, and also the opportunity to develop and live with dignity. Furthermore, the State did not respond to the systematic abuses perpetrated against them; and
- c) the Court has recognized that, in the case of serious damage to the life plan of a victim, total restitution requires a corresponding measure of reparation. The elimination and reduction of the life plans of these youths has objectively restricted their freedom and constitutes the loss of a valuable possession. This type of grave prejudice to the victim's future life does not correspond to either pecuniary damage or non-pecuniary damage. It should be compensated by a payment of at least US\$50,000.00 (fifty thousand United States dollars) for each of the victims.

The State's arguments

87. The State indicated that:

- a) with regard to the non-pecuniary damage, the judgment on reparations should cover the aggrieved parties themselves and, if this is not feasible, their direct next of kin. Therefore, it recognizes the following as direct victims: Anstraun Aman Villagrán Morales, Henry Giovanni Contreras, Federico Clemente Figueroa Túnchez, Julio Roberto Caal Sandoval and Jovito Josué Juárez Cifuentes and, as a result of the direct violations that they suffered, Ana María Contreras, Matilde Reyna Morales García, Rosa Carlota Sandoval, Margarita Urbina, Marta Isabel Túnchez Palencia and Noemí Cifuentes. The State does not recognize the right of any other person to receive reparations;
- b) with regard to each of the direct young victims, a sum of Q50,000.00 (fifty thousand quetzales) should be granted for non-pecuniary damage. The sum of Q25,000.00 (twenty-five thousand quetzales) should be granted to each of victims' mothers and to Julio Roberto Caal Sandoval's grandmother, for the same concept;

c) with regard to the life plan, the precarious situation of the victims makes it highly probable that they did not have a life plan to put into practice and it asks the Court to reject the Commission's request to establish separate financial reparations for this concept, and also the amount requested; and

d) it accepts its responsibility in this case as regards the general failure to adopt effective policies to avoid having a street children problem, but the victims' next of kin also bear responsibility in this respect, because they did not fulfill their basic functions.

The considerations of the Court

88. This Court, as other international tribunals, has repeatedly indicated that a judgment of condemnation may be, *per se*, a form of compensation for non-pecuniary damage⁸⁰. However, owing to the grave circumstances of the instant case, the intensity of the suffering that the respective facts caused to the direct victims and their next of kin, and also the other consequences of a non-pecuniary nature that they caused the latter, the Court considers that, in fairness, it must order the payment of compensation for non-pecuniary damage⁸¹.

89. The victims' next of kin and the Commission have referred to various 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.

90. Taking into consideration the different aspects of the above-mentioned damage that has been submitted as evidence by the victims' representatives and the Commission, insofar as they are pertinent and respond to the particularities of each individual case, the Court, in fairness, establishes the value of the compensation for non-pecuniary damage that must be made to each of the direct victims and their immediate next of kin, as indicated in the table that appears below (*infra* para. 93). The Court explains that, when making this calculation for non-pecuniary damage, it has also borne in mind 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 future⁸².

⁸⁰ cf. *Ivcher Bronstein case*, *supra* note 2, para. 183; "*The Last Temptation of Christ*" case (*Olmedo Bustos et al*), *supra* note 2, para. 99; *Baena Ricardo et al. case*, *supra* note 2, para. 206; *The Constitutional Court case*, *supra* note 15, para. 122; *Blake case. Reparations*, *supra* note 13, para. 55. The European Court has established the same criterion, *see, inter alia*, *Eur Court HR, Ruiz Torrija v. Spain judgment of 9 December 1994, Series A no. 303-A, para. 33*; *Eur Court HR, Boner v. the United Kingdom judgment of 28 October 1994, Series A no. 300-B, para. 46*; *Eur Court HR, Kroon and Others v. the Netherlands judgment of 27 October 1994, Series A no. 297-C, para. 45*; *Eur Court H.R., Darby judgment of 23 October 1990, Series A no. 187, para. 40*; *Eur Court H.R., Koendjibharie, judgment of 25 October 1990, Series A no. 185-B, para. 34*; *Eur Court H.R., Wassink, judgment of 27 September 1990, Series A no. 185-A, para. 41*; and *Eur Court H.R., McCallum judgment of 30 August 1990, Series A no. 183, para. 37*.

⁸¹ cf. *Ivcher Bronstein case*, *supra* note 2, para. 183; *Baena Ricardo et al. case*, *supra* note 2, para. 206; and *The Constitutional Court case*, *supra* note 15, para. 122.

⁸² cf. *Villagrán Morales et al. case (The "Street Children" case)*. Judgment of November 19, 1999. Series C No. 63, paras. 188 to 191.

91. In order to establish the compensation for non-pecuniary damage, the Court also considered:

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 assassinated⁸³; and

b) with regard to Anstraun Aman Villagrán Morales, Julio Roberto Caal Sandoval and Jovito Josué Suárez Cifuentes, that they were minors (*supra* para. 69.1.a, 69.3.a and 69.5.a) and, consequently, there were particularly vulnerable and should have been the object of special protection by the State⁸⁴.

92. With regard to the immediate families of the five youths, the Court has taken into consideration 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. The compensation for this damage must be paid to the siblings of the victims as indicated in the table that appears below.

93. In accordance with the foregoing, the Court establishes the following amounts as compensation for the non-pecuniary damage suffered by the five youths who are the subject of this case, their mothers and grandmother and their siblings who are listed in this table:

⁸³ cf. *Villagrán Morales et al. case (The "Street Children" case)*, *supra* note 82, paras. 157 to 163.

⁸⁴ cf. *Villagrán Morales et al. case (The "Street Children" case)*, *supra* note 82, paras. 195 to 197.

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

IX OTHER FORMS OF REPARATION

Arguments of the representatives of the victims' next of kin

94. the representatives of the victims' next of kin indicated that, in general:
- a) satisfaction occurs when three actions are carried out, generally in an accumulative manner: apologies (or any other gesture that shows recognition of the authorship of the act in question), the prosecution and punishment of those responsible, and the adoption of measures to avoid repetition of the damage (guarantees of non-repetition); and
 - b) satisfaction and the guarantee of non-repetition are essential components of the concept of making reparation to the victims, in particular when these are children and youths who were never protected by the State, since the latter tolerated them living on the street and did not remedy this, and as a result they were violently and arbitrarily deprived of their lives. Accordingly, Guatemala must guarantee that such violations do not occur again and complement this with measures of satisfaction.
95. Furthermore, the representatives requested the following measures of satisfaction:

- a) that effective measures be adopted for the integral protection of street children and youths to avoid the occurrence of events such as those that have been denounced. This implies the adoption of significant reforms of Guatemalan public policies at the legislative, judicial and administrative level. Children and youths who live on the streets, as the victims did, have no possibility of leading a healthy, normal and dignified life, and are stigmatized as delinquents. Consequently, integral protection should be provided to this sector of society;
- b) that effective measures be adopted for the total implementation of the 1997 "*Plan de Acción a Favor de Niños, Niñas y Jóvenes de la Calle*" (Plan of action for street children) and that the 1996 Children and Youth Code (Decree 78-96) be put into force;
- c) that the State publicly recognize its responsibility for the seriousness of the facts that occurred and that involved street children, by gestures and symbols that give national expression to the reparation, such as building an educational center in memory of the victims. This would be a place offering free education, which would be accessible to this disadvantaged sector of the population, and all available resources should be used to attract the attention of the mass media to this symbolic measure and ensure their involvement.
- d) that the facts be clarified entirely and the authors of the violations receive appropriate punishment. The State should complete the investigation of the circumstances that produced the violations, promptly, impartially and effectively, and determine the individual responsibilities in this case. The existence of an acquittal due to *res judicata*, as the result of an irregular proceeding, cannot be the excuse for preventing those responsible from being punished; and
- e) that the Court order that the 1979 Minors Code be derogated.

The Commission's arguments

96. The Commission indicated that:

- a) it supports the claims of the petitioners with regard to reparations of a symbolic nature and also that certain aspects of the violations under discussion and the resulting damage cannot be repaired by compensation. Bearing in mind the gravity of the violations and the need to reconstitute the protection of the rights, particularly the rights of the child and the right to life, the Commission considers that the guarantees of satisfaction and non-repetition are an essential component of the required reparations:
- b) it is extremely important to consider the needs and wishes of the victims and their next of kin when determining the reparations, and therefore the Commission emphasizes three components of the non-pecuniary reparations:
 - b.i) the State should be ordered to designate a school or educational center with the names of the victims, as this would be an important way of attaching importance to their memory and keeping it alive;

b.ii) the State should be ordered to comply with the wishes of the mother of Henry Giovanni Contreras as regards the exhumation of his mortal remains in order to bury them again in an appropriate place that she will determine, an act of overwhelming importance in the life of the family; and

b.iii) the State should be ordered to fully comply with the part of the judgment that orders an effective investigation into the facts in order to ensure that violations of this type are not repeated.

The State's arguments

97. On this point, the State indicated that:

a) it shares the Commission's opinion that pecuniary reparation is only one of the aspects that should be considered in an "integral reparation." Friendly settlements have been undertaken in other cases in which the State has committed itself to take action on four basic points: financial reparation, seeking justice, dignifying the victims and strengthening and promoting the inter-American human rights system. With regard to the Commission's other proposals, Guatemala would be prepared to examine them and comment on them later;

b) with regard to the homage to the victims and exhumation of the body of Henry Giovanni Contreras, it requested the Court to omit these issues from the judgment on reparations and urge the parties to reach an agreement on the appropriate way to satisfy such claims;

c) the Government institutions formulated the *Plan de Acción a Favor de los Niños, Niñas y Jóvenes de la Calle*, in collaboration with non-governmental organizations. It added that it hopes that the executing agency will implement this plan during the current year; and

d) it reiterates that the commitment to comply with its obligation to promote and further the investigations to clarify the cases examined by the Court or, when appropriate, redirect those that have already been initiated is of vital importance.

The considerations of the Court

98. Although, in its judgment on merits, the Court did not find that Guatemala had violated Article 2 of the Convention, which stipulates that the State is obliged to adopt "such legislative or other measures as may be necessary to give effect to" the rights therein recognized, it is clear that this is an obligation that the State must comply with, merely because it has ratified this legal instrument⁸⁵. Thus, this Court considers that, in accordance with the said Article 2 of the Convention, Guatemala must implement, in its internal legislation, the legislative, administrative or other measures that are necessary to adapt Guatemalan legislation to Article 19 of the Convention, in order to ensure that events such as those under consideration are never repeated. Despite this, the Court cannot establish what such measures should

⁸⁵ cf. *Garrido and Baigorria case. Reparations*, supra note 19, para. 68.

be and, in particular, whether they should consist in derogating the 1979 Minors Code or bringing into force the Children and Youth Code adopted by the Congress of the Republic of Guatemala in 1996 and the 1997 plan of action for street children, as the representatives of the victims' next of kin and the Commission request.

99. In accordance with the eighth operative paragraph of the judgment on merits of November 19, 1999, Guatemala must conduct an effective investigation to identify those responsible for the human rights violations declared in this judgment and, when appropriate, punish them. The Court has stated that the obligation to guarantee and ensure effective exercise of the rights and freedoms established in the Convention is independent of and different from the obligation to make reparation. While the State is obliged to investigate the facts and punish those responsible, the victim or, in his absence, his next of kin, may waive the measures of reparation for the damage caused⁸⁶. Consequently, the State that leaves 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 jurisdiction⁸⁷.

100. On many occasions, this Court has referred to the right of the next of kin of the victims to know what happened⁸⁸ and the identity of the State agents responsible for the acts. "[W]hen there has been a human rights violation, the State has a duty to investigate the facts and punish those responsible, [...] and this obligation must be complied with seriously and not as a mere formality"⁸⁹. Moreover, this Court has indicated that the State "is obliged to combat [impunity] by all available legal means, because [impunity] encourages the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin"⁹⁰.

101. Accordingly, the Court reiterates that Guatemala is obliged to investigate the facts that generated the violations of the American Convention in the instant case, identify those responsible and punish them.

102. With regard to the request relating to the exhumation of the body of Henry Giovanni Contreras, this Court considers that Guatemala should 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, so as to satisfy the desire of the family to give them appropriate burial, according to their religious beliefs and customs.

103. As for the request to give an educational center the names of the victims, the Court orders the State to designate an educational center with a name allusive to the

⁸⁶ *cf. Garrido and Baigorria case. Reparations, supra* note 19, para. 72.

⁸⁷ *cf. Bámaca Velásquez case. Judgment of November 25, 2000. Series C No. 70, para. 129; Garrido and Baigorria case. Reparations, supra* note 19, para. 73; and *Paniagua Morales et al. case. Judgment of March 8, 1998. Series C No. 37, para. 178 and sixth operative paragraph.*

⁸⁸ *cf. Aloeboetoe et al. case. Reparations, supra* note 15, para. 109; *Godínez Cruz case. supra* note 3, para. 191; and *Velásquez Rodríguez case, supra* note 3, para. 181.

⁸⁹ *El Amparo case. Reparations, supra* note 15, para. 61. See also, *Blake case. Reparations, supra* note 13, para. 65; and *Suárez Rosero case. Reparations, supra* note 15, paras. 79 and 80.

⁹⁰ *Paniagua Morales et al. case, supra* note 87, para. 173. Also, *cf. Ivcher Bronstein case, supra* note 2, para. 186; and *The Constitutional Court case, supra* note 15, para. 123.

young victims in this case and to place in this center 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 will contribute to raising awareness in order to avoid the repetition of harmful acts such as those that occurred in the instant case and will keep the memory of the victims alive⁹¹.

X COSTS AND EXPENSES

Arguments of the representatives of the victims' next of kin

104. The representatives of the victims' next of kin indicated that:

- a) the next of kin incurred various expenses before the authorities in the domestic judicial proceedings to investigate the deaths of the victims: travel to police stations and judicial offices, time invested in statements, photocopies, obtaining birth and death certificates, etc. Although there is no precise documentation with regard to these expenses, they should be reimbursed by the State and the Court can establish them based on the principle of equity;
- b) the actions taken by the victims, their successors or their representatives to obtain the jurisdictional decision recognizing the violation committed and establishing the legal consequences resulted in expenses incurred before both the domestic and the international instances;
- c) in this case, several proceedings were filed at the internal level and, although they were ineffective, they generated a series of expenses and costs. The petitioners are requesting that the Court grant compensation for the expenses incurred by *Casa Alianza* in supporting and representing the victims' next of kin. Although there is no evidence to show the precise amount of such expenses, the sum of US\$ 3,500.00 (three thousand five hundred United States dollars) is considered to be a fair estimate;
- d) *Casa Alianza* and CEJIL have defended the victims' next of kin in the proceeding before the inter-American system and request reimbursement of their expenses;
- e) *Casa Alianza* has incurred expenses related to air tickets and airport taxes, accommodation and subsistence, internal transport, telephone calls and faxes, mailing parcels by air, totaling US\$ 24,151.91 (twenty-four thousand one hundred and fifty-one United States dollars and ninety-one cents); and
- f) CEJIL has incurred expenses related to two hearings before the Commission and three hearings before the Court, telephone and fax bills, courier expenses and office supplies (copies, stationery, etc.) totaling US\$ 11,710.00 (eleven thousand seven hundred and ten United States dollars).

The Commission's arguments

⁹¹ cf. *Benavides Ceballos case*. Judgment of June 19, 1998. Series C No. 38, paras. 48.5 and 55; and *Aloeboetoe et al. case. Reparations*, *supra* note 15, para. 96.

105. The Commission indicated that:

- a) the Court should order that the victims be reimbursed the reasonable costs and legal fees that were incurred in order to obtain justice, before both the national courts and the inter-American system; and
- b) it does not ask the Court to order the payment of costs and expenses to cover its own participation. With regard to the victims' representatives, neither they nor their lawyers should be obliged to cover the costs related to the legal representation needed to seek justice, when this has been denied by the respective State and when the amount of the costs is reasonable. Consequently, the Commission considers that the payment of the costs and fees requested by the victims' representatives is justified.

The State's arguments

106. The State declared that it agreed that the Court should decide on the fees and expenses incurred by the victims' representatives, but only if the said expenses can be fully verified by legal documents that support these disbursements. It therefore requests the Court to reject any piece of evidence that does not meet this condition.

The considerations of the Court

107. Costs and expenses should be understood within the concept of reparation established in Article 63(1) of the American Convention, because the actions taken by the victim or victims, their successors or their representatives to have access to international justice implies disbursements and commitments of a financial nature which should be compensated when delivering the judgment of condemnation. For this reason, the Court considers that the costs referred to in Article 55(1) of the Rules of Procedure also include the various necessary and reasonable expenses that the victim or victims incurred in order to have access to the inter-American system for the protection of human rights, and these expenses include the fees of those who provide legal assistance. Consequently, the Court must assess prudently the scope of the costs and expenses, bearing in mind the particular circumstances of the case, the nature of the international jurisdiction for the protection of human rights and the characteristics of the respective proceeding, which are unique and differ from those of other national or international proceedings⁹².

108. This Court has already indicated that the concept of costs includes both those corresponding to the stage of access to justice at the national level and those that refer to justice at the international level before the two instances: the Commission and the Court⁹³.

109. To this end, the Court considers that, in reimbursement of the expenses and costs generated in the domestic jurisdiction and in the inter-American jurisdiction, it is fair to recognize to the representatives of the victims' next of kin the sum of US\$ 27,651.91 (twenty seven thousand six hundred and fifty-one United States dollars

⁹² cf. *Loayza Tamayo case, Reparations, supra* note 12, paras. 176 and 177; and *Garrido and Baigorria case. Reparations, supra* note 19, paras. 79, 80 and 82.

⁹³ cf. *Loayza Tamayo case. Reparations, supra* note 12, para. 178; and *Garrido and Baigorria case. Reparations, supra* note 19, para. 81.

and ninety-one cents) for *Casa Alianza* and the sum of US\$ 11,000.00 (eleven thousand United States dollars) for CEJIL.

XI METHOD OF COMPLIANCE

Arguments of the representatives of the victims' next of kin

110. In their reparations brief, the representatives of the victims' next of kin proposed that the compensation payment should be made by a single payment of the total amount calculated at the time of the execution of judgment. During the public hearing, in view of the State's proposal for a friendly settlement, the representatives indicated that, even though the State had shown good intentions, this was not the appropriate procedural stage for implementing such a proposal. Nevertheless, they were ready to work with the State in executing the judgment on reparations delivered by the Court.

The Commission's arguments

111. The Commission requested the Court that:

- a) Guatemala be obliged to pay the compensation amounts that had been established within six months of the respective judgment;
- b) payment of the compensation be made either in United States dollars or the equivalent in quetzales;
- c) the need to maintain the purchasing power of the amount that the Court orders to be paid should be taken into account when calculating the compensation and determining the form of payment, considering devaluation and depreciation;
- d) payment of the compensation be exempt from any current or future taxes;
- e) it find that the Court would maintain its competence in this matter until it was verified that all the measures of reparation ordered had been complied with.

The State's arguments

112. During the public hearing, Guatemala proposed two options for determining reparations to the Court. First, the possibility of negotiating an agreement with the parties on the form and amount of the compensations, within a period of time defined by the Court. Second, if that measure was not accepted, it proposed that a court of arbitration should be established, which would be responsible for determining the pecuniary compensation within a period to be defined by the Court, prior to which the parties would sign a commitment to respect the arbitrator's decision. The agreement reached would, in any case, be submitted to the Court for its approval and the Court would reserve the right to decide on the matter should the parties not reach an agreement.

113. In the case of the next of kin of Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes, the State indicated that they had not appeared at the reparation proceeding and, despite this, the Court should decide on the amount that will be destined to their legitimate heirs. In the judgment, the Court should decide that the corresponding amount would be deposited in the *Banco de Guatemala* and order that, should none of the next of kin of these persons appear, such sums remain deposited for one year from the date on which the respective judgment is delivered, so that the persons who believe that they have legitimate rights may enforce them. If, once this period has expired, no one has made a claim, brought a legal action or taken action in this regard, it requests the Court to order in the judgment that the said amounts should be destined by the State to the Social Welfare Secretariat of the Presidency of the Republic, which is the executing agent for the street children plan. In that event, the programs that are implemented should bear the names of Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes.

The considerations of the Court

114. In order to comply with this judgment, the State must pay the compensations, reimburse the costs and expenses and adopt the other measures that are ordered within six months of the notification of the judgment.

115. The payment of the compensations established for the adult next of kin of the victims shall be made directly to them in each case. If any of them shall have died or dies, the payment shall be made to the heirs.

116. The reimbursement of the expenses and costs generated by the measures taken by the representatives of the victims' next of kin in the domestic proceedings and in the international proceeding before the inter-American system for the protection of human rights, shall be paid to *Casa Alianza* and to CEJIL, as determined above (*supra* para. 109).

117. If, for any reason, it should not be possible for the beneficiaries of the compensations to receive them within the indicated period of six months, the State must deposit the said amounts in their favor in an account or a deposit certificate in a solvent Guatemalan banking institution, in United States dollars or the equivalent in Guatemalan currency, within a period of six months, and in the most favorable financial conditions allowed by the law and banking practice. If, after ten years, the compensation has not been claimed, the amount shall be returned, with the interest earned, to the State of Guatemala.

118. With regard to the compensation for the minor beneficiary, the State shall open an account or invest in a deposit certificate in a solvent Guatemalan banking institution, in United States dollars or the equivalent in Guatemalan currency, within a period of six months, and in the most favorable financial conditions allowed by the law and banking practice. The benefits derived from interest will increase the net worth, and the total amount shall be given to the minor, Osman Ravid Agreda Contreras, when he attains his majority or when he marries. Should he die, the right shall be transmitted to his heirs.

119. The State may comply with its obligations by making payments in United States dollars or the equivalent 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, in order to make the respective calculation.

120. The payments ordered in this judgment shall be exempt from any current or future tax.

121. Should the State fail to pay the amounts on time, it shall pay interest on the amount owed, corresponding to the banking interest on overdue payments in Guatemala.

122. In accordance with its consistent practice, this Court reserves the right to monitor full compliance with this judgment. The case shall be closed once the State has fully complied with its provisions.

XII OPERATIVE PARAGRAPHS

123. Therefore,

THE COURT,

DECIDES:

unanimously,

1. That, for pecuniary damage, as a result of the death of Anstraun Aman Villagrán Morales, Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes, the State of Guatemala must pay the following compensation:

- a) US\$ 32,286.00 (thirty-two thousand two hundred and eighty-six United States dollars) or the equivalent in Guatemalan currency, for the death of Anstraun Aman Villagrán Morales; this amount to be given to his mother, Matilde Reyna Morales García;
- b) US\$ 30,995.00 (thirty thousand nine hundred and ninety-five United States dollars) or the equivalent in Guatemalan currency, for the death of Henry Giovanni Contreras; this amount to be given to his mother, Ana María Contreras;
- c) US\$ 31,248.00 (thirty-one thousand two hundred and forty-eight United States dollars) or the equivalent in Guatemalan currency, for the death of Julio Roberto Caal Sandoval; this amount to be given to his grandmother, Margarita Urbina;
- d) US\$ 30,504.00 (thirty thousand five hundred and four United States dollars) or the equivalent in Guatemalan currency, for the death of Federico Clemente Figueroa Túnchez; this amount to be given to his mother, Marta Isabel Túnchez Palencia; and
- e) US\$ 28,181.00 (twenty-eight thousand one hundred and eighty-one United States dollars) or the equivalent in Guatemalan currency, for the death

of Jovito Josué Juárez Cifuentes; this amount to be given to his mother, Noemí Cifuentes;

unanimously,

2. That, for non-pecuniary damage suffered by Anstraun Aman Villagrán Morales, Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Federico Clemente Figueroa Túnchez and Jovito Josué Juárez Cifuentes, the State of Guatemala must pay the following compensations, which their successors will receive:

- a) US\$ 23,000.00 (twenty-three thousand United States dollars) or the equivalent in Guatemalan currency, to the mother of Anstraun Aman Villagrán Morales, Matilde Reyna Morales García;
- b) US\$ 27,000.00 (twenty-seven thousand United States dollars) or the equivalent in Guatemalan currency, to the mother of Henry Giovanni Contreras, Ana María Contreras;
- c) US\$ 30,000.00 (thirty thousand United States dollars) or the equivalent in Guatemalan currency, to the grandmother of Julio Roberto Caal Sandoval, Margarita Urbina;
- d) US\$ 27,000.00 (twenty-seven thousand United States dollars) or the equivalent in Guatemalan currency, to the mother of Federico Clemente Figueroa Túnchez, Marta Isabel Túnchez Palencia; and
- e) US\$ 30,000.00 (thirty thousand United States dollars) or the equivalent in Guatemalan currency, to the mother of Jovito Josué Juárez Cifuentes, Noemí Cifuentes.

unanimously,

3. That, for non-pecuniary damage, the State of Guatemala must pay a compensation of US\$ 26,000.00 (twenty-six thousand United States dollars) or the equivalent in Guatemalan currency, as indicated in paragraphs 92.b and 93 of this judgment, to each of the following persons: Matilde Reyna Morales García, Ana María Contreras, Rosa Carlota Sandoval, Margarita Urbina, Marta Isabel Túnchez Palencia and Noemí Cifuentes. The amount corresponding to Rosa Carlota Sandoval shall be given to her mother Margarita Urbina.

unanimously,

4. That, for non-pecuniary damage, the State of Guatemala must pay a compensation of US\$ 3,000.00 (three thousand United States dollars) or the equivalent in Guatemalan currency, as indicated in paragraphs 92.c, 93 and 118 of this judgment, to each of the following persons: Reyna Dalila Villagrán Morales, Lorena Dianeth Villagrán Morales, Gerardo Adoriman Villagrán Morales, Mónica Renata Agreda Contreras, Shirley Marlen Agreda Contreras, Osman Ravid Agreda Contreras, Guadalupe Concepción Figueroa Túnchez and Zorayda Izabel Figueroa Túnchez.

unanimously,

5. That, in accordance with Article 2 of the American Convention on Human Rights, the State of Guatemala must adopt in its domestic legislation, the legislative, administrative and any other measures that are necessary in order to adapt Guatemalan legislation to Article 19 of the Convention.

unanimously,

6. That the State of Guatemala must provide the resources and adopt the other measures needed for the transfer of the mortal remains of Henry Giovanni Contreras and their subsequent burial in the place chosen by his next of kin, as indicated in paragraph 102 of this judgment.

unanimously,

7. That the State of Guatemala must designate an educational center with a name allusive to the young victims in this case and place, in this center, a plaque with the names of Henry Giovanni Contreras, Julio Roberto Caal Sandoval, Federico Clemente Figueroa Túnchez, Jovito Josué Juárez Cifuentes and Anstraun Aman Villagrán Morales, as indicated in paragraph 103 of this judgment.

unanimously,

8. That the State of Guatemala must investigate the facts of this case, identify and punish those responsible and adopt, in its domestic law, the provisions needed to ensure compliance with this obligation.

unanimously,

9. That, in reimbursement of the expenses and costs in the internal jurisdiction and in the inter-American jurisdiction, the State of Guatemala must pay the representatives of the victims' next of kin the amount of US\$ 38,651.91 (thirty-eight thousand six hundred and fifty-one United States dollars and ninety-one cents). Of this amount, the sum of US\$27,651.91 (twenty-seven thousand six hundred and fifty-one United States dollars with ninety-one cents) must be paid to the *Asociación Casa Alianza/América Latina* and the sum of US\$ 11,000.00 (eleven thousand United States dollars) to the Center for Justice and International Law (CEJIL).

unanimously,

10. That the State of Guatemala must comply with the measures of reparation ordered in this judgment within six months of its notification.

unanimously,

11. that the payments ordered in this judgment shall be exempt from any type of current or future charge or tax.

unanimously,

12. that it shall monitor compliance with this judgment and shall close the instant case once the State has fully complied with its provisions.

Judges Cañado Trindade and de Roux Rengifo informed the Court of their separate opinions, which accompany this judgment.

Done at San José, Costa Rica, on May 26, 2001, in Spanish and English, the Spanish text being authentic,

Antônio A. Cañado Trindade
President

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cañado Trindade
President

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. The present case of the "*Street Children*" is truly paradigmatic, to the extent that, besides portraying a real situation of day-to-day life in Latin America, it discloses that human conscience has attained a degree of evolution that has rendered it possible to impart justice by means of the protection of the rights of the marginalized or excluded, in granting to them, as to every human being, direct access to an international judicial instance in order to vindicate their rights, as the true complaining party. The human being, even in the most adverse conditions, emerges as subject of the International Law of Human Rights, endowed with full international juridico-procedural capacity. The present Judgment of the Inter-American Court of Human Rights in the case of the "*Street Children*" not only resolves a concrete case as to reparations, but also contributes to raise the standards of human behaviour with regard to the dispossessed. Cases such as the present one, added to others that reveal a high intensity of human suffering, such as, e.g., that of *Paniagua Morales and Others*, further disclose that the violent death of the beloved ones can have - as it has in fact occurred - devastating effects on the close relatives and disrupting effects on the respective family units.

2. These cases, in my view, make it quite clear that the reparations of human rights violations ought to be determined as from the gravity of the facts and their impact upon the integrality of the personality of the victims, - both the direct (the murdered persons) and the indirect ones (their surviving close relatives). In voting in favour of the adoption, by the Inter-American Court of Human Rights, of the present Judgment on reparations in the case of the "*Street Children*", I feel thus obliged to present my personal thoughts on the matter. They are focussed, mainly, on three elements which, surprisingly, have been insufficiently dwelt upon in contemporary international case-law and doctrine, as well as in the practice of pleadings of litigators in the international *contentieux* to date, in the matter of reparations for violations of human rights.

3. I refer particularly to the trilogy, formed by *victimization*, *human suffering*, and *rehabilitation of the victims*, - to be considered as from the integrality of the personality of the victims. In my understanding, there is pressing need for greater reflection on this trilogy, in order to understand the true meaning and scope of *reparations* in the present context of the protection of the rights of the human being. It is not sufficient to keep in mind the basic distinction - nowadays widely recognized - between reparations and one of their forms, indemnizations. One ought to identify the real meaning of the term *reparations* in the domain of the International Law of Human Rights (cf. pars. 40-42, *infra*). The determination of the forms, amounts and extent of reparations, in my view cannot prescind from a prior comprehension of the real sense of human suffering.

4. The personal thoughts which I see it fit to develop in this Separate Opinion are not meant to submit general criteria for the settlement of problems pertaining to reparations due to the victims of human rights violations, such as those raised in the present case of the "*Street Children*". In warning as to the risks - so common nowadays - of a *reductionist* approach to the matter (with an undue emphasis on compensations in the form of simple indemnizations), my purpose is rather to draw attention to the need to contribute to secure the prevalence of superior values which are at issue, from the perspective of the centrality of the position of the victims, in their integrality, as well as to the importance of securing the measures of rehabilitation of these latter.

5. It is not by mere chance that, in cases of violations of human rights marked by extreme violence, the Inter-American Court has seen it fit to receive in public hearings the declarations of psychologists (as to reparations, as in the cases of the "*Street Children*", and of *Paniagua Morales and Others*), and of forensic doctors (as in the *Gangaram Panday* case, merits, 1994). Likewise, in other cases, with distinct characteristics (e.g., with a high density of the cultural element), the Court has deemed it appropriate to listen in public hearings to the declarations of anthropologists or social scientists (as in, e.g., the cases of *Aloeboetoe and Others*, reparations, 1993, and the *Community Mayagna Awas Tingni*, merits, 2001). Definitively, contrary to what in the past positivists assumed with unjustified self-sufficiency, Law has, in my view, much to learn from other branches of human knowledge, and *viceversa*.

6. In one of the declarations in the public hearing before the Court, of 11 August 2000, in the case of *Paniagua Morales and Others*, it was stressed that the torture inflicted upon, and the violent death of, a beloved one, can affect, in a disrupting way, his family circle as a whole; hence the importance of knowing the truth of the facts and of imparting justice, so as also to structure the psychic life of the indirect victims (the close relatives). The realization of justice contributes to set in order human relations, having a structuring function of the human psychism itself: the threats, the fear and the impunity, do affect the psychic life of human beings, aggravating the situation of pain, whilst the truth and justice help at least to heal, with the passing of time, the deep wounds caused by the violent death of a dear relative¹.

7. In fact, the violent death of a beloved one throws ineluctably the surviving relatives into the dense shadows of human existence:

- "Nel mezzo del cammin di nostra vita, mi ritrovai per una selva oscura, chè la diritta via era smarrita"².

In the brutalized world in which we live, any person can find himself in a "*selva oscura*", at *any moment* of his life, - in the middle of it, at the very beginning, or at the end (as it may be inferred from the cases of the "*Street Children*" and of *Paniagua Morales and Others*). It is for this reason that Sophocles used to warn - with an insight which appears perennially contemporary - that one is not to consider any person truly happy, until he has passed the final limit of human existence - death - secure from pain³.

8. In the present case of the "*Street Children*", it seems evident to me the intense suffering of the mothers of the murdered youngsters, and the grandmother of the one of them; in the case of *Paniagua Morales and Others*, in which the victims of the "White Van" had their throats cut or were tortured, the same intense suffering is experienced by the relatives - parents or sons - of the direct victims. The determination of the reparations, - in their distinct forms (among which rank the satisfaction and the rehabilitation), - due to the indirect victims, has, in my understanding, as a central

¹. Cf. Inter-American Court of Human Rights (IACtHR), *Case Paniagua Morales and Others / Reparations - Transcripción de la Audiencia Pública Celebrada en la Sede de la Corte los Días 11 y 12 de Agosto de 2000*, pp. 144-175 (unpublished document, of internal circulation).

². Dante Alighieri, *La Divina Comedia - Inferno* (1309), verses I, 1-3.

³. Sophocles, *Oedipus the King* (428-425 before Christ), verses 1528-1530.

element, the *human suffering*, considered as from the gravity of the facts and their impact upon the integrality of the personality - and above all the condition of spiritual being - of the (direct and indirect) victims.

9. In my view, the absence of an objective criterion of assessment of human suffering should not be invoked as a justification for a "technical" - or rather mechanical - application of the relevant juridical norms. To the contrary, the lesson which appears to me necessary to extract from the present case of the "*Street Children*" (and also from the case *Paniagua Morales and Others*) is in the sense that one ought to be *guided* by the victimization and the human suffering, as well as the rehabilitation of the surviving victims⁴, also in order to fill gaps in the applicable juridical norms and, furthermore, on the basis of considerations of equity, to reach a solution *ex aequo et bono* for the concrete case in conformity with Law. Ultimately, the jurisdiction (*jus dicere, jurisdictio*) of the Tribunal is summed up in its power to declare the Law, and the sentence (from the Latin *sententia*, etymologically derived from "*sentimiento*", feeling) is something more than a logical operation in the framework of predetermined juridical limits.

10. The intensity of human suffering, so eloquently demonstrated in the present case of the "*Street Children*" (as well as in the case of *Paniagua Morales and Others*)⁵, constitutes, in sum, in my view, the element of major importance for the consideration of the reparations for violations of human rights. In the present case of the "*Street Children*", one of the mothers, Mrs. Marta Isabel Túnchez Palencia declared in the public hearing before the Court, on 12 March 2001, that "I will still be agonizing and my

⁴. This last element - rehabilitation - has already been identified as one of the forms of reparation: cf., e.g., Th. van Boven (special *rapporteur*), *Study concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms - Final Report*, U.N. Commission on Human Rights/Sub-Commission on Prevention of Discrimination and Protection of Minorities, doc. E/CN.4/Sub.2/1993/8, of 02.07.1993, pp. 53 and 57; D. Shelton, *Remedies in International Human Rights Law*, Oxford, University Press, 2000, pp. 302-303; but the question needs greater conceptual development, on the part of the contemporary case-law as well as doctrine on the matter.

⁵. It draws my attention the desperation which can be inferred, for example, from the declarations, in the public hearing before the Court, of 12 March 2001, in the present case of the *Street Children*, of the mothers, Mrs. Ana María Contreras and Mrs. Reyna Dalila Villagrán Morales, confronting the fact that their sons had been killed as a "small animal (*un animalito*)" (the same term utilized by both); cf. IACtHR, *Transcripción de la Audiencia Pública de 12 de Marzo de 2001 sobre Reparaciones en el Caso Villagrán Morales y Otros*, pp. 17 and 48, respectively (unpublished document); as well as from the declaration, in the public hearing before the Court, of 11-12 August 2000, in the case *Paniagua Morales y Otros*, of the mother, Mrs. María Ildelfonsa Morales de Paniagua, in describing her dead daughter: "(...) she was all burnt. The nails of the fingers of the hands and of the feet had been extracted. She had a big cut here, decapitated. (...) It was a terrible death". Cf. IACtHR, *Case Paniagua Morales and Others / Reparations - Transcripción de la Audiencia Pública Celebrada en la Sede de la Corte los Días 11 y 12 de Agosto de 2000*, p. 89 (unpublished document). - I cannot omit here to point out the respectful way whereby they were both interrogated, as witnesses, by both the Inter-American Commission and the respondent State; it is worth leaving on the records the respectable intervention of this latter in the aforementioned hearing, in pointing out that he would ask no question, and adding: "Mrs. Ildelfonsa Morales de Paniagua, on behalf of the Government and the State which we represent, we deeply regret the suffering, the pain and the damage caused to you. We perfectly know that there is no human power capable of remedying this wound, but we hope that may exist resignation in your heart so that you achieve, ultimately, some day to give us your pardon (...) [for the] damage caused to you"; *ibid.*, p. 96. In my view, in that moment of the hearing, the International Law of Human Rights, moved by the human conscience, disclosed the vigour of its operation.

son (...) is still in my heart. To me my son (...) is not dead, (...) he is alive, alive. I say that wherever I go is my son. (...) Still until now, he is alive. (...) I feel my son, in each of his birthdays, in October"⁶. In the case of *Paniagua Morales and Others*, the adolescent Manuel Alberto González Chinchilla declared, likewise, that, since the murder of this father, when he played football with his colleagues, he felt as if it were his father who was playing with him, he felt as if he were his own father⁷. I saw it fit to ask him (already anticipating his answer), in the public hearing before the Court on 12 March 2001, if "[he] felt the presence of [his] father within [him]self"⁸. His answer, which was not surprising to me, was an emphatic "Yes!"⁹. What I could not anticipate was the manner in which he said it, promptly and with all firmness and conviction.

11. The arguments submitted in the public hearings before this Court, on 12 March 2001, in the case of the "*Street Children*", and on 11-12 August 2000, in the case of *Paniagua Morales and Others*, appear to me clearly to disclose the *communion* (term derived from the Latin, *communicare*) between the beloved ones who died and those who survive them. But there is a tendency, among specialists of other areas of human knowledge, to consider attitudes such as the ones described in the preceding paragraph of this Separate Opinion, as "fantasy", - as mentioned effectively by an expert at a given moment of the public hearing referred to, of 12 March 2001 in the present case of the "*Street Children*"¹⁰.

12. I would not characterize this way, and with so much self-assurance, attitudes like the ones previously described¹¹; ultimately, the so-called "objective reality" has also had its critics¹²... To me, it is not at all "fantasy", but on the contrary: it is a clear manifestation of what appears to me as the *communion* between the dead and the alive, - as I infer from the expressions, e.g., of the adolescent Manuel Alberto González Chinchilla, orphan of his father, and of Mrs. Marta Isabel Túnchez Palencia, orphan of

⁶. Cf. IACtHR, *Transcripción de la Audiencia Pública de 12 de Marzo de 2001 sobre Reparaciones en el Caso Villagrán Morales y Otros*, p. 60, and cf. p. 79 (unpublished document).

⁷. Cf. IACtHR, *Case Paniagua Morales and Others / Reparations - Transcripción de la Audiencia Pública...*, cit. *supra* n. (1), p. 130 (unpublished document, of internal circulation). - Five months after his declaration made before the Tribunal, the adolescent referred to began to be protected by Provisional Measures ordered by the Inter-American Court, in its Resolution of 29 January 2001.

⁸. *Ibid.*, p. 139.

⁹. *Ibid.*, p. 139.

¹⁰. Cf. IACtHR, *Transcripción de la Audiencia Pública de 12 de Marzo de 2001 sobre Reparaciones en el Caso Villagrán Morales y Otros*, pp. 79 y 84-86 (unpublished document).

¹¹. As already warned four centuries ago, there surely must be more things in heaven and earth than we dream of in our philosophy; W. Shakespeare, *Hamlet, Prince of Denmark*, 1600, act I, scene V.

¹². In his essay *The Doors of Perception* (1954), for example, Aldous Huxley rebelled against the so-called "objective reality", which has never been able to render human beings capable of prescinding from symbols and language itself; cf. A. Huxley, *The Doors of Perception, and Heaven and Hell*, London/N.Y., Harper & Row, 1990 (reprint), pp. 23, 47, 58 and 74.

her son¹³, in the public hearings referred to, pertaining to the cases of *Paniagua Morales and Others* and of the "Street Children" (*cit. supra*), respectively.

13. The reality of the youngster Manuel Alberto González Chincilla is that he brings his murdered father within himself; and the reality of Mrs. Marta Isabel Túnchez Palencia is that she brings her murdered son within herself. The realities of the young man and the mother, orphans, ought to be accepted, and respected; they are not a "fantasy". The damage suffered by them, from the perspective of the integrality of their personality, as victims, is truly irreparable. The personality of each victimized human being is an ineluctable reality: in face of the violation of their basic rights, one cannot attempt to deprive a (surviving) victim of his most personal beliefs, if these latter are all that is left to him to search for a meaning for his own life; one cannot underestimate the human soul¹⁴.

14. In all rigour, one would not need to go beyond the domain of legal science to reach the same conclusion. It may be recalled that domestic penal law oriented itself, in its evolution, towards the figure of the delinquent, leaving the victim to a marginal position; this approach was for some time reflected in the collective social *milieu* itself, which began to demonstrate greater interest in the figure of the criminal than in those of his victims, abandoned to oblivion. As well warned by the *Ecclesiastes*, "there is none to console the tears of the oppressed" (part I, par. 4-1). Nowadays, a whole trend of thought¹⁵ endeavours to foster the rebirth of the figure of the victim, in considering him no longer as a "neutral" object of the juridical relationship caused by the wrongful act, but rather as the subject victimized by a human conflict.

15. International penal law appears to run the risk of incurring into the same distortion of relegating to a secondary level the figure of the victims, centring the attention rather on those responsible for crimes of particular gravity¹⁶. This is not a theoretical speculation: it was recently pointed out, for example, that international penal law has sometimes forgotten the centrality of the victims themselves¹⁷. In my view, 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.

¹³. With the passing of time, and as the twilight of life draws closer, the roles seem to be reversed: parents feel like sons, and sons feel like parents.

¹⁴. Cf., in this sense, C.G. Jung, "Approaching the Unconscious", *Man and His Symbols* (eds. C.G. Jung and M.-L. von Franz *et alii*), N.Y., Laurel, 1968, pp. 45, 76 and 93, and cf. pp. 63, 78, 84, 86 and 91. Personal beliefs help the human being to endure suffering, and reconcile him with the cruelty of destiny, particularly in the face of death; S. Freud, *The Future of an Illusion*, N.Y., Anchor, 1964, p. 24; on the destiny in human thinking, and the reality of the inner life of each one, cf., e.g., A. Schopenhauer, *Los Designios del Destino*, Madrid, Tecnos, 1994, pp. 18, 23 and 28.

¹⁵. E.g., on the part of those who cultivate the so-called "victimology", above all as from the seventies.

¹⁶. That is, acts of genocide, war crimes, and crimes against humanity.

¹⁷. Thus, these latter did not come to appear in the Statutes of the Nuremberg and Tokyo Tribunals, in the mid-forties, and are mentioned, but only briefly, in the nineties, in the Regulations of the *ad hoc* International Penal Tribunals for ex-Yugoslavia and Rwanda. G. Cohen-Jonathan, "Quelques considérations sur la réparation accordée aux victimes...", *op. cit. infra* n. (), pp. 139-140; the victims are not witnesses, but rather, unfortunately, actors (*ibid.*, p. 140).

16. For a long time I have been insisting that the great juridical revolution of the XXth century has been the one consolidated by the International Law of Human Rights, in erecting the human being as subject of International Law, endowed, as a true *complaining party* against the State, with full juridico-procedural capacity at international level¹⁸. The present case of the "*Street Children*", in which the forgotten ones of this world succeed to resort to an international tribunal in order to vindicate their rights as human beings, gives an eloquent testimony of this. In the ambit of application of this new *corpus juris*, it is undoubtedly the victim who appropriately assumes the central position. The impact of the International Law of Human Rights in other areas of Law (both public and private) timely occurs, to the effect of humanizing them. This development appears in conformity with the very aims of Law, the addressees of whose norms are, ultimately, the human beings.

17. The impact of the International Law of Human Rights in the evolution of a specific aspect of contemporary International Law, namely, that pertaining to the right of foreign detainees to information on consular assistance in the framework of the guarantees of the due process of law, to refer to one example, is clearly inferred from the Advisory Opinion n. 16 of the Inter-American Court (of 01 October 1999). In a classic and luminous monograph (titled *The Sources of International Law*) published in 1946, the Danish jurist Max Sorensen pondered that the elements and influences which determine the *content* of legal regulation (social needs, ideal exigencies), emanate from the *social conscience* prevailing in the international community. This being so, the very *validity* of the juridical norms becomes reality also "in the psychological domain, and it is at this level that the value conceptions are manifested"; Sorensen concludes that the value criteria respond to an "interior necessity"¹⁹.

18. One ought to go, definitively, beyond appearances, beyond shadows. But even if, along the *cammin di nostra vita*, we transcend at times the shadows and behold the light, no one can assure us that darkness will not fall again. But to this latter once more the light would follow, - like in the succession of night and day, or of day and night²⁰. The tension of the clear-dark, of the advances intermingled with setbacks, is proper of the human condition, and it constitutes, in fact, one of the most precious legacies of the thinking of the ancient Greeks (always so contemporary) to the evolution of the human thinking itself, which has penetrated human conscience throughout the centuries. The

¹⁸. Cf., besides my previous studies, recently, A.A. Cançado Trindade, "Las Cláusulas Pétreas de la Protección Internacional del Ser Humano: El Acceso Directo de los Individuos a la Justicia a Nivel Internacional y la Intangibilidad de la Jurisdicción Obligatoria de los Tribunales Internacionales de Derechos Humanos", in *El Sistema Interamericano de Protección de los Derechos Humanos en el Umbral del Siglo XXI - Memoria del Seminario* (November 1999), volume I, San José of Costa Rica, Inter-American Court of Human Rights, 2001, pp. 3-68.

¹⁹. M. Sorensen, *Les sources du droit international*, Copenhagen, Munksgaard, 1946, pp. 13-14 and 254. - It is always good to recall such lucid considerations, as the study of Law nowadays tends to be reduced to a mere reading of positive law. The positivists, in the domain of Law, and the so-called "realists", in the field of social sciences, have shown themselves indifferent to concerns such as the ones pointed out herein, and invariably subservient to power (to the established order in a given historical moment), disclosing a regrettable intellectual cowardice.

²⁰. Just as darkness falls when light vanishes, likewise the first ray of light emerge out of the last shadows of obscurity.

Platonic allegory of the cave, for example, reveals, with all lucidity and its great existential density, the precariousness of the human condition, and, accordingly, the necessity of transcendence, beyond the alleged crude "reality" of the facts. In the domain of Law, well beyond legal positivism, one is to bear in mind the reality of the *human conscience*²¹.

19. The necessity of formation and development of *human conscience* itself was stressed by Carl Jung²², who used to take seriously the feelings and beliefs of the human being; such necessity is rendered even more pressing in our days, in which the perception of material "progress" threatens increasingly spiritual life²³. According to Jung, the intense psychological suffering leads to the isolation of the individual from the rest of "normal" persons, to the extreme loneliness, but furthermore it awakens the "creativity" of the spirit²⁴. In expressing his fear in face of the "frightening lack of maturity" and of the "barbaric lack of conscience" of the contemporary man²⁵, and in referring to the *chiaroscuro* of life, he lucidly warned that "in this world the good and the evil are more or less balanced", and this is the reason why "the victory of the good is always a special act of grace"²⁶.

20. The present case of the "*Street Children*" was lodged with the Inter-American Court, and it has just been decided by it; but the denounced facts form but a microcosm of the brutality prevailing in the day-to-day scenario of the streets of Latin America and, - why not admit it? - of the streets of the whole "post-modern" world of our days. A world that appears determined to protect capitals, goods and services, but not human beings, has changed the ends for the means. A world that has subjected the majority of human beings at the service of the interests and greed of a few, has forgotten that we all are born free and equal in rights, and we all follow the path of our lives ineluctably towards death (with the crossing into eternity), which restores the equality of the existential condition of all human beings.

21. This being so, it is difficult to avoid the disturbing question: if we all arrive to this world, and depart from it, with equal fragility, of which mortality, proper to the

²¹. I fear, however, that this is bound to become increasingly difficult, above all as from this beginning of the XXIst century, with the current threat of electronic screens to the written word (with its undeniable cultural *substratum*), and the advent of the era of so-called "virtual reality" (a *contradictio in terminis*), - so much *en vogue* nowadays, - which may, by its inadequate or exaggerated use, without reflection, hinder the search for transcendence, above and beyond the shadows of the contingent and precarious human condition.

²². C.G. Jung, *Modern Man in Search of a Soul*, San Diego/N.Y./Londres, Harvest/Harcourt Brace, 1933 [reprint without date], pp. 95, 97 and 103.

²³. *Ibid.*, pp. 204-205. To him, one had to advance towards spiritual life, so as to transcend the forces of nature (pp. 122-123 and 145); in opposing himself to the reductionism of specialized knowledge, he warned that such *specialization* (or fragmentation) of knowledge (above all scientific) led to the dehumanization of the contemporary world, with consequences not necessarily always beneficial (as assumed), but also catastrophic (p. 199).

²⁴. C.G. Jung, *Psychological Reflections (1905-1961)*, Princeton/N.J., Bollingen Found./Princeton University Press, 1953 [reprint 1978], pp. 151 and 252.

²⁵. *Ibid.*, p. 168.

²⁶. *Ibid.*, pp. 234 and 236.

human condition, bears witness, why do we victimize each others during the so short path of our lives? 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 ephemeral and escaping (and thereby deseperating) 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.

22. Nowadays, there is simply no news at all of numerous other cases, similar to the *cas d'espèce*, of the "Street Children", daily victimizing likewise poor and humble persons, who do not achieve to reach the international jurisdiction, nor the national one, and who are not even conscious of their rights. But even if those responsible for the established order do not perceive it, the suffering of the excluded ones is ineluctably projected into the whole social *corpus*. The supreme injustice of the state of poverty inflicted upon the unfortunate ones contaminates the whole social *milieu*, which, in valuing violence and agressiveness, relegates to a secondary position the victims, forgetting that 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.

23. The considerable scientific-technological advances of our times has much increased the capacity of the human being to do all that is both good and evil. As to this latter²⁷, one cannot deny nowadays the importance and pressing need to devote greater attention to victimization, human suffering, and rehabilitation of the victims, - keeping in mind the current diversification of the sources of violations of human rights²⁸. The systematic violations of human rights and the growth of violence (in its multiple forms) in our days and everywhere disclose that, regrettably, the much

²⁷. For an etiology of evil in the historical evolution of human thinking, cf. A.-D. Sertillanges, *Le problème du mal*, Paris, Aubier/Éd. Montaigne, 1948, pp. 5-412; and for a more recent reflection, cf., e.g., F. Alberoni, *Las Razones del Bien y del Mal*, México, Ed. Gedisa, 1988, pp. 9-196. - Besides those monographs, among others, also some great works of universal literature bear witness that, the anguish and vulnerability of the human being in the face of evil, mark presence in all social *milieux* and in all cultures. In order to evoke but one example (among others), the work of the Russian writer Fédor Dostoyevski (1821-1881), e.g., contains the warning that a human being who, abusing of his free will, victimizes another one (his fellowman), causes a harm to himself, and is punished not only by the law, but also by his own conscience; the reconquest of good (*bien*), on the part of the victim (and, ultimately, of every human being), passes through suffering, and the search for the meaning of life.

²⁸. Of which bear witness the violations perpetrated by unidentified agents or death squads, by the persistence of impunity, by the manipulation of the power of communications, by the exclusions generated by the economic power (in particular by the concentration of income in a world scale, which many insist on continuing to call "globalization" of the economy).

praised material progress (enjoyed, in reality, by very few) has simply not been accompanied *pari pasu* of concomitant advances at spiritual level.

24. And this, despite the visionary allegories of Aldous Huxley and George Orwell, added to the penetrating reflections by Arnold Toynbee, Ernst Cassirer and Stefan Zweig, in the first half of the XXth century²⁹, - and followed by the grave warnings of thinkers of the stature of Bertrand Russell, Karl Popper, Simone Weil, Isaiah Berlin and Giovanni Sartori, among others, in the second half of the XXth century³⁰. At this beginning of the XXIst century, there persist the gap between egoism and human solidarity, and the divorce between specialized knowledge and wisdom. As the recurrent violations of human rights with extremes of cruelty show, the human being of the digital era and of the fluxes of "volatile" capitals, just like his predecessors of more primitive societies, keeps on bearing the germ of good and evil, continues to be capable of victimizing his fellowmen in a growing scale³¹, and remains involved - at the same time - in cosmos and chaos.

25. In my Separate Opinion in the *Bámaca Velásquez* case (Judgment on the merits, of 25.11.2000), I saw it fit to express my understanding of the unity of the human kind in the links between the alive and the dead (pars. 14-18), which, on their turn, call for the respect to the mortal remains of every person. Such remains, - I recalled, - are the object of regulation by the penal law of numerous countries, which tipify and sanction the crimes against the respect for the dead (par. 11). International Humanitarian Law likewise imposes expressly the respect for the mortal remains of the persons who died, as well as a proper grave for them³².

26. The present Judgment on reparations in the case of the "*Street Children*", in this same line, decides that the respondent State "ought to provide the resources and adopt the other necessary measures for the transfer of the mortal remains" of one of the murdered adolescents and "the subsequent burial at the place of the choice of his relatives" (resolatory point n. 6, and cf. par. 102). In a temporal dimension, one has to keep always in mind the struggles of our ancestors for the rights we today enjoy; if after this existence rights are not needed (as from the death of their *titulaires*), nevertheless duties subsist³³.

²⁹. A. Huxley, *Brave New World* (1932); G. Orwell, *Animal Farm* (1945), and *1984* (1949); A.J. Toynbee, *Civilization on Trial* (1948); E. Cassirer, *The Myth of State* (1946); S. Zweig, *Die Welt von Gestern* (1944).

³⁰. B. Russell, "Knowledge and Wisdom", in *Essays in Philosophy* (1960); K. Popper, *The Lesson of This Century* (1997); S. Weil, *Réflexions sur les causes de la liberté et de l'oppression sociale* (1991, posthumous work); I. Berlin, "Return of the *Volksgeist*: Nationalism, Good and Bad", in *At Century's End* (1996); G. Sartori, *Homo Videns - La Sociedad Teledirigida* (1998). And cf. also, *inter alia*, Frantz Fanon, *Les damnés de la terre* (1961); Eric Hobsbawn, *Age of Extremes* (1994); Alain Finkielkraut, *L'humanité perdue* (1996).

³¹. As illustrated in our days by the scorn of the arsenals of weapons of mass destruction, which constitute a clamorous insult to human reason, and to humankind as a whole.

³². Geneva Convention of 1949 on the Protection of Civilians in Time of War, Article 130; Additional Protocol I of 1977 to the Geneva Conventions of 1949, Article 34.

³³. N. Alcalá-Zamora y Torres, *La Potestad Jurídica sobre el Más Allá de la Vida*, Buenos Aires, Ed. Jur. Europa-América, 1959, p. 22.

27. Hence the importance of the *satisfaction*, as a form of non-pecuniary reparation to the close relatives of the murdered victims. It is the juridical conscience itself that establishes legal relations *throughout time*, in which we all live together. But the living and the dead succeed each other, without necessarily living together; even then, also in this circumstance, one ought to "practice the *neminem laedere* and to that end, previously, the *suum cuique tribuere*"³⁴. Law is interpreted and applied *within the time*, and the reparations due to the victims - direct and indirect - of violations of human rights make no exception to that.

28. In my 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.

29. When the European Convention of Human Rights completed 40 years of operation, in 1993, the European Court of Human Rights had granted reparations of an invariably *pecuniary* nature in much more than a hundred cases³⁵. This has generated expressions of dissatisfaction in contemporary European legal doctrine, which nowadays comes to call for "a reparation more adapted to the situation of the victim"³⁶. In reality, already in the sixties emerged the first criticisms to a restrictive vision of the reparations due to the victims. In an article published in 1968, Phédon Vegleris warned against the inconveniences of the practice - of those days - of the European Court of limiting the reparations of violations of human rights to simple indemnizations³⁷. Criticisms of the kind have been renewed and reiterated along the years, at doctrinal level, in the framework of the European system of protection of human rights.

30. The Inter-American Court of Human Rights, on its turn, has taken a much broader position on the matter, in interpreting and applying Article 63(2) of the American Convention on Human Rights. Thus, as from its Judgment on reparations in the case of *Aloeboetoe and Others versus Suriname* (of 10 September 1993), the Court has, on some occasions, fixed - correctly, in my view - *non-pecuniary* reparations, besides indemnizations. In the *Aloeboetoe* case referred to, the Court ordered to the respondent State, as a measure of reparation, *inter alia*, to reopen a school located in

³⁴. *Ibid.*, pp. 25-26, and cf. p. 185.

³⁵. Cf. Th. van Boven (special *rapporteur*), *Study concerning the Right to Restitution, Compensation and Rehabilitation...*, *op. cit. supra* n. (4), p. 34.

³⁶. Cf. G. Cohen-Jonathan, "Quelques considérations sur la réparation accordée aux victimes d'une violation de la Convention Européenne des Droits de l'Homme", in *Les droits de l'homme au seuil du troisième millénaire - Mélanges en hommage à Pierre Lambert*, Bruxelles, Bruylant, 2000, pp. 129-140.

³⁷. Ph. Vegleris, "Modes de redressement des violations de la Convention Européenne des Droits de l'Homme - Esquisse d'une classification", in *Mélanges offerts à Polys Modinos*, Paris, Pédone, 1968, pp. 379-380.

the locality of the wrongful occurrences, so as to function regularly and permanently (as from 1994) and to put into operation a dispensary which existed in that place (resolutive point n. 5).

31. Seven and a half years later, the Court, in the present case of the "*Street Children*", in abiding by a request of the representatives of the relatives of the victims, again orders a non-pecuniary reparation, of the kind of obligations of doing, consisting in

"designating an education centre with a name referring to the youngsters victims of this case and placing in such centre a plaque with the names"

of the five murdered adolescents (resolutive point n. 7, and cf. par. 103). As very well pointed out by the Court, this measure

"would contribute to *awake the conscience* in order to avoid the repetition of wrongful acts such as those occurred in the present case and to keep alive the memory of the victims"³⁸.

32. In the *cas d'espèce*, the Court has, thus, duly valued the living conditions of abandonment of the so-called "street children", brutally victimized, bearing

"in mind the general adverse conditions of abandonment suffered by the five youngsters in the streets, who remained in a situation of high risk and without any help as to their future" (par. 90).

In the whole present Judgment on reparations in the case of the "*Street Children*", the Court sought to fulfill the basic - material and other - needs of their relatives. And, both in the fixing of the moral damage (pars. 88-93), as in relation to the aforementioned measures of satisfaction (pars. 98-103), - to me of the greatest importance, - the Court also kept in mind the melancholic reality of the five adolescents victimized in the street.

33. In the present case of the "*Street Children*", 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. May the present Judgment on reparations serve, thus, also of encouragement to all those who, in our countries of Latin America, have experienced the pain of losing a beloved person in similar circumstances of suffering and humiliation, aggravated by the impunity and the indifference of the social *milieu*.

34. In the case of *Loayza Tamayo versus Peru* (reparations, 1998), it was pointed out, in the same line of reasoning, that

- "(...) Contrary to what the materialist conception of the *homo oeconomicus* pretends, a conception regrettably prevailing in our times, (...) the human being is not

³⁸. Par. 103 (emphasis added).

reduced to a mere agent of economic production, to be considered solely in function of such production or of his capacity to work.

The human being has needs and aspirations which transcend the purely economic measurement or projection. Already in 1948, half a century ago, the American Declaration on the Rights and Duties of Man warned in its preamble [fourth par.] that the "spiritual development is the supreme end of human existence and the highest expression thereof" (...). In the domain of the International Law of Human Rights, the determination of reparations ought to bear in mind the integrality of the personality of the victim, and the impact upon this latter of the violation of her human rights: it ought to start from an integral and not only patrimonial perspective of her potentialities and capacities.

From all the aforementioned it clearly results that non-pecuniary reparations are much more important than one might *prima facie* assume. (...)

(...) The whole chapter of reparations for violations of human rights ought to, in our view, be reassessed from the perspective of the integrality of the personality of the victim, bearing in mind her realization as a human being and the restauration of her dignity. (...)³⁹.

35. Within the Inter-American Court, since my Dissenting Opinions in the cases of *El Amparo*, concerning Venezuela (Judgment on reparations, of 14.09.1996, and Resolution on interpretation of sentence, of 16.04.1997) and *Caballero Delgado and Santana versus Colombia* (Judgment on reparations, of 29.01.1997), I have constantly expressed the great importance I attribute, as from the central position of the victims, to the non-pecuniary reparations (*restitutio in integrum*, satisfaction, realization of justice and the struggle against impunity, rehabilitation of the victims). I am not at all convinced by the "logic" - or rather, the lack of logic - of the *homo oeconomicus* of our days, to whom, amidst the new idolatry of the god-market, everything is reduced to the fixing of compensation in the form of amounts of indemnizations, since in his outlook human relations themselves have - regrettably - become commercialized. Definitively, to the integrality of the personality of the victim corresponds an *integral* reparation for the damages suffered, which is not at all reduced to the reparations for material and moral damages (indemnizations).

36. 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? If the indemnizations are paid, would the "problem" be "resolved"? What is certain is that all the rights protected under the American Convention on Human Rights have an autonomous value and a juridical content of their own, and moreover, are all related *inter se*, indivisible as they are. As to the fundamental right to life, I would go even further: its protection, which requires positive measures on the part of the State, falls under the domain of *jus cogens*, as acknowledged by contemporary juridical doctrine⁴⁰.

³⁹. Inter-American Court of Human Rights, case *Loayza Tamayo versus Peru* (Reparations), Judgment of 27 November 1998, Joint Separate Opinion of Judges A.A. Cançado Trindade and A. Abreu Burelli, pars. 9-11 and 17.

⁴⁰. Cf., on the matter, e.g., W. Paul Gormley, "The Right to Life and the Rule of Non-Derogability: Peremptory Norms of *Jus Cogens*", in *The Right to Life in International Law* (ed. B.G. Ramcharan), Dordrecht, Nijhoff, 1985, pp. 120-159; Y. Dinstein, "The *Erga Omnes* Applicability of Human Rights", 30 *Archiv des Völkerrechts* (1992) pp. 16-37; International Court of Justice, *South West Africa Cases* (2nd. phase, Ethiopia and Liberia versus South Africa), Dissenting Opinion of Judge K. Tanaka, *ICJ Reports* (1966) p. 298; and cf., in general, J. G. C. van Aggelen, *Le rôle des organisations internationales dans la protection du droit à la vie*, Bruxelles, E. Story-Scientia, 1986, pp. 1-104; D. Prémont and F. Montant (eds.), *Actes du Symposium sur le*

37. The day when the work of determining the reparations due to the victims of violations of fundamental human rights *were to be reduced* exclusively to a simple fixing of compensations in the form of indemnizations, one would no longer need the knowledge patiently acquired, assimilated and accumulated throughout years of readings, studies and reflection: to that end, a calculating machine would suffice. The day this were to occur, - which I hope will never come, - the labour itself of an international tribunal of human rights would be irremediably devoid of all sense. Article 63(1) of the American Convention, on the contrary, renders it possible, and 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.

38. The petitioners themselves and the legal representatives of the victims or their relatives will know to keep always in mind that there are superior values which ought to be affirmed and vindicated; the concern for the prominence of such values ought to have primacy over the claim of indemnizations, also to fulfill the personal needs - other than material - of the (surviving) victims themselves or their relatives. In the public hearing before this Court, of 12 March 2001, in the case of the *Street Children*, the witness Mrs. Reyna Dalila Villagrán Morales lucidly pointed out, in respect of the pain of the impact of the murder of her son upon herself and her family, that "not even all the gold of the world, (...) nor what most valuable might exist in the world, will relieve us of the suffering we feel for having lost him"⁴¹. 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. The evil perpetrated in the persons of the (direct and indirect) victims is not removed by the reparations: *the victims continue being victims, before and after the reparations*, - and this requires a greater importance to be attributed to the measures in favour of their *rehabilitation*.

39. With regard, in particular, to the close relatives of the direct victims of violations of human rights, I fear that only through the intense suffering that is *accepted* (which seems to me to have above all a *self-didactic* effect) they will be able, as indirect victims, in face of the loss of a beloved person, aggravated by the extreme violence, to reconstruct their *interior life*, - which is the sole safe place where each one can find

droit à la vie - Quarante ans après l'adoption de la Déclaration Universelle des Droits de l'Homme: Évolution conceptuelle, normative et jurisprudentielle, Genève, CID, 1992, pp. 1-91; A.A. Cançado Trindade, "Human Rights and the Environment", *Human Rights: New Dimensions and Challenges* (ed. J. Symonides), Paris/Aldershot, UNESCO/Dartmouth, 1998, pp. 117-153; F. Przetacznik, "The Right to Life as a Basic Human Right", 9 *Revue des droits de l'homme/Human Rights Journal* (1976) pp. 585-609. And cf. the general comments ns. 6/1982 and 14/1984 of the Human Rights Committee (under the United Nations Covenant on Civil and Political Rights), reproduced in: United Nations, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. doc. HRI/GEN/1/Rev. 3, del 15.08.1997, pp. 6-7 and 18-19.

⁴¹. Cf. IACtHR, *Transcripción de la Audiencia Pública de 12 de Marzo de 2001 sobre Reparaciones en el Caso Villagrán Morales y Otros*, p. 48 (unpublished document). - In a public hearing (of 09.06.1998) on reparations in another case before the Inter-American Court, the victim, Mrs. María Elena Loayza Tamayo, pronounced in the same sense, pointing out that she was conscious that the "economic indemnization" would not redress the whole damage that she suffered. IACtHR, *Transcripción de la Audiencia Pública Celebrada en la Sede de la Corte el 09 de Junio de 1998 sobre las Reparaciones en el Caso Loayza Tamayo*, p. 34, and cf. pp. 60-61 (unpublished document).

refuge from the injustice and the insults of this world. But the evil committed does not disappear by the granting of reparations, and keeps on affecting the close relatives of the tortured and murdered person in their relations among them, and with other persons, and with the outside world⁴². The direct victims have suffered an irreparable harm, in having being deprived of their lives arbitrarily (in the terms of Article 4(1) of the American Convention on Human Rights).

40. But also the indirect victims (parents, sons, husband and wife, and, in certain circumstances, brothers) have suffered an irreparable loss, as their lives will never more be the same. The loss, at a given moment of their lives, of the beloved one, has thrown them into a "*selva oscura*", wherefrom they will have to endeavour to get out, through suffering (and only suffering), in order not only to honour the memory of their dead, but also to transcend the darkness of human existence, and to attempt to get closer to the light and to know the true reality, during the time which is left to them of the brief journey of each one in this world (the very brief *cammin di nostra vita*, which does not allow us to *know* all that we need). The realization of justice contributes at least to structure their psychic life, to reawake their faith and hope, and to set in order their human relations with their fellowmen. Every true jurist has, thus, the ineluctable duty to give his contribution to the realization of justice, from the perspective of the integrality of the personality of the victims.

41. My conclusion is in the sense that, in circumstances such as those of the present case of the *Street Children*, there is *stricto sensu* no true or full reparation possible, in the literal sense of the term (from the Latin *reparatio*, derived from *reparare*, "to prepare or dispose again"), what reveals the limits of Law (like the limits of other branches of human knowledge). As we are, in a way, prisoners of our own language, we thus have to attempt to be always aware of the proper meaning of the terms we utilize, so as to avoid that their evocation, without much thinking, renders them devoid of meaning⁴³. The words bear the accumulation of human experience, and thus their use should be conscious and careful⁴⁴.

42. The impossibility of a full reparation - the *restitutio in integrum* - takes place, in my understanding, not only as to the direct victims and the fundamental right to life, as commonly assumed, but also as to the indirect (surviving) victims and other rights (such as that of not being subjected to torture, nor to cruel, inhuman or degrading treatment⁴⁵). Juridically, above all in circumstances such as those of the present case of

⁴². J. Herman, *Trauma and Recovery - The Aftermath of Violence, from Domestic Abuse to Political Terror*, N.Y., Basic Books, 1992 [reprint 1997], pp. 188 and 190, and cf. pp. 210-211 and 242-243.

⁴³. And lead to dismay and skepticism, as in the example of the legendary prince of Denmark:
- "(...) What do you read, my lord?
- Words, words, words".

W. Shakespeare, *Hamlet, Prince of Denmark*, 1600, act II, scene 2.

⁴⁴. As well pointed out, "our words make our worlds"; Ph. Allott, *Eunomia - New Order for a New World*, Oxford, University Press, 1990, p. 6, and cf. pp. 14-15.

⁴⁵. On the recent jurisprudential development of this latter, cf.: European Court of Human Rights, case *Selmouni versus France*, Judgment (on the merits) of 28.07.1999, pars. 95 and 101; Inter-American Court of Human Rights, case *Cantoral Benavides versus Peru*, Judgment (on the merits) of 18.08.2000, pars. 99-100 (on the torture perpetrated by acts producing in the victim "an acute physical, psychic or moral suffering").

the *Street Children*, the reparations - of the *consequences* of the measure or situation in violation of the protected human rights (in the terms of Article 63(1) of the American Convention), - instead of truly *repairing*, rather *alleviate* the human suffering of the surviving relatives, seeking to rehabilitate them for life, - and *thereby* they become absolutely necessary.

43. This is, in my understanding, the true meaning, with the inevitable limitations of its real extent, of the juridical concept of *reparations*, in the framework of the International Law of Human Rights. The evil committed, as I have already pointed out, 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.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE DE ROUX RENGIFO

On the occasion of this judgment, I wish to make a general observation concerning the issue of the fair determination of compensation for *non-pecuniary damage*.

First, I would like to recall that in the judgment to which this opinion refers, the Court established a very relevant distinction between two types of *non-pecuniary damage*: on the one hand, "the sufferings and distress caused to the direct victims and their next of kin" and, on the other, "the impairment of values that are highly significant to them [, which] cannot be assessed in financial terms".

I would have preferred to Court to use a more general expression than that of *non-pecuniary damage (daño moral)*; for example, that of *non-material damage (daño immaterial)*, to allude to those negative changes in a person's situation that are not of a financial or patrimonial nature. In that case, it could have reserved the expression *non-pecuniary damage*, as comparative law on responsibility has been doing, to refer exclusively to the suffering and grief caused by the injurious facts to the direct victims and their next of kin. But it is not worth giving too much significance to this matter, which appears to be merely a matter of terminology.

In this and other judgments, the Court has said that *non-pecuniary damage* cannot be repaired by the payment of a monetary equivalent; in other words, it cannot be measured and, thus, cannot be compensated exactly, in monetary terms. Consequently, it is only viable to make reparation for such damages by granting *compensation*, which is established by "applying judicial discretion and the principle of equity."

Accordingly, 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.

In this matter, as in many others, "the best is the enemy of the good." 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. It is clear that this is a complex intellectual operation because, when making an arbitrary decision in the matter, judges cannot shield themselves behind

the non-compatibility of the nature of these two types of circumstances that has to be taken into account.

In the practice of the courts, the matter is handled as follows: starting with a certain amount (frequently suggested by reference to preceding decisions of the court in question or other similar courts), this is submitted to a sort of *negative test* in order to establish whether it appears inadequate, either because it is too much or too little. After the appropriate modifications are introduced, the figure that best weathers the said *test* is reached.

The more precisely they trace the frontiers of each of the categories of conditions and values of a non-material nature that it is hoped to repair by determining, in fairness, a monetary compensation, the better these decisions are.

As I have indicated above, distinctions, such as those made by the Inter-American Court in this case, between the grief and pain suffered by the direct victims and their next of kin and the impairment of certain values of a non-pecuniary nature that are very significant for the individual, help make the type of demarcation referred to in the previous paragraph.

In the light of this distinction, we may speak of the following types of *non-pecuniary damage* in cases such as this one:

1. The mental and physical suffering undergone by the direct and indirect victims (real non-pecuniary damage), and
2. Other non-material damage, among which we may consider those indicated below:
 - a) Loss of life, considered as an autonomous value*;
 - b) Destruction of the life plan, when it is shown that, by constantly investing efforts and resources, the victims had constructed such a plan, and this was cut short by the human rights violations that constitute the facts of the case;
 - c) Alteration of the emotional and affective living conditions that arise from the loss of a close relative; usually this is particularly serious in the case of children and extends in time far beyond the moment when the death of the loved one has ceased to cause perceptible grief.

* Three objections are usually made to the recognition of compensation for loss of life. First, due precisely to the fact that he died, the victim did not consciously suffer because of the deprivation of the asset in question. Disregarding the fact that this objection can only be made when death is instantaneous, it should be indicated that it is only valid if *non-pecuniary damage* is reduced to pain and suffering and we fail to consider that the loss of certain non-pecuniary or patrimonial assets, which do not necessarily produce that type of suffering, also correspond to this kind of damage. A second objection indicates that life is an asset that cannot be measured in monetary terms and that, by definition, the person who is deprived of his life cannot be the subject of any reparation. However, should this objection be successful, all the constructions of the law of responsibility relating to compensation for non-material damage would be destroyed because, as has been reiterated, it cannot be assessed in monetary terms. A third adverse comment is more pragmatic. It asserts that, if we admit reparation of life as an autonomous asset, we would be paving the way towards exorbitant penalties that would, in the final count, endanger the very survival of human rights protection systems. But an approach that attempts to close the way to excessive judgments, hiding something that is self-evident – that to kill a person is to deprive him of an asset, the asset of life, and cause him a damage that merits compensation – is not a reasonable way to approach this issue.

The relevance of resorting to categories such as these is particularly evident in complex cases – those that involve the violation of various rights of many persons. In such an event, it is necessary to fine-tune the assessment of damage, in particular *non-pecuniary* damage, in order to be certain that compensations rigorously adapted to the particularities of each individual situation are ordered in favor of each victim.

In the Street Children case, 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 (physical and mental suffering, loss of life as an autonomous value, destruction of the life plan, failure to protect minors...). 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. Finally, it determined the value of the latter, 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.

I also agree, *en bloc*, with the results of the Court's assessment, although, as explained above, I would have preferred that the different categories of violations and impairments of a non-material nature that the facts of the case caused the victims had been dealt with and calculated separately.

Carlos Vicente de Roux-Rengifo
Judge

Manuel E. Ventura-Robles
Secretary