

**Order of the
Inter-American Court of Human Rights
of January 27, 2009
Case of the "Street Children" (Villagrán Morales *et al.*)
v. Guatemala
(Monitoring Compliance with Judgment)**

HAVING SEEN,

1. The Judgment on the merits passed by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") on November 19, 1999.
2. The Judgment on reparations passed by the Inter-American Court on May 26, 2001.
3. The Order entered by the Court on November 27, 2003, whereby it:

Declar[ed]:

1. That the State ha[d] complied with the compensation ordered for pecuniary and non-pecuniary damage (*first, second, third and fourth operative paragraph of the judgment on reparations [...]*), except for the payment to Gerardo Adoriman Villagrán Morales, as indicated in subparagraphs (a) and (b) of the [...] Order; with the designation of an educational center with a name allusive to the young victims in this case and the placing in this center of a plaque with their names; with the payment of the costs and expenses ordered in favor of the representatives of the victims' next of kin, and with the adoption of the necessary legislative measures to adapt Guatemalan legislation to Article 19 of the American Convention (*fifth, seventh and ninth operative paragraph of the judgment on reparations [...]*), as indicated in subparagraphs 9(c), 9(d) and 9(e) of the [...] Order.

[...]

4. The Order entered by the Court on June 14, 2005, whereby it:

Declar[ed]:

1. That the State ha[d] complied with the provisions of the fourth and sixth operating paragraphs of the Judgment on reparations [...], as regards payment of the compensation for non-pecuniary damage to the benefit of Mr. Gerardo Adoriman Villagrán-Morales, and the obligation to provide any other resources and implement any other measures necessary for transporting the mortal remains of Henry Giovanni Contreras and its subsequent burial at the location selected by his relatives.

[...]

[and] Decide[d]:

3. To call upon the State to adopt all measures necessary to promptly and effectively comply with the operative paragraphs pending compliance of the Judgment on reparations of the Court of May 26, 2001, [on the measures adopted by the State to investigate, prosecute and punish those responsible for the human right violations declared by the Court], in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

[...]

5. The Order of the President of the Court (hereinafter, "the President") of November 11, 2008, whereby, exercising its power to monitor compliance with its decisions and in consultation with the remaining judges of the Court, decided to call the Inter-American

Commission of Human Rights (hereinafter, "the Commission" or "the Inter-American Commission"), the Republic of Guatemala (hereinafter, "the State" or "Guatemala") and the representatives of the victims and their relatives (hereinafter, "the representatives") to a private hearing, in order for the Court to obtain information from the State as regards compliance with the Judgment passed in the instant case, and to receive the observations made by the Commission and the representatives in that regard.

6. The private hearing held by the Court in San José de Costa Rica on January 20, 2000.¹ In the course of such private hearing, the State, the Inter-American Commission and the representatives made reference to the only aspect pending compliance, regarding the obligation of the State to investigate and, if applicable, punish those responsible for the human rights violations declared by the Court and to adopt any domestic law provisions necessary to guarantee compliance with this obligation.

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. That the State of Guatemala is a State Party to the American Convention of Human Rights (hereinafter, "the Convention" or "the American Convention") since May 25, 1978, and recognized the jurisdiction of the Court on March 9, 1987.

3. That Article 68(1) of the American Convention sets forth that "[t]he State Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." For such purpose, the States must guarantee that the Tribunal's decisions are implemented in the domestic jurisdiction.²

4. That in view of the final and non-appealable character of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly by the State within the established term.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility. The obligations imposed by the Convention upon State Parties bound all powers and authorities of the State.³

¹ The parties appearing at this hearing were as follows: for the Inter-American Commission, Mrs. Elizabeth Abi-Mershed, Alternate Executive Secretary; for the victims, Mrs. Marcela Martino and Gisela De León, from the Center for Justice and International Law (CEJIL), and for the State, Mrs. Dora Ruth del Valle Cóbar, President of the Presidential Coordinating Committee for the Executive's Human Rights Policy (COPREDEH); Delia Marina Dávila-Salazar, Agent, and Vivian Nohemí González-Westendorff, Alternate Agent.

² Cf. *Case of Baena-Ricardo et al. v. Panamá. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Vargas-Areco v. Paraguay*. Monitoring Compliance with Judgment. Order of the Court of October 30, 2008, Considering clause No. 3; and *Case of Claude Reyes et al. v. Chile*. Monitoring Compliance with Judgment. Order of the Court of November 24, 2008, Considering clause No. 3.

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC -14/94 of

6. That the States Parties to the Convention must guarantee compliance with its provisions and its effects (*effet utile*) within their own domestic laws. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on the protected rights), but also to the procedural provisions, such as the one concerning compliance with the Court's judgments. These obligations must be interpreted and applied in such a way that the protected guarantee is truly practical and effective, given the special nature of international human rights treaties.⁴

7. That every State Party to the Convention having recognized the compulsory jurisdiction of the Court has the duty to fulfill the obligations imposed by the Court. This duty includes the obligation of the State to report to the Court on the measures adopted to comply with the decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance with the Judgment as a whole.⁵

8. That the Court appreciates the significant efficacy of the hearing held for monitoring compliance with the Judgment in the instant case.

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* *

9. That as regards to the only aspect pending compliance related to the obligation of the State to investigate the events, identify and, eventually, punish those responsible for the human rights violations declared by the Court, and to adopt the domestic law provisions necessary to guarantee compliance with this obligation (*Operative Paragraph No. 8 of the Judgment on the merits and Operative Paragraph No. 8 of the Judgment on reparations*), the State mentioned a series of procedures, that had no positive results, carried out in the 90s and that have already been appraised by the Court during the merits stage in the instant case.

10. That as to the current situation, the State informed that the "Presidential Commission on Human Rights requested the Attorney General's Office to resume the investigation in the instant case in order to establish the criminal responsibility of those who are found guilty in relation to the events" and that in response to the request, the Attorney General's Office restated that on December 3, 2008, "in accordance with the principle against double jeopardy, no criminal action may be brought against accused individuals who have already been acquitted given that new criminal proceedings cannot be initiated against them". The State added that criminal proceedings were "carried out in accordance with effective legislation" and that the state "guaranteed due process of law and all legal remedies available in the domestic jurisdiction". Lastly, the State mentioned that, notwithstanding the acquittal of the three accused individuals and the dismissal of the case

December 9, 1994. Series A No. 14, para. 35; *Case of Vargas-Areco v. Paraguay*, *supra* note 2, Considering clause No. 5; and *Case of Claude Reyes v. Chile*, *supra* note 2, Considering clause No. 5.

⁴ *Cf. Case of Ivcher Bronstein v. Perú*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Vargas-Areco v. Paraguay*, *supra* note 2, Considering clause No. 6; and *Case of Claude Reyes v. Chile*, *supra* note 2, Considering clause No. 6.

⁵ *Cf. Case of Barrios Altos v. Perú*. Monitoring Compliance with Judgment. Order of the Court of September 22, 2005, Considering clause No. 7; *Case of Baena Ricardo et al. v. Panamá*. Monitoring Compliance with Judgment. Order of the Court of October 30, 2008, Considering clause No. 7; and *Caso Vargas Areco v. Paraguay*, *supra* note 2, Considering clause No. 7.

due to the death of the fourth accused, "the Attorney General's Office undertakes to further on the investigation to establish the identity of those responsible for the events" and that "proceedings remain open".

11. That pursuant to the Judgment on the merits rendered by the Court, judicial authorities "failed to comply with their obligation to promote an adequate investigation and judicial proceedings", the State held that "Guatemalan domestic legislation does not provide for [...] the concept of sham *res judicata*" and, therefore, "this would lead to legislative amendments, which would result in longer time periods".

12. That the representatives expressed their "profound frustration in view of the report presented by the State of Guatemala" and held that the judicial procedures mentioned by the State are "the same procedures reported [...] in the last written report which, moreover, were appraised by this Court" that "served as basis for the State of Guatemala to be declared responsible for the violation of Articles 8 and 25 of the Convention". The representatives added that "for that reason they [cannot] understand how the State [...] can claim [...] that the investigation was not carried out in accordance with effective legislation, completely disregarding the decisions made by the [...] Court".

13. That the representatives also claimed that "proceedings remain open and no further procedure was carried out after the passing of the Judgment on the merits and the Judgment on reparations" and that "basically, the State has ignored what the Court ordered for the purposes of justice". In particular, the representatives held that "the Court found in the Judgment that the Tribunals that had appraised the evidence failed to perform their duties in an independent and impartial manner and, therefore, a new proceeding should be initiated". In this sense, the Court was requested to remind the State of "the need to initiate a new investigation" and for the Court to express an opinion on what had already been established in other Judgments "regarding the sham *res judicata* or apparent *res judicata*", which is based precisely on the "assumption of lack of impartiality [and] independence of the authorities in charge of the investigations and prosecution of those responsible".

14. That the representatives concluded by making reference to the "circumstance" of "a context where absolute impunity prevails in most of the paradigmatic cases heard by this Court [involving Guatemala]". Particularly, they indicated that "statistics [...] reflect this reality in a convincing manner, for instance, according to the information of the International Commission against Impunity in Guatemala, impunity reaches 98% in reported crimes", which, according to the representatives, constitutes "an endemic problem" of the State. Furthermore, they stated that "the inefficacy of the justice system [...] renders even more urgent a decision by this Court regarding the status of compliance with these Judgments" and that such ruling should be "emphatic upon indicating the need for the State to adopt prompt and effective measures, not only to resume investigations in the instant case, but also to correct structural problems that hinder progress in justice".

15. That the Commission stated that it "finds that no information was provided on the measures adopted to resume [...], in a diligent manner, the investigations and to establish the appropriate responsibility". It added that "the matter under investigation does not refer exclusively to the perpetrators of the murder"; the Court established in its Judgment "that the investigators and agents of justice had not met their essential duties" and that in that respect the Commission considers "that the measures required to fight impunity in the instant case include [the implementation of] criminal, administrative or disciplinary measures as required to assess and establish the responsibility of those who consolidated impunity rather than finding justice". The Commission concluded "that it is necessary to reopen the entire proceeding; not against one person or several non-identified persons

regarding the murders exclusively[, but] it is necessary to refocus on the overall matter of the instant case and the denial of justice”.

16. That as regards to the observations made by the State regarding the lack of provisions on the *res judicata* principle in the legislation of Guatemala, the Commission found that “the Court has already dealt with this matter in the Judgment upon ordering the performance of investigations, determination, prosecution and punishment of those responsible, and also the adoption of the domestic measures necessary to render these obligations effective”.

17. That in cases of extra-judicial executions, it is essential that the States conduct an effective investigation into any deprivation of the right to life enshrined in Article 4 of the Convention, and to punish those responsible, particularly when State agents are involved.⁶ As regards the obligation to guarantee the right set forth in Article 5 of the American Convention, the Court has indicated that said obligation comprises the State’s duty to investigate possible acts of torture or other cruel, inhuman or degrading treatment.⁷

18. That the duty to investigate constitutes an unavoidable obligation of the State resulting from international law and, as mentioned by this Court, in the case of serious violation of fundamental rights, the need to prevent the repetition of those events depend, largely, on successful avoidance of impunity and satisfaction of the expectations of the victims and society as a whole to finally know the truth about the events.⁸

19. That the Court has defined impunity as the overall failure to investigate, arrest, prosecute and convict those responsible for violations of the rights protected under the American Convention.⁹

20. That impunity may arise in different manners; as a result of the State’s failure to organize the mechanisms necessary to investigate a crime¹⁰ or of carrying out domestic proceedings that result in delays and undue hindrances;¹¹ of failing to formally define an autonomous crime (e.g. crime of forced disappearance), which prevents the adequate performance of criminal proceedings;¹² of adopting self-amnesty laws;¹³ of failing to enforce

⁶ Cf. *Case of Myrna Mack Chang v. Guatemala*. Merits, reparations and costs. Judgment of November 25, 2003. Series C No. 101, para. 156; and *Case of Valle-Jaramillo et al. v. Colombia*. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 192, para. 101.

⁷ Cf. *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 92; *Case of the Miguel Castro-Castro Prison v. Perú*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 344; and *Case of Bueno Alves v. Argentina*. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 164, para. 88.

⁸ Cf. *Case of Vargas-Areco v. Paraguay*. Merits, reparations and costs. Judgment of September 26, 2006. Series C No. 155, para. 81; *Case of the Miguel Castro-Castro Prison v. Perú*, *supra* note 7, para. 347; and *Case of Bueno Alves v. Argentina*, *supra* note 7, para. 90.

⁹ Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. Merits. Judgment of March 8, 1998. Series C No. 37, para. 173; *Case of Vargas-Areco v. Paraguay*, *supra* note 8, para. 153; and *Case of Tiu Tojin v. Guatemala*. Merits, reparations and costs. Judgment of November 25, 2008. Series C. No. 190, para. 69.

¹⁰ Cf. *Case of Velásquez-Rodríguez v. Honduras*, Merits. Judgment of July 29, 1988. Series C No. 4, para. 176 and 177; *Case of Heliodoro Portugal v. Panamá*. Merits, reparations and costs. Judgment of August 12, 2008. Series C No. 186, para. 116; and *Case of Tiu Tojin v. Guatemala*, *supra* note 9, para. 69.

¹¹ Cf. *Case of Bulacio v. Argentina*. Merits, reparations and costs. Judgment of September 18, 2003. Series C No. 100, para. 115; *Case of Servellón García et al. v. Honduras*. Merits, reparations and costs. Judgment of September 21, 2006. Series C No. 152, para. 151; and *Case of Bayarri v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, para. 116.

¹² Cf. *Case of Heliodoro-Portugal v. Panamá*, *supra* note 10, para. 183.

¹³ Cf. *Case of Barrios Altos v. Perú*. Judgment of March 14, 2001. Series C No. 75, para. 43.

the sentence imposed¹⁴ or of imposing upon those found guilty insignificant punishment that is fully inconsistent with the relevance of the crime,¹⁵ among others.

21. That the elimination of impunity through all legal means available is a key element for the eradication of extra-judicial executions, torture and other crimes.¹⁶ Judicial proceedings that continue until their closing and that meet their purpose are the clearest indication of 0 tolerance towards human rights violations and contributes to provide reparation to the victims and shows society that justice has been made.

22. That the Court has found that the duty to investigate should not be understood by the State as a mere formality preordained to be ineffective, or procedures performed merely for private interests, that depends on the procedural initiative of the victims or their relatives or the production of evidence by individuals.¹⁷ Therefore, effective investigations should be suitable to produce results or offering a response to the violations of the rights enshrined in the Convention.

23. That the efficacy of an investigation can be established by using international documents and rules that cover the various aspects of the investigation of abuses against human rights. For instance, the UN Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol),¹⁸ and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions, contained in the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions (Minnesota Protocol).¹⁹

24. That the Inter-American Court has stated that the determination of the truth in the context of the obligation to investigate a death that could have resulted from an extra-judicial execution should occur from the very first procedures in a diligent and prompt manner. In that regard, State authorities conducting an investigation for an extra-judicial, arbitrary or summary execution shall, *inter alia*, a) identify the victim; b) collect and preserve evidence related to the death in order to assist with any investigation; c) identify possible witnesses and obtain testimonies in relation to the death under investigation; d) determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and e) distinguish between natural death, accidental death, suicide and homicide. In addition, it is necessary that a thorough investigation of the crime scene be conducted and rigorous autopsies and analyses of

¹⁴ Cf. *Case of Valle-Jaramillo et al. v. Colombia*, *supra* note 6, para. 165.

¹⁵ Cf. *Case of Vargas-Areco v. Paraguay*, *supra* note 8, paras. 106 to 109.

¹⁶ Cf. *Case of Ituango Massacres v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2006. Series C No. 148, para. 299; and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, para. 137; and *Case of Vargas-Areco v. Paraguay*, *supra* note 8, para. 81.

¹⁷ Cf. *Case of Velázquez-Rodríguez*, *supra* note 10, para. 177; *Case of Heliodoro Portugal v. Panamá*, *supra* note 10, para. 144; and *Case of Valle-Jaramillo et al. v. Colombia*, *supra* note 6, para. 100 and 157.

¹⁸ Cf. *Case of Bayarri v. Argentina*, *supra* note 11, para. 92.

¹⁹ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 127; *Case of the Miguel Castro-Castro Prison*, *supra* note 7, para. 383; and *Case of Zambrano-Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 121.

human remains be performed by competent professionals, using the best available procedures.²⁰

25. That the investigators of reports or indications of extra-judicial executions must be independent individuals. Such independence should be, not only institutional or hierarchical, but also actual from any institution or person that may be subject to investigation.²¹

26. That as regards to the effective investigation and documentation of torture and cruel, inhuman and degrading treatment, the Court has held that the principles of independence, impartiality, competence, diligence and promptness should apply to any legal system and govern the investigation of any alleged acts of torture.²²

27. That at the time of hearing report or indications of acts of torture, competent authorities will be entitled to access any information deemed necessary for the actual performance of the investigation, and will indeed be obliged to exercise that power. To that effect, the necessary technical and budgetary resources should be available, including the power to bound the officers allegedly involved in the crime investigated to appear and give their testimony.²³

28. That the investigators of acts of torture and mistreatment must gather all possible material evidence. The aim is at successfully preserving evidence so that it can be used in a potential criminal proceeding. To that effect, it is necessary for the investigators to have access to the places where acts of torture were allegedly committed.²⁴

29. That any places subject to investigation as alleged crime scenes must be closed so that no potential evidence is lost and only investigators and their staff will be allowed access thereto. All evidence will be gathered, handled, packed and identified in a proper manner, and must be kept at a place to safeguard it from contamination, touching or loss.²⁵

30. That in the instant case, the Court established in its Judgment on the merits that:

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

230. In this respect, the Court observes that the domestic judicial proceedings revealed two types of serious defect: first, investigation of the crimes of abduction and torture was completely omitted

²⁰ Cf. *Case of Juan Humberto Sánchez*, *supra* note 19, para. 127 and 132; *Case of the Miguel Castro-Castro Prison v. Perú*, *supra* note 7, para. 383; and *Case of Zambrano-Vélez et al. v. Ecuador*, *supra* note 19, para. 121.

²¹ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra* note 16, para. 81; and *Case of Zambrano-Vélez et al. v. Ecuador*, *supra* note 19, para. 122.

²² Cf. *Case of Bueno Alves v. Argentina*, *supra* note 7, para. 108; and *Case of Bayarri v. Argentina*, *supra* note 11, para. 92.

²³ Cf. *Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment)*, Office of the High Commissioner of the United Nations for Human Rights (OHCHR). Series on Professional Training No. 8, Newsletter 1, United Nations, New York and Genève, 2004, principles contained in para. 79.

²⁴ Cf. *Istanbul Protocol*, *supra* note 23, para. 101.

²⁵ Cf. *Istanbul Protocol*, *supra* note 23, para. 102.

[...]. Second, evidence that could have been very important for the due clarification of the homicides was not ordered, practiced or evaluated [...].

31. That as regards to the manner to progress on the investigation of the events, the State reported that "the investigation will be jointly promoted with the Attorney General's Office" and that meeting were held with CEJIL and "an agreement was reached to establish spaces for debate and discussion regarding the different orders of the Court". Particular, the State indicated that "the Committees to Foster Investigations were organized", to "invite the members of the Attorney General's Office, the Ministry of the Interior and other institutions that could have any involvement in these cases". According to the State, the purpose of those Committees is "to promote the orders of the Court" and "thus, achieve progress in compliance".

32. That representatives held that they had met with the State "given their concern for widespread impunity" and that CEJIL proposed to the State the possibility of defining spaces for debate "to make judicial agents aware of their obligation to comply with the Judgments of the Court". The representatives further established that such agreement "includes gathering with judicial agents to make them aware of the principles of [the] Court", but "the obligation to define a plan as to how to develop the investigations falls under the exclusive and sole responsibility of the State".

33. That the Commission stated that it appreciates "the readiness of the State" and "it considers that joint work with the Attorney general's Office that considers the participation of the representatives of the victims could constitute an important step". In that regard, the Commission highlighted two specific issues: first, it would be convenient "to rely on a schedule of activities to reopen this investigation and progress on specific measures"; and, second, it would be necessary to define a comprehensive plan for investigation that covers all substantive and operative aspects of the Court's decisions on the merits and reparations".

34. That the Court appreciates the efforts recently made by the State to organize "Committees to Foster Investigations" and calls upon the parties to work restlessly in these spaces for debate to achieve a better understanding of the Judgments of the Court by State officers and, hence, reach effective compliance with those Judgments. In turn, the Court expects that these Committees will serve as starting points to open new possibilities for progressing and concluding investigations of the events in the instant case. That notwithstanding, the Court considers necessary to emphasize that this new State initiative should not be used to delay investigations even more or to justify any failure to investigate by the State, since official authorities have the obligation to follow all stages of the investigation process as specified in this Order, irrespective of the existence of those Committees.

35. That notwithstanding the foregoing, after the passing of the Judgment on the merits and the Judgment on reparations and costs, the State has not submitted to the Court any new information to prove that significant progress was made regarding the investigation of the events and the search for and eventual punishment of those responsible. The State has repeatedly made reference to the procedures that this Court has declared as violations of the human rights of the victims. Moreover, the allegations made by the State at the private hearing, in the sense that the investigations and the criminal proceedings in which the Court has already rendered a decision were carried out in accordance with the law and the guarantee of due legal process, are clearly contradictory to the findings of this Court as contained in the Judgments.

36. That the State completely failed to report on the measures adopted in the domestic jurisdiction to guarantee compliance with the obligation to investigate the facts and, if appropriate, to punish those responsible therefor, as provided for in Operative Paragraph No. 8 of the Judgment on reparations.

37. That the violations declared in the instant case remain entirely unpunished as found by the Court more than 9 years ago in its Judgment on the merits, and after nearly 18 years of the events. This situation forces the Court to remind Guatemala that the State has specific obligations in accordance with the American Convention, particularly regarding Articles 67 and 68 thereof; therefore, the State shall fully and promptly fulfill its obligation to investigate the events of the instant case and to adopt any domestic law provisions necessary to guarantee the performance of this obligation, and to report to the Court, within the term set forth in the operative paragraphs of this Order, on any measures adopted to that effect as from notice of this Order. In particular, the State shall report on any measures adopted to:

- (a) identify those responsible for the acts of torture and abduction of the victims;
- (b) identify all those responsible for the murders perpetrated,
- (c) adjust its domestic legislation to the international standards against impunity and effective and prompt investigation of extra-judicial, arbitrary and summary executions, and acts of torture and cruel, inhuman and degrading treatment.

38. That similarly, the State shall report on the measures adopted to redress or cure the defects declared by the Court in paragraph 232 of the Judgment on the merits, regarding:

- (a) the reevaluation of the testimony of "the witness who stated that she had been submitted to abduction and ill-treatment similar to those suffered by the four youths in the instant case";
- (b) the reevaluation of the testimonies that were declared to be "irrelevant" without any explanation, although they provided revealing elements about the way in which the facts occurred and contributed to identify those responsible;
- (c) the reevaluation of the report resulting from the police investigation ordered by the judges to support judicial proceedings, which was set aside upon considering that it did not constitute "sufficient evidence", where it was stated that the perpetrators of the murder were the two police officers identified by the witnesses;
- (d) the reevaluation of the statement by the witness who worked for the welfare of the "street children";
- e) the reevaluation of certain witnesses - whose testimony was received many months after the events had occurred - on the circumstances at the time when the events occurred, which were entirely rejected although they provided revealing information on other aspects of the events under investigation that were consistent and concurring; and
- (f) the reevaluation of the ballistic test contained in the case record, according to which the bullet found near the body of Anstram Aman Villagrán-Morales had been fired by the arm assigned to one of the accused police officers.

39. That the Court will continue examining closely the measures adopted for compliance in the instant case and, if necessary, will send the case of the General Assembly of the Organization of American States, in accordance with Article 65 of the American Convention, which provides as follows:

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

NOW THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising its power to monitor compliance with its judgments, in accordance with Articles 33, 62(1), 67 and 68(1) of the American Convention on Human Rights, 25(1), 25(2) and 30 of its Statute and Article 29(2) of its Rules of Procedure,

DECLARES:

1. The State has not yet fulfilled its obligation to investigate the events of the instant case, identify and, as appropriate, punish those responsible and to adapt domestic law provisions as required to guarantee the performance of this obligation (*Operative Paragraph No. 8 of the Judgment on the merits and No. 8 of the Judgment on reparations*); therefore, proceedings to monitor compliance will remain open until full satisfaction of this aspect.

AND DECIDES:

2. To call upon the State to immediately adopt all measures necessary to promptly and effectively comply with the aspects pending compliance, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

3. To call upon the State to submit to the Inter-American Court of Human Rights, no later than May 4, 2009, a thorough and updated report specifying the measures adopted to comply with the reparation ordered by the Court which is still pending compliance, in accordance with the provisions of Whereas clauses No. 37 and 38.

4. To call upon the representatives of the victims and the Inter-American Commission of Human Rights to submit their comments on the report of the State of Guatemala mentioned in the foregoing Operative Paragraph of this Order, no later than four and six weeks, respectively, after receiving the aforementioned report.

5. To call upon the Secretariat of the Court to serve notice of this Order upon the State, the Inter-American Commission on Human Rights, the Representatives of the victims and the Inter-American Commission on Human Rights.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alesandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary