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Guatemala: Children's Rights Case Wins Judgment at Inter-American Court of Human Rights

by Ismene Zarifis*

In May 2001, eleven years after the brutal killing of five street children by members of the Guatemalan National Civilian Police, the Inter-American Court of Human Rights (Court) in Costa Rica finally rendered justice in the form of reparations. This action followed the Court's November 1999 decision on the merits, which condemned the State of Guatemala for the deaths of the youths in the case of *Anstraum Villagrán Morales, et al.*, also known as the *Bosques* case. This case marks the first time in 20 years that the Court has decided a children's rights case, and it is the first time that a judgment involves legal, social, economic, and educational remedies. The Court ordered Guatemala to pay financial reparations to the families of the victims, to establish a school for street children, and to implement internal laws in accordance with Article 19 (Rights of the Child) of the American Convention on Human Rights (American Convention), requiring respect and protection of minors by family, society, and the state. In the Inter-American system, the *Bosques* case serves as valuable precedent for future cases of human rights abuses of street children. The judgment also reflects an increase in the respect for and enforcement of children's rights, not only in Guatemala, but also in all of the Americas.

Before their deaths, the victims in the *Bosques* case—Anstraum Aman Villagrán Morales (age 17), Henry Giovanni Contreras (age 18), Julio Roberto Caal Sandoval (age 15), Federico Clemente Figueroa Tunchez (age 20), and Jovito Josué Juárez Cifuentes (age 17)—took part in reha-

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bitative programs run by *Casa Alianza*, a non-governmental children's rights organization. On June 17, 1990, the severely burned bodies of four of the victims were found mutilated in the woods, with their eyes and ears burned and their tongues severed. On June 25, 1990, the fifth victim was abducted and suffered the same fate as his friends. As a result of these crimes, and in reaction to unprecedented numbers of human rights violations committed against street children, *Casa Alianza* opened its legal aid office in 1990 with the initiation of the *Bosques* case.

In June 1990, *Casa Alianza* presented the case to a Guatemalan court, charging that two national police officers had tortured and killed the five street children. The court found insufficient evidence to convict the accused officers, and this decision was affirmed by the Court of Appeals in May 1992. According to the Guatemalan government, the case was closed.

Casa Alianza and the Center for Justice and International Law (CEJIL) identified several procedural and substantive due process irregularities, and presented the case



Credit: Casa Alianza

A Guatemalan child participating in a program for street children run by *Casa Alianza*.

to the Inter-American Commission on Human Rights (Commission) within the Organization of American States (OAS). Pursuant to the American Convention, the parties petitioned the Commission under Article 44, allowing non-governmental entities to lodge petitions containing denunciations of Convention violations by a State Party, and under Article 46(a), granting admissibility to petitions once domestic remedies have been exhausted. As a member of the OAS, Guatemala ratified the American Convention in 1987 and the Convention on the Rights of the Child in 1990 (CRC), and is obligated to enforce the principles in these human rights instruments.

Background

Crimes of torture, rape, and extra-judicial execution of street children by police are not uncommon in Guatemala. In 2000, *Casa Alianza* reported that of an estimated 6,000 street children in Guatemala City, 65 percent are between 10–17 years old, and more than 90 percent are likely to be addicted to chemical inhalants. The children are highly vulnerable due to poor living conditions, and especially susceptible to police abuse and intimidation.

Guatemala has no institution to protect and rehabilitate street children, many of whom have suffered from domestic violence, physical and sexual abuse, or desperate social and economic conditions. In an attempt to escape these problems, the children find solidarity with others in similar situations, and quickly fall victim to drug use and delinquency owing to lack of education or employment opportunities. Some children maintain irregular contact with their families, but most have severed all familial ties. Police regularly take advantage of this highly vulnerable group, in violation of rights protected in the Guatemalan Minors' Code of 1979 and the CRC.

In general, the perception of the public, including members of the judiciary and the Public Ministry in charge of

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criminal investigations, is that street children are delinquents deserving punishment rather than victims in need of protection. This perception facilitates wide-spread impunity for those responsible for the extra-judicial killings, as these killings are seen as ridding society of its perceived criminal elements. According to lawyers at *Casa Alianza*, Public Ministry officials lack the political will to investigate or prosecute members of security forces implicated in human rights abuses of street children. Although *Casa Alianza* recorded 300 criminal complaints involving children's rights between 1990 and 1996, only a handful were prosecuted successfully, and the majority of the cases never reached trial due to incomplete investigations.

The Guatemalan Minors' Code of 1979

The Guatemalan Minors' Code of 1979 reflects the social perception of street children as objects in need of protection rather than individuals with rights. The preamble of the Minors' Code states, "[t]he family and youths require special protection and assistance from the State." The language in the Minors' Code lacks the principle of "inherent dignity and inalienable rights of all members of the human family," as set forth in the preamble of the CRC. UNICEF and the Institute of Juridical Studies' (IJS) point out that, unlike the CRC, the Minors' Code aims to protect society from street children by reprimanding their antisocial behavior rather than addressing the social reality that causes these children to live on the streets. This objective is reflected in Article 33 of the Minors' Code (Apprehension of Minors) which states, "in cases where a minor is arrested, regardless of the reason, he will be taken to a Judge for Minors who will hear the arresting officers and the minor in order to decide if the minor should be 'deposited' in an adequate place or released." Guatemala lacks such a rehabilitative institution.

The Guatemalan justice system is slow, ineffective, and highly susceptible to corruption and intimidation, resulting in a high level of impunity, and few convictions for human rights abuses.

In particular, the Minors' Code does not distinguish between the punitive treatment of juvenile delinquents and protective treatment for children in irregular situations. UNICEF and IJS reported that broad definitions of children in irregular situations (Article 5) and children in danger (Article 48) lead to contradictions within the Minors' Code, resulting in the arrests of non-delinquent street children. The Minors' Code requires a number of substantive reforms in order for it to comply with international obligations set forth in the CRC. Although a new Code for Children and Youth was proposed in 1996, this instrument, modeled after the CRC, has yet to be passed by the Guatemalan Congress.

A History of Impunity

Despite numerous abuses inflicted upon Guatemalan street children, prompt and thorough investigations are rare, and prosecutions have been infrequent, according to lawyers at *Casa Alianza*. The Guatemalan justice system is slow, ineffective, and highly susceptible to corruption and intimidation, resulting in a high level of impunity, and few convictions for human rights abuses. As a result, police officers continue their abusive behavior and are not held accountable for their actions.

Between 1994 and 1998, *Casa Alianza* reported only eight convictions from all the children's rights cases presented for prosecution. This low number was attributed largely to misplaced or lost files by justice officials (32 percent), negligence (19 percent), or lack of sufficient evidence (19 percent). Approximately 86 percent of such cases received between 1990 and 1998 remain unresolved. In cases where the perpetrators of abuses were known members of the national police, 93 percent of the cases received were unresolved.

The greatest obstacle to convictions is the lack of investigation by the Public Ministry, resulting in the lack of sufficient evidence for prosecution. For example, in the case of Marvin Aju Barrientos (age 23), a street youth shot and killed by two unidentified individuals in 1996, the Public Ministry investigation has not progressed despite the fact that there were three eyewitnesses. According to Guatemala's criminal procedure code, the Public Ministry has six months to complete the investigation phase in a case where the perpetrator is unknown. However, an extension of up to one year is permitted, after which the case either must be closed temporarily or the trial must begin. Five years later, the investigation in the *Barrientos* case is at a standstill. In the case of Maria Teresa Ibanez (age 17) and Jennifer Ibanez (age 15), two girls raped by police officers in January 2001, the Public Ministry investigation was slow and inefficient, and despite testimony from several witnesses, the accused police officers were not questioned or detained.

Analysis of the *Bosques* case in the Guatemalan Courts

Guatemalan courts failed to convict officers of the national civilian police, citing insufficient evidence. The existing evidence was declared inadmissible for trial under a provision in the former Guatemalan criminal code, in effect until 1996. Article 654, or *tachas*, allowed the judge to strike evidence in a criminal case under certain circumstances, such



Credit: Casa Alianza

Guatemalan children participating in a program for street children run by Casa Alianza.

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as where testimony was taken from a biased individual. Four police officers of the criminal investigations department testified in the *Bosques* case, as well as the mothers of two of the victims and thirteen youths who were friends of the victims. Bruce Harris, Executive Director of *Casa Alianza* in Latin America, also testified, but his declaration was inadmissible because he was the original accuser. Despite the strength of this evidence, the testimony was inadmissible under *tachas*, because the court deemed the evidence biased.

In addition to striking the biased testimony, omissions by the Public Ministry, such as the failure to identify the accused, the failure to establish the owner of the firearm used in the killings, and the failure to depose a key witness in the case, helped to support the court's ultimate finding of insufficient evidence for prosecution. Additionally, the court found that the autopsies of the victims were incomplete and lacked signs of torture, and the court failed to order a reconstruction of the crime. The investigating judge also failed to recognize discrepancies in the accused officers' testimonies, failed to investigate the license plate number identified by eyewitnesses, and did not complete the investigation into bullet casings found at the scene. Moreover, the crime was described in all the legal documents as a homicide, ignoring the fact that the victims had suffered torture before being shot and killed. Finally, the judge failed to evaluate objectively and gather the evidence, and the parties were never notified of the progress in the case.

The investigation of the case was carried out arbitrarily and violated several provisions in the American Convention: Article 1.1 (State's obligation to respect the rights and freedoms of all persons subject to their jurisdiction), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection). Accordingly, the parties challenged the court's finding of insufficient evidence. Despite the sufficiency of evidence for a conviction, in March 1992 the Court of Appeals affirmed the lower court's decision. The President of the court refused to take any further steps to complete the investigation. Finally, in 1992 the Supreme Court of Justice refused judicial review of the case.

Judgment by the Inter-American Court

After four years of litigation of the *Bosques* case in the Guatemalan courts, the parties presented the case to the Inter-American Commission on Human Rights (Commission) on September 15, 1994. *Casa Alianza* and CEJIL pursued prosecution in the Inter-American system because they feared additional impunity for human rights violations against street children by the Guatemalan police. The Commission recognized several violations of the American Convention: Article 1 (Obligation to Respect Rights); Article 4 (Right to Life); Article 5 (Right to Humane Treatment); Article 7 (Right to Personal Liberty); Article 8 (Right to a Fair Trial); Article 19 (Rights of the Child); and Article 25 (Right to Judicial Protection). The Commission also identified violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Despite the Commission's attempts to negotiate a friendly settlement, the Guatemalan government refused.

After three years of negotiations with the Guatemalan government, the Commission completed its report in October 1996, calling on Guatemala to undertake the following measures: investigate the case promptly and establish the facts effectively; adopt necessary measures to bring the perpetrators of the crime to justice; grant financial reparations to the families of the victims; implement protective measures to prevent human rights abuses in the future; and offer ongoing training for police officers. The Commission allowed Guatemala two months to comply with its recommendations before publishing the report. The state's failure to respond led to the decision to transfer the case to the Inter-American Court of Human Rights on January 7, 1997.

The Court decided the *Bosques* case on November 19, 1999, condemning the Guatemalan government for violating seven articles (1, 4, 5, 7, 8, 19, 25) of the American Convention and three articles (1, 6, 8) of the Inter-American Convention to Prevent and Punish Torture. The concurring opinion by Justice Antonio Trindade and Justice Abreu Burelli placed special importance on the particularly vulnerable situation of street children in Latin America and emphasized the state's responsibility to protect the

right to life (American Convention, Article 4) of all human beings. More specifically, the opinion elaborated on the interpretation of Article 4 by incorporating the right to live in dignity. "[T]he need for protection of the weakest—such as street children—requires a definitive interpretation of the right to life which considers the minimum

conditions for a dignified life. The state party has a special duty to protect the lives of the most vulnerable and defenseless, such as street children," the Justices said. The violation of the right to life of these five youths is especially serious when their right to live in dignity, free from poverty and vulnerability, is also violated. (Minors' Code, Article 2; American Convention, Article 19)

The reparations phase of the judgment concluded on May 26, 2001, after Court hearings with the families of the victims and international experts. The *Bosques* case marked the first time that the Court condemned a member state for violating children's rights. In a unanimous decision, the Court called for U.S.\$ 508,865.91 in monetary compensation for the victims' families and for *Casa Alianza's* and CEJIL's legal expenses. Guatemala was required to establish a school for street children in the name of the five victims and to exhume the body of Henri Contreras and bury it in the cemetery of Vieja Sacatepequez, as requested by his family. Lastly, the reparations sentence ordered Guatemala to bring its internal laws regarding children into accordance with Article 19 (Rights of the Child) of the American Convention. The Court gave the Guatemalan government six months to comply with the order.

The *Bosques* case established an important precedent in the Inter-American legal system for children's rights jurisprudence. Article 63 of the American Convention makes the Court judgments legally binding on States Parties, and a study of the Inter-American jurisprudence shows that Court decisions serve as valuable authority for future cases. The May 2001 opinion sends a warning to all Member States that they may be held responsible for similar crimes perpetrated

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CENTER FACULTY/STAFF NEWS

John Cerone, the new Executive Director of the War Crimes Research Office at American University's Washington College of Law (WCL), has worked as a human rights lawyer with the United Nations Mission in Kosovo, and as a legal consultant for the International Secretariat of Amnesty International. He also has served as Legal Advisor to the Attorney General of Sierra Leone in the government's negotiations with the UN on the establishment of the Special Court for Sierra Leone. In June 2001, Mr. Cerone published an article entitled "Minding the Gap: Outlining KFOR Accountability under International Human Rights and Humanitarian Law in Post-Conflict Kosovo," in the *European Journal of International Law*. In July, he appeared on C-SPAN's "Washington Journal" to discuss the Hague Tribunal and the transfer of Slobodan Milosevic to the UN Detention Unit in The Hague, Netherlands. In August and September, he traveled to the Federal Republic of Yugoslavia as a member of a team of humanitarian law experts to train Yugoslav judges and prosecutors in the laws of war and international criminal law. In October, Mr. Cerone spoke at an American Society of International Law Conference entitled "To War, To Court, To Both?" He discussed the law of state responsibility in the context of the September 11, 2001, terrorist attacks on a panel entitled "Armed Conflict, Terrorism, and the Law."

Robert K. Goldman, Professor of Law and Co-Director of the Center for Human Rights and Humanitarian Law (Center), currently serves as a member of the Inter-American Commission on Human Rights (IACHR) and as a member of the Board of the Inter-American Institute of Human

Rights in San Jose, Costa Rica. In May 2001, he traveled to Bogotá, Colombia, to preside over two days of meetings with government officials and representatives of NGOs to review the status of provisional measures granted by the IACHR to protect persons in that country. In July, as the IACHR's delegate, he argued cases against Colombia and Argentina before the Inter-American Court of Human Rights (Court), and again traveled to Colombia to participate in the exhumation ordered by the Court in Mocoa, Putumayo. In July, Professor Goldman spoke at a seminar in Belize organized by the IACHR to help train lawyers and judges from the Western Caribbean on the workings of the Inter-American human rights system.

Claudio Grossman, Dean, Co-Director of the Center, and member of the IACHR, has published numerous books and articles since April 2001, including: *Analyzing Communications: The Experience of the Inter-American Commission on Human Rights*; *The Inter-American System for the Protection of Human Rights in the 21st Century*; "The Inter-American System of Human Rights," published in 1 *Foreign Affairs en Español* 115 (2001); and "*Awas Tigni v. Nicaragua: A Landmark Case for the Inter-American System*," published in the *Human Rights Brief*, (Volume 8, Issue 3). In April, Dean Grossman presented the Annual Report of the IACHR to the Committee on Legal and Political Affairs of the Permanent Council of the Organization of American States (OAS), and in June, presented the Annual Report of the IACHR to the General Assembly of the OAS in Costa Rica. Also in June, he lectured at WCL's Academy on Human Rights and Humanitarian Law (Academy) about the Inter-

American human rights system. In August, he participated in a video-conference with the University of Chile for an event entitled "*Seminario Derechos Humanos y Sociedad*" ("Seminar on Human Rights and Society"). In September, Dean Grossman was interviewed by Voice of America & Worldnet Television during their program on "*Terrorismo: America Bajo Ataque*" ("Terrorism: America Under Attack"). Also in September, he moderated a panel at the Latin American Studies Association 2001 XXIII International Congress entitled "Human Rights and Humanitarian Law: Implications of the Pinochet and the Argentine Cases," and participated in The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa. As President of the IACHR, Dean Grossman also was named as an observer in the criminal trial of the bombing of the *Asociación Mutual Israelita* (AIMA).

Claudia Martín, Visiting Associate Professor, Co-Director of the Center's Digest Project, and Co-Director of the Academy, taught two courses during the first session of the Academy from May 29–June 15, 2001. Together with Professor Diego Rodríguez-Pinzón, she also coordinated the academic and administrative aspects of the program. On August 7, 2001, Professor Martín spoke about human rights legal education in Latin America at the Annual Meeting of the Association Liaison Office for University Cooperation in Development (ALO). From September 10–14, 2001, she coordinated the seminar "Human Rights Legal Education in Mexico and Ecuador" for human rights professors from law schools in those particular

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against children within their borders. Further, the *Bosques* judgment should make it easier for victims of children's rights abuses to gain sympathetic judgments from the Court.

Beyond the specific remedies ordered by the Court, this judgment should have a lasting impact on the Guatemalan government's enforcement and respect for its human rights obligations. Currently, the legal office of *Casa Alianza* is negotiating a friendly settlement with the Guatemalan government in four other children's rights cases. If the parties successfully achieve a friendly settlement, the cases will not be transferred to the Court for trial.

Conclusion

Despite the efforts of *Casa Alianza* and other legal services offices to defend children's rights in Guatemala, similar incidents of abuse persist. Such efforts are impeded by Public Ministry officials' failure to investigate these crimes as well as the judiciary's failure to prosecute the accused. The judiciary continues to function in a negligent and arbitrary manner, often violating procedural due process norms.

Although the Public Ministry is responsible for gathering evidence through criminal investigations, it often abandons cases due to insufficient evidence, and in rare instances where sufficient evidence exists, the Public Ministry is reluctant to prosecute. The *Bosques* case is an example of how human rights violations can be pursued within the Inter-American system when cases fail to make progress after years of prompting by the parties, or where the legal process is riddled with irregularities. The Court offers victims an alternative legal recourse to seek justice.

It is important that the Guatemalan government comply with the reparations decision by the Court and that it promptly reform its laws on children's rights by implementing the proposed Youth and Children's Code of 1996. Guatemala also should comply with its obligation to protect street children by creating special institutions for their rehabilitation and education. ☺

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