

1999

Five Murdered Street Children in Guatemala: A Precedent Before the Inter-American Court of Human Rights

Selina Kossen

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), [International Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Kossen, Selina. "Five Murdered Street Children in Guatemala: A Precedent Before the Inter-American Court of Human Rights." Human Rights Brief 6, no. 3 (1999): 11-12, 18.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Five Murdered Street Children in Guatemala: A Precedent Before the Inter-American Court of Human Rights

by Selina Kossen*

Guatemala, like several other Latin America countries, has a large number of street children—children with some family links or none at all—who spend their life on the street, begging, selling trinkets, or shining shoes to sustain themselves or supplement their families' income. Guatemala City alone has 5,000 street children. Most of these children are abused or rejected by dysfunctional and poor families who are unable to care for them. They are often too young when they first become street children to understand the situation in which they find themselves, and will steal, beg, or sell themselves for sex to obtain a meal or a clean bed. Many suffer from malnutrition and turn to sniffing glue to still their pangs of hunger. They are living on the edge of society, unknown and unwanted, ready victims of beatings, illegal detentions, torture, sexual abuse, and murder by those assigned to protect them, the Guatemalan National Police.

The UN Committee Against Torture reported that, between 1990 and 1994, 188 penal proceedings were instituted in Guatemala concerning maltreatment of street children, involving 282 perpetrators, most of them members of the National Police. The 1992 and 1993 reports of the UN Special Rapporteur on Arbitrary, Extrajudicial and Summary Executions (Special Rapporteur) stated that street children in Guatemala were principal targets for death threats as well as summary and arbitrary executions. The Special Rapporteur found that the persons responsible for many of these crimes were members of private police corps or the National Police. The Inter-American Court of Human Rights (Inter-American Court), in its 1993 Fourth Report on the Situation of Human Rights in Guatemala, indicated that, in cases of the abuse of street children, it was improbable that Guatemalan judicial proceedings would be instituted or that the perpetrators would be punished.

The case of *Villagrán Morales et al. v. Guatemala* is the first case on street children brought before the Inter-American Court. The case is premised on the kidnapping and murder of Henry Giovanni Contreras (18 years old), Federico Clemente Figueroa Túnchez (20), Julio Roberto Caal Sandoval (15), and Jovito Josué Juárez Cifuentes (17), and on the murder of Ansträum Villagrán Morales (17).

Background to the Villagrán Morales Case

The petitioners allege that on June 15, 1990, Henry, Federico, Julio, and Jovito were sitting next to a kiosk in Plaza Bolívar, in Guatemala City, when a pickup truck stopped near them. Armed men came out, forced the boys to get in, and drove them away. One day later, Julio and Henry were found dead, shot at point blank range. The next day the bodies of Federico and Jovito were found, as well. On June 25, 1990, various witnesses in the same area in which the other boys were kidnapped saw Ansträum and, shortly before midnight, watched a policeman follow him into an alley. Witnesses heard shots and stated that two policemen ran out of the alley.

When the policemen stopped, other street children approached them and accused them of killing Ansträum. The policemen allegedly threatened the children with the same fate as Ansträum and left the area.

As a result of these murders, the National Police instituted two separate investigations that were later joined. The National Police questioned various persons, including mothers and relatives of four of the murdered boys, two women who worked at the kiosk on the nights of the crimes, and the street children who heard shots fired and saw the police run away from the area of Ansträum's murder. With the help of these witnesses, many of whom received anonymous threats during the investigation and court proceedings, three persons involved in both cases were identified. Samuel Rocaél Valdez Zuñiga, a member of the National Police, was accused of having illegally arrested, detained, tortured, and murdered Henry, Federico, Julio, and Jovito. He is also accused of having murdered Ansträum based on the testimony of a witness from that crime scene. Another member of the police, Nestor Fonseca, along with a civilian, Rosa Trinidad Morales Pérez, was implicated as an accomplice to the murders. In its decision of December 26, 1991, however, the Guatemalan Third Court of First Instance invalidated the

testimonies of the mothers of three of the victims because it considered them lacking in impartiality. The court further determined that the testimonies of seven witnesses and five National Police investigators were insufficient to establish the culpability of the accused.

The Guatemalan Public Ministry filed an appeal and on March 25, 1992, the Guatemalan Court of Appeals affirmed part of the

judgment, stating that the Third Court of First Instance correctly excluded the testimonies of the mothers of the victims. The appellate court also upheld excluding the testimony of one witness, citing the threats that she had received as affecting her interests. In *casación*, the Guatemalan Supreme Court ruled that the Court of First Instance had the discretion to reject or declare irrelevant the means of proof that were adduced.

The Villagrán Morales Case in the Inter-American System

Under Article 44 of the American Convention on Human Rights (American Convention), "[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization of American States (OAS), may lodge petitions with the Inter-American Commission on Human Rights (IACHR) containing denunciations or complaints of violation of this Convention by a State Party." The IACHR then determines the admissibility of the case and may decide to carry out an investigation. It may facilitate a friendly settlement between the parties or submit the case before the Inter-American Court.

continued on next page

Street Children, continued from previous page

On September 15, 1994, the Center of Justice and International Law (CEJIL), a Washington, D.C., based organization that conducts international human rights litigation in Latin America and the Caribbean, and *Casa Alianza*, a nongovernmental organization that provides legal and community-based services to Guatemalan street children, filed a formal claim on behalf of the five murdered Guatemalan children before the IACHR. The IACHR presented the *Villagrán Morales* case to the Inter-American Court in January 1997, in conformity with Articles 50 and 51 of the American Convention.

Preliminary Arguments in the Villagrán Morales Case. On April 2, 1997, the Guatemalan government submitted its first preliminary objections to the Inter-American Court. Guatemala challenged the jurisdiction of the Inter-American Court with regard to the *Villagrán Morales* case. Guatemala cited its own constitution, which renders that a Guatemalan justice tribunal's decisions are only reviewable by the Guatemalan Supreme Court of Justice. Guatemala also asserted that no other authority may intervene in the administration of justice in Guatemala without illegally infringing on Guatemala's sovereignty. The Inter-American Court, however, held that the Guatemalan objection was "a question that concerns the merits of the case." The Inter-American Court found that the IACHR instead sought to have the Guatemalan government declared in violation of several precepts of the American Convention through the death of the five street children.

The IACHR's Arguments on the Merits of the Villagrán Morales Case. Testimony for the *Villagrán Morales* case was held on January 28 and 29, 1999, before the Inter-American Court. The IACHR representatives included Washington College of Law Dean and IACHR Commissioner Claudio Grossman; IACHR attorney Elizabeth Abi-Mershed; and CEJIL Director Viviana Krsticevic.

The IACHR alleged that Guatemala violated its obligations under the American Convention. The IACHR charged Guatemala with violating Article 1 (Obligation to Respect Rights [that are embodied in the American Convention]), Article 4 (Right to Life), 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) when National Police murdered the five Guatemalan children.

The IACHR simultaneously invoked Articles 1.1, 8, and 25 of the American Convention. In conformity with Article 1.1, when a right that is protected by the American Convention is infringed, that State is obliged to investigate the alleged facts *sua sponte*, to punish the perpetrators, and to provide legal mechanisms that allow for indemnification. Articles 8 and 25 of the American Convention provide the victim with the right to procure legal representation and protection. When a violation of the right to life is involved and the victim is unable to present a claim, this right passes on automatically to the victim's relatives, according to Article 8 of the American Convention.

The IACHR alleged in the *Villagrán Morales* case that the State of Guatemala denied the relatives and representatives of the five murdered children legal recourse and due process. The IACHR presented three main arguments to support this claim. First, the IACHR alleged that the Guatemalan judicial authorities in charge of the investigations carried out their tasks insufficiently. Second, the IACHR alleged that the

Guatemalan courts omitted crucial evidence of the murders, including the testimonies of three of the murdered boys' mothers. Third, the IACHR alleged that Guatemala knowingly failed to protect key witnesses, including several members of the victims' families, which ultimately impeded the domestic judicial process.

With regard to Article 5, the IACHR presented witness statements that showed that agents of the National Police used their official capacity to detain the boys, and were, therefore, responsible for the boys' physical integrity while they were in custody. The IACHR presented autopsy reports that stated that the victims showed signs of being tortured prior to their murders.

The Article 7 argument presented by the IACHR alleged that the arrests of Henry, Federico, Jovito, and Julio by agents of the National Police were an illegal and arbitrary deprivation of their liberty. By invoking Article 19, the IACHR argued that the Guatemalan government failed to take the special precautions required to guarantee the safety of the three murdered minors, Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes, and Anstrum Villagrán Morales.

Witness Testimony Presented by the IACHR in the Villagrán Morales Case. On January 28, 1999, the Inter-American Court heard from 11 IACHR witnesses. The mothers of two of the murdered boys testified about the problems they faced while trying to obtain information from the Guatemalan police about their sons' deaths and the difficulty they had obtaining their sons' bodies from the police morgue. One mother stated that she received an anonymous threat while trying to assess what happened to her son.

Bruce Harris, of *Casa Alianza*, testified that he previously had made complaints regarding the treatment of street children by the Guatemalan National Police to the Offices of the Guatemalan Prosecutor and the Guatemalan Ombudsman for Human Rights, as well as oral statements to the National Police. Harris stressed that since there are no governmental programs in Guatemala to provide necessities, such as food and shelter, street children incur retaliation from the National Police because they are forced to beg and steal.

Other IACHR witnesses included one of the street children who saw the defendants follow the victims into the alley, and the woman working in the Plaza Bolívar kiosk who heard shots fired. In addition, four investigators from the National Police testified about the deficiencies surrounding several technical matters of the National Police investigations, and an autopsy specialist testified about the defective way in which the autopsies on the murder victims were performed.

Closing Arguments presented in the Villagrán Morales Case. January 29, 1999, was reserved for the final arguments. The IACHR emphasized that the American Convention requires Guatemala to afford special protections to minors. The IACHR argued that the Guatemalan government failed in this obligation when, despite knowledge of potential abuse of street children by the National Police, it failed to offer any protections or legal recourse to the survivors of the murdered victims.

Guatemala, on the other hand, asserted that the petitioners could still initiate a *habeas corpus* proceeding against the judgment of the Guatemalan Supreme Court in *casación*, a civil law remedy that allows for review by a higher court.

continued on page 18

Street Children, continued from page 12

Guatemala, therefore, argued *inter alia* that the petitioners had not exhausted all local remedies in accordance with Articles 46 and 47 of the American Convention.

Conclusion

The case of *Villagrán Morales* is the first case dealing with police brutality against street children before any international tribunal. The Inter-American Court is not expected to render its decision in the *Villagrán Morales* case before June 1999 at the earliest. The *Villagrán Morales* decision will be a precedent not only for the cases on the torture and killing of street children in Guatemala, but also for the abundance of similar cases likely to come before courts worldwide. One decision, however, is not enough. Press coverage and global public support will be necessary to help other street children brutalized by their own governments.

The international community has recognized the importance of preventing acts, such as those alleged against the Guatemalan government in *Villagrán Morales*, through various treaties, typified in the International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Rights of the Child, and the International Convention on Torture. In addition, the Special Rapporteur has specifically addressed the problems of street children in Guatemala and in the Western Hemisphere as a whole for the United Nations. These mechanisms, however, can only make recommendations to states as to how to implement their domestic provisions. The Inter-American Court, on the other hand, provides an actual course of remedy by rendering a binding and enforceable decision. A favorable decision in the *Villagrán Morales* case, which would hold Guatemala responsible for the gross violations of its agents, is crucial to the development of international jurisprudence. Not only would it provide justice for the families of the five murdered boys, but it also would encourage states worldwide to develop and enforce legal systems that can protect their citizens.

The values of society are in a large manner reflected in the way it treats its children. The case of Anstrum, Julio, Jovito, Henry, and Federico represents not only a social and legal inequity in Guatemala. It is also an appeal to all countries to understand the importance of developing programs that will assist those unfortunate children left to live on the streets. For justice to truly prevail, this case should be used as an example to denounce the violence against these human beings, who are, after all, only children. ☉

**Selina Kossen graduated from Utrecht University with a Meester in de Rechten (J.D. equivalent) with a specialization in public international law and human rights. From August 1998 until March 1999, she worked for Washington College of Law Dean Claudio Grossman as a visiting human rights research scholar on cases before the Inter-American Commission on Human Rights, both at the law school and the Commission. She began working for the Pan American Health Organization in May 1999.*

Academic Freedom, continued from page 16

all threats, and that self-governance and appropriate academic leadership are fundamental components of any meaningful enjoyment of academic freedom and autonomy. The 1998 LU directly contravenes these principles by placing powers of university decision making almost entirely with the Serbian government.

The domestic and international violations of the 1998 LU constitute a denial of important rights. The NATO air strikes, which commenced on March 24, 1999, against Serb forces, will have unforeseeable consequences on Serbian domestic politics. Prior to the NATO bombings, there were positive signs that opposition to the 1998 LU was effective. On February 9, 1999, for example, Professor Radmilo Marojević, a government-appointed dean at the University of Belgrade, resigned after months of student protests surrounding his appointment under the 1998 LU. Unfortunately, as Radomir Diklić, a founder and director of the local Beta independent news agency stated, "[e]ven if the war were to stop right now . . . the effect will be to cut all the roots of democracy that previously existed here." Restoring academic freedom within Serbian universities will play a crucial role in the building a fragile democracy. ☉

**Barbara Cochrane is a first year J.D. candidate at the Washington College of Law and a Staff Writer for The Human Rights Brief.*

Goldman Profile, continued from page 2

would also like to pursue funding from sources outside the hemisphere.

Commission's Importance in the Development of International Law

Goldman believes that the Commission's decisions are on the cutting edge of international law. The Commission has devoted particular attention to addressing impunity for human rights violators, which continues to be one of the primary issues in Latin America. The Commission was also the first international organ to deal with the politically loaded issue of amnesties for human rights violators. As a result of Commission efforts regarding these and other issues, other international bodies such as the UN Human Rights Committee and the Inter-American Court of Human Rights now recognize their importance.

Conclusion

Much of Goldman's work with the Commission is performed on a volunteer basis and requires a tremendous commitment of his time and resources. He finds this involvement, however, extremely rewarding. His efforts also have paid off for WCL students, who benefit in the classroom from his human rights experiences and have enhanced opportunities to become involved in activities at the Commission due to his position there. As president during the coming year, Goldman hopes to deepen the international community's involvement in the Commission and strengthen the organization's internal structure so that the Commission continues, in his estimation, to be the most successful and effective human rights body in the world. ☉

**Sarah Aird and Tom Lynch are first year J.D. candidates at the Washington College of Law and Staff Writers for The Human Rights Brief.*

