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## **REPORT No. 23/18**

### **CASE 12.329**

REPORT ON MERITS

VICENTE ARIEL NOGUERA AND FAMILY  
PARAGUAY

Approved by the Commission at its session No. 2116 held on February 24, 2018  
167<sup>th</sup> Special Period of Sessions

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Paraguay. February 24, 2018.

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**I. SUMMARY**

1. On October 17, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition lodged by Maria Noguera (hereinafter “the petitioner”), alleging international responsibility of the Republic of Paraguay (hereinafter “the Paraguayan State,” “the State” or “Paraguay”) for human rights violations related to the death of her son Vicente Ariel Noguera.

2. The Commission approved Report on Admissibility No. 10/11 on March 22, 2011.<sup>1</sup> On April 20, 2011, the Commission notified the parties about said report and placed itself at their disposal in order to reach a friendly settlement agreement.<sup>2</sup> The parties were granted all time periods provided for under the rules of procedure to submit their additional observations on the merits. All of the information received from them was duly forwarded to the opposing party.

3. The petitioner alleged that Vicente Ariel Noguera was recruited at 15 years of age to provide voluntary military service and died at 17 years of age, at military facilities and in dubious circumstances. She further contended that two investigations were carried out into his death in the military and ordinary criminal jurisdictions, which concluded with a dismissal and archiving of the case, respectively. The petitioner claimed that according to accounts of his fellow soldiers, his death was the result of the use of excessive physical punishments and other mistreatment. She also argued that Vicente Ariel Noguera’s classmates, who were candidates for promotion to corporal, were threatened in order to conceal the true circumstances of his death.

4. The State alleged that Vicente Ariel Noguera’s death was caused by disease and that it was corroborated. It also contended that the investigation in the ordinary criminal jurisdiction was archived in keeping with the procedural law in force at the time and in accordance with due process of law. Lastly, it claimed that at the time the events took place, the recruitment persons under 18 years of age was prohibited in Paraguay, as it currently is and, consequently, said enlistment does not incur its international responsibility.

5. Based on the determinations of fact and law, the Inter-American Commission concluded that the State is responsible for the violation of Article 4.1 (right to life), Article 5.2 (right to humane treatment), 8.1 (right to a fair trial), 25.1 (judicial protection), and 19 (rights of the child), in connection with the obligations set forth under Articles 1.1 and 2 of the same instrument. The Commission issued the respective recommendations.

**II. POSITIONS OF THE PARTIES**

**A. Petitioner**

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<sup>1</sup> IACHR. Report No. 10/11, Case 12.329, Admissibility, Vicente Ariel Noguera, Paraguay, March 22, 2011.

<sup>2</sup> The parties expressed their willingness to enter into a friendly settlement agreement. The Commission observed that during the friendly settlement process, for which negotiations continued over approximately ten years, the petitioner reported on several occasions that she wished to withdraw from these negotiations and, on November 30, 2015, she did so for good. The Commission participated in the Friendly Settlement Agreement negotiations, during which the parties submitted information on compliance with some of the items they had agreed upon. The IACHR appreciates, nonetheless, the forward steps taken by the State in the aforementioned compliance with the commitments it undertook in the context of the friendly settlement process, which will be taken into account in the recommendations.

6. The petitioner argued that Vicente Ariel Noguera was born in Asunción, Paraguay, on April 29, 1978. She claimed that at the time of the events, the alleged victim was 17 years of age and was serving in his second term of military service at the Reserve Officers Military Training Center (hereinafter “the CIMEFOR”) as a candidate for the rank of Corporal. She noted that the alleged victim died on January 11, 1996 at the facilities of the Third Army Corps, in the town of Mariscal Estigarribia, Chaco. She contended that as of the present date, the circumstances and cause of the death of the alleged victim have not been uncovered.

7. She argued that, after the initial medical examination, Vicente Ariel Noguera’s death was described as “sudden death.” But, following the first autopsy, this hypothesis was later changed to “death from hantavirus infection,” and subsequently, in the context of the process of inquiry into the cause of death ordered by the Supreme Court of Military Justice (hereinafter “the SCJM”), said determination was changed once again to indicate that the death was caused by a generalized pulmonary infection of another type. However, the petitioner recounts that she became aware of parallel versions from CIMEFOR cadets, according to which his death was the result of acts of physical violence. In this regard, she also alleged that she saw a press photograph in which she could discern the injury to the head of her son and noted that his underwear was bloodstained. The alleged victim’s mother added that in response to these doubts and parallel to the investigation in the military jurisdiction, she filed a “request for judicial investigation” with the Office of the Attorney General of the State (hereinafter “the Attorney General”) and brought a “formal private criminal complaint” (*querrela*) in the ordinary criminal jurisdiction for the crimes of homicide and bodily harm of Vicente Ariel Noguera.

8. She claimed that the acts described above constituted violations of the **right to life and humane treatment**, inasmuch as the body of the alleged victim presented several injuries that are not accounted for in any medical examination or the autopsy reports. She additionally contended that the alleged victims classmates revealed to her that her son had been subjected to the process known as “*descuereo*,”<sup>3</sup> that is, beaten with nightsticks in the stomach by Second Lieutenant Mosqueda and was taken to the lock-up cell by Lieutenant Hernán Alcaraz as punishment for not letting himself be slapped and, consequently, the alleged victim was not present at dinner the night before his death. Lastly, she also made the argument that the alleged victim’s underwear was stained with blood and, therefore, she claims he was the victim of sexual violence.

9. She argued violations of the **right to a fair trial and access to justice**, because the death of the alleged victim was not correctly or properly investigated. She contends that the expert reports to determine the cause of death contradict each other; sudden death, death from hantavirus and, then, determination of death from generalized infection, and that as of the present time, the circumstances of the death of the alleged victim have not been established, because the formal complaint was archived (November 6, 2002) and the military investigation was closed (October 21, 1997). Additionally, the petitioner argues that the classmates of the alleged victim, who attested to the assaults on him, were threatened so they would not testify against their superiors, thus undermining the effectiveness of the judicial remedy pursued by her.

10. As for the **rights of the child**, in light of the fact that the victim was recruited for military service at age 15 and remained in this service until his death at age 17 violates the prohibition under domestic law of the recruitment of minors into military service. In this regard, she claims: “it cannot be understood that if the minor’s parents or guardian have given their authorization, it ceases to be illegal to recruit minors under 18 years of age.”

## **B. State**

11. Based on the arguments it made and the official documents in the case file, the State alleged that Vicente Ariel Noguera was in good health and had been carrying out the activities typical of his military training without any problem. The morning of April 11, 1996, the alleged victim’s fellow trainees realized that he was not waking up and, therefore, their first reaction was to report it to the superior officers of

<sup>3</sup> A form of physical exercise-based punishment known by that term in the military service in Paraguay, literally meaning ‘flaying or skinning.’

CIMEFOR and administer first aid to him and try to resuscitate him and then transport him to Mariscal Estigarribia Health Center for medical examination. The Death Certificate, issued that same day, lists as the cause: "sudden death."

12. On the same day of his death, a preliminary investigation was opened under military jurisdiction to determine the causes of the death of Vicente Ariel Noguera. In the context of this investigation, a first autopsy was performed (April 11, 1996) in which remains of a pulmonary infection were found, which the forensic doctors concluded, in their preliminary report, could be Hantavirus. This hypothesis was finally ruled out through subsequent analysis by a laboratory in New Mexico, United States (March 20, 1996), which also recommended further analysis. The State also argued that the death of Vicente Ariel Noguera is not related to any type of physical violence. Lastly, the State has also introduced the report of the second autopsy performed on the body of Vicente Ariel Noguera (September 9, 1996), indicating the absence of evidence of physical trauma and concluding once again that the cause of death was "interstitial pneumonia."

13. As to the alleged violation of the **right to life and humane treatment**, the State denied its responsibility, as was mentioned above, because the medical expert's report determined that the death of the alleged victim was from "viral-type acute interstitial pneumonia" and that the finding was not "disputed" because it was "determinant, sound and purely technical." Additionally, with regard to the physical assault, it noted that the aforementioned expert's report also determined that there were no "signs of evidence of traumatic violence" and that there was no "traumatic evidence on skin, muscles and bones especially in the area referred to as suspicious of traumatic injury," that was noted. The State also asserted that the mother of the alleged victim collects a pension for the death of her son and that he had been awarded a posthumous promotion to the rank of Reserve Second Lieutenant. Additionally, with regard to the viral intoxication that was stated as the cause of the death of the alleged victim, it claimed that it cannot be attributed to the State given that the intoxication "was not caused by a failure to protect by the State."

14. The State argued that it did not violate the **right to a fair trial** because the criminal proceeding and the investigation were conducted in keeping with the Criminal Code and statutorily established procedural stages. It contended that "all timely investigatory steps in addition to those proposed by the Prosecutor and the complainant" were carried out. Additionally, it explained that the archiving of the criminal complaint for homicide, bodily injury, abuse of authority and other criminal offenses, was based on the proper application of the procedural law in effect at the time, which provides for archiving the case when said remedy (a private criminal complaint: *querrela*) is filed in cases of unidentified defendants and after six months have elapsed, the Public Prosecutor's Office or the parties have not filed the relevant motions or taken the pertinent investigatory steps to continue the proceedings.

15. The State further claimed that it did not violate the **rights of the child** because at the time when the events occurred, it was not a party to the Convention on the Rights of the Child and, consequently, there was no prohibition in place for recruitment into military service under 18 years of age. It further contended that since 2005, there have been amendments to the provisions of the Law of the Military Forces and the Decree of the Commander-in-Chief establishing the prohibition without exception of the recruitment of underage persons into military service.

### III. DETERMINATIONS OF FACT

#### A. Context

16. The Commission has already had the opportunity to analyze the context of military service in Paraguay. In this regard, the Commission, as well as other international bodies, has observed that the complex issue is related, on the one hand, to recruitment for military service in general and, on the other hand, to the conditions in which military service is performed.

17. With respect to recruitment, the Commission is aware of the existence of situations violating free consent and the use of intimidation for enlistment into military service<sup>4</sup> and the failure to verify legal age requirements for the enrollment of recruits into the ranks of the military forces.<sup>5</sup> Furthermore, with regard to the conditions of military service, the aforementioned reports reflect complaints of mistreatment and deaths of conscripts into military service.<sup>6</sup> In the analysis of the instant case, the Commission will consider that this would not be an isolated instance, as well as elements of context ranging from how enlistment is conducted to the fact that mistreatment and death take place in the course of performance of military service.

18. Information has been made available to the Commission by the Association of the Family Members of Victims of Military Service (AFAVISEM), an organization founded by María Noguera, claiming that from 1989 to 1999, 102 cases of deaths of child soldiers were reported in Paraguay, none of which have been properly investigated.<sup>7</sup> With the passage of time, AFAVISEM has reported that said figure has been on the rise and, as of 2012, a total of 156 deaths of child soldiers had been counted at facilities of the Armed Forces and 30 in the National Police, as well as 400 victims, who did not die but reportedly lost limbs or mobility as a result of beatings, gunshots, extreme physical activities, as well as psychological and psychiatric problems stemming from beatings, mistreatment, stress, humiliation and excessive physical exertion.<sup>8</sup>

## **B. Relevant Legal Framework**

### **1. Performance of military service**

19. At the time of the events, military service was regulated in the National Constitution of Paraguay<sup>9</sup> and the Law of Compulsory Military Service,<sup>10</sup> the relevant portions of which read as follows:

#### **NATIONAL CONSTITUTION**

**Article 129 – MILITARY SERVICE:** Every Paraguayan is obligated to train and perform their share of the armed defense of the Nation. For this purpose, compulsory military service is established. The law shall regulate the conditions in which this duty is to be carried out. (...)

#### **LAW Nº 569/75 OF COMPULSORY MILITARY SERVICE**

##### **CHAPTER I: General Provisions (...)**

**Art. 3.-** The length of this service shall be thirty-three years divided up as follows:

**a. PERMANENT:** From age eighteen and nineteen years of age included in the Armed Forces or Police Institutions (...)

##### **CHAPTER II: Registration**

**Art. 15.-** Every native born or naturalized male Paraguayan citizen is obligated to enlist at seventeen years of age until fifty years of age (...)

<sup>4</sup> IACHR. *Third Report on the Situation of Human Rights in Paraguay*. OEA/Ser./L/VII.110, doc. 52, March 9, 2001, pars. 37 and 38; IACHR. Report No. 85/09, Case 11.607, Report on the Merits (publication). Víctor Hugo Maciel, Paraguay, August 6, 2009, par. 67.

<sup>5</sup> Committee on the Rights of the Child. *Concluding observations on the initial report of Paraguay submitted under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013)*. CRC/C/OPAC/PRY/CO/1, October 25, 2013, Par. 14-1.

<sup>6</sup> Committee against Torture. *Conclusions and Recommendations of the Committee against Torture, Paraguay*. A/55/44, May 10, 2000, pars.146-151; IACHR. *Third Report on the Situation of Human Rights in Paraguay*. *Op. Cit.* Pars. 39 et seq; United Nations Human Rights Committee. *Consideration of reports submitted by the States Parties under Article 40 of the Covenant*. CCPR/C/PRY/CO/2, April 24, 2006, par. 14.

<sup>7</sup> IACHR. *Third Report on the Situation of Human Rights in Paraguay*. OEA/Ser./L/VII.110, doc. 52, March 9, 2001, par. 40 and Annex 1. Initial petition of September 19, 2000.

<sup>8</sup> Alternative Report to the First Report of the Paraguayan State on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, submitted by Plan Paraguay and the Coordinator for the Rights of Children and Adolescents (CDIA). July 2012, pg. 9.

<sup>9</sup> National Constitution of Paraguay of June 20, 1992.

<sup>10</sup> Law of Compulsory Military Service of December 24, 1975.

**CHAPTER III****Military Service (...)**

**Art. 36.-** Military service in peacetime is two-years long in the Eastern Region and one-year long in the Western Region or Paraguayan Chaco. Citizens who have passed their 4<sup>th</sup> Year of Secondary School Instruction shall be entitled to admission to the Military Reserve Officers Training Centers (C.I.M.E.F.O.R.).

**CHAPTER VI****Responsibility (...)**

**Art. 56.-** Authorities who recruit children under the age of eighteen years old or who retain in service persons legally exempt [from military service], notwithstanding the exceptions provided for in this law, without prejudice to any criminal liability, shall be dismissed from their position or disqualified for five years from holding any public positions. The parents, guardians or persons responsible for the offended minor may report the act to the closest authority, who must immediately report it to the Commander-in-Chief of the Armed Forces of the Nation. (...)

**2. 2. Applicable criminal proceedings**

20. During the filing of the complaint for homicide, bodily harm, etc. of Vicente Ariel Noguera, the State was in the process of implementation of a new criminal proceeding and said transition to the new criminal justice system was governed by Law No. 1444.<sup>11</sup> In the section pertaining to archiving or closing investigations, said statute specifies the following:

**CHAPTER II DISPOSTION OF CASES (...)**

**Article 7.- ARCHIVING** In cases with unidentified defendants, the Court may order the archiving of the case investigation, when the Public Prosecutor's Office or the parties, within a period of six months, do not file motions or conduct the acts or take the investigatory steps, pertinent to continue the case.

21. The legal statute governing the dismissal of preliminary investigations within a criminal case before the military justice system was the Military Code of Criminal Procedure in peacetime and wartime,<sup>12</sup> the relevant portions of which read as follows:

**TITLE VIII****Dismissal**

**Art. 194.-** He shall be free: a) when it is proven through evidence that the crime has not been perpetrated;

**C. Vicente Ariel Noguera and María Noguera**

22. Vicente Ariel Noguera was born on July 11, 1978 in Asunción, Paraguay. He was in his fourth year of secondary school and was 15 years old when he enrolled in the military service at CIMEFOR. The Commission does not have information about the specific circumstances surrounding said enrollment.

<sup>11</sup> Law No. 1.444/99, which governs the period of transition to the new criminal procedural system, enacted with the force of law by the Congress of the Nation of Paraguay on June 10, 1999.

<sup>12</sup> Law No. 844, which establishes the Military Code of Criminal Procedure in peacetime and wartime, December 18, 1980.

However, based on statements of the petitioner, the IACHR understands that he was authorized by his mother to do so.

23. His mother, María Ramona Isabel Noguera Domínguez, is the petitioner before the Commission, the private complainant in the criminal case in the ordinary criminal jurisdiction and is the activist and leader of AFAVISEM. At the time of the death of her son Vicente Ariel, she was working as a dressmaker and was 37 years old. The Commission also identifies in the case proceedings other family members, including but not limited to the grandfather of the alleged victim.

#### **D. Enlistment in CIMEFOR and the death of Vicente Ariel Noguera on January 11, 1996**

24. Vicente Ariel Noguera was accepted into CIMEFOR on December 1, 1994, after being found eligible by the Office of Recruitment and Mobilization Service.<sup>13</sup> The alleged victim was a second year student of compulsory military service and was transferred on January 2, 1996 to the Third Company of CIMEFOR Division in Mariscal Estigarribia, in the Paraguayan Chaco.<sup>14</sup> According to the reports of his superiors, the minor Noguera stood out because of “his outstanding *esprit de corps*” and “during his stay he has not shown any symptom of affectation or low performance to be confined or medicated.”<sup>15</sup> Likewise, it was said about him that he was “a [member of] the personnel who always was characterized by his dedication to learning the instruction provided.”<sup>16</sup>

25. According to the report of Lieutenant Germán Alcaraz, promoted to Commander of the 3<sup>rd</sup> Company of the CIMEFOR Division, the alleged victim was present at the typical activities of his pre-military training on January 10, 1996. After his last activity “the Company [Cía.] bathed and after that, dinner, at 20:30 hours call to barracks, then in bunks the list of night guards was read then the Company went to bed without any incident.”<sup>17</sup>

26. According to the same report, the duty of night guardsmen (*imaginarias*) was assigned to cadets Jorge Pereira and Néstor Ojeda. Additionally, it is noted that at 1:30 a.m. of Thursday January 11, 1996, said cadets heard a scream in the dormitory and came to the aid of the alleged victim and “had him sit on the bed and they believed that it was a nightmare and they lay him down again, with everything remaining all quiet.”<sup>18</sup>

27. The events subsequent to this episode appear in the aforementioned report as follows: “at 5:00 hours normal schedule of reveille the Company gets up then later since Corporal Candidate Noguera was not getting up some of his comrades tried to wake him up, since he remained lying down, he was taken from the bed, next cadet Marcos Arza, examined him, this cadet is a paramedic, he ascertained that he no longer was presenting vital signs, immediately he was evacuated to health, aided by five of his comrades (...) where the nurse S/Of. San. Bienbenido Chaparro examined him, after he was given artificial respiration with thorax massage without achieving any effect.”<sup>19</sup>

28. In the report of Lieutenant Alcaraz, it is also noted that after that situation he became aware that the alleged victim was clinically dead. According to the account, simultaneously, a cadet was sent “in search of doctors to the house of the Commander (Cmdte.) of the Center, Colonel (Cnel.) DEM Ignacio

<sup>13</sup> Annex 2. Registration form for recruitment and service registration. Annex to State’s submission No. 653-04/MPP-OEA of September 26, 2004.

<sup>14</sup> Annex 1. Initial petition of September 19, 2000.

<sup>15</sup> Annex 3. Report of the Tcnl. Cmdte. Escobar Division CIMEFOR under the direction of the Commander of the CIMEFOR Center III of January 11, 1996. Annex to State’s submission No. 653-04/MPP-OEA of September 26, 2004.

<sup>16</sup> Annex 4. Report of First Lieutenant of Inf. Cmdte. 1<sup>st</sup> Pel. Bareiro under the direction of the Commander of the CIMEFOR Center III of January 11, 1996. Annex to State’s submission No. 653-04/MPP-OEA of September 26, 2004.

<sup>17</sup> Annex 4. Report of First Lieutenant of Inf. Cmdte. 1<sup>st</sup> Pel. Bareiro under the direction of the Commander of the CIMEFOR Center III of January 11, 1996. Annex to State’s submission No. 653-04/MPP-OEA of September 26, 2004.

<sup>18</sup> Annex 4. Report of First Lieutenant of Inf. Cmdte. 1<sup>st</sup> Pel. Bareiro under the direction of the Commander of the CIMEFOR Center III of January 11, 1996. Annex to State’s submission No. 653-04/MPP-OEA of September 26, 2004.

<sup>19</sup> Annex 4. Report of First Lieutenant of Inf. Cmdte. 1<sup>st</sup> Pel. Bareiro under the direction of the Commander of the CIMEFOR Center III of January 11, 1996. Annex to State’s submission No. 653-04/MPP-OEA of September 26, 2004.

Mendoza, who minutes later appeared in person on the premises to transport him to the hospital of the 3<sup>rd</sup> corps accompanied by the five comrades and the nurse.”<sup>20</sup>

29. The Commission takes note of the discrepancies between the petitioner’s account and the information provided by the State as to the events that took place the day before the death of the alleged victim. In the initial petition, the petitioner claimed to the IACHR that there was a “pact of silence” among the cadets, because they had been threatened with discharge from Compulsory Military Service, if they talked about the true circumstances of the death of Vicente Ariel Noguera, as was recounted to the alleged victim’s mother, in the presence of journalist Andrés Colman, by cadet Raúl Agustín Rufinelli. Cadet Rufinelli recanted what he had allegedly recounted in the context of the prosecutorial investigation in the ordinary jurisdiction and asked the alleged victim’s mother to not come to see him any more.

30. The mother informed the IACHR that she personally took the testimonies of the individuals who, according to her description, told her that her son was punished by Lieutenant Hernán Alcaraz and Second Lieutenant Mosqueda, from 18:00 hours to 24:00 hours on January 10, 1996, “but that they went too far, because of a possible flu or cold and consequence of the torture [the alleged victim] died,” all of this with the knowledge of the “Commander of the 3<sup>rd</sup> Army Corps General Eligió Torres Heyn, Lieutenant Colonel Pablino Escobar commander of the Division in Mariscal Estigarribia, First Lieutenant Arlando Vera was on guard duty the night that Ariel was killed,<sup>21</sup> and he [Vera] told a girlfriend that they had killed my son.”<sup>22</sup> Moreover, according to the formal private criminal complaint (*querrela*) filed by María Noguera, she claimed that her son’s body presented several injuries, and that his underwear was stained with blood, as if he had been sexually abused.<sup>23</sup>

31. The petitioner also claimed to the Commission that other witness to the death of the alleged victim provided the following information:

1) José Agustín Rufinelli was with Ariel on Wednesday January 10, 1996 in the afternoon, he lives in Villa Hayes, he was willing to testify before the ordinary Courts but was never called. He saw when Lieutenant Mosqueda kicked Ariel in the ankle on Monday afternoon, and on Wednesday he saw and participated in the *descuereo* (‘flaying’, ‘roughing up’) of Ariel by Mosqueda and others. He saw when on January 10, 1996 in the afternoon, Lieutenant Alcaraz took Ariel to the punishment cell, because Ariel blocked his hand when Lieutenant Alcaraz tried to slap him and at dinner time he was not with his other comrades, as it was the custom that they would all assemble there (...) 2) Mario Toñanez: childhood friend of Ariel, they were neighbors and he claims (...) that he was not sick on the day of his death. 3) Carlos Villalva: neighbor and friend of Ariel, who also claims that Ariel was not sick on the day of his death and was one of the people who checked Ariel’s body on January 11, 1996.<sup>24</sup>

32. The petitioner also contended that the following individuals changed their testimony for fear or because they were no longer interested in helping to get to the bottom of the circumstances of the death of the alleged victim, because of their proximity to the persons, who at the time of the events held leadership positions at the CIMEFOR:

4) Paul Figueredo: he does not want to speak about the topic when I went to see him he said he was a night guardsman on the night of Ariel’s crime, 5) Piris: Ariel’s bunkmate, he does not want to speak with me and he sent word through third parties that he is [not going to] face me, that he is very scared. The same with Osmar Garcete, he even became aggressive when on one occasion I tried to speak with him. 6) Hugo Acuña: he lives in Sapukai, he was a

<sup>20</sup> Annex 4. Report of First Lieutenant of Inf. Cmdte. 1<sup>st</sup> Pel. Bareiro under the direction of the Commander of the CIMEFOR Center III of January 11, 1996. Annex to State’s submission No. 653-04/MPP-OEA of September 26, 2004.

<sup>21</sup> The Commission clarifies for the record that María Noguera refers to her son indiscriminately as “Ariel” and “Vicente Ariel” and that these names always refer to the alleged victim.

<sup>22</sup> Annex 1. Initial petition of September 19, 2000.

<sup>23</sup> Annex 5. Formal private criminal complaint (*querrela*). Annex to State’s submission of September 16, 2004.

<sup>24</sup> Annex 5. Formal private criminal complaint (*querrela*). Annex to State’s submission of September 16, 2004.

friend of Ariel when he came to his town of birth of Mariscal Estigarribia he told me he saw how they killed Ariel and then changed his story, 7) Marcos Arza was a comrade and paramedic, he was a close confident and friend of the senior officers and therefore did not show any interest in elucidating the circumstances in which my son Ariel was killed. 8) Gustavo Saucedo: he was also on night barracks guard duty.<sup>25</sup>

33. The petitioner added to the case file the audio recording of an interview with deputy Sergio López, who testified about the death of the alleged victim as follows:<sup>26</sup>

“something strange happened there, something out of place was done there with Ariel, but the thing is nobody dares to speak up (...) they know, I know and they are keeping quiet, these people must say what happened to Ariel, when I went to Chaco I told him, right in front of the generals, speak, talk (...) but thus far these people [who know] Ariel still don’t have their discharge (...) and there are people who promised that ‘when we get out we are going to talk while we don’t have our freedom of discharge we are not going to talk,’ I was told that, and I know also they promised his mother.”

34. Likewise, the testimony of comrade De la Cueva noted that the *descuereos* (roughing up) were part of daily, everyday life in the pre-military service.<sup>27</sup>

35. For its part, the State introduced in the case file the statements of 21 cadets and Lieutenant Alcaraz – provided in the context of the investigation in the military jurisdiction – in which it is recounted that the day before the alleged victim’s death transpired normally, that the alleged victim did not receive any punishment and that he was in notable physical shape. Additionally, all of them denied that the superior officers meted out physical punishment and, on the contrary, noted that they received good treatment. The narrative of all of the declarants is similar and the transcripts reflect similar answers, often identical. The Commission also notes that everyone questioned concurred in that at around 1:00 in the morning on January 11, 1996, the alleged victim uttered a kind of sound, that some of the declarants described as a coughing fit and others as a nightmare, which apparently was so loud that some of the cadets approached to massage his chest, in response to which the alleged victim only turned over and continued sleeping.<sup>28</sup>

36. The Commission notes that the press consistently reported on and covered the death of the alleged victim concurring in that “in conversations with his classmates, they claimed that Ariel was in good health and that days earlier he manifested no symptom of any illness that would jeopardize his life to the extreme of ending it so suddenly” and that there was nothing abnormal in the health of the alleged victim.<sup>29</sup> Additionally, there are press reports indicating that the residents living nearby the barracks saw that, the day before the death of the alleged victim, the CIMEFOR students conducted drills from 14:00 hours to 17:00 hours.<sup>30</sup> Also, several reports at the time provide accounts of poor living conditions and of physical abuses in the context of the CIMEFOR program.<sup>31</sup>

37. The alleged victim’s death certificate, of January 11, 1996, lists as the cause of death the phrase “sudden death.”

<sup>25</sup> Annex 5. Formal private criminal complaint (*querrela*). Annex to State’s submission of September 16, 2004.

<sup>26</sup> Annex 6. Interview with Deputy Sergio López of September 1996. Cassette 1. Tape submitted by the petitioner.

<sup>27</sup> Annex 7. Interview of Cadet De la Cueva of September 1996. Cassette 1. Tape submitted by the petitioner.

<sup>28</sup> Annex 8. Statements to the Military Investigating Magistrate of the First Rotation given by Cadets Antonio Arza Galeano, Carlos Taboada Zamudio, Oscar Daniel Maldonado, Gustavo Enrique Saucedo Duarte, Jorge Darío Pereira Ecurra, Héctor Fabián Ojeda Chaparro, Ángel Adid Quiñones Morán, Arnaldo Melgarejo Martínez, Julián Paul Figueredo Díaz, Carlos Alberto Villalba Vega, Milciades Díaz Solís, Néstor Fabián Romero, Osmar Garcete González, Germán Ramírez Cardozo, Omar Ricardo Popovich Jara, Marcelo Raúl Romero Cáceres, Luis Alberto Scolari Gómez, Hugo César Rojas Zelaya, Germán Antonio Sosa Cardozo and Ever Mario Pico Duarte; and of First Lieutenant Art. Hernan Darío Alcaraz.

<sup>29</sup> Annex 9. Article in the daily newspaper ABC of January 12, 1996, p.2. Press dossier attached by the petitioner. Additionally: La Nación of January 12, 1996, p.4, among other ones.

<sup>30</sup> Annex 10. Article in the daily newspaper El Día of January 12, 1996, pg. 4. Press dossier attached by the petitioner.

<sup>31</sup> Annex 11. Article in the daily newspaper El Día of January 12, 1996, p.a5, Article in La Nación of January 12, 1996, p.5, Press dossier attached by the petitioner.

## E. The inquiry into the cause of death of Vicente Ariel Noguera conducted in the military jurisdiction

38. According to the records in the case file, on January 11, 1996, the Military Court of the Investigating Magistrate of the First Rotation issued an Order to Open an Initial Inquiry to get to the bottom of the death of the alleged victim; identify and punish the culprit, culprits or accomplices and/or accessories after the fact. That same day, Doctor Juan Francisco Giménez was appointed to be in charge of the medical inspection and examination of the body of the alleged victim at the Regional Hospital of Mariscal Estigarribia, where the first forensic examination was performed before he was sent to Asunción for the respective autopsy. The Commission takes note that the doctor testified: “on the body no signs or signals of visible physical violence are apparent, except for the cadaveric marmoreal spots of rigor mortis.”<sup>32</sup>

39. Based on the case file in the military jurisdiction, the Commission notes that, with the consent of the family, the Judge, ordered the autopsy to be performed at a private hospital called “Migone” in Asunción.<sup>33</sup> The Commission takes note that the press reported the transfer from the Hospital Central of Mariscal Estigarribia to Hospital Migone, where the autopsy was to be performed, as an eventful incident. In the press clippings introduced into the case file by the petitioner, accounts are given that “at the airport, the military members in charge of the custody of the airplane appeared quite tense and attempted to prevent access of the press to the runway, where the plane was parked.” Likewise, the Commission notes a report that on the way to Hospital Migone “the ambulance driver –a low-ranking military member– made a detour to head toward the Military Hospital. The grandfather of the deceased, who was riding in the back of the ambulance, grabbed the driver by the neck and with the other hand on steering wheel, demanding that he head back to ‘Migone’ [hospital]. Finally, and under the responsibility of Captain Florenciañez, the ambulance headed to the establishment chosen by the family members (...).”<sup>34</sup>

40. According to record (no number), which was part of the military judicial case file, signed by the Magistrate investigating the case, the autopsy was conducted at Hospital Migone and was performed by Doctors Miguel Ángel Martínez Yaryes, Hugo Artemio Diez Pérez Benites and Sinjulfo Marecos on January 11, 1996 from 16:45 to 18:00 hours. The autopsy report, of February 23, 1996, determined that the “principal pathology detected is pulmonary inflammation of the PNEUMONITIS INTERSTITIAL variety with significant inflammatory type ALVEOLAR EDEMA, which is observed with variable intensity, between light and severe on both lungs. Another conspicuous alteration is a congestion of almost all organs, of a passive type, of relative short duration, which can be in relation to a diffuse alteration of the vascular wall associated with a likely septic shock and cardiac functional alteration.” Based on the foregoing report, the case file shows that lung samples of the alleged victim were sent to the Center for Disease Control and Prevention (New Mexico, United States of America), which in a report of March 20, 1996, ruled out that it was Hantavirus Pulmonary Syndrome.

41. Additionally, the Commission noticed that there was also a toxicological examination performed, on January 15, 1996, the result of which was negative for the items it tested.<sup>35</sup> The Commission notes that the report of the Military Prosecutor, which is part of the military jurisdiction case file, indicated that “the items from which the effective causes of the death could be inferred, have been exhaustively analyzed (...) that they could have been caused by mistreatment originated in service or by staff of the senior hierarchy, coming to the conclusion *prima facie* of non-existence of evidence of criminal intent.”<sup>36</sup>

<sup>32</sup> Annex 12. Case File “Preliminary Inquiry into the cause of death of candidate for corporal Vicente Ariel Noguera of Center No. 3 of CIMEFOR based in Mcal. Estigarribia”. Annex to States submission No. 653-04/MPP-OEA of September 26, 2004.

<sup>33</sup> Annex 12. Case File “Preliminary Inquiry into the cause of death of candidate for corporal Vicente Ariel Noguera of Center No. 3 of CIMEFOR based in Mcal. Estigarribia”. Annex to States submission No. 653-04/MPP-OEA of September 26, 2004.

<sup>34</sup> Annex 13. Article daily newspaper ABC of January 12, 1996, pg.3. Press dossier attached by the petitioner. Also see: La Nación of January 12, 1996, pg.4., among other ones.

<sup>35</sup> Negative for cocaine, morphine, barbiturates, benzodiazepines, amphetamines and herbicides.

<sup>36</sup> Annex 14. Report 24 of Military Prosecutor of March 13, 1996. Annex to State’s submission of September 16, 2004.

42. As to the testimonial evidence in the context of this case, the Commission notes for the record that the statements of 21 cadets and CIMEFOR officers appear in the court's file, which were taken by the Investigating Magistrate, of which the contents and notable similarity to each other, were described in paragraph 30 of this Report.

43. On October 21, 1997, Military Trial Court of the First Rotation dismissed of the case on the grounds that there was no criminal offense to investigate or criminal to punish. Accordingly, it ordered the matter to be archived, in accordance with Article 199 of the Military Code of Criminal Procedure. The Commission notes that the Court mentions in its recitals of fact the existence of the report of Prosecutor 157, of October 6, 1997, in which the Military Prosecuting Attorney concluded that there were no "indications pointing to anyone at all as responsible for the incident investigated in the proceedings and, therefore, in the judgment of this Office of the Prosecutor, a order to dismiss must be issued for the instant case and the archiving of these case proceedings." Without prejudice to the foregoing, the Commission notes for the record that this Military Prosecutor's Report is not part of its case file.

**F. The "request for a judicial investigation" to the Public Prosecutor's Office and filing of a formal private criminal complaint for the crimes of homicide, bodily harm and abuse of authority with the Court for Criminal Matters**

44. The Commission notes that there are two letters in the case file –one from January 17, 1996<sup>37</sup> and one from July 29, 1996-<sup>38</sup> in which the alleged victim's mother conveys to the Attorney General her strong belief that the death of her son was not an accidental matter, but rather an act of violence and requested his intervention to investigate the death. Based on the foregoing request, the case titled "Request for a judicial investigation brought by María Ramona Noguera" (hereinafter "the request for investigation") was opened. In addition to this request, the Commission takes note that the alleged victim's mother filed a formal private criminal complaint (*querrela*) for the homicide of her son before the Criminal Trial Court for Criminal Matters of the 11<sup>th</sup> Rotation (hereinafter "the Court of the 11<sup>th</sup> Rotation), presided over by Criminal Matter Judge José Waldir Servín Bernal, on September 6, 1996, in which she explicitly asserts "that on January 11 this year, that is, nine days after my son left, he is returned to me dead, presenting on his body several lesions and his underwear was even stained with blood, as if her had been sexually abused."<sup>39</sup>

45. Based on Order to Open Inquiry 1565, of October 2, 1996, which appears in the case file, the Commission establishes that the Criminal Court decided "TO ADMIT the private criminal complaint (...) against unnamed persons for the alleged commission of the crimes of HOMICIDE, BODILY HARM, ABUSE OF AUTHORITY."<sup>40</sup> In this same ruling, a group of witnesses is summoned to provide testimony during the investigation. The Commission takes note that out of the twenty people called to give a statement, the case file shows that only two statements were actually taken, those of José Agustín Rufinelli Romero and Julián Paúl Figueredo Díaz, which were given on October 30, 1996 and April 3, 2002, respectively. The petitioner notes that the version of events provided by witness Rufinelli was different from the version that he had previously given to María Noguera.

46. On August 2, 1996, the Public Prosecutor's Office recommended to the Court of the 11<sup>th</sup> Rotation an "exhumation of the body of the deceased in order to conduct a new autopsy"<sup>41</sup> in the context of the request for investigation. On September 5, 1996, under a decision that appears in the case file, said Court ordered the exhumation of the alleged victim, which was carried out on September 9, 1996 at 16:00 hours,<sup>42</sup> with Doctor José Bellassai<sup>43</sup> acting as the expert physician and Dr. José María Llano<sup>44</sup> as forensic doctor.

<sup>37</sup> Annex 15. Alleged victim's mother's letter addressed to the Attorney General of January 17, 1996. Annex to State's submission of September 16, 2004.

<sup>38</sup> Annex 16. Alleged victim's mother's letter addressed to the Attorney General. Annex to State's submission of January 29, 1996. September 16, 2004.

<sup>39</sup> Annex 5. Formal private criminal complaint. Annex to State's submission of September 16, 2004.

<sup>40</sup> Annex 17. Order to Open Inquiry. Annex to State's submission of September 16, 2004.

<sup>41</sup> Annex 18. Report No. 1007 of the Attorney General of August 2, 1996. Annex to State's submission of September 16, 2004.

<sup>42</sup> Annex 19. Record of exhumation of September 9, 1996. Annex to State's submission of September 16, 2004.

<sup>43</sup> Annex 20. Ruling of the Judge for Criminal Matters of September 05, 1996. Annex to State's submission of September 16, 2004.

47. The Commission takes note that, according to Doctor Bellassai's expert autopsy report, no "injuries of traumatic evidence on the skin, muscles and bones" were observed. "In particular, emphasis was placed on the area referred to as suspicious of traumatic injury according to the photographic study of the cadaver in the frontal zone. In this zone no solution of continuity of the skin, ecchymosis, hematomas are observed nor solutions of continuity of the frontal (forehead) bone. We did not view injuries either in the natural orifices that are free and permeable." Next, the report reaches the conclusion that the cause of death "is obviously interstitial pneumonitis with important alveolar edema and hemorrhage. We also verified important passive congestion of all organs that we related to a state of final shock. (...)"<sup>45</sup> The Commission notes that the alleged victim's mother claims that you can see that there are injuries on the body of the alleged victim from the photographs and video of the first autopsy (especially one on the head that she says can be seen in the photographs), which does not comport with the expert witness's report.<sup>46</sup>

48. Additionally, during the course of the investigation, the Commission notices that the Criminal Court of the 11<sup>th</sup> Rotation ruled that, because the events of the death of the alleged victim took place in Mariscal Estigarribia, said Court of the Investigating Magistrate was supposed to hear the case and, therefore, it transferred the case proceedings to said jurisdiction on September 19, 1996. This transfer led to Investigating Magistrate Antonio Diaz Piris taking over the investigation; however María Noguera filed for his removal on the grounds that the Magistrate failed to turn over the case file to the Office of the Clerk of the Court, it misled her with regard to the location of the case file and he expressed his personal hostility against her.<sup>47</sup> In decision A.I. No. 83 of the Court of Appeals for Criminal Matters, First Chamber, of March 13, 1998, it was found that María Noguera's grounds were sufficient to remove the Magistrate from the case basing its reasoning "on the statements made by the appellant are serious and more than sufficient to justify, for reasons of prudence, the removal of the Judge, and because it could eventually compromise his impartiality (...)." <sup>48</sup>

49. As a consequence, a negative dispute over jurisdiction ensued between the Trial Court Judges for Criminal Matters of the first and twelfth rotations, because neither of the judges recognized the other's jurisdiction to oversee the investigation. Finally, the Supreme Court of Justice awarded jurisdiction to the Judge of the First Rotation of said Trial Court of the jurisdiction of Mariscal de Estigarribia on February 26, 1999<sup>49</sup> and, therefore, the Prosecutor's Office assigned to this court took back the investigations on April 9, 1999.<sup>50</sup>

50. Once the case was taken back by the respective Prosecutor's Office, the Commission notes that from April to July 1999, the Prosecutor directed the alleged victim's mother to submit the addresses of the people who she reported knew the circumstances of Ariel Noguera's death. In the case file there are two written submissions from Vicente Ariel Noguera's mother in which she requests the Judge to order the Chief of the Armed Forces of the Nation (hereinafter "the Chief of the FFAA") to provide said information.<sup>51</sup>

51. The case file also includes the Prosecutor's Report of July 18, 2001, reiterating to the Chief of the FFAA to forward the addresses of the persons identified as witnesses in the investigation and the Military

[... continuation]

<sup>44</sup> Annex 21. Swearing in of the forensic doctor by Criminal Judge of September 9, 1996. Annex to State's submission of September 16, 2004.

<sup>45</sup> Annex 22. Expert's Autopsy Report of October 18, 1996. Annex to State's submission of September 16, 2004.

<sup>46</sup> Annex 1. Initial petition of September 19, 2000.

<sup>47</sup> Annex 23. Filing for Removal of Judge of February 4, 1999. Annex to State's submission of September 16, 2004.

<sup>48</sup> Annex 24. Motion for Removal. Annex to State's submission of September 16, 2004.

<sup>49</sup> Annex 25. Decision A.I. 157 of the Supreme Court of February 26, 1998. Annex to State's submission of September 16, 2004. The Commission notes on the record that the year of issuance appearing is "1998," but based on the information set forth therein is evident that said decision is from 1999.

<sup>50</sup> Annex 26. Report No. 285 As/13/IV/99 of Prosecuting Attorney Eladio Valiente of April 09, 1999. Annex to State's submission of September 16, 2004.

<sup>51</sup> Annex 27. Submissions of the complainant in the request for investigation of February 6, 2000 and June 8, 2000. Annex to State's submission of September 16, 2004.

Supreme Court of Justice to forward the case proceedings file in its jurisdiction.<sup>52</sup> On August 31, 2001, the chief of the Military Supreme Court of Justice only forwarded the order to dismiss the investigation into the death of the alleged victim (not the full case file) and the requested addresses of the persons identified by name in the ongoing investigation.

52. The Commission notes on the record that there are several communications in the case file, which were conveyed during the course of the investigation by the Judge for Criminal Matters requesting information from CIMEFOR about the alleged victim's death (information about recruitment and health status of the alleged victim), from Migone Hospital (autopsy results) and from the daily newspaper *Última Hora* (photographs). These communications, according to the pieces of documentary evidence appearing in the case file, were answered in a timely fashion by those who they were addressed to, who forwarded copies of the information requested at the start of the investigations. The information submitted by said sources was described above in previous sections of the instant report on the merits.

53. On November 6, 2002, Criminal Judge for Liquidations and Sentencing No. 7 archived the request for investigation, as appears in ruling A.I. No. 670 of November 6, 2002, which is part of the case file before the Commission. According to this ruling, the reason for archiving was based on Article 7 of Law 1444/99, which provides that "in cases with defendants who have not been individually named, the Court shall order the archiving of the case proceedings, when the Public Prosecutor's Office or the parties, within a period of six months, have not filed any motions or taken the pertinent investigatory or other steps to continue with the case."<sup>53</sup>

#### IV. LEGAL ANALYSIS

54. The instant case is related to the death of the minor Vicente Ariel Noguera, who was under the custody of the State performing military service, and the investigations into the death under the military and ordinary jurisdiction. The Commission will examine the allegations of the parties and the proven facts in the following order: i) right to life and humane treatment with respect to Vicente Ariel Noguera; ii) right to a fair trial and judicial protection; iii) the rights of the child in light of the alleged victim performing military service in his condition as a minor; and iv) the right to humane treatment of Maria Noguera;

##### A. **Right to life<sup>54</sup> (Article 4.1), right to humane treatment<sup>55</sup> (Article 5.2) and rights of the child<sup>56</sup> (Article 19) in connection with Article 1.1 of the American Convention**

##### 1. **General considerations regarding the State's duty as guarantor of persons under its custody and the duty of special protection of children**

55. The Commission recalls that the right to life is a prerequisite for the enjoyment of all other human rights and without the respect for which all other rights are meaningless.<sup>57</sup> Compliance with Article 4, in connection with Article 1.1 of the American Convention, not only presupposes that no person can arbitrarily be deprived of his life, but also requires that States adopt any measures necessary to protect and preserve the right to life, under their duty to ensure the full and free exercise of the rights of all individuals

<sup>52</sup> Annex 28. Prosecutor's Report No. 226 of July 18, 2001. Annex to State's submission of September 16, 2004.

<sup>53</sup> Annex 29. A. No. 670 of Criminal Judge for Liquidations and Sentencing No 7 of November 6, 2002. Annex to State's submission of September 16, 2004.

<sup>54</sup> Article 4 of the American Convention establishes the following in the relevant portion: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. (...)

<sup>55</sup> Article 5 of the American Convention establishes the following in the relevant portion: 2. No one shall be subjected to torture or to cruel, in human, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

<sup>56</sup> Article 19 of the American Convention establishes the following in the relevant portion: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

<sup>57</sup> IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 185.

under their jurisdiction.<sup>58</sup> Separately, the European Court has asserted the importance that the right to life must be interpreted and applied so as to make its safeguards practical and effective.<sup>59</sup>

56. Additionally, the Commission has affirmed that, with regard to the rights of the child, the State has a duty of special protection because of the special condition held by children, stemming from their progressive development at the physical, cognitive, emotional, psychological and social levels.<sup>60</sup> In relation to the right to life of children, for its part, the Inter-American Court has held that when the State deprives a child of his or her liberty, that States must “be all the more diligent and responsible in its role as guarantor and must take special measures based on the principle of the best interests of the child,” and also “to protect a child’s life, the State must be particularly attentive to that child’s living conditions while deprived of his or her liberty.”<sup>61</sup> It must be noted that the Inter-American Court recently held that the State’s duty as guarantor with regard to persons under its custody is fully applicable to persons performing military service in the situation of living in barracks and not only to persons deprived of liberty.<sup>62</sup>

57. Along these lines of thinking, the Commission has held that “the State has the particular duty to protect the life and integrity of military recruits, since their freedom of movement and the application of disciplinary rules to which they could be submitted directly depend on State agents, who exercise authority and command over the recruits. Thus, when a recruit enlists in the Army in a good state of health but becomes injured during his service, it is the State’s duty to give a convincing explanation of the causes of these injuries.”<sup>63</sup>

58. In a specific case on the subject matter, the Inter-American Court fleshed out the State’s obligations to persons under its custody, when they are performing military service, as follows:

(...) the State has the duty to: i) safeguard the health and wellbeing of members of the military on active duty; ii) ensure that the manner and method of training do not exceed the unavoidable level of suffering inherent to that condition, and iii) provide a satisfactory and convincing explanation about any adverse affects on the health or life that may be presented by persons who are in a special situation of subordination in the military sphere, whether they are performing voluntary or compulsory military service, or they have enrolled in the armed forces as cadets or holding any higher rank in the military scale of hierarchy. Consequently, the State must be considered responsible for harm to the personal integrity and life suffered by a person, who has been under the authority and control of State officials, such as those who participate in military instruction or schools.<sup>64</sup>

<sup>58</sup> IA Court of HR. Case of Zambrano Vélez et al v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 80. Also see: IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 186.

<sup>59</sup> ECHR, Case McCann and others v. The United Kingdom. Application No. 27229/95, 27 September 1995, § 146.

<sup>60</sup> IACHR. *Report on Violence, Children and Organized Crime*. OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015, par. 271.

<sup>61</sup> IA Court of HR. Case of the “Juvenile Reeducation Institute” v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, par. 160.

<sup>62</sup> IA Court of HR. Case of Quispialaya Vilcapoma v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2015. Series C No. 320, par. 115 y ss.

<sup>63</sup> IACHR. Case 12.482, Report No. 84/13, Merits, Valdemir Quispealaya Vilcapoma, Peru, November 4, 2013, par. 114.

<sup>64</sup> IA Court of HR. Case of Ortiz Hernández et al v. Venezuela. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338. Par. 107.

## **2. Explanation of the death of Vicente Ariel Noguera**

59. In this section the Commission will examine whether the explanation regarding the death of Vicente Ariel Noguera provided by Paraguay meet the standards on States' obligations, particularly, regarding children, and the burden of proof described above for cases of persons under the custody of the State, including persons performing military service.

60. The Commission notes that the State's position regarding the reasons that gave rise to the death of the alleged victim, is based on the autopsy reports that were introduced in the case file, one report in the context of the military jurisdiction investigation and the other one in the context of the ordinary jurisdiction. In this regard, the only explanation provided by the State is related to the supposed medical cause of death of Vicente Ariel Noguera, but not to the circumstances of mode, time and place that have given rise to these health problems.

61. Beyond the inadequate explanation of the State, based on the result of the autopsy reports, the Commission notes that investigations in the domestic jurisdiction were unsuccessful at getting to the bottom of the circumstances of the death of Vicente Ariel Noguera. In the respective section of the instant report, the IACHR will delve deeper into the problems with these investigations in light of due process of law and judicial protection. For purposes of this point, the Commission notes that the State has been unable to offer a satisfactory explanation of the death of the alleged victim under its custody either to the IACHR or in the context of domestic investigations and, therefore, said death can be attributed to it under the standards cited above.

## **3. Evidence of responsibility in the death of Vicente Ariel Noguera**

62. The Commission notes that in the instant case there is other evidence that points to State responsibility, including information about his good health status, allegations, statements and other indications that cite physical punishment and other potential acts of aggression, which were not investigated in the domestic courts and in the context of military service, strictly speaking.

63. Firstly, the Commission recalls that at the time of the events of the case, there was a context of infringements of the right to life and humane treatment of cadets (candidates for corporal), who were doing their military service in Paraguay. In view of this context, the death of Vicente Ariel Noguera cannot be considered an isolated incident. This context is not only the point of departure for this analysis, but we must also take into consideration that because he was under the custody of the State in a situation of special vulnerability, and in such a context, it should have triggered a heightened duty of due diligence in the investigations, which was not the case, as will be further examined hereunder.

64. Secondly, the Commission has determined that there is no dispute that, up until the day before his death, the alleged victim was in good health. Furthermore, based on the statements provided by witnesses, the Commission takes note that Vicente Ariel Noguera's physical fortitude was a trait that his classmates noticed about him and that on January 10, 1996, the day before his death, he was in fine health, and showed no sign of any illness. This single fact raises serious doubts about the versions that his death was caused by an infectious process, when a few hours before his death, Vicente Ariel Noguera did not present any symptom whatsoever.

65. In any case, even if it were the cause of death, because of the alleged victim's condition as a minor, he was under the custody of the State and it had the obligation to prove that it fulfilled several duties that are inherent to its special role as guarantor in these circumstances.

66. The Commission notes that beginning in 1994 Vicente Ariel Noguera was subject to typical rules of a barracks-based military training regime, where demonstration of physical strength, hierarchical obedience and physical punishment is very conspicuous. Taking into account the State's duty of strict diligence with respect to children who perform military service, the Commission finds that over past two

years of the life of Vicente Ariel Noguera, during his military service, the State was the entity with the capacity to know his true health status, through a formative process whereby the alleged victim would be able to notify it about the existence of a disease or ailment without any fear of retaliation, as well as undergoing routine medical examinations. Thus, the Commission finds that even if it accepts that there was a prior infection developing, the State did not demonstrate that it complied with its duty of due diligence in diagnosing the situation and preventing the death.

67. Thirdly, the Commission finds that there are versions of the death of Vicente Ariel Noguera recounting excessive physical exercise the day before his death, as a result of punishment inflicted in the context of performance of military service. In the context of infringements of the lives and safety of the cadets of the military service mentioned above and inasmuch as “descuereo” [‘roughing up’] is a common practice described in the testimonies of the corporals-in-training (cadets), as cited by the petitioner, the Commission highlights that the allegation of physical punishments in light of said context was not investigated. Additionally, this case was not tied to other potential cases of abuses in this context at the specific barracks or in general. Similarly, despite the specific complaint of sexual violence made by María Noguera, the Commission has not been able to identify that it had been investigated, given that the Order to Open a Preliminary Inquiry only dealt with the investigation into homicide, bodily harm and abuse of authority. The State has not refuted nor provided any evidence of having investigated with diligence whether Vicente Ariel Noguera was subjected to punishment the day before his death.

68. Likewise, the Commission notes that the mother, in her two letters addressed to the Office of the Prosecutor and in the formal private criminal complaint brought by her in the ordinary jurisdiction, indicates the possibility that the death of the alleged victim was the result of an act of violence. This situation is also documented by the local press, and at least one deputy gave recorded testimony that was introduced into the case file that he personally was aware of these parallel statements that described a violent death. In these circumstances, the Commission finds that in view of this information, it was the State’s duty to design and exhaust to the utmost the respective line of investigation, including to provide protection so that the witnesses could give statements without fear of retaliation or exposure to punishment, and thus make it possible to either accept or rule out the parallel version circulating which, additionally, is consistent with the evidence of the good health and the absence of any symptoms of the alleged victim immediately prior to his death, as well as the particular context described above.

#### **4. Conclusion**

69. Based on the foregoing conclusions, the Commission finds that the State of Paraguay did not provide a satisfactory explanation for the death of the minor Vicente Ariel Noguera, who was under its custody and therefore, it has failed to disprove the presumption of responsibility for said death. Additionally, the Commission concludes that there is additional consistent evidence, which strengthens said conclusion in the specific case. This evidence points to the death as a result of physical punishment and other abuses. For these reasons, in particular, there were complaints and several pieces of evidence that the death was caused by physical punishment and other abuses, and because the State has not offered an adequate explanation to uncover the cause of the death and elucidate the charges of abuses. Accordingly, the Commission finds the Paraguayan State violated the right to life, to humane treatment and the rights of the child established in Articles 4.1, 5.2 and 19 of the American Convention, in connection with its duties to respect and ensure enshrined in Article 1.1 of the same instrument to the detriment of Vicente Ariel Noguera.

**B. The right to a fair trial and judicial protection (Articles 8.1<sup>65</sup> and Article 25.1<sup>66</sup>) in connection with Article 1.1 of the American Convention**

**1. General considerations on the duty to investigate, military jurisdiction and reasonable period of time**

70. The Commission will now proceed to address previously-established standards in the Inter-American system regarding the investigation of human rights violations by military courts, conducting investigations in cases of the death of persons under the custody of the State, and the criteria to determine a reasonable length of time for an investigation and a judicial proceeding.

71. The Commission recalls that special jurisdictions, such as military criminal courts, must have a restrictive and exceptional scope and be aimed at the protection of special legal interests, which are tied to the armed forces themselves.<sup>67</sup> Similarly, the Inter-American Court has held that when it comes to special jurisdictions, such as military courts, only active soldiers shall be prosecuted within military jurisdiction “for the commission of crimes or offenses that based on their own nature threaten the juridical rights of the military order itself.”<sup>68</sup> In short, human rights violations must be investigated, tried and punished according to the law by ordinary criminal courts.<sup>69</sup>

72. Additionally, the Inter-American Court has held that in cases of the investigation into the death of a person who was in State custody, the corresponding authorities must initiate *ex officio* and without delay, a serious, impartial, and effective investigation. Pursuant to the Court’s legal precedents, “this investigation must be conducted using all available legal means to determine the truth and to investigate, prosecute and punish all those responsible for the facts, especially when State agents are or may be involved.”<sup>70</sup> Accordingly, the duty to investigate must be undertaken in a serious manner and not as a mere formality preordained to be ineffective and it must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests.<sup>71</sup>

73. In this same vein, for the purpose of ensuring due diligence in conducting an exhaustive and impartial investigation into a death in dubious circumstances, involving agents of the State, the Commission underscores a few standards of the Minnesota Protocol, an instrument establishing minimum investigatory requirements such as: identification of the victim, collection and preservation of evidence related to the death in order to aid in potential prosecution of those responsible, identification of potential witnesses and taking their statements in relation to the death, determination of the cause, manner, place and time of death, as well as any pattern or practice that may have provoked the death, differentiation between natural death, suicide and homicide, identification and apprehension of the individuals involved in the death and bringing the alleged perpetrators before a competent court established by law.<sup>72</sup> In accordance with these standards, “When necessary, and subject to the consent of the individuals(s) concerned, investigators should take steps

<sup>65</sup> Article 8 of the American Convention provides, in the relevant portion: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>66</sup> Article 25 of the American Convention provides, in the relevant portion: 1. Everyone has the right to a simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>67</sup> IACHR. Report 53/01. Case 11.565. Ana, Beatriz and Cecilia González Pérez. Mexico. April 4, 2001, par. 81.

<sup>68</sup> IA Court of HR. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 272.

<sup>69</sup> IACHR. Report No. 84/13, Case 12.482, Merits, Valdemir Quispealaya Vilcapoma, Peru. November 4, 2013. Par. 131.

<sup>70</sup> IA Court of HR. *Case of Mendoza et al v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260. Par. 218. Also see: Cfr. Case of Velásquez Rodríguez v. Honduras. Merits, par. 177, and Case of the Massacre of Santo Domingo v. Colombia, par. 157.

<sup>71</sup> IA Court of HR. *Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C, No. 6, par. 177.

<sup>72</sup> IA Court of HR. Case of Ortiz Hernández et al v. Venezuela. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338. Par. 161.

to protect an interviewee and others from ill-treatment or intimidation as a consequence of providing information.”<sup>73</sup>

74. Likewise, in accordance with the above-mentioned Protocol, it is established as a general principle of autopsies, in cases of suspicious deaths, that a key duty of forensic personnel is to help ensure that the cause and circumstances of the death are revealed and to draw conclusions as to the cause of death and contributing factors. In this same vein, the Protocol recognizes that in very few cases can the cause of death be determined only on the basis of the autopsy with no other information about the death and, therefore, the autopsy report must list what injuries were found and interpret and explain how the injuries occurred. Lastly, the Protocol establishes that it is particularly important with autopsies in this type of situation to make records in the form of images, using both adequate photography for documentation and independent review, and full body radiological imaging (X-rays).<sup>74</sup>

75. Lastly, with regard to the reasonable period of time set forth in Article 8.1 of the American Convention, the Inter-American Court has established that three elements must be taken into account to determine reasonableness of the period of time over which a case is carried out: a) the complexity of the matter, b) the procedural activity carried out by the interested party, and c) the conduct of judicial authorities.<sup>75</sup> The Commission and the Court have also found that the adverse effect of the duration of the proceedings must also be taken into consideration.<sup>76</sup>

## **2. The investigation into the death of Vicente Ariel Noguera under the military jurisdiction**

76. The Commission finds that the only investigation that was opened *ex officio* to elucidate the death of Vicente Ariel Noguera took place under the military jurisdiction, on the same day of his death. While the Commission recognizes that, in the context of this investigation, testimonial, forensic, toxicological evidence was gathered, as was cited earlier, the standards of the Inter-American system, which have been repeatedly upheld, have determined that military jurisdictions lack the independence and impartiality necessary to hear cases of potential human rights violations relating to legally protected interests, which cannot be defined as military *per se*, such as in the case at hand, the right to life.

77. In view of the foregoing, the Commission finds that the investigation in the military jurisdiction into the death of Vicente Ariel Noguera constituted a violation of the right to a competent, independent and impartial authority. Moreover, the collection of evidence under a jurisdiction that does not provide for these minimum protections, not only raises serious doubts about the effectiveness of the evidence from such an investigation, but it cannot be regarded as effective in light of the obligation of due diligence required for the investigation of the death of a person under the custody of the State.

## **3. Due diligence in the investigation into the death of Vicente Ariel Noguera under the ordinary jurisdiction**

78. The Commission will examine whether the State fulfilled its duty to investigate the death of Vicente Ariel Noguera with the due diligence required in cases of deaths of persons under the custody of the State. In this regard, the examination will focus on the obligation to conduct an *ex officio* investigation, the collection of evidence, testimony and forensics, and pursuit of logical lines of investigation.

<sup>73</sup> UN. *The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017. Par. 86

<sup>74</sup> *Ibidem*. Pars. 148-182 and 255, 264 266.

<sup>75</sup> IA Court of HR. *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No 155, par. 196; Case of the Massacres of Ituango v. Colombia. Judgment of July 1, 2006 Series C No. 148, par. 289; and IA Court of HR. *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, par. 151.

<sup>76</sup> IA Court of HR. *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 155.

79. Firstly, the Commission notes that the death of Vicente Ariel Noguera occurred on January 11, 1996, and that the first judicial action in the ordinary jurisdiction was taken on August 2, 1996, in other words, almost seven months after his death, when the Attorney General of the State, requested the Judge on Rotation to authorize the exhumation of the body to perform a second autopsy. After the first step taken by the Prosecutor, the mother of the alleged victim filed a formal private criminal complaint with the Judge on Rotation on September 6, 1996. The Commission takes as the formal opening of the investigation into the death of Vicente Ariel Noguera in the ordinary jurisdiction, the decision to Order the Opening of the Preliminary Inquiry on October 2, 1996, triggered by the private criminal complaint filed by the mother. In this regard, the Commission notes a considerable delay in the opening of *ex officio* investigations under ordinary jurisdiction.

80. Secondly, as for the taking of testimonial evidence, the Commission finds that from the time the order to open the preliminary inquiry was issued (October 2, 1996) until the archiving of the complaint (November 6, 2002), of the almost 20 witnesses summoned –including fellow cadets and officers of CIMEFOR at the base of Mariscal Estigarribia– only two interviews were actually conducted. It should be noted that, taking into consideration the situation of subordination and potential intimidation to which the witness were subjected by their superiors in their status as candidates for corporal, the State did not report on any measures of protection that were taken to ensure that they would be able to freely testify. In light of the specific information provided by a deputy (*infra* par. 33), by the press (*infra* par. 36), and by the mother (*infra* par. 44) regarding the witnesses possibly being afraid of giving a statement, it was even more necessary to take such measures.

81. Additionally, the Commission notes that during the investigation, the Office of the Prosecutor shifted the burden of proof to the mother of the alleged victim to provide the addresses of the cadets, whose testimony was required to reconstruct events through testimonial evidence (under two orders in 2000), despite her reply that said information must be requested from the Chief of the Armed Forces, and was indeed finally provided by the Supreme Military Court in 2001. In this regard, the Commission deems it necessary to recall that in the Inter-American system, dating back to its earliest legal precedents, it has been established that investigations of human rights violations must not depend on the procedural initiative of the family members of victims or upon the offer of evidence by private parties, without an effective search for the truth by the government.<sup>77</sup> Besides, in this case, this requirement gave rise to such crucial information to the investigation not being obtained until 2001. The Commission notes as well that there is no evidence in the case file that the State has exhausted all efforts, once it received said information, to ensure that the witnesses showed up to provide a statement.

82. In view of the foregoing considerations, the Commission finds that it was the State's responsibility to build and consolidate the body of testimonial evidence to help to get to the bottom of the death of Vicente Ariel Noguera. This responsibility entails both obtaining the addresses of the witnesses, summoning them to testify, as well as putting mechanisms of protection into place to provide security and trust for the cadets to cooperate with the judicial investigations without any fear of retaliation or reprisal from their superiors. Based on the foregoing, along with the fact that over the course of almost seven years only two formal statements were successfully taken, the Commission finds that the State breached its duty of due diligence with regard to obtaining and building testimonial evidence to successfully conduct the investigation.

83. Thirdly, with respect to how the autopsies were conducted, in the two autopsy reports in the case file, the Commission finds that the stated cause of death is expressed and attributed only to a pulmonary infection, but there is no analysis to connect the disease to the contextual surroundings and the living conditions of the alleged victim. Additionally, with respect to imaging records of the autopsy, the Commission notes that no X-ray evidence was taken in either of the autopsies. It is also noteworthy to the Commission that the investigating magistrate had to request photographs of the autopsy from the media, in view of the fact that no photographs were included in the medical report or in the military court case file. The absence of

<sup>77</sup> IA Court of HR. *Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C, No. 6, par. 177.

autopsy photographs to comprise a tangible record of the forensic findings and allow for independent review has not been explained either by the State.

84. Fourthly, the Commission notes that the mother of the alleged victim mentioned to the Attorney General and the Investigating Magistrate, as of her first written submissions, that the statements of persons present at the death of Vicente Ariel Noguera existed, which described that his death was not an accidental event or sudden death but rather the result of a violent act, which along with the context of abuses during military service in Paraguay, should have immediately triggered the conceptualization and exhaustion of a logical line of investigation. Despite this, no investigatory strategy at all can be found in the case file, based on this information, aimed at corroborating or ruling out these parallel versions, which were reported to the Investigating Magistrate formally and in a timely manner.

85. Fifthly, the Commission notices that on November 6, 2002, the decision was made to archive the private criminal complaint on the grounds of the inactivity of the parties. Pursuant to the rules governing archiving at the time of the events, procedural inactivity of the parties was indeed statutory grounds for the archiving of a case. The Commission finds that, even though the decision to archive does not indicate to which party specifically the inactivity is attributed, the inactivity of the mother could not be the grounds for the State to archive a criminal case, inasmuch as in accordance with Inter-American standards, it is the responsibility of State authorities to move forward in the investigation proceedings, not the responsibility of the victims or their family members. In this same vein, if the decision to archive is based on the inactivity of the prosecutor, this could be indicative precisely of a breach of the duty to investigate with due diligence.

86. Sixthly and lastly, the Commission finds that six months is too short of a period to be able to complete evidence collection. Only two statements were taken, protections were not put in place for witness to be able to provide statements free of fear and retaliation, no diligent autopsy was performed in keeping with applicable standards (Minnesota Protocol) and no line of investigation was followed to address information about a possible violent death stemming from the fact that the death of Vicente Ariel Noguera took place in a specific context as a cadet while doing military service under the custody of the State. Furthermore, during the investigation, the very little photographic evidence of the first autopsy had to be requested from the press, and the rest of the information was requested from CIMEFOR (reports on the day of death of the alleged victim) and from the Supreme Military Court (military jurisdiction case file), and was never assessed because the complaint was archived, as was noted above, on the grounds of the procedural inactivity of the mother. In this regard, the Commission finds that the State's actions regarding evidence collection and examination, over the course of six months, does not meet the standards of due diligence for deaths of persons under the custody of the State.

#### **4. Reasonable time in the investigation into the death of Vicente Ariel Noguera**

87. The Commission takes note that the investigation was conducted over the course of almost six years (1996 - 2002) prior to being archived. As to the complexity of the matter, the Commission notes that it was not a particularly complex case, taking into account that it involved the death of just one person and that there is no dispute as to the fact that it took place under the custody of the State at the above-referenced military facility. In any case, the State did not provide any arguments as to possible complexity, nor did it specifically link these delays to such complexity.

88. As for the actions of the interested party, the Commission notes that there is no information whatsoever in the case file to indicate that the victim's mother hampered in any way the investigations. On the contrary, the investigations were conducted at her initiative and she provided the information that was available to her. As to the archiving of the case, the IACHR has previously established in this report that it runs counter to the Convention to use the inactivity, either of the mother or of the Prosecutor's Office, to discontinue the investigation into the death of the alleged victim before exercising due diligence.

89. With respect to the procedural conduct of the State, the Commission finds that two elements of fact illustrate the delay, among other ones, and these are: calling the witnesses to provide statements and the jurisdictional dispute, which took place in the context of the main investigation.

90. Regarding the first point, the IACHR established earlier that the State breached its duty to successfully collect testimonial evidence, *ex officio*, in view of the fact that it was its duty to obtain, on its own initiative, the addresses of the cadet witnesses. The Commission notes that it was not until August 31, 2001 that the Supreme Court provided the addresses of the cadets, who were to be interviewed. The State did not provide at any time to the Commission reasons to justify this delay in contacting and summoning Vicente Ariel Noguera's classmates, or why over the course of the years that the investigation was active did it only manage to take two witnesses' statements.

91. Moreover, with regard to the second point, the Commission takes note that there was a jurisdictional dispute to determine which competent authority was to conduct the investigation. This dispute began in 1998, was settled on February 26, 1999, with the prosecutorial inquiries actually resuming on April 9, 1999. Once the case resumed, it is noted that the first efforts of the prosecutor's office were aimed at identifying the addresses of the students causing the additional delays described above.

92. As such, the Commission finds that, taking into consideration that the procedural initiative is the responsibility of the State in this type of investigation, the procedural behavior of the State evinces periods of procedural inactivity (1997) and that in the periods of procedural inactivity (1998-2001) the main actions that are observed are with regard to jurisdiction and do not entail any significant advancement in collecting evidence to get to the bottom of the case. In these conditions, the Commission finds that the principle of a reasonable period of time in the investigation was violated.

## 5. Conclusion

93. Based on the foregoing considerations, the Commission concludes that the State of Paraguay violated the right to a fair trial and judicial protection set forth in Articles 8.1 and 25.1 of the American Convention in connection with the obligations enshrined in Article 1.1 of the same instrument, to the detriment of the mother of Vicente Ariel Noguera.

### C. Military service by children and the rights of the child (Article 19) in connection with Articles 1.1 and 2 of the American Convention.

94. The Inter-American Commission and Court have found that for the analysis of Article 19 of the American Convention, it is important to resort by reference to other international instruments, which set forth more specific provisions regarding the protection of children and as a whole comprise the *corpus juris* of the human rights of children and adolescents.<sup>78</sup>

95. International law generally prohibits recruitment into military service under 15 years of age,<sup>79</sup> but it does permit voluntary recruitment of minors from 15 to 18 years of age, when domestic law does not provide otherwise. In this regard, even though recruitment of 15 to 18 year-olds was legal at the time of the events of the case, the obligation to ensure special protection for children is still applicable and, therefore, minors must receive the same treatment as recruits who have reached 18 years of age.<sup>80</sup>

96. As such, the Commission has repeatedly examined<sup>81</sup> the legal framework governing the subject matter in Paraguay in light of international instruments and holdings regarding participation of

<sup>78</sup> IACHR. *Report on the Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas*. OEA/Ser.L/V/II. Doc.54/13 of October 17, 2013, par. 31 et seq.

<sup>79</sup> Convention on the Rights of the Child in force from September 2, 1989, Article 38.3; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, in force since February 12, 2002, Article 3; Rome Statute, in force since July 1, 2002, Article 8.2.e.vii. Also, forced or compulsory recruitment of children is defined as one of the worst forms of child labor, pursuant to Article 3.a. of ILO Convention 182, in force since November 19, 2000.

<sup>80</sup> IACHR. Third Report on the Situation of Human Rights in Colombia. OEA/Ser.L/V/II.102 Doc. 9 rev. 1. February 26, 1999, par. 66.

<sup>81</sup> IACHR. Report No. 85/09, Case 11.607, Report on the Merits (publication), Víctor Hugo Maciel, Paraguay, August 6, 2009 pars. 51-80; IACHR, Third Report on the Situation of Human Rights in Paraguay, OEA/Ser./L/VII.110 doc. 52, March 9, 2001, par. 37 et seq; IACHR, 1999 Annual Report of the Inter-American Commission on Human Rights, Chapter 6, Recommendation on eradication of the recruitment

[continues ...]

children in military service and has concluded that “the tendency under international law is that children of less than 18 years of age should not be inducted into the Armed Forces and that in any event, children less than 18 years of age should not participate directly in hostilities and must receive special treatment that takes into account their age and corresponding requirements (....).”<sup>82</sup> In addition to the foregoing consideration, the Commission finds that the special role as guarantor set forth in Article 19 of the American Convention imposes on States the duty to provide specific safeguards to ensure that recruitment takes into consideration the degree of development of the child and his or her progressive autonomy to make decisions about himself or herself, to make sure that the enlistment is truly voluntary.<sup>83</sup>

97. In the case before it, the Commission takes note that Vicente Ariel Noguera was born on April 29, 1978, his military record lists as his date of enrollment April 19, 1994, and his enlistment card notes under the “seniority” box, the date of December 1, 1994.

98. Based on the foregoing, the Commission finds that the State did not violate the general prohibition of recruitment of persons under 15 years old into military service nor did Vicente Ariel Noguera’s enrollment in the armed services run afoul of the Convention. However, based on the case file, it cannot be determined whether differential measures were taken, in order to be able to conclude that the State, in its special role as guarantor, took into consideration the condition as a child of Vicente Ariel Noguera or that it took special actions, in light of the practice known as “descuereo” [‘flaying’], which was widely used at the facility, for his protection in terms of his level of development during his military training at CIMEFOR, after his recruitment. In view of the foregoing considerations, the Commission concludes that the State of Paraguay violated the rights of the child as established in Article 19 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Vicente Ariel Noguera.

**D. The right to humane treatment of the family of Vicente Ariel Noguera (Article 5.1<sup>84</sup>) in connection with Article 1.1 of the American Convention**

99. The Inter-American Commission and Court have held that the next of kin of the victims of certain human rights violations can, in turn, be victims.<sup>85</sup> In this regard, the Court has found that the right to mental and moral integrity of the next of kin of victims has been violated based on the additional suffering they have endured as a result of the particular circumstances of the violations perpetrated against the victims and of subsequent acts or omissions of the State authorities in relation to the facts.<sup>86</sup>

100. In the instant case, the Commission found as established fact that Vicente Ariel Noguera lost his life under the custody of the State in circumstances that were unclear and were not investigated with due diligence. These circumstances autonomously constitute a source of suffering and powerlessness to his next of kin, who as of the present date do not have certainty as to the cause and circumstances of his death. In that

[... continuation]

and participation of children in armed conflicts, OEA/Ser.L/V/II.106Doc. 3, April 13, 2000, pg. 1619. IACHR, Application of the IACHR to the IA Court of HR in the case of Gerardo Vargas Areco, Case 12.300, Paraguay, March 27, 2005, par. 33-63.

<sup>82</sup> IACHR. Report No. 85/09, Case 11.607, Report on the Merits (publication), Víctor Hugo Maciel, Paraguay, August 6, 2009 par. 62.

<sup>83</sup> The Commission considers that on this subject matter, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, in force for Paraguay since September 27, 2002, after the events of the instant case, establishes in Article 3.3. “States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that: a) Such recruitment is genuinely voluntary; b) Such recruitment is carried out with the informed consent of the person’s parents or legal guardians; c) Such persons are fully informed of the duties involved in such military service. d) Such persons provide reliable proof of age prior to acceptance into national military service.

<sup>84</sup> Article 5 of the American Convention provides: 1. Every person has the right to have his physical, mental, and moral integrity respected.

<sup>85</sup> IACHR. Report No. 11/10. Case 12.488. Merits. Barrios Family Members. Venezuela. March 16, 2010. Par. 91. IACHR. Report on Terrorism and Human Rights. Par. 227; IA Court of HR. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 112; and Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 164. par. 102.

<sup>86</sup> IA Court of HR. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 112; and Case of Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155. par. 96.

type of circumstance, the Court has held that: [...] the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in those violations, as well as their corresponding responsibilities.”<sup>87</sup>

101. Based on the foregoing, the Commission finds that the loss of her loved one in circumstances such as those described in the instant report, as well as the absence of truth and justice, cause suffering and anguish to the family members of Vicente Ariel Noguera, in violation of their right to mental and moral integrity established in Article 5.1 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument.

## V. CONCLUSIONS AND RECOMMENDATIONS

102. Based on the determinations of fact and law, the Inter-American Commission concluded that the State is responsible for the violation of Article 4.1 (right to life), 5.2 (right to humane treatment), 8.1 (right to a fair trial), 25.1 (judicial protection), and 19 (rights of the child), in connection with the obligations established in Article 1.1 of the same instrument, to the detriment of Vicente Ariel Noguera and his family, as set forth throughout the instant merits report.

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE STATE OF PARAGUAY,

1. To fully redress the human rights violations found in the instant report, for both physical and moral damages. The State must adopt measures of economic compensation and satisfaction. At the time of assessment of compliance with the recommendations of the instant report on the merits, the Commission will take into account effectively implemented measures in the context of the friendly settlement negotiations, without prejudice to any complementary measures that must be adopted in order to meet the standard of full reparation.

2. To provide the necessary measures of physical and mental health care for the rehabilitation of María Noguera, should she so desire and in concert with her.

3. To further and conclude the criminal investigation, which the State reported to the Commission during the processing of the case had been reopened on May 28, 2012, diligently, effectively and within a reasonable period of time in order to thoroughly elucidate the facts, identify those who may be responsible and impose punishment accordingly for the human rights violations found in the instant report.

4. To take the necessary measures to prevent the repetition of the human rights violations found in the instant report, including: i) training of members of the armed forces in charge of persons who are performing military service, specifically with regard to international standards on its special role as guarantor for these persons, and regarding the limitations imposed by international law on methods of military discipline; ii) creation of independent, suitable and effective mechanisms of accountability with regard to abuses in the sphere of military service; and iii) the elimination of the use of military justice and the strengthening of the capacity to investigate deaths and other abuses that take place under the custody of the State in the context of performance of military service.

Adopted by the Inter-American Commission on Human Rights in the city of Bogota, Colombia on February 24, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de

<sup>87</sup> IA Court of HR. Case of Valle Jaramillo et al v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 102; Case of the Massacre of la Rochela v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, par. 195; and Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, par. 146.

Troitiño, First Vice-president; Luis Ernesto Vargas Silva, Second Vice-president; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola y Flávia Piovesan, members of the Commission.

I, the undersigned, Elizabeth Abi-Mershed, in my capacity as Assistant Executive Secretary of the Inter-American Commission on Human Rights, in accordance with article 49 of the Rules of Procedure, certify that is a true copy of the original deposited in the archives of the Executive Secretary of the IACHR.

Elizabeth Abi-Mershed  
Assistant Executive Secretary

## Annexes

Annex 1. Initial petition of September 19, 2000.

Annex 2. Registration form for recruitment and service registration. Annex to State's submission No. 653-04/MPP-OEA of September 26, 2004.

Annex 3. Report of the Tcnl. Cmdte. Escobar Division CIMEFOR under the direction of the Commander of the CIMEFOR Center III of January 11, 1996. Annex to State's submission No. 653-04/MPP-OEA of September 26, 2004.

Annex 4. Report of First Lieutenant of Inf. Cmdte. 1<sup>st</sup> Pel. Bareiro under the direction of the Commander of the CIMEFOR Center III of January 11, 1996. Annex to State's submission No. 653-04/MPP-OEA of September 26, 2004.

Annex 5. Formal private criminal complaint (*querrela*). Annex to State's submission of September 16, 2004.

Annex 5. Formal private criminal complaint (*querrela*). Annex to State's submission of September 16, 2004.

Annex 6. Interview with Deputy Sergio López of September 1996. Cassette 1. Tape submitted by the petitioner.

Annex 7. Interview of Cadet De la Cueva of September 1996. Cassette 1. Tape submitted by the petitioner.

Annex 8. Statements to the Military Investigating Magistrate of the First Rotation given by Cadets Antonio Arza Galeano, Carlos Taboada Zamudio, Oscar Daniel Maldonado, Gustavo Enrique Saucedo Duarte, Jorge Darío Pereira Escurra, Héctor Fabián Ojeda Chaparro, Ángel Adid Quiñones Morán, Arnaldo Melgarejo Martínez, Julián Paul Figueredo Díaz, Carlos Alberto Villalba Vega, Milciades Díaz Solís, Néstor Fabián Romero, Osmar Garcete González, Germán Ramírez Cardozo, Omar Ricardo Popovich Jara, Marcelo Raúl Romero Cáceres, Luis Alberto Scolari Gómez, Hugo César Rojas Zelaya, Germán Antonio Sosa Cardozo and Ever Mario Pico Duarte; and of First Lieutenant Art. Hernan Darío Alcaraz,.

Annex 9. Article in the daily newspaper ABC of January 12, 1996, p.2. Press dossier attached by the petitioner. Additionally: La Nación of January 12, 1996, p.4, among other ones.

Annex 10. Article in the daily newspaper El Día of January 12, 1996, pg. 4. Press dossier attached by the petitioner.

Annex 11. Article in the daily newspaper El Día of January 12, 1996, p.a5, Article in La Nación of January 12, 1996, p.5, Press dossier attached by the petitioner

Annex 12. Case File "Preliminary Inquiry into the cause of death of candidate for corporal Vicente Ariel Noguera of Center No. 3 of CIMEFOR based in Mcal. Estigarribia". Annex to States submission No. 653-04/MPP-OEA of September 26, 2004.

Annex 13. Article daily newspaper ABC of January 12, 1996, pg.3. Press dossier attached by the petitioner. Also see: La Nación of January 12, 1996, pg.4., among other ones.

Annex 14. Report 24 of Military Prosecutor of March 13, 1996. Annex to State's submission of September 16, 2004.

Annex 15. Alleged victim's mother's letter addressed to the Attorney General of January 17, 1996. Annex to State's submission of September 16, 2004.

Annex 16. Alleged victim's mother's letter addressed to the Attorney General. Annex to State's submission of January 29, 1996. September 16, 2004.

Annex 17. Order to Open Inquiry. Annex to State's submission of September 16, 2004.

Annex 18. Report No. 1007 of the Attorney General of August 2, 1996 Annex to State's submission of September 16, 2004.

Annex 19. Record of exhumation of September 9, 1996. Annex to State's submission of September 16, 2004.

Annex 20. Ruling of the Judge for Criminal Matters of September 05, 1996. Annex to State's submission of September 16, 2004.

Annex 21. Swearing in of the forensic doctor by Criminal Judge of September 9, 1996. Annex to State's submission of September 16, 2004.

Annex 22. Expert's Autopsy Report of October 18, 1996. Annex to State's submission of September 16, 2004.

Annex 1. Initial petition of September 19, 2000.

Annex 23. Filing for Removal of Judge of February 4, 1999. Annex to State's submission of September 16, 2004.

Annex 24. Motion for Removal. Annex to State's submission of September 16, 2004.

Annex 25. Decision A.I. 157 of the Supreme Court of February 26, 1998. Annex to State's submission of September 16, 2004. The Commission notes on the record that the year of issuance appearing is "1998," but based on the information set forth therein is evident that said decision is from 1999.

Annex 26. Report No. 285 As/13/IV/99 of Prosecuting Attorney Eladio Valiente of April 09, 1999. Annex to State's submission of September 16, 2004.

Annex 27. Submissions of the complainant in the request for investigation of February 6, 2000 and June 8, 2000. Annex to State's submission of September 16, 2004.

Annex 28. Prosecutor's Report No. 226 of July 18, 2001. Annex to State's submission of September 16, 2004.

Annex 29. A. No. 670 of Criminal Judge for Liquidations and Sentencing No 7 of November 6, 2002. Annex to State's submission of September 16, 2004.