

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF NOGUERA ET AL. V. PARAGUAY

JUDGMENT OF MARCH 9, 2020

(Merits, reparations and costs)

In the case of *Noguera et al. v. Paraguay*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:¹

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice President
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this judgment, which is structured as follows:

¹ Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto did not take part in the deliberation and signing of this Judgment for reasons beyond their control, which were accepted by the full Court.

CASE OF NOGUERA ET AL. V. PARAGUAY

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I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On July 2, 2018, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Inter-American Court, pursuant to Articles 51 and 61 of the American Convention, the case of “Vicente Ariel Noguera and Family” against the Republic of Paraguay (hereinafter “the State,” “the Paraguayan State” or “Paraguay”). According to the Commission, the case concerns the death of Vicente Noguera, on January 11, 1996, when he was 17 years old and engaged in voluntary military service. The Commission held that the Paraguayan State was unable to provide a satisfactory explanation for the death of the minor who was under its custody and, therefore, was unable to refute the evidence pointing to its international responsibility for his death, as a result of being subjected to excessive physical exercises as a punishment ordered by his superiors. The Commission added that the death of Vicente Noguera, a candidate to corporal, was investigated in proceedings before a military court, which dismissed the case on October 21, 1996, concluding that the cause of death was a generalized pulmonary infection. It also indicated that the private criminal complaint filed in the ordinary jurisdiction was archived on November 6, 2002, on grounds of procedural inactivity.
2. *Procedure before the Commission.* The procedure before the Commission was as follows:
 - a. *Petition.* On October 17, 2000, the Commission received a petition presented by María Noguera (hereinafter “the petitioner”) against Paraguay.
 - b. *Admissibility Report.* On March 22, 2011, the Commission adopted Admissibility Report No. 10/11.
 - c. *Friendly Settlement Agreement.* On August 5, 2011, a friendly settlement agreement was signed between the State and the representatives. The agreement was not ratified by the Commission pursuant to Articles 48(1)(f) and 49 of the American Convention.²
 - d. *Merits Report.* On February 24, 2018, the Commission issued Merits Report No. 23/18, pursuant to Article 50 of the Convention (hereinafter “Merits Report” or “Report No. 23/18”), in which it reached a series of conclusions and made several recommendations to the State.
 - e. *Notification to the State.* The Merits Report was notified to the State in a communication of April 2, 2018, granting it two months to provide information on compliance with the recommendations. The State responded to the Merits Report on June 26, 2018, describing a series of measures adopted in compliance with its recommendations. However, the Commission considered that the State had failed to comply with an essential measure related to the issue of justice and, in the absence of a request for an extension by the State, decided to submit the case to the Inter-American Court.
3. *Submission to the Court.* On July 2, 2018, the Commission submitted all the facts and human rights violations described in the Merits Report to the jurisdiction of the Inter-American Court, “owing to the need to obtain justice and reparation.” The Commission also requested that the Court declare the international responsibility of Paraguay for the violation of the rights indicated in the conclusions of that Report, and to order certain measures of reparation (*infra* Chapter IX). The Court notes that nearly eighteen years

² In its final written observations, the Commission indicated that the State had failed to comply with the justice component agreed by the parties in the friendly settlement agreement. It explained that it had taken this matter into consideration, together with the request by the mother of Vicente Ariel Noguera to terminate the negotiation process, given the State’s failure to fully implement the agreed measures. That decision was notified to the parties on December 3, 2015, and the processing of the case continued until the adoption of Merits Report No. 23/18.

have elapsed between the presentation of the initial petition before the Commission and the submission of this case before the Court.

II PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and the representatives.*³ The submission of the case was notified to the representatives and to the State on November 19, 2018.

5. *Brief with pleadings, motions and evidence.* On January 19, 2019, the representatives submitted to the Court its brief with pleadings, motions and evidence (hereinafter, "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure.

6. *Answering brief.*⁴ On April 12, 2019, the State submitted to the Court its brief answering the submission of the case and the pleadings and motions brief of the representatives, (hereinafter "answering brief"). In this brief, the State filed a motion entitled "preliminary objection" and partially acknowledged its responsibility for the facts of this case.

7. *Observations on the State's preliminary objection and acknowledgment of responsibility.* On July 1, 2019, the representatives presented their observations on the "preliminary objection" presented by the State and on its acknowledgment of responsibility. On June 5, 2019, the Commission indicated that it had no observations to make in that regard.

8. *Public hearing.* In an Order of July 8, 2019, the President of the Court summoned the parties and the Commission to a public hearing, which took place on August 28, 2019, during the 62nd Special Session of the Court.⁵

9. *Final written arguments and observations.* On September 27 and 30, 2019, the representatives and the State, respectively, presented their final written arguments. The Commission presented its final written observations on September 30.

10. *Deliberation of this case.* The Court began its deliberations on this judgment on March 9, 2020.

III JURISDICTION

11. The Court has jurisdiction to hear this case, pursuant to 62(3) of the Convention, because Paraguay has been a State Party to the Convention since August 24, 1989, and accepted the Court's contentious jurisdiction on March 11, 1993.

³ The representatives of the alleged victims were María Noguera, alleged victim and mother of Vicente Noguera and Alejandro Nissen Personali, both members of the *Asociación de Familiares Víctimas del Servicio Militar* (Association of Families of Victims of Military Service).

⁴ The State designated Sergio Coscia Nogués, Attorney General of the Republic, as its Agent, and Ricardo Merlo Faella, Assistant Prosecutor in charge of the Special Human Rights Unit of the Attorney General's Office and Marcelo Scappini, Director General of Human Rights of the Ministry of Foreign Affairs, as Alternate Agents.

⁵ The following persons appeared at the hearing: a) for the Inter-American Commission: Luis Ernesto Vargas, Marisol Blanchard, Jorge H. Meza Flores, Piero Vásquez and Analía Banfi Vique; b) for the representatives: María Noguera and Andrés Vásquez; and c) for the State: Sergio Coscia Nogués, Ricardo Merlo Faella, Martha Sophia López Garelli, Renzo Cristaldo, Bélen Diana, Pablo Rojas Pichler, Rodolfo Barrios, Alejandra Peralta, Silvia Cabrera, Pablo Lemir, María Romy Romero, Noelia López and Patricia Sulim.

IV PRIOR CONSIDERATION

12. The *State* presented a motion described as a “preliminary objection” in which it indicated that the Commission had not identified the alleged victims defined as the “next of kin” of Vicente Noguera in its brief submitting the case or in its Merits Report. As in other cases, the Court does not consider that the State’s argument constitutes a preliminary objection, since it does not explain the reasons why the case submitted would not be admissible or why the Court would not have jurisdiction to hear it. Therefore, the Court will analyze these arguments as a prior consideration.

13. The *State* pointed out that in its Merits Report the Commission expressly identified Vicente Noguera, his mother María Noguera, and his grandfather as the alleged victims, without mentioning the latter’s name. It added that, despite this, the representatives included the three siblings of Vicente Ariel Noguera as alleged victims in their pleadings and motions brief, and also named their grandfather. For that reason, the State requested that these persons be excluded as alleged victims because they were not identified in the Merits Report and no documentary evidence was provided to prove their kinship with the deceased victim.

14. The *representatives* argued that Vicente Noguera’s death had consequences on the lives of his siblings, and therefore they should be considered as victims. The *Commission* did not present observations on those arguments.

15. With regard to the identification of alleged victims, the Court observes that Article 35(1) of its Rules requires that any case submitted through the presentation of the Merits Report must identify the alleged victims. Thus, it is for the Commission to identify precisely and at the proper procedural opportunity the alleged victims in a case before the Court,⁶ save in the exceptional circumstances contemplated in Article 35(2) of the Court’s Rules of Procedure.⁷

16. In the instant case, the only persons named as alleged victims in the Merits Report are Vicente and María Noguera. Given that the exception contemplated in Article 35(2) does not apply to this case, the Court will consider Vicente Ariel Noguera and María Ramona Isabel Noguera Domínguez as the alleged victims, since they are the only persons named by the Commission in the Merits Report, and will not include the remaining family members.

V ACKNOWLEDGMENT OF RESPONSIBILITY

A. Observations of the parties and of the Commission

17. The *State* acknowledged its international responsibility in the same terms as the Friendly Settlement Agreement signed in 2011 (*supra* para. 2.c). Specifically, it recalled that in the agreement it acknowledged its international responsibility for “the death of the minor Vicente Noguera, while under the custody of the army, for the violation of the right to personal integrity and the right to life, for failure to provide special measures of protection for a child, as well as judicial protection and judicial guarantees, [pursuant to]

⁶ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Jenkins v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2019. Series C No. 397, para. 36.

⁷ According to this article, when it has not been possible to identify one or more of the alleged victims affected by the facts of the case, because it concerns mass or collective violations, the Court shall decide whether to consider those individuals as victims. Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 48 and *Case of Jenkins v. Argentina* para. 36.

Articles 4, 5, 8, 19 and 25 of the American Convention on Human Rights, of 1969, and the obligations derived from Article 1(1) thereof." It indicated that its acquiescence continues, is firm, and differs from the Merits Report and the pleadings and motions brief only on "specific points."

18. In relation to the differences with the arguments made by the representatives and the Commission, the State: a) indicated that, as a result of the cases of "V́ctor Hugo Maciel," "Vargas Areco" and even the case of "Vicente Ariel Noguera," the State has adapted its legislation and practices regarding military service to comply with international standards; b) referred to the authorization requested by María Noguera so that her son Vicente could perform military service; c) mentioned that the autopsy ordered by the military jurisdiction was carried out at Sanatorio Migone Battilana, a private hospital, by Dr. M.A.M. (at the express request of María Noguera) with the participation of two other doctors; d) referred to an independent diagnosis confirming Vicente Noguera's lung condition; e) refuted the Commission's allegation of the absence of a military prosecutor's opinion on October 6, 1997, which is included in the case file; f) explained the conditions under which the second autopsy was performed on Vicente Noguera's body; g) referred to the reopening of the investigation into the death of Vicente Noguera in 2012; h) indicated that it conducted numerous investigative actions *ex officio* of great value in the context of the summary criminal proceedings in this case; i) alleged that at the time of the facts, in 1996, the State was not required to comply with the standards of the Minnesota Protocol when performing autopsies, and j) argued that it did not violate the general prohibition to enlist minors under 15 years in military service, and did not accept that Vicente Noguera's enrolment contravened the Convention or the provisions of the domestic legal system. Regarding the representatives' arguments and their references to private investigations undertaken by María Noguera, or to testimonies to which she had access independently and outside of the formal proceedings, the State denied the assertions inferred from these elements because there was no way to prove them.

19. As to its acknowledgment of responsibility for the violation of Articles 8 and 25 of the Convention, the State merely indicated that it recognized that the investigations were "insufficient to clarify all the facts denounced."

20. The *representatives* emphasized that, until now, the circumstances of Vicente Noguera's death have not been clarified and those responsible for inflicting cruel, inhuman and degrading treatment and possible torture have not been identified. The *Commission* argued that the State's acknowledgment of international responsibility must be clarified in terms of its scope and legal effects. It noted that the arguments presented by the State contradict some of the facts it supposedly acknowledged and their legal implications.⁸

B. Considerations of the Court

21. In accordance with Articles 62 and 64 of the Rules, and in exercise of its authority of international protection of human rights, a matter of international public order, the Court must ensure that acts of acknowledgment of responsibility are acceptable for the purposes sought by the Inter-American System.⁹ In the following chapters, the Court will analyze the situation in the instant case.

⁸ The Commission indicated that the State had changed its position, asserting that Vicente Noguera's death was caused by a pulmonary infection and was not the result of violence, thereby denying the very facts that activated its international responsibility without having completed the new investigation that it claimed to have initiated. It added that the State did not refer to the violations of Article 19 in relation to Articles 1(1) and 2 of the Convention regarding the lack of special safeguards for adolescents engaged in military service, reflected in practices such as "*descuereo*" ("flaying" or "roughing up"). Therefore, the dispute concerning those violations persists in its totality.

⁹ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Valenzuela Ávila v. Guatemala. Merits, reparations and costs.* Judgment of October 11, 2019. Series C No. 386, para. 17.

B.1. Regarding the facts

22. Paraguay expressly acknowledged its responsibility for the facts alleged by the Commission in the Merits Report; however, it differed on some points mentioned in that report and in the pleadings and motions brief. The Court considers that there is no longer a dispute regarding the facts acknowledged by the State that relate to the lack of a satisfactory explanation on the circumstances surrounding the death of Vicente Noguera. However, the dispute continues regarding the facts related to the alleged mistreatment suffered by Vicente Noguera prior to his death. This Court will rule on the matters that are still in dispute when it examines the merits of this case.

B.2. Regarding the legal claims

23. Taking into account the violations acknowledged by the State, together with the observations of the representatives and of the Commission, the Court considers that the dispute has ceased with regard to:

- a) The failure to clarify the circumstances surrounding the death of Vicente Noguera at a military establishment, under the State's protection, and the violation of the right to life (Article 4(1) of the Convention), to personal integrity (Article 5(1) of the Convention) and to the rights of the child (Article 19 of the Convention) to his detriment, and
- b) the violation of the right to personal integrity (Article 5(1) of the Convention) to the detriment of María Noguera, for the suffering caused by the death of her son Vicente Noguera. In the specific circumstances of this case, the Court does not consider it necessary to conduct a subsequent analysis regarding this right in a chapter on Merits.

24. In relation to the alleged violation of the rights to judicial guarantees and judicial protection, the Court notes that in its acknowledgment of responsibility, the State does not specify the reasons why those rights were violated and, in addition, contradicts a significant number of allegations made by the Commission and the representatives. Accordingly, the Court finds that the State's acquiescence in relation to those two rights lacks clarity and, therefore, it considers that the dispute continues regarding those alleged violations.

25. The Court considers that the dispute continues regarding:

- a) the alleged ill-treatment to which Vicente Noguera was subjected, which led to his death at a military establishment, in violation of his right to life (Article 4(1) of the Convention) to humane treatment (Article 5(2) of the Convention) and to the rights of the child (Article 19 of the Convention), and
- b) the violation of the rights to judicial guarantees (Article 8 of the Convention) and judicial protection (Article 25(1) of the Convention) to the detriment of María Noguera.

B.3. Regarding the reparations

26. Lastly, the dispute persists regarding the determination of eventual reparations, costs and expenses. In this regard, the Court confirms that in 2011 a friendly settlement agreement was signed between María Noguera and the State, in which the parties agreed to certain measures of reparation (*supra* para. 2.c). Although the agreement was not ratified by the Commission, this Court considers that the signing of said agreement and the subsequent conduct of the parties are relevant when deciding upon reparations. Thus, in the corresponding chapter, the Court will assess the measures of reparation implemented by the State and will analyze the possible need to grant additional measures based on the requests submitted by the Commission and the representatives, on the Court's case law on that matter, and on the State's arguments in that regard (*infra* Chapter IX).

B.4. Assessment of the State's partial acknowledgment of responsibility

27. The State's acquiescence constitutes a partial acceptance of the facts and a partial acknowledgment of the alleged violations. This Court considers that this acknowledgment of international responsibility is a positive contribution to these proceedings and to the effectiveness of the principles that inspire the American Convention, as well as to the need to provide reparation to the victims.¹⁰ The State's acquiescence also has full juridical effects in keeping with Articles 62 and 64 of the Court's Rules of Procedure, and has important symbolic value to ensure that similar facts are not repeated. Furthermore, the Court notes that an acknowledgment of specific acts and violations may have effects and consequences on its analysis of other alleged acts and violations in the same case, to the extent that they are all part of the same set of circumstances.¹¹

28. In any case, it is pertinent to specify the scope of this acknowledgment. In principle, the State had a minor under its care and was therefore responsible for his life and integrity. Faced with the death of an adolescent under its custody in a military establishment and a failure to clarify the facts – which the State admits – the Court considers that in juridical terms, that acknowledgment means that Vicente Noguera's death was neither accidental nor fortuitous. All this is reinforced by the fact that it is for the State, being in charge of the evidence, to disprove that the victim's death resulted from mistreatment.

28. Based on the foregoing, and in exercise of its attributes as an international organ for the protection of human rights, the Court finds it necessary to deliver a judgment in which it determines the facts of this case, according to the evidence gathered during the proceedings before this Court, in order to contribute to the reparation of the victims, to help prevent a repetition of similar facts and to satisfy the purposes of the inter-American jurisdiction on human rights.

VI EVIDENCE

29. The Court admits those documents presented at the proper procedural opportunity by the parties and the Commission, which have neither been disputed nor challenged, and whose authenticity has not been questioned.¹²

30. In addition, the representatives provided various documents as annexes to their observations on the preliminary objection filed by the State.¹³ They also forwarded, with their final written arguments, copies of payrolls for the months of January, July and August of 2019. For its part, the State submitted with its final written arguments, some annexes that comprise "an investigation file containing the actions carried out up to September 19, 2019."

31. Regarding the proper procedural opportunity for submitting annexes to the main briefs, the Court reiterates that, in general, and pursuant to Article 57(2) of the Rules,

¹⁰ Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57; and *Case of Valenzuela Ávila v. Guatemala*, para. 18.

¹¹ Cf. *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia*, para. 27, and *Case of Valenzuela Ávila v. Guatemala*, para. 17.

¹² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2020. Series C No. 398, para. 42.

¹³ These documents are: 1. Birth certificate of Vicente Noguera; 2. Birth certificate of Catherine Elizabeth Noguera; 3. Birth certificate of Aldo David Alcaraz Noguera; 4. Birth certificate of Ruth Araceli Alcaraz Noguera; 5. Precautionary Measures granted by the IACHR in favor of María Noguera and Family; 6. Declaration of Heirship in favor of María Noguera; 7. Photograph of the first monument (column); 8. Photograph of the plastic plaque with a printed photo of Vicente Noguera; 9. Photograph of the second monument; 10. Photograph of the third monument, and 11. Certificate of the commitment to repair the tomb of Vicente Noguera, signed by the State and the victims.

documentary evidence may be presented with the briefs submitting the case, of pleadings and motions or the answering brief, as applicable. Such evidence is not admissible outside of those procedural opportunities, except when it falls within the exceptions established in the aforementioned article (namely, *force majeure*, serious impediment), or if it is evidence that refers to an event that occurred after those procedural opportunities.¹⁴ Consequently, the evidence provided by the representatives with their brief of observations on the preliminary objection is inadmissible because it was not presented at the proper procedural moment. The other documents that accompany the final written arguments submitted by the representatives and the State constitute supervening evidence and therefore this Court admits them as part of the body of evidence in this case.

32. The Court also deems it pertinent to admit the statements received at the public hearing¹⁵ and by affidavit,¹⁶ insofar as they are in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.¹⁷

VII FACTS

33. In this chapter, the Court will establish the facts that it considers proven in this case, based on the body of evidence, on the factual framework established in the Merits Report, and on the State's acknowledgment of international responsibility. It will also consider those facts presented by the parties that serve to explain, clarify or dismiss that factual framework.¹⁸ The facts will be presented in the following order: a) background; b) the death of Vicente Noguera, and c) investigations and judicial proceedings related to the death of Vicente Noguera.

A. Background

34. At the time of the facts of this case, a context of human rights violations existed in Paraguay in relation to military recruitment and the conditions under which military service was carried out in that country. Specifically, there were numerous situations involving the violation of free consent, the use of intimidation to enlist recruits into military service, and failure to verify the legal age requirements for the enrollment of recruits into the armed forces. The State did not deny that this context existed, although it indicated that it had subsequently adapted its legislation and practices regarding military service to comply with international standards.

35. In relation to this matter, the Court recalls that in the case of *Vargas Areco v. Paraguay*, the "State ha[d] acknowledged the existence of mistreatment, forced recruitment and death involving children in active military service," and that "in most cases, these violations resulted from excesses committed by superior officers when imposing physical and psychological punishment on conscripts," as well as excessive physical exercises and "accidents associated with the characteristics of military service. In

¹⁴ Cf. *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 22, and *Case of Montesinos Mejía v. Ecuador*, para. 43.

¹⁵ The Court received the statements of María Noguera, Miguel Cillero Bruñol and María Liz Cecilia García Frasqueri.

¹⁶ The Court received the statements provided by affidavit of Amalia Quintana of Florentín Aldo David Alcaraz Noguera and Andrés Colman Gutiérrez.

¹⁷ The purposes of the statements are established in the Order of the President of the Court of July 16, 2019.

¹⁸ Cf. *Case of "Five Pensioners" v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019. Series C No. 382, para. 28.

many cases, these circumstances have irreversible physical and psychological consequences."¹⁹

36. Based on the foregoing, the persistence of these circumstances has been noted in the context of the universal system of human rights. On May 10, 2000, the Committee against Torture reported that in Paraguay the practices of torture and cruel, inhuman or degrading treatment continued in establishments of the armed forces.²⁰ Similarly, in 2001, the Committee on the Rights of the Child expressed concern over the mistreatment, forced recruitment and deaths that occurred in the course of military service.²¹ Similarly, in a report of April 24, 2006, the Human Rights Committee expressed its concern over the persistent practice of recruitment of children in the military service of Paraguay.²² More recently, on October 25, 2013, the Committee on the Rights of the Child issued a report in which it stated that "[d]espite the administrative and legislative measures adopted by the State Party to ensure that no child under 18 years is recruited, the Committee remains concerned at the persistent falsification of birth certificates, which facilitates the enlistment of minors under 18 years of age in the armed forces."²³

37. Lastly, at the national level, the Coordinating Office for the Rights of Children and Adolescents of Paraguay (CDIA) stated that from 1989 to 2012, between 149 and 156 deaths of child soldiers were reported in facilities of the armed forces, while some 400 children were left with serious physical and psychological problems, such as loss of limbs or mobility, firearm injuries, etc.²⁴

B. The death of Vicente Noguera

38. Vicente Ariel Noguera was born on April 29, 1978, in Asunción, Paraguay. He was 16 years old when he enlisted in the Reserve Officers Military Training Center (hereinafter "CIMEFOR"), on December 1, 1994, after being declared fit by the Office of Recruitment and Mobilization.²⁵ His recruitment was legally approved at the request of his mother, María Ramona Isabel Noguera Domínguez who, at the time of the events, worked as a dressmaker. She is currently an activist and leader of the *Asociación de Familiares de Víctimas del Servicio Militar* -AFAVISEM (Association of Family Members of Victims of Military Service).²⁶

39. On January 2, 1996, during his second year of military service, Vicente Noguera was transferred to the Third Company of the CIMEFOR Division in Mariscal Estigarribia, located

¹⁹ Cf. *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 71.27.

²⁰ Cf. United Nations, Committee against Torture. Conclusions and Recommendations. A/55/44, 10 May 2000, paras. 146 to 151.

²¹ Cf. United Nations, Committee on the Rights of the Child. *Examination of Reports by States Parties under Article 44 of the Convention on the Rights of the Child. Report on Paraguay*. CRC/C/65/Add.12, of March 15, 2001.

²² Cf. United Nations, Human Rights Committee. *Examination of Reports by States Parties under Article 40 of the Convention*. CCPR/C/PRY /C0/2, of April 24, 2006, para. 14.

²³ Cf. United Nations, 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 conflicts. CRC/C/OPAC/PRY/C0/1, of October 25, 2013, para.14.

²⁴ Cf. Alternative report to the first report of Paraguay on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, presented by Plan Paraguay and the Coordinating Office for the Rights of Children and Adolescents (CDIA), July 2012, page 9.

²⁵ Cf. Office of the Recruitment and Mobilization Service, official letter of January 18, 1996, indicating that he was recruited on December 1, 1994 (evidence file, folio 1783), and Enlistment Card of the Recruitment and Enlistment Service No 016303/660 of September 19, 1994 (evidence file, folio 67). Also, Ministry of Public Health and Social Welfare, XIV Region, Certificate of November 7, 1994, which states that Vicente had no symptoms of infectious-contagious disease, neither physical nor mental (evidence file, folio 3205).

²⁶ Cf. Judiciary, Judicial File: "Vicente Ariel Noguera s/ permit for CIMEFOR", No. 722, 1994 (evidence file, folios 3209 and 3210).

in the Paraguayan Chaco, where he died on January 11, 1996. The last day that Vicente Noguera was seen alive was on January 10, 1996, when he was present at the pre-military physical training activities. However, based on the evidence and statements provided, two different versions exist regarding the circumstances surrounding his death.

40. According to a first version, alleged by the representatives and described in the Merits Report and in the pleadings and motions brief, Vicente Noguera's death occurred in a violent manner after being subjected to mistreatment and excessive exercises ("*descuereo*"²⁷) by senior members of CIMEFOR. In addition, some of Vicente Noguera's fellow cadets initially told María Noguera that they saw how these individuals kicked her son's body, tortured him and locked him in a cell as punishment. According to their account of the events, they heard screams and groaning, without specifying whether these occurred within or outside the barracks where they slept. They alleged that there was a pact of silence among the aspiring corporals because they had been threatened with discharge from military service if they told the truth to the authorities investigating the facts.²⁸

41. The representatives also indicated that, from the outset, they had doubts regarding the circumstances in which Vicente Noguera's death took place because, as stated in the medical report for admission to the CIMEFOR²⁹ and in the report on his death,³⁰ the alleged victim enjoyed good physical health and did not show any symptoms of illness or low performance that would require hospitalization or medication. Also, when his body was taken to the medical center for the autopsy, his relatives noticed evidence of a blow to his head and traces of blood in his underwear, indicating that he may have suffered sexual violence; however, no valid and reasonable explanation was provided in this regard.³¹

42. A second version, based on the statements of 21 cadets and of Lieutenant Germán Alcaraz, provided in the context of the investigation in the military jurisdiction, recounted that the day before the alleged victim's death transpired normally, that the alleged victim received no punishment and that he was in a good physical health.³² Likewise, the report on his death submitted to the Commander of the Third Company of the CIMEFOR Division, stated that Vicente Noguera was present at the military pre-training activities on January 10, 1996, and that later, at around 20:30 that evening, the soldiers assembled in the dormitory for "roll call" and then went to bed without incident."³³

43. According to the testimonies provided, the cadets heard a scream from Vicente Noguera at around 00:45 to 01:30, possibly a coughing fit or a nightmare, which was so loud that some of his fellow cadets approached to massage his chest. According to this version, Vicente Noguera merely turned over and continued sleeping. The report also states that the following day at around 5:00 am, given that the alleged victim was not getting up, some of his comrades tried to wake him up, but since he remained lying down, he was taken down from his bunk. It was then confirmed that Vicente Noguera no longer

²⁷ Cf. Term used in Paraguay's military jargon to refer to mistreatment and cruel, inhuman or degrading treatment by superiors (Cf. Brief of pleadings, motions and evidence, folio 121).

²⁸ Cf. Initial petition of September 19, 2000 (evidence file, folios 1777 et seq.).

²⁹ Cf. Enlistment Card of the Recruitment and Enlistment Service No. 016303/660 of September 19, 1994 (evidence file, folio 67), and Office of Intelligence and Mobilization Services, official letter of January 18, 1996, which indicates that a medical examination was performed on May 3, 1995 and that Vicente was declared fit (evidence file, folio 1783). Likewise, Ministry of Public Health and Social Welfare, XIV Region, Certificate of November 7, 1994, confirming that Vicente showed no physical or mental symptoms of infectious-contagious disease. (evidence file, folio 3205).

³⁰ Cf. Report of Lieutenant Colonel P.E. of January 11, 1996 (evidence file, folio 1785).

³¹ Cf. Criminal complaint filed by María Noguera on September 6, 1996 (evidence file, folios 1790 et seq.).

³² Cf. Statements made by the candidates for corporal before the Military Investigating Judge (evidence file, folios 1795 to 1900).

³³ Report of Lieutenant H.A. of January 11, 1996 (evidence file, folio 216).

had vital signs.³⁴ According to this second version of events, the cause of death was established as a generalized infection without any type of traumatic violence. The latter hypothesis was allegedly confirmed by various forensic analyses, medical tests and autopsies carried out.

C. Investigations and judicial proceedings related to the death of Vicente Noguera

C.1. Summary proceedings in the military criminal jurisdiction

44. On January 11, 1996, the Military Court of Investigation ordered the opening of a preliminary inquiry into the death of Vicente Noguera.³⁵ The first forensic examination concluded that no signs or indications of physical violence were visible on the body, "only the cadaveric marmoreal discoloration of rigor mortis."³⁶

45. In the context of that investigation into this case, the judge, with the consent of the family of the alleged victim, ordered an autopsy to be performed at the private "Migone" Hospital in the city of Asunción. The autopsy took place on January 11, 1996, between 16:45 and 18:00 hours, in the presence of a doctor expressly requested by María Noguera.

46. The autopsy report issued on February 23, 1996, determined that the "principal pathology detected is pulmonary inflammation of the *interstitial pneumonitis* variety with significant inflammatory *alveolar edema*, which is observed with variable intensity, from mild to severe in both lungs."³⁷ A toxicology test was also carried out, the result of which was negative regarding the presence of drugs or toxic substances.³⁸ In addition, samples of the alleged victim's lung tissue were sent for analysis to the Centers for Disease Control and Prevention (CDC), in New Mexico, United States. In a report dated March 20, 1996, the CDC confirmed the diagnosis of interstitial pneumonitis, but added that the results were not consistent with Hantavirus Pulmonary Syndrome (HPS). It also indicated that the result of the immune-histochemical analysis was negative.³⁹

47. On October 21, 1997, the Military Trial Court dismissed 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, pursuant to Article 199 of the Military Code of Criminal Procedure.⁴⁰

³⁴ Cf. Report of Lieutenant Colonel P.E. of January 11, 1996 (evidence file, folio 1785) and Report of Lieutenant H.A. of January 11, 1996 (evidence file, folio 216).

³⁵ Cf. Commander in Chief of the Armed Forces of Paraguay, Case File of "Summary administrative investigation into the cause of death of Cadet Vicente Ariel Noguera of Center No. 3 of the CIMEFOR, based in Mariscal Estigarribia" (evidence file, folio 3214).

³⁶ Cf. Commander in Chief of the Armed Forces of Paraguay, Case file "Summary administrative investigation into the cause of death of Cadet Vicente Ariel Noguera of Center No. 3 of CIMEFOR, based in Mariscal Estigarribia." Medical examination of January 11, 1996 (evidence file, folio 2767).

³⁷ The report added that "another notable alteration is congestion in nearly all the organs, of a passive type, of relatively short duration, which may be related to a diffuse alteration of the vascular wall associated with a probable septic shock and an alteration of cardiac function." Autopsy Report of February 23, 1996 (evidence file, folio 3426).

³⁸ Cf. National Police of Paraguay. Department of Criminal Investigation. Forensic Laboratory. Laboratory results of January 15, 1996 (evidence file, folio 2945).

³⁹ Cf. Centers for Disease Control and Prevention (CDC) Communication of March 20, 1996 (evidence file, folio 3444).

⁴⁰ Cf. Commander-in-Chief of the Armed Forces of Paraguay, Case file "Summary administrative investigation into the cause of death of Cadet Vicente Ariel Noguera of Center No. 3 of CIMEFOR, based in Mariscal Estigarribia" (evidence file, folio 3452). Article 199 of the Military Code of Criminal Procedure stated that "once full dismissal has been decreed, the case records shall be archived, following the actions for the execution of the order."

C.2. Investigation and judicial proceedings in the ordinary jurisdiction

48. On January 17 and July 29, 1996, María Noguera sent letters to the Attorney General in which she expressed her firm conviction that her son's death was not accidental, but rather the result of an act of violence, and requested his intervention to investigate the death.⁴¹ She also filed a criminal complaint for the homicide of her son on September 6, 1996.⁴²

49. On August 2, 1996, the Attorney General's Office recommended the exhumation of the corpse of the deceased victim in order to perform a new autopsy.⁴³ On September 5, 1996, an order was issued for the exhumation and a second autopsy on the body of Vicente Noguera, which took place on September 9, 1996. The autopsy report concluded that there was "no evidence of traumatic lesions on skin, muscles or bones" and that the cause of death was "interstitial pneumonitis with significant alveolar edema and hemorrhage."⁴⁴

50. On September 19, 1996, the Criminal Court of the 11th circuit decided to transfer the case to the jurisdiction of Mariscal Estigarribia, noting that the events related to the death of the alleged victim occurred in that locality.⁴⁵ This transfer led to a new investigating judge taking over the proceedings; however, Mrs. María Noguera filed for his removal, claiming that he had misled her and had expressed his personal hostility against her. The Court of Appeals for Criminal Matters considered that "the statements made by the appellant (Mrs. Noguera) are serious and more than sufficient to justify, for reasons of prudence, the removal of the judge."⁴⁶ Consequently, a negative dispute over jurisdiction ensued between the judges involved, because neither of the judges recognized the other's jurisdiction to oversee the investigation. Finally, on February 26, 1999, the Supreme Court of Justice awarded jurisdiction to the judge of the First Trial Court of the jurisdiction of Mariscal Estigarribia.⁴⁷

51. On October 2, 1996, the Criminal Court decided to admit the criminal complaint "against unnamed persons for the alleged commission of the crimes of homicide, bodily harm and abuse of authority."⁴⁸

52. Between April and July of 1999, the prosecutor directed the plaintiff to submit the addresses of the people who knew the circumstances of Vicente Noguera's death. María Noguera requested on two occasions that the judge require the Chief of the Armed Forces of Paraguay to provide said information.⁴⁹ On July 18, 2001, the prosecutor reiterated the request to the Chief of the Armed Forces to forward the addresses of the persons identified as witnesses.⁵⁰ On August 31, 2001, the President of the Military Supreme Court of Justice

⁴¹ Cf. Letters from the mother of the alleged victim to the Attorney General of January 17, 1996 and July 29, 1996 (evidence file, folios 1916 to 1920).

⁴² Cf. Criminal complaint filed by María Noguera on September 6, 1996 (evidence file, folios 1790 et seq.).

⁴³ Cf. Report No. 1007 of the Attorney General of August 2, 1996. Annex to the brief of the State of September 16, 2004 (evidence file, folio 1925).

⁴⁴ Cf. Autopsy Report of October 18, 1996 (evidence file, folio 1935).

⁴⁵ Cf. Criminal Court of First Instance of the 11th Circuit. Ruling of September 19, 1996 (evidence file, folio 2018).

⁴⁶ Cf. First Chamber of the Appeals Court on Criminal Matters. Motion for removal of March 13, 1998 (evidence file, folios 1941 to 1942).

⁴⁷ Supreme Court of Justice. Decision A. I. No. 157, of February 26, 1999 (evidence file, folios 1944 to 1945).

⁴⁸ Cf. Court of First Instance on Criminal Matters of 11th Circuit. Ruling of October 2, 1996 (evidence file, folios 1922 to 1923).

⁴⁹ Cf. Briefs of the plaintiff requesting an investigation, dated February 6, 2000, and June 6, 2000 (evidence file, folios 1948 to 1951).

⁵⁰ Cf. Prosecutor's Report No. 226 of July 18, 2001 (evidence file, folio 1953).

merely forwarded the order to dismiss the investigation into the death of Vicente Noguera and the request for the aforementioned addresses.

53. On November 6, 2002, the Criminal Judge for Liquidation and Sentencing archived the request for investigation 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 file, when the Public Prosecutor’s Office or the parties have not filed any motions within a period of six months, or taken any pertinent investigatory or other steps to continue with the case.”⁵¹

54. On May 28, 2012, the investigation into Vicente Noguera’s death was reopened in compliance with the friendly settlement agreement.⁵² In 2013, the prosecutor in charge of the case requested a measure related to the friendly settlement agreement, involving the formation of a medical board to conduct further analysis of the autopsies; this was carried out on October 1 of that year.⁵³ On October 9, 2013, the medical board presented a report in which it concluded that the cause of Vicente Noguera’s death was acute pneumonitis. The medical board also acknowledged the negative results of the hantavirus tests conducted in the United States, confirmed that the victim showed no signs of physical mistreatment and concluded that it was a natural death resulting from the evolution of a pathological process.⁵⁴

55. Following the corresponding investigation, the aforementioned prosecutor requested the final dismissal of the case on October 31, 2013, as did the assistant prosecutor on November 20, 2013.⁵⁵ On March 10, 2014, the case was archived without granting the request for final closure of the proceedings filed by the representative of the Attorney General’s Office, which was deemed inadmissible.⁵⁶

56. On December 13, 2018, after the case was submitted to the Inter-American Court, the Human Rights Prosecutor of the Attorney General’s Office initiated the process to open the case on torture. The case registration form stated that all pertinent steps must be taken to uncover the truth of the matter, taking into account that the preliminary investigations in relation to this case are in Specialized Human Rights Unit No. 2.⁵⁷ Since that date, a number of actions have been carried out, including hearings to gather testimonial evidence,⁵⁸ the forwarding of official letters to the Special Human Rights Unit

⁵¹ Cf. Ruling No. 670 of the Criminal Judge of Liquidation and Sentencing No. 7 of November 6, 2002. Annex to the State’s brief of September 16, 2004 (evidence file, folios 1954 and 1955).

⁵² Cf. Attorney General’s Office, Assistant Prosecutor for Human Rights, Decision of May 28, 2012 (evidence file, folio 3178).

⁵³ Cf. Case file: “Petition to archive the Request for a Judicial Investigation filed by María Ramona Noguera” (evidence file, folios 3130 to 3193).

⁵⁴ Cf. Office of Legal Medicine and Forensic Sciences, “Request for a Judicial Investigation filed by María Noguera,” answers to points raised about the expert report, October 9, 2013 (evidence file, folio 3137).

⁵⁵ Cf. Attorney General’s Office, Special Human Rights Unit No. 2, injunction No. 88 of October 31, 2013 (evidence file, folios 3139 to 3148) and Assistant Prosecutor, Ruling No. 1615 of November 20, 2013 (evidence file, folio 3157).

⁵⁶ Cf. Decision of the Human Rights Prosecutor of May 28, 2012 (evidence file, folio 4219).

⁵⁷ Cf. Attorney General’s Office of the Republic of Paraguay, Case registration form, December 13, 2018 (evidence file, folios 4201 to 4215).

⁵⁸ Cf. Attorney General’s Office, transcript of the hearing of February 25, 2019 (evidence file folios 4225 to 4235). Also, evidence file, folios 4427 et seq.

Nº 2⁵⁹ and to the Commander in Chief of the Armed Forces of Paraguay.⁶⁰ In addition, some experts conducted an historic autopsy on the remains of Vicente Noguera.⁶¹

57. The historic autopsy performed on July 18, 2019, reiterates once again that the cause of the death was interstitial pneumonitis of “viral” origin, and that the death was natural and non-violent. As recognized by the State, it also indicated that this health condition may occur asymptotically and that physical training, including the type inherent to the rigors of military discipline, could influence the outcomes as occurred in this case.⁶²

VIII MERITS

58. In this case, the Court must analyze the State’s international responsibility for alleged violations of different rights under the Convention, in relation to the death of Vicente Noguera in the course of performing military service, while under the custody of the State. Given that the State made a partial acknowledgment of responsibility, the Court will only examine those matters that are still in dispute. The Court will analyze the arguments on the merits in the following order: a) rights to life, to personal integrity and rights of the child, and b) rights to judicial guarantees and judicial protection.

VIII.1 RIGHTS TO LIFE, PERSONAL INTEGRITY AND RIGHTS OF THE CHILD (ARTICLES 4, 5 AND 19 OF THE AMERICAN CONVENTION)

A. Arguments of the parties and of the Commission

59. The *Commission* argued that the domestic investigations failed to clarify the circumstances of Vicente Noguera’s death, and therefore considered that his death could be attributed to the State. It held that the reasons offered by the State for the death of the alleged victim were based on two autopsy reports and that the only explanation given relates to alleged medical cause of the death, but not to the circumstances of time, manner and place. The Commission added that other elements point to the State’s responsibility, such as the prevailing conditions of military service in Paraguay at the time of the events and the infringements of the right to life and humane treatment of the cadets (candidates for corporal) who enlisted. In this context, it considered that the death of the alleged victim could not be regarded as an isolated incident.

60. The Commission noted that there is no dispute that on the day before his death, the alleged victim was in good health. This fact, together with reports that describe excessive physical exercises on that day, raise serious doubts about the claims that the alleged victim’s death was caused by an infectious process. In any case, even if this were the cause of death, it does not exonerate the State from its responsibility because the alleged victim, who was a minor, was under the custody of the State, which failed to provide an adequate explanation to clarify the death and abuses denounced. The Commission further considered that Paraguay did not take into account the fact that the alleged victim was a

⁵⁹ Cf. Attorney General’s Office, Note 86/19 of February 18, 2019 (evidence file, folio 4237).

⁶⁰ Cf. Attorney General’s Office, Official letters 15/19 of March 11, 2019 and 50/19 of June 5, 2019 (evidence file, folios 4239 and 4277).

⁶¹ Cf. Attorney General’s Office, Official letter 15/19 of March 11, 2019 (evidence file, folio 4239), and Attorney General’s Office, Office of Legal Medicine and Forensic Sciences, Entry No.19/19 of July 18, 2019 (evidence file, folios 4391 to 4419).

⁶² Cf. Historical autopsy, July 18, 2018 (evidence file, folios 4417 to 4419).

child and did not implement special measures for his protection, in violation of the rights of the child.

61. For their part, the *representatives* agreed with the observations of the Commission. They added that, aside from the State's inadequate explanation based on the autopsy reports, they noted that the investigations conducted at the domestic level failed to clarify the circumstances surrounding Vicente Noguera's death. Thus, they attributed responsibility to Paraguay, because his death occurred while under the State's custody. They also noted that attempts were made to conceal the circumstances of his death, which occurred without due protection and guarantees for his rights. They emphasized that the State is responsible for protecting, preserving and ensuring the right to life and the full and free exercise of the rights of all persons under its protection.

62. The representatives affirmed that the State must act as guarantor to all minors under its custody, offering them special protection in order to safeguard their life and development, seeking their best interest. They also emphasized that the State must provide special measures to safeguard the life and integrity of every child under the State's custody while performing military service, because during military service they are deprived of their liberty in an exceptional manner.

63. Unable to refute the evidence regarding the possibility of a violent death, the *State* accepted that it was responsible for the violation of Articles 4(1), 5(2) and 19 of the Convention. It also pointed out that, after the Merits Report was issued, it decided to open a new investigation on December 13, 2018,⁶³ which included actions such as receiving the testimony of Mrs. María Noguera on February 25, 2019, requesting reports from the Commander in Chief of the Armed Forces of Paraguay and ordering a historical autopsy to be conducted on April 8, 2019.

B. Considerations of the Court

64. The Court will now examine the question of the State's international responsibility for the violation of Articles 4, 5, and 19 of the American Convention to the detriment of Vicente Noguera.

65. This Court has established that the right to life plays a fundamental role in the American Convention, because it is essential for the exercise of all other rights. Compliance with Article 4, in relation to Article 1(1) of the American Convention, supposes not only that no one may be arbitrarily deprived of their life (negative obligation), but also requires States to take all appropriate steps to protect and preserve the right to life (positive obligation),⁶⁴ in keeping with the obligation to ensure the full and free exercise of the rights of all persons subject to their jurisdiction.⁶⁵

66. Consequently, the States have the obligation to create the required conditions to ensure that no violations of this inalienable right occur and, in particular, they have a duty to prevent their agents from violating it. This active protection of the right to life by the State involves not only its legislators, but all State institutions and those responsible for safeguarding security, whether they are members of its police forces or its armed forces.⁶⁶

⁶³ Cf. Investigation No 01-01-02-01-2018-203 classified as "Unnamed person/ Torture," conducted by the Special Human Rights Unit, prosecutor Silvia Cabrera.

⁶⁴ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999, para. 144, and *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 29, 2016. Series C No. 327, para. 100.

⁶⁵ Cf. *Case of Myrna Mack Chang v. Guatemala*, para. 153, and *Case of Ruiz Fuentes et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of October 10, 2019. Series C No. 385, para. 100.

⁶⁶ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, paras. 144 and 145, and *Case of Ruiz Fuentes et al. v. Guatemala*, para. 100.

67. With regard to persons under the custody of the State, including members of the armed forces on active service in barracks, this Court has indicated that the State must ensure their right to life and personal integrity, given its special role as guarantor with respect to those persons.⁶⁷ Thus, for individuals subject to the military service regime, the Court considers that the State has the duty to: i) safeguard the integrity and welfare of soldiers on active duty; ii) ensure that the manner and method of training does not exceed the inevitable level of suffering inherent to that activity; and iii) provide a satisfactory and convincing explanation regarding the effects on the integrity and life of persons subject to the special military regime, whether they are performing voluntary or compulsory military service, or whether they are enlisted as cadets in the armed forces or hold a higher rank in the military hierarchy. Consequently, it is appropriate to hold the State responsible for any harm to the personal integrity and life suffered by a person under the authority and control of State agents, such as those participating in military training.⁶⁸

68. Furthermore, in the case of children or minors under the custody of the State, the latter has an additional obligation under Article 19 of the American Convention, namely, to assume its special role as guarantor with greater care and responsibility and take special measures based on the principle of the best interest of the child.⁶⁹

69. Finally, regarding persons under the custody of the State at military facilities, the Court has established that the rights to life and personal integrity are directly and immediately connected to health care,⁷⁰ and that a lack of adequate medical care may entail the violation of Article 5(1) of the Convention.⁷¹ Thus, the Court considers that one of the security measures that should be adopted in the context of military service is the provision of adequate and high-quality medical treatment, either within the barracks or outside, including any emergency and specialized medical treatment considered pertinent.⁷²

B.1. The State's responsibility for failure to clarify the circumstances of Vicente Noguera's death

70. The Court recalls that the State acknowledged its international responsibility for the violation of the rights to life (Article 4(1)), personal integrity (Article 5(1)) and the rights of the child (Article 19), to the detriment of Vicente Noguera. It has admitted that those rights were violated because the death of Vicente Noguera, who was 17 years old at the time of his death, took place in a military facility, under the State's protection. It also acknowledged that no explanation was provided regarding the circumstances of his death, or any evidence to satisfactorily refute the possibility of a violent death (*supra* para. 63). Accordingly, and by virtue of the State's acknowledgment of responsibility, the Court finds the State responsible for the violation of the right to life, the right to personal integrity and the rights of the child, recognized in Articles 4(1), 5(1) and 19 of the American

⁶⁷ Cf. *Case of Quispialaya Vilcapoma v. Peru*. Judgment of November 23, 2015. Series C No. 308, para. 124.

⁶⁸ Cf. *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017, para. 107.

⁶⁹ Cf. *Case of the Gómez Paquiyauri Brothers*, paras. 124, 163-164, and 171, *Case of Cuscul Pivaral et al. v. Guatemala. Judgment of Preliminary objection, merits, reparations and costs*. Judgment of 14 May 2019. Series C No. 359, para. 132.

⁷⁰ Cf. *Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs*. Reparations and costs. Judgment of November 22, 2007. Series C No. 171 para. 117, *Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 170, and *Case of Ortiz Hernández et al. v. Venezuela*, para. 119.

⁷¹ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 157, and *Case of Cuscul Pivaral et al. v. Guatemala*, para. 161.

⁷² Cf. *Case of Ortiz Hernández et al. v. Venezuela*, para. 119.

Convention, in relation to Article 1(1) of the same instrument, to the detriment of Vicente Noguera.

B.2. The State's responsibility for the alleged mistreatment of Vicente Noguera

71. This Court has already mentioned that a dispute persists regarding the alleged violation of Vicente Noguera's rights in relation to his alleged mistreatment, which supposedly resulted in his death at a military establishment (*supra* para. 25). In that regard, the Court must determine whether there is sufficient evidence to conclude that the State is also responsible for the violation of the right to life, to physical integrity and to the rights of the child, for those specific reasons, to the detriment of Vicente Noguera.

72. With respect to the foregoing, the Court notes that various expert, medical and forensic analyses were carried out, including: a) forensic examination of January 11, 1996; b) autopsy performed on January 11, 1996; c) tests on samples of lung tissue from the alleged victim conducted by the Centers for Disease Control and Prevention-CDC- (New Mexico, United States); d) exhumation and expert analysis performed on the body of Vicente Noguera on September 9, 1996, e) autopsy carried out on October 18, 1996; f) expert analysis by a medical board on October 9, 2013, and g) historical autopsy on July 18, 2019 (*supra* Chapter VII.C). According to the results of these expert analyses, no signs or indications of physical violence were detected, and the death resulted from a generalized infection that could have been asymptomatic. These expert analyses confirm the version of the facts according to which there is not sufficient evidence to conclude that Vicente Noguera suffered physical mistreatment, as was recognized by the authorities in the domestic judicial proceedings (*supra* Chapter VII.C).

73. On the other hand, the version of events provided by the family of Vicente Noguera, who claimed that he showed signs of a blow to his head and traces of blood in his underwear, suggests that he may have suffered sexual violence (*supra* Chapter VII.B). This is also based on testimony received by family members of Vicente Noguera, on the accounts by his fellow cadets to his mother, and on press reports. Lastly, at the time of the events of this case, a context of human rights violations was associated with military service in Paraguay, particularly mistreatment, forced recruitment and even death among child recruits (*supra* Chapter VII.A).

74. In relation to this last point, it should be recalled that regardless of the general situation that may have existed in Paraguay at the time of the events of this case, in order to establish the State's responsibility for breaching its duty of respect through the actions of its agents, it is not sufficient to examine a general situation or context regarding human rights violations by State officials; it is also necessary that the State's obligations of respect are breached in the specific circumstances of that case.⁷³

75. Regarding the State's responsibility for the alleged mistreatment of Vicente Noguera, the Court notes that the State did not provide information to explain how the Paraguayan military authorities fulfilled their obligation to ensure the safety of the alleged victim through mechanisms or routine medical examinations to determine his fitness and monitor his health. In addition, as indicated in the historical autopsy report, the victim's health symptoms that apparently caused his death could have been aggravated by the physical training, and even by the rigors inherent to military discipline. Thus, the failure to detect Vicente Noguera's physical ailment, and his subjection to physical exercises that could have aggravated his state of health, are elements that reinforce the State's responsibility even though, in light of the evidence presented, it is not possible to reach a firm conclusion that his death was the result of the mistreatment he allegedly suffered.

⁷³ Cf. *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2016. Series C No. 325, para. 180, and *Case Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019. Series C No. 392, para. 67.

VIII.2
RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION
(ARTICLES 1(1), 8(1) AND 25 OF THE AMERICAN CONVENTION)

A. Arguments of the parties and of the Commission

76. In the instant case, the *Commission* alleged the following violations: a) the right to a competent, independent and impartial authority during the investigation by the military jurisdiction into the death of Vicente Noguera; b) the State's obligation to investigate with due diligence the death of Vicente Noguera,⁷⁴ and c) the principle of reasonable time in the investigation. The *representatives* agreed with the Commission.

77. For its part, the *State* acknowledged its responsibility for the violation of the rights to judicial guarantees and judicial protection. However, as indicated in the relevant chapter (*supra* Chapter V.B.2), the reasons why it proceeded to make that acknowledgment are not clear. Although in general terms the State "recognized that [the investigations] were insufficient to clarify all the facts denounced," it also referred to some points over which there had been "some confusion in its interpretation." In particular, it argued that numerous investigative actions of great value were carried out *ex officio* in the criminal justice proceedings and that a new investigation was opened to satisfy international standards. It added that when these events occurred, the State did not have an obligation to adopt the recommendations of the Minnesota Protocol. Finally, it referred to the private investigations undertaken by the mother of the alleged victim outside of the formal proceedings, denying the assertions made, since there was no way of proving them. The State also mentioned the possibility that this information might be included and verified in the context of the investigation conducted by the Attorney General's Office.

B. Considerations of the Court

78. Article 8(1) of the Convention establishes that 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, all within the general obligation of the States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).⁷⁵

79. This Court has indicated that Article 25(1) of the Convention establishes the obligation of the States Parties to ensure to everyone under their jurisdiction, a simple, prompt and effective recourse, against acts that violate his fundamental rights.⁷⁶ Accordingly, it is possible to identify two specific obligations of the State. The first is to embody in its legislation and ensure the proper application of effective remedies and guarantees of due process before the competent authorities, which protect all persons subject to its jurisdiction from acts that violate their fundamental rights or which lead to the determination of the

⁷⁴ The Commission indicated the following: a) regarding the testimonial evidence gathered, of the twenty witnesses summoned only two were interviewed, and the Prosecutor's Office also imposed on the mother of the alleged victim the obligation to provide the addresses of the cadets whose testimony was required as evidence; b) that the two autopsy reports establish that the cause of death was a lung infection, without linking that disease to the environment and living conditions of the alleged victim, and that no x-rays or tests were performed during the autopsies and no photographs were included in medical report or in the military case file, and c) there is no evidence that an investigative strategy was followed aimed at corroborating or ruling out that the alleged victim's death was not an accident, but rather the result of a violent act.

⁷⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Montesinos Mejía v. Ecuador*, para. 151.

⁷⁶ Cf. *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 95, and *Case of López et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2019. Series C No. 396, para. 209.

latter's rights and obligations. The second is to guarantee the means to implement the respective decisions and final judgments issued by such competent authorities, in order to effectively protect the rights declared or recognized.⁷⁷

B.1. The principles of reasonable time and due diligence in an investigation

80. In the instant case, the chapter on the State's acknowledgment of responsibility indicated that a dispute persists regarding the alleged violation of the rights to judicial guarantees and judicial protection (Articles 8 and 25 of the Convention) to the detriment of María Noguera.

81. The Court has consistently indicated that the duty to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty, not as a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the procedural initiative of the victim or his family or upon their offer of proof.⁷⁸ Likewise, due diligence requires that the investigating body carry out all measures and investigations necessary to try and obtain the result pursued.⁷⁹

82. Furthermore, the Court has consistently stated that the first stages of an investigation are of crucial importance and that any omissions and irregularities during those stages may have a negative impact on the real prospects of effectively clarifying the matter.⁸⁰ Thus, to ensure the effectiveness of an investigation it is essential to prevent omissions in the gathering of evidence and follow logical lines of investigation.⁸¹

83. In its constant case law, the Court has also considered that a prolonged delay in the proceedings may constitute, in itself, a violation of judicial guarantees.⁸² The Court has reiterated that in each specific case, the reasonable time should be examined in relation to the total duration of the proceedings, from the first procedural act until the final judgment is handed down. Thus, it has considered that four elements must be taken into account in determining whether the guarantee of reasonable time is met, namely: (i) the complexity of the matter;⁸³ (ii) the procedural activity of the interested party;⁸⁴ (iii) the conduct of the judicial authorities;⁸⁵ and (iv) the effect of the duration of the proceedings

⁷⁷ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 237 and *Case of López et al. v. Argentina*, para. 209.

⁷⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of Gómez Virula et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 21, 2019. Series C No. 393, para. 65.

⁷⁹ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Omeara Carrascal et al. v. Colombia. Interpretation of the Judgment on Merits, reparations and costs*. Judgment of October 14, 2019. Series C No. 389, para. 211.

⁸⁰ Cf. *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 119, and *Case of Gómez Virula et al. v. Guatemala*, para. 73.

⁸¹ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, paras. 88 and 105, and *Case of Gómez Virula et al. v. Guatemala*, para. 77.

⁸² Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Montesinos Mejía v. Ecuador*, para. 178.

⁸³ In relation to the complexity of the matter, the Court has taken into account different aspects to determine the complexity of a proceeding. These include the complexity of the evidence, the plurality of procedural subjects or the number of victims, the time elapsed since the violation, the characteristics of the remedy established in domestic law, and the context in which the violation occurred. Cf. *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 78, and *Case of Jenkins v. Argentina*, para. 110.

⁸⁴ To determine the reasonableness of the time, the Court has taken into account whether the procedural conduct of the party seeking to obtain justice has contributed, to some extent, to unduly prolonging the process. Cf. *Case of Cantos v. Argentina. Merits, reparations and costs*. Judgment of November 28, 2002. Series C No. 97, para. 57, and *Case of Montesinos Mejía v. Ecuador*, para. 184.

⁸⁵ The Court has considered that the principle of effective judicial protection requires that the implementation procedures be accessible to the parties, without hindrance or undue delay in order to quickly,

on the legal situation of the alleged victim.⁸⁶ The Court recalls that it falls upon the State to demonstrate the reasons why a proceeding, or several proceedings, have lasted longer than a reasonable time. Otherwise, the Court has broad powers to make its own analysis of this matter.⁸⁷ The Court considers the proceeding to be at an end when a final and firm judgment is delivered, including any appeals that may be filed.⁸⁸

84. In this case, the State accepted that it had not clarified the circumstances surrounding the death of Vicente Noguera and that the investigations conducted for that purpose were inadequate (*supra* para. 77). This failure to clarify the facts has continued for more than 23 years since the death of Vicente Noguera. Moreover, the Court finds that the facts of this case are not of such complexity as to justify such a delay. Also, the procedural activity undertaken by the family of Vicente Noguera has been consistent with what could reasonably be expected. On the other hand, the proceedings suffered several periods of inactivity or delays that were not reasonable: i. before the case was archived in 2002, there was a dispute over jurisdiction that took nearly two and a half years– from September 1996 to February 1999– to be settled; ii. the case was archived for nearly 10 years before being reopened in 2012, to then be archived once again in 2014, and iii. in 2018, a new case was opened to investigate alleged acts of torture, which still continues. With regard to the effects of the duration of the proceeding on the person’s legal situation, the Court considers that it does not have sufficient elements to reach a conclusion on this last point.

85. Therefore, based on the foregoing considerations, the Court concludes that the State is responsible for violating the principles of reasonable time and due diligence in the investigation into the death of Vicente Noguera, pursuant to Articles 8(1) and 25 of the American Convention, to the detriment of his mother, María Noguera.

B.2. The natural judge principle

86. With respect to the natural judge principle, the Court confirms, in the first place, that the summary investigation into the facts of the case was initiated in the military jurisdiction. In the context of that inquiry, various investigative actions were carried out, mainly related to forensic evidence (autopsies, and tests on samples of lung tissue) in private establishments, within and outside the country, with the participation of a doctor designated by the family of the deceased. That investigation concluded that Vicente Noguera died as a result of an infection (*supra* Chapter VII.C.1). Subsequently, another investigation was opened in the ordinary jurisdiction after Vicente Noguera’s mother filed a criminal complaint alleging homicide (*supra* Chapter VII.C.2). That jurisdiction ordered an exhumation and a second autopsy to be carried out and gathered testimonial evidence, reaching the same conclusions (*supra* Chapter VII.C.2).

87. Accordingly, faced with the possibility that Vicente Noguera could have been a victim of acts of violence, the domestic authorities initiated a case in the ordinary jurisdiction, and carried out various investigative actions, which arrived at identical conclusions to those reached in the military jurisdiction. The summary investigation into the death of Vicente Noguera included numerous actions (autopsy and examinations) carried out in non-military establishments. Consequently, given the specificities of the case, the Court concludes that

simply, and comprehensively satisfy their purpose. *Cf. Case of Mejía Idrovo v. Ecuador*, para. 106, and *Case of Jenkins v. Argentina*, para. 119.

⁸⁶ Finally, in relation to the effects on the alleged victim’s legal situation, the Court has indicated to determine whether the time was reasonable, it is necessary to take into account the effects caused by the duration of the proceedings on the legal situation of the person concerned considering, among other factors, the matter in dispute. *Cf. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2019. Series C No. 394, para. 148.

⁸⁷ *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Jenkins v. Argentina*, para. 106.

⁸⁸ *Cf. Case of Suárez Rosero v. Ecuador. Reparations and costs*. Judgment of January 20, 1999. Series C No. 44, para. 71, and *Case of Jenkins v. Argentina*, para. 106.

there was no violation of the natural judge principle established in Article 8(1) of the American Convention.

IX REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

88. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to provide adequate reparation, and that this provision reflects a customary rule that constitutes one of the fundamental principles of contemporary international law on State responsibility.⁸⁹ Therefore, the Court has considered the need to grant different measures of reparation in order to provide comprehensive redress so that, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction as well as guarantees of non-repetition have special relevance for the harm caused.⁹⁰ The Court has also established that the reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm.⁹¹

89. In consideration of the violations of the American Convention declared in the preceding chapters, and in light of the criteria established in the Court's case law on the nature and scope of the obligation to make reparation, the Court will examine the claims presented by the Commission and the representatives, together with the arguments of the State.⁹²

90. The Court reiterates that during the processing of this case before the Commission a friendly settlement agreement was signed between the representatives and the State, which was not ratified by the Commission (*supra* para. 2.c). Despite this, the State has complied with several measures of reparation agreed with the representatives, which are also the subject of claims for measures of reparation in the proceedings before the Court.

A. Injured party

91. Under the terms of Article 63(1) of the Convention, this Court considers as injured party anyone who has been declared a victim of the violation of any right recognized therein. Therefore, based on the foregoing, the Court considers as "injured party" Vicente Ariel Noguera, and his mother, Mrs. María Ramona Isabel Noguera Domínguez.

B. Obligation to investigate the facts and identify, prosecute and, if appropriate, punish those responsible

92. The *Commission* asked the Court to order the State to continue and complete the criminal investigation that was reopened in May of 2012, in a diligent and effective manner, and within a reasonable time, in order to fully clarify the facts, identify the persons responsible and impose the appropriate sanctions. The *representatives* argued that the State should conduct an investigation that would include the reconstruction of the facts, and hand over to the victim's mother the video of the autopsy carried out on January 11, 1996. They added that, if necessary, a new autopsy should be carried out in the presence

⁸⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of Montesinos Mejía v. Ecuador*, para. 204.

⁹⁰ Cf. *Case of the Dos Erres Massacre v. Guatemala, Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Montesinos Mejía v. Ecuador*, para. 218.

⁹¹ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Montesinos Mejía v. Ecuador*, para. 219.

⁹² Cf. *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 189, and *Case of Montesinos Mejía v. Ecuador*, para. 220.

of experts designated by the victim's family. The *State* pointed out that in 2012 it had reopened the case that was archived in 2001, establishing a new medical board that worked on the basis of the two previous autopsies, which concluded once again that the death of Vicente Noguera was not violent. It added that, on December 13, 2018, it decided to open a new investigation into the punishable offense of torture to determine whether or not such acts of a criminal nature were committed, and to fully clarify all the facts. In relation to the autopsy, the *State* emphasized that an expert analysis was conducted consisting of a historical autopsy to determine whether Vicente Noguera's body showed signs of violence.

93. In relation to this request, the Court confirms that an investigation was opened in 2018. Consequently, the Court orders the *State* to continue and complete that investigation in accordance with the applicable domestic law.

C. Measures of rehabilitation

94. The *Commission* called on the *State* to provide the physical and mental health care necessary for the rehabilitation of María Noguera, if she so wishes, and in agreement with her. The *representatives* did not refer to this measure of reparation. The *State* affirmed that this measure of reparation has already been implemented in the context of the commitments made in the friendly settlement agreement, which coincided with this request by the *Commission*.

95. The *Court* does not consider it appropriate to order the aforementioned measure of reparation, considering that the *State* has complied with it in the context of the friendly settlement agreement.⁹³ The *representatives* have not challenged the information provided by the *State* on compliance with this measure and made no request in this regard.

D. Measures of satisfaction

D.1. Publication of the judgment

96. The parties and the *Commission* did not refer to this measure of reparation. Nevertheless, as it has done in other cases,⁹⁴ the *Court* deems it pertinent to order the *State* to publish, within six months of notification of this judgment: a) the official summary of this judgment prepared by the *Court*, once, in the Official Gazette, in an appropriate and legible font; b) the official summary of this judgment prepared by the *Court*, once, in a newspaper with widespread national circulation, in an appropriate and legible font, and c) this judgment in its entirety, available for a period of one year, on an official web site, in a manner accessible to the public. The *State* must advise this *Court* immediately when it has issued each of the publications ordered.

D.2. Other measures of satisfaction

97. The *representatives* asked the *Court* to order the *State* to: i) erect a new monument (column) with a commemorative plaque at the intersection of *Calle Coronel Martínez* and *Avenida Sta. Teresa*; ii) ensure the permanence of the monument erected in memory of the victim in Mariscal Estigarribia, in the Paraguayan Chaco; iii) change the name of *Avenida Santa Teresa* to that of Infantry Sub-lieutenant Vicente Noguera; iv) make

⁹³ In the friendly settlement agreement, the fifth clause establishes that the *State* "through the Ministry of Public Health and Social Welfare, undertakes to provide medical and psychological assistance free of charge to the siblings of the victim, as well as the provision of medicines. Said assistance will be provided at the public hospital or health center nearest to the home of the beneficiaries that offers services and medication appropriate to the treatment required, regardless of the service that they may receive at the Military Hospital." Friendly Settlement Agreement (evidence file, folio 3508).

⁹⁴ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Montesinos Mejía v. Ecuador*, para. 226.

available premises for the installation and operation of the *Casa del Soldado* ("House of the Soldier") to provide comprehensive support to the family members of victims of military service; v) officially release the partial list of the 157 deceased youths already recognized, and continue work to complete that list; vi) formally present the lifelong usufruct contract for the tomb containing the remains of the victim, with exoneration from related municipal taxes, and vii) separate the Ministry of Defense from the negotiations. The *Commission* did not refer specifically to these measures.

98. With regard to the construction of the monument (stone column), the *State* pointed out that this measure was already implemented. It indicated that three columns were erected with commemorative plaques in honor of Vicente Noguera, the last one being erected at the intersection between *Calle Coronel Martínez* and *Avenida Santa Teresa*, as requested by Mrs. María Noguera. As to the permanence of that monument, the *State* considered that this request was unnecessary because there are no factual reports to suggest that it will be removed. Regarding the change of name of *Avenida Santa Teresa*, the *State* indicated that it sent letters to the municipalities of Asunción and Fernando de la Mora requesting the change of name. Finally, the *State* affirmed that the premises designated for the *Casa del Soldado* have been at the disposal of Mrs. María Noguera since 2013. The *State* presented no arguments regarding the lifelong contract for use of the tomb containing the remains of the alleged victim and the *Commission* did not refer to these measures.

99. Regarding these requests for reparation, the *Court* notes that in the context of the friendly settlement agreement: a) the *State* acknowledged its international responsibility in a public act broadcast by the media, in which the then President Fernando Lugo offered an apology to the Noguera family; b) the ex-President of Paraguay, Federico Franco, has participated in acts of reparation with respect to Mrs. Noguera on behalf of the *State*; c) the *State* has signed an usufruct contract with Mrs. Noguera, which was presented to her during a public act in the presence of former President Federico Franco, for the premises of *Casa del Soldado*, to serve as the offices of AFAVISEM (Association of Family Members of Victims of Military Service) of which María Noguera is the President; d) three monuments (columns) were erected with commemorative plaques in memory of the deceased victim, and e) the tomb where Vicente Noguera is buried was repaired and formally handed over in the presence of high-ranking authorities.

100. For those reasons, this *Court* considers that this judgment and the other measures of satisfaction that were already implemented by the *State* are sufficient and adequate to redress the violations suffered by the victims and does not consider it appropriate to order additional measures.

E. Guarantees of non-repetition

101. The *Commission* and the *representatives* asked the *Court* to order the *State* to implement training programs for members of the armed forces in charge of persons engaged in military service. These programs should focus specifically on international standards, on the *State's* special role as guarantor in respect of those persons, and on the limits imposed by international human rights law on methods of military discipline. The *Commission* also requested the creation of independent, appropriate and effective mechanisms of accountability with regard to abuses committed in the context of military service, as well as the elimination of the use of military courts and the strengthening of the *State's* capacity to investigate deaths and other abuses that take place under the custody of the *State* in the context of military service. The *representatives* added that the *State* should eliminate the jurisdiction of military courts to investigate public criminal matters and cases of human rights violations and requested the enactment of Law No. 4913 on non-violence in military barracks.

102. Regarding the training programs, the *State* pointed out that it had already implemented this measure and, furthermore, that it had complied with a similar measure of reparation in the case of Vargas Areco. The *State* specifically mentioned that the Joint

Command of the Armed Forces had issued a general directive ordering the implementation of training programs on human rights, international humanitarian law and defense of the environment. As to the military criminal courts, the State reported that an application is currently being processed for the reform of the entire military justice system and a complete change of paradigm regarding its scope, and that Congress will then begin discussions on this matter.

103. This *Court* observes that in the friendly settlement agreement, the State agreed to include courses and programs on human rights education in the academic curriculum of military training at the General Staff College (*Escuela de Estado Mayor*) and the Officers' Training Colleges of the three armed forces, given that the victim formed part of the Reserve Officers Training College. The Court also notes that, in the context of compliance with the reparations ordered in the case of Vargas Areco, training programs directed at the armed forces will be implemented as a guarantee of non-repetition, and that Paraguay has not permitted minors under 18 to perform voluntary military service since 2008. Nevertheless, the Court deems it pertinent to order the State to ensure that the academic curriculum of the military training provided at the General Staff College and at the Officers' Training Colleges of the three armed forces include human rights training programs, with an emphasis on international standards and the State's special role as guarantor of all persons who perform military service. This measure must be implemented within one year of notification of this judgment.

104. As to the military criminal jurisdiction the Court recalls that, although in this case it did not find the State responsible for violating the obligation to adopt provisions of domestic law, pursuant to Article 2 of the American Convention, it considers that because the first investigation was conducted by the military justice system, it is pertinent to order the Paraguayan State to submit a report on the progress of the legislative procedure to reform the military justice system as mentioned. This report must contain specific details of the main changes proposed, their compatibility with the Convention and the proposed time frame for their final approval. This measure must be implemented within one year of notification of this judgment.

E. Other measures of non-repetition requested

105. The *representatives* asked the Court to order the State to develop a protocol for the investigation of all cases of human rights violations in military barracks and to ensure that autopsies are conducted in accordance with international standards. The *representatives* also requested that the National Quality and Animal Health Service (SENACSA) carry out epidemiological monitoring of animals that transmit hantavirus, in order to determine the presence of rodents that transmit hantavirus in all military establishments in the Occidental Region and take the necessary steps to eradicate that disease.

106. Regarding the measure of reparation related to the epidemiological control of animals that transmit hantavirus, the *State* pointed out that this request is unrelated to the facts that prompted the litigation, especially since Mrs. Noguera requested, as a measure of reparation, that her son's name be removed from the list of deaths from hantavirus, affirming that he did not die of that disease. Lastly, with respect to the protocol for the investigation of cases of human rights violations, the State argued that this measure was extremely generic. It added that the victims' representatives have the opportunity to participate in criminal proceedings and that since 2006 the Attorney General's Office has implemented a protocol for conducting autopsies.

107. With regard to the foregoing, the *Court* notes that, as emphasized by the victims' representatives, the evidence presented by the parties and the Commission does not conclude that Vicente Noguera died as a result of a hantavirus-related disease. Therefore, it is not appropriate to order a measure of reparation related to the epidemiological control of rodents that transmit hantavirus through the National Quality and Animal Health Service (SENACSA) because that request does not have a causal nexus with the conclusions reached in the chapters on the facts and merits of this judgment. As to the other requests,

this Court considers that the measures of reparation already implemented by the State are sufficient and adequate to redress the violations suffered by the victims and does not find it appropriate to order additional measures.

F. Compensation

F.1. Arguments of the parties and of the Commission

a) Pecuniary damage

108. The *Commission* asked the Court to order the State to provide comprehensive reparation, both pecuniary and non-pecuniary, and to adopt measures of financial compensation. The *representatives* considered that the State should pay the sum of Gs. 1,634,929,686.00 (one thousand six hundred and thirty-four million, nine hundred and twenty-nine thousand, six hundred and eighty-six *guaraníes*) for loss of profits of Vicente Noguera. Their calculation was based on the minimum wage from 1996 until 2046 and the life expectancy at the time of the facts (67.7 years).⁹⁵ In addition, they estimated the amount for loss of earnings of María Noguera at Gs. 129,600,000.00 (one hundred and twenty-nine million, six hundred thousand *guaraníes*), taking into account the amount she earned daily in her dressmaking workshop.

109. The *State* pointed out that it had agreed upon and paid Mrs. María Noguera the sum of US\$ 75,000 (seventy-five thousand United States dollars) as compensation, together with the monthly sum that she receives as a pension since 1996 and that she will continue to receive for the rest of her life. Therefore, it considered that the amount already paid to her and the amount that she will continue to receive constitutes fair compensation.⁹⁶ In particular, it indicated that since 1996 Mrs. Noguera has received the pension granted to her after her son's death, and will continue to receive it as long as she lives. It added that, as of March 2019, she had received approximately US\$ 92,656 (ninety-two thousand, six hundred and fifty-six United States dollars) and therefore the claim for loss of profits was inadmissible. Finally, it pointed out that the amount of money that Mrs. Noguera allegedly stopped receiving was not based on any documentary evidence, and should therefore be rejected.

110. In relation to consequential damage, the *representatives* explained that they took into account all the imponderables that could arise as a result of the harm caused. Specifically, they took into account the average rent paid over 15 years, estimating the consequential damage at Gs. 144,000,000.00 (one hundred and forty-four million *guaraníes*). They also added Gs. 50,000,000.00 (fifty million *guaraníes*) for medical expenses and Gs. 27,750,000.00 (twenty-seven million, seven hundred and fifty thousand *guaraníes*) for reparation and completion of the victim's tomb, for a total of Gs. 221,750,000.00 (two hundred and twenty-one million, seven hundred and fifty thousand *guaraníes*).

111. With regard to rent payments, the *State* argued that there is no causal nexus between the damages claimed and the facts denounced. Regarding the medical expenses requested, it pointed out that not a single document was provided to show the relevant dates or costs of these, adding that Mrs. Noguera was offered medical care, free of charge, which she rejected because she said she had private medical insurance. Therefore, it may be assumed that no claimable medical expenses existed. Finally, the *State* referred to the

⁹⁵ The methodology used by the representatives to calculate loss of earnings was as follows: they used parameters of the Central Bank of Paraguay on the minimum wage and inflation averages from 1999 to 2017, which according to the Consumers' Office was 6.6%. However, they calculated the evolution of the minimum legal wage projecting 4% annual inflation.

⁹⁶ The *State* questioned the representatives' claim, since the potential salaries that the deceased victim might have earned could not be considered as loss of earnings for his mother; also, the fact that they were claiming 100% of the son's potential salary, based on a life expectancy of 67.7 years, assuming that he would have handed over 100% of his salary to his mother each month.

amount requested for repairs and completion of the tomb, affirming that this request was groundless, since the tomb was satisfactorily remodeled and handed over in the context of the friendly settlement agreement in 2011. It also noted that no complaint was received regarding the remodeling of the tomb or evidence to demonstrate its deterioration or disrepair, and therefore that claim should be dismissed.

b) Non-pecuniary damage

112. The *representatives* indicated that the amount for moral damages was left to the discretion of the Court. However, they requested the sum of Gs. 1,387,000, 000.00 (one thousand three hundred and eighty-seven million guaraníes) and added that they were requesting US\$ 50,000 (fifty thousand United States dollars) for each of the children of Mrs. María Noguera: Aldo David Alcaraz Noguera, Catherine Elizabeth Noguera and Ruth Araceli Alcaraz Noguera.

113. The *State* argued that the amounts claimed were based on a number of generic and purely subjective factors. It requested that, in light of the financial compensation received voluntarily by Mrs. Noguera, no additional claims be made for non-pecuniary damage. In relation to María Noguera's children, it reiterated that they should not be considered as victims in this case and added that the claim was generic, given that not a single document was provided to demonstrate the alleged psychological or emotional harm suffered, or any birth certificates or records to prove their age at the time of the facts.

F.2. Considerations of the Court

114. In its case law, this Court has held that pecuniary damage supposes the loss of or detriment to the income of the victims, the expenses incurred owing to the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.⁹⁷

115. In this case, the Court confirms that Mrs. Noguera has been receiving a pension since 1996, which was agreed after the death of her son. Thus, it is not appropriate for this Court to set an amount for pecuniary reparation related to loss of earnings. However, this Court deems it pertinent to order, in equity, the payment of US\$ 20,000.00 (twenty thousand United States dollars) in favor of María Noguera for consequential pecuniary damage related to her search for justice for the death of her son.

116. The Court also confirms that, as agreed in the friendly settlement agreement, the State paid Mrs. Noguera US\$ 75,000.00 (seventy-five thousand United States dollars) for the death of her son. This Court does not consider it appropriate to order further compensation to that already received by María Noguera.

G. Costs and expenses

117. The *representatives* asked the Court to award the sum of US\$ 15,000 (fifteen thousand United States dollars) for costs and expenses, in line with international standards. The *State* rejected the amount claimed, arguing that those expenses would eventually be reimbursed through the Victims' Legal Assistance Fund. Furthermore, it noted that the representatives did not provide receipts to prove any disbursements that could be justified, such as the payment of costs, and therefore asked the Court to reject their request.

118. The *Court* reiterates that, based on its case law, costs and expenses form part of the concept of reparation because the efforts made by the victims to obtain justice, both at national and international level, entail disbursements that must be compensated when the State's international responsibility has been declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope,

⁹⁷ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Montesinos Mejía v. Ecuador*, para. 236.

which includes expenses generated before the authorities of the domestic courts and those incurred during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity, taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.⁹⁸

119. This Court has indicated that “the claims of the victims or their representatives with regard to costs and expenses, and the substantiating evidence, must be submitted to the Court at the first procedural opportunity granted to them - that is, in the pleadings and motions brief – without prejudice to updating those claims at a later date, in keeping with the new costs and expenses incurred during the proceedings before this Court.” In addition, the Court reiterates that “it is not sufficient to merely forward probative documents; rather, the parties are required to include arguments that relate the evidence to the fact it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly indicated.”⁹⁹

120. In this instance, the case file contains no evidence to support the costs and expenses claimed by the representatives for processing this case before the Court. However, the Court considers that such proceedings necessarily involve monetary outlays, and therefore decides that the State must pay the victims’ representatives the sum of US\$ 15,000.00 (fifteen thousand United States dollars) for costs and expenses. At the stage of monitoring compliance with the judgment, the Court may order the State to reimburse the victims or their representatives for reasonable expenses incurred during that procedural stage.¹⁰⁰

H. Reimbursement of expenses to the Victims’ Legal Assistance Fund

121. In an Order of July 16, 2019, the President of the Court approved the request submitted by the alleged victims, through their representatives, to have access to the Victims’ Legal Assistance Fund, and granted the financial assistance necessary to cover the expenses for the presentation of one testimony and the appearance of two legal representatives at the public hearing in this case. The Secretariat of the Court forwarded to the State a copy of the report on the disbursements made in application of that Fund in this case, which totaled US\$1,994.88 (one thousand, nine hundred and ninety-four United States dollars and eighty-eight cents). Paraguay acknowledged that, upon delivering its judgment, the Court has the authority to decide on the admissibility of ordering the respondent State to reimburse the Fund Victims’ Legal Assistance Fund. Thus, it is for the Court, in application of Article 5 of the Rules of the Fund, to evaluate in its judgment whether to order the respondent State to reimburse expenditures made from the Victims’ Legal Assistance Fund.

122. In light of the violations declared in this judgment, the Court orders the State to reimburse the said Fund in the amount of US\$1,994.88 (one thousand, nine hundred and ninety-four United States dollars and eighty-eight cents) for the expenses incurred. This amount shall be reimbursed to the Inter-American Court within ninety days from notification of this judgment.

I. Method of compliance with the payments ordered

⁹⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, paras. 79 and 82, and *Case of Montesinos Mejía v. Ecuador*, para. 244.

⁹⁹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, paras. 275 and 277, and *Case of Montesinos Mejía v. Ecuador*, para. 245.

¹⁰⁰ Cf. *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Interpretation of the Judgment of Merits, reparations and costs*. Judgment of August 19, 2013. Series C No. 262, para. 62, and *Case of Montesinos Mejía v. Ecuador*, para. 246.

123. The State shall make the payments for compensation and reimbursement of costs and expenses, as established in this judgment, directly to María Noguera, within one year of notification thereof.

124. If the beneficiary is deceased, or dies before she receives the respective compensation, this shall be delivered directly to her heirs, in accordance with the applicable domestic law.

125. The State shall comply with its monetary obligations through payment in United States dollars, or the equivalent in its national currency, calculated according to the exchange rate in force on the New York Stock Exchange (United States of America) on the day before payment.

126. If, for reasons that can be attributed to the beneficiary of the compensation, or her heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit these amounts in an account or certificate of deposit in their favor in a solvent Paraguayan financial institution, in United States dollars, and on the most favorable financial terms permitted by the State's law and banking practice. If the corresponding compensation is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

127. The amounts allocated in this judgment as compensation, and as reimbursement of costs and expenses, shall be delivered in full to the person indicated in this judgment, without any deductions arising from possible taxes or charges.

128. If the State should fall into arrears, including in the reimbursement of the expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed, corresponding to banking interest on arrears in the Republic of Paraguay.

X OPERATIVE PARAGRAPHS

129. Therefore,

THE COURT

DECLARES,

Unanimously, that:

1. The State is responsible for the violation of the rights established in Articles 4(1), 5(1) and 19 of the American Convention on Human Rights to the detriment of Vicente Noguera, pursuant to paragraphs 70 to 75 of this judgment.

2. The State is responsible for the violation of the rights enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of María Noguera, pursuant to paragraphs 80 to 85 of this judgment.

3. The State is responsible for the violation of the right enshrined in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of María Noguera, pursuant to paragraph 23 of this judgment.

4. The State is not responsible for the violation of the natural judge principle contained in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of María Noguera, pursuant to paragraphs 86 and 87 of this judgment.

AND ESTABLISHES:

Unanimously, that:

5. This Judgment is *per se* a form of reparation.
6. The State shall continue and complete the investigation that is currently in progress regarding the facts of this case, in accordance with the applicable domestic laws and pursuant to paragraph 93 of this judgment.
7. The State shall issue the publications indicated in paragraph 96 of this judgment, within six months of notification of this judgment.
8. The State shall ensure that the academic curriculum for military training at the General Staff College (*Escuela de Estado Mayor*) and the Officers' Training Colleges of the three armed forces includes human rights programs, focusing particularly on international standards and on the State's special role as guarantor of persons engaged in military service, pursuant to paragraph 103 of this judgment.
9. The State shall submit a progress report on the legislative process for the reform of the military criminal justice system, in the terms of paragraph 104 of this judgment.
10. The State shall pay the amounts established in paragraphs 115 and 120 of this judgment as compensation for pecuniary damage, and for reimbursement of costs and expenses, pursuant to paragraphs 123 to 128 of this judgment.
11. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the amount disbursed during the processing of this case, pursuant to paragraphs 122 and 128 of this judgment.
12. The State, within one year of notification of the judgment, shall provide the Court with a report on the measures adopted to comply with it, notwithstanding the provisions of paragraph 96 of this judgment.
13. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfilment of its duties under the American Convention on Human Rights, and will close this case when the State has complied fully with all its provisions.

DONE in Spanish at San José, Costa Rica, on March 9, 2020.

I/A Court HR. *Case of Noguera et al. v. Paraguay. Merits, reparations and costs.* Judgment of March 9, 2020.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary