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| Title/Style of Cause: | Victor Hugo Maciel v. Paraguay |
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| Decided by: | President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Paolo G. Carozza. |
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| Represented by: | APPLICANTS: the Center for Justice and International Law and the Peace and Justice Service, a Paraguayan subsidiary |
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I. SUMMARY

1. On March 14, 1996, the Center for Justice and International Law (CEJIL) and the Peace and Justice Service, a Paraguayan subsidiary (SERPAJ/PY) (hereinafter, “the petitioners”) lodged a petition with the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “the IACHR”) against the Republic of Paraguay (hereinafter “Paraguay,” “the Paraguayan State,” or “the State”). Said petition reported the violation by the Paraguayan State of the rights to life, humane treatment, personal liberty, and a fair trial, the rights of the child, and the right to judicial protection, enshrined in Articles 4, 5, 7, 8, 19, and 25, respectively, of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), all in relation to violation of the general duty of the state to respect and guarantee the rights established in the Convention, pursuant to Article 1(1) of that instrument, to the detriment of Víctor Hugo Maciel, who died at 15 years of age while he was performing compulsory military service with the Paraguayan Armed Forces.

2. The petitioners alleged that Victor Hugo Maciel, who was 15 years, was recruited on August 6, 1995, to provide compulsory military service in the Paraguayan armed forces, although his parents expressed their opposition to the recruitment. The petitioners indicated that on October 2, 1995, Maciel boy felt sick, apparently experiencing fever and chills. The same day, the entire squad where Maciel was serving, was put through an additional series of rigorous activities, known in Paraguay as “descuereo” [“flaying”] due to an error or failing during the so-called “closed drill” [“ejercicios de orden cerrado”]. The petitioners stated that when Víctor Hugo Maciel tried to fulfill the punishment, he fell to the ground, unconscious and face up. He was later transferred to San Jorge Hospital, where he died. The petitioners contended that Maciel

boy was suffering from Chagas' disease in its chronic stage, which most patent manifestations have to do with irregularities in the heart. The petitioners alleged that the military court for preliminary proceedings [Juzgado de Instrucción Militar de Turno] initiated an investigation into the facts, which ended with the dismissal of the case on December 4, 1995. At the same time as the military investigation, preliminary criminal proceedings to investigate the facts of the case were initiated in the ordinary jurisdiction, because of publicity given to the case in the newspapers and by members of the Human Rights Committee of the Chamber of Senators of the Paraguayan Congress, but did not moved forward.

3. On March 8, 2005, the Inter-American Commission on Human Rights approved Report N° 34/05, in accordance with Article 50 of the American Convention. The report was transmitted to the State of Paraguay on April 20, 2005, with a deadline of two months for compliance with its recommendations. On June 17, 2005, the State asked for suspension of the period established in Article 51 (1) of the American Convention and formally requested the possibility of seeking a friendly settlement on the basis of recognition of its international responsibility for the facts that gave rise to this case, which was accepted by the petitioners. On March 22, 2006, the petitioners and the State signed a friendly settlement agreement.

4. The Commission concludes that although important progresses have been achieved to comply with the Friendly Settlement Agreement of Mach 22, 2006, the State has partially complied with the recommendation made by the IACHR in Report N° 34/05, regarding the State obligation to fully investigate, impartially and effectively, the facts of this case, for the purpose of identifying, judging, and punishing the intellectual and material authors responsible for the death of Victor Hugo Maciel boy.

II. PROCESSING BY THE COMMISSION AND FRIENDLY SETTLEMENT

5. On April 10, 1996, the Commission began processing the case and forwarded the petition to the State. In accordance with the IACHR's Rules of Procedure in effect at the time, it granted the State 90 days to submit its response. The State did not respond within the time indicated, and on August 8 and December 6, 1996, the Commission reiterated its request for information, specifically indicating that it could apply Article 42 of the Commission's Rules of Procedure in effect at that time, the equivalent of Article 39 of the IACHR's present Rules of Procedure. In a communication dated April 21, 1997, the petitioners requested the IACHR to initiate a friendly settlement procedure. On May 8, 1997, the IACHR forwarded to the State the communication from the petitioners, and placed itself at their disposal for a friendly settlement process. On July 3, 1997, meetings between the parties began, with the Commission acting as intermediary, in an effort to achieve a friendly settlement in this case. In the course of these meetings, the parties discussed various points of a possible friendly settlement, and exchanged their views on the viability of such a settlement.

6. On October 10, 2000, a hearing was held on a possible friendly settlement at the headquarters of the Inter-American Commission. On October 25, 2002, the Commission requested information from both parties. On May 13, 2003, the petitioners, and the mother of the victim, Mrs. Francisca Alcaraz Viuda de [Widow of] Maciel, sent a communication stating their intention to withdraw from the friendly settlement process. On May 20, 2003, the Commission,

in accordance with its Rules of Procedure, terminated the friendly settlement process, notified both parties of that decision, and, pursuant to its Rules of Procedure, decided to postpone consideration of admissibility until after discussing and deciding on the merits. Thus the Commission requested the petitioners to submit their final observations.

7. The petitioners submitted their observations on September 23, 2003. On November 10, 2003, they were forwarded to the State, and it was requested to submit its final observations. The State submitted those observations on April 28, 2004. On July 23, 2004, the Commission requested additional information of both parties, and it was sent by the petitioners on August 24, 2004 and by the State on August 25, 2004.

8. On September 15, 2004, the IACHR asked the Pan-American Health Organization (PAHO) for a technical opinion on international standards and other specialized information related to Chagas' disease. That technical opinion was received by the IACHR on February 25, 2005. The IACHR noted that even though the opinion was requested and responded to in general terms, it could be used in deciding the present case, and so it decided to transfer a copy of it to both parties, which it did on March 8, 2005.

III. POSITION OF THE PARTIES

A. Petitioners

9. They report that the boy, Víctor Hugo Maciel, was recruited on August 6, 1995 to provide compulsory military service in the Paraguayan armed forces. They specifically state that on August 6, 1995, members of the armed forces came to the home of Víctor Hugo Maciel's family, who were farmers in the Province of Pirapey, and took him away to serve in the military. They add that the boy gave his consent, but that his parents expressed their opposition to the recruitment.

10. They indicate that Víctor Hugo Maciel was born on September 19, 1979, so that he was 15 years old at the time he was recruited.

11. They contend that according to documents of the Recruitment and Mobilization Service Department, Víctor Hugo Maciel was considered fit for compulsory military service. They add that after he died, it was determined that at the time he was recruited for military service, the child was suffering from Chagas' disease. According to the World Health Organization, it is a disease that is found among Latin Americans living in makeshift housing conditions and exposed to contagion by the insect transmitting the protozoa that causes the disease.[FN1]

[FN1] The petitioners cite on this point: World Health Organization, Chagas' Infectious Disease homepage, at www.who.int/ctd/chagas/epidemio.htm

12. They mention that according to scientific studies, Chagas' disease, which affects 16 to 18 million persons in Latin America, is transmitted by insects, most of which live in the holes and

cracks in rural housing, and that they cause serious damage, through lesions to the heart and other vital organs. They add that Chagas' disease can be detected in three periods: in the acute or beginning stage, which lasts 20 to 30 days; in the intermediate or latent stage, of variable duration, which can be for several years; and, in the chronic stage, where there is late manifestation of the infection lasting a variable time depending on the gravity of the disease's progress in each patient.[FN2]

[FN2] In this regard, the petitioners cite the study: "Chagas' Disease" (Sanmartino, Mariana. "La maladie de Chagas", Université de Genève. Published by Mariana Sanmartino, where it states that this disease affects between 16 and 18 million people in Latin America.

13. They say that Víctor Hugo Maciel suffered from the disease in its chronic stage. According to medical references on the disease quoted by the petitioners, this stage is found in about 15% of persons with the disease, and its most patent manifestations have to do with irregularities in the heart. The petitioners stress the fact that the cardiopathy of Chagas' disease occurs in young people, or in other words, in a relatively healthy individual, the disease causes inability to live a normal life as a result of damage to the heart."[FN3]

[FN3] In this regard, the petitioners cite: Miraflores College, "Chagas' Disease," Mexico, in: www.mlfor.mx/materias/temas/malchagas/malchagas.htm

14. They say that according to statements made by Miguel Ángel Candia Sotelo and Néstor Ale Vera Sotelo, both cavalry soldiers and companions of Víctor Hugo Maciel, on October 2, 1995, the Maciel boy said he felt sick, apparently experiencing fever and chills.

15. They add that at about 6:00 a.m. on October 2, 1995, the Maciel boy participated in the regular activities of his squad, and because of a error or failing during the so-called "closed drill" ["ejercicios de orden cerrado"], the entire squad was put through an additional series of rigorous activities, known in Paraguay as "descuereo" ["flaying"] on the orders of Second Lieutenant Osvaldo Zacarías Muñoz.

16. They report that, in the opinion of the Paraguayan Military Prosecutor, these "descuereo" exercises are similar to what would be required of a soccer team in training.

17. They state that when Víctor Hugo Maciel tried to fulfill the punishment, he fell to the ground, unconscious and face up, and, according to several accounts heard by the petitioners, Second Lieutenant Muñoz kicked him twice. They add that when the Maciel boy did not react, he asked for assistance and the boy was transferred to San Jorge Hospital, where he died. They say that the death certificate issued at the time merely indicated as cause of death: "sudden death."

18. They report that the parents of Víctor Hugo Maciel said that when they were informed of the death of their son by an army officer, he gave them a million guaranies and persuaded them to sign a document in which they promised not to request an autopsy on their son. The petitioners point out that the father of the Maciel boy is illiterate, and that the information he received was that his son had suffered an “attack” and that he had been hospitalized for three days before passing away.

19. They report that in note No. 126/95, dated October 5, 1995 and addressed to the President of the Supreme Court of Military Justice by Brigadier General Fauso Facetti, it was confirmed that the parents of Víctor Hugo Maciel did not authorize an autopsy of the corpse.

20. They say that, with the support of the Defense Committee of the Chamber of Deputies, the parents of the Maciel boy decided to request an investigation into the events and asked that his body be exhumed. They go on to mention that, on October 12, 1995, an autopsy was accordingly performed, with the conclusion that Víctor Hugo Maciel died “suddenly from enlarged cardiopathy of the Chagas’ type, in the absence of signs of traumatic violence,” and that one of the experts determined that what “precipitated his sudden death was the extreme physical duress to which he was subjected, which exceeded the functional reserve of his heart, which was already diminished by the disease.”

21. They report that there are persons who live with Chagas’ disease for a long time and, according to the medical report, the induction of Víctor Hugo Maciel into the armed forces and the additional exercises to which he was subjected were determining factors in accelerating his death.

22. They indicate that the alleged hematomas identified by the father of Víctor Maciel as signs of the blows received by Maciel were considered by the corresponding physicians as the result of post mortem discoloration of the corpse.

23. They state that on the same day as the death of Víctor Hugo Maciel, namely, on October 2, 1995, the Commander of the Army’s First Cavalry Division sent a letter to the President of the Supreme Court of Military Justice, requesting that the military court for preliminary proceedings [Juzgado de Instrucción Militar de Turno] initiate an investigation into the facts. Accordingly, a preliminary investigation was initiated under military jurisdiction, and on October 12, 1995, the results of exhumation were added to the evidence. On October 25, 1995, the military prosecutor requested dismissal of the case, on the grounds that the facts under investigation did not constitute a crime. The petitioners report that said request by the military prosecutor was granted by the military trial court [Juez de Primera Instancia Militar de Primer Turno], in Resolution A.I. No. 28/95, dated December 4, 1995.

24. They state that at the same time as the military investigation, and with the publicity given to the case in the newspapers and by members of the Human Rights Committee of the Chamber of Senators of the Paraguayan Congress, on October 18, 1995, the Office of the Public Prosecutor of the State [Fiscalía General del Estado] requested that the courts of the ordinary jurisdiction open preliminary criminal proceedings to investigate the facts of the case. They were

initiated by the trial court for criminal matters [Juzgado de Primera Instancia en lo Criminal del Tercer Turno].

25. They point out that the investigation in the ordinary courts did not move forward, and that the military courts delayed in sending the information repeatedly requested by the ordinary court, and that no light was shed on responsibility for the death of Víctor Hugo Maciel.

26. They indicate that on December 29, 1997, the parents of the Maciel boy lodged a formal complaint against the physicians responsible for the medical examination prior to the induction of Víctor Hugo Maciel, and against Second Lieutenant Osvaldo Zacarías Muñoz. They add that by October 2002, all the members of the military involved in the case had already given testimony, but that the case was still in the preliminary investigation stage.

27. They claim that forced recruitment and the recruitment of children into the Compulsory Military Service in Paraguay is a practice of the Paraguayan Armed Forces. They add that on occasions, the parents of children who are recruited are intimidated by the armed forces and compelled to accept the conscription of their children, and that this practice is used primarily in the case of groups of poor peasants and that it includes the use of false documents in the enlistment process.

28. They refer to reports of a high number of accidents and alleged homicides of soldiers who are in compulsory service, and to the fact that the victims, in most cases, have been soldiers less than 18 years of age. They say that the quality of medical control over the conscripts into military service is deficient, and they add that in the armed forces of Paraguay, punishment is inflicted and soldiers are subjected to physical activities that are injurious from both a psychological and a physical standpoint.

B. The State

29. The Paraguayan State did not submit a response to the petition within the time allotted by the Commission for that purpose, pursuant to its Rules of Procedure in effect at the time. The State allowed the regulatory deadlines to lapse, and only responded when it received a proposal for a friendly settlement.

30. In its observations on the merits, on April 28, 2004, the State asserted that, despite the fact that they had not been able to comply fully with the points negotiated during the friendly settlement process in this case, it had led to significant progress in areas of the Paraguayan Military Service. It referred to the following examples of this: the cooperation and unusual openness of the Paraguayan armed forces to discussing and assessing its enlistment procedures; the improvement in procedures for checking on the health condition of enlistees; the significant reduction in the presence of under-age children inducted into the armed forces; respect for the decision of those who refuse to join the armed forces as conscientious objectors; and, the establishment of mechanisms for control and monitoring of the status of the compulsory military service, through the Ombudsman's Office [Defensoría del Pueblo].

31. The State described the results of the work done by the Joint Inter-Institutional Committee, made up of representatives of government and civil society for the purpose of discussing the compulsory military service. It added that this Committee visited military bases and checked on the general conditions and possible presence of under-age soldiers. It also reported that as a result of this exercise, the Public Prosecutor's Office [Ministerio Público] initiated 16 judicial proceedings based on alleged irregularities in military conscription procedures.

32. It stated that since 2002, boys under 18 years of age have no longer been recruited into the Paraguay armed forces, and that no young men below the minimum regulatory age have been identified in any military unit. It added that on May 22, 2002, Paraguay ratified the "Optional Protocol of the Convention on the Rights of the Child relating to the Participation of Children in Armed Conflicts," and that it had therefore committed to set the minimum age of 16 years for voluntary recruitment, following the standards established by the protocol in that regard.

33. It explained that efforts are being made to combat the falsification of documents, and referred to practical and cultural considerations that affect the situation.

34. As regards the specific facts of the present case, it partially questioned the account of the facts presented by the petitioners. In this regard, it questioned whether the recruitment of Víctor Hugo Maciel had been done against the will of his parents. It added that medical reports on the autopsy and the death certificate show that Víctor Hugo Maciel died suddenly and not from injuries suffered as a result of physical mistreatment. It asserted that neither had it been proved that Víctor Hugo Maciel had been subjected to physical punishment, and emphasized that the medical report had not identified injuries on his body.

35. It stated that it acknowledged that there was not an adequate medical examination to detect the disease affecting Víctor Hugo Maciel, and maintained that, according to what was agreed during the friendly settlement process, measures were adopted to provide for compensation for the next of kin of Víctor Hugo Maciel in the amount of US\$20,000, in addition to payment of a pension to the family. It added that despite the fact that the State had not managed to pay the compensation, it was pursuing efforts with the National Congress so that it would adopt a budget that would allow for this payment.

36. It contended that appropriate efforts were made to guarantee an adequate investigation into the facts of this case, both in the military and the ordinary courts. It added that on September 13, 2003, the prosecutor in charge of the case in the ordinary courts requested that the case be closed, because "at this point in the proceedings there is no one and no certainty of finding a person for determining responsibility." As regards the petitioners' allegations of rights' violations, the State partially accepted the alleged violation of the right to life by the petitioners, but denied international responsibility with regard to the other rights that the petitioners alleged were violated.

IV. ANALYSIS ON ADMISSIBILITY

37. Based on the foregoing, on May 20, 2003, the IACHR decided to postpone consideration of admissibility until after a discussion and decision on the merits. Consequently, the Commission will now examine admissibility of the petition.

A. Jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci*

38. In accordance with Article 44 of the American Convention and Article 23 of the IACHR's Rules of Procedure, petitioners are authorized to lodge petitions with the Commission related to alleged violations of the rights established in the American Convention. As for the State, Paraguay is a party to the Convention, and therefore is required to respond internationally in the case of violations of that instrument. The alleged victim is a natural person, in respect of whom the State undertook the obligation to guarantee the rights enshrined in the Convention. Thus, the Commission has personal jurisdiction to examine the complaint.

39. The Commission has subject matter jurisdiction because the petition refers to complaints of the violation of human rights protected by the American Convention.

40. The IACHR has jurisdiction *ratione temporis*, because the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State on the date on which Víctor Hugo Maciel was recruited, since Paraguay ratified the American Convention on August 24, 1989, and Víctor Hugo Maciel was recruited on August 6, 1995.

41. The Commission has jurisdiction *ratione loci* to take cognizance of the petition, since it alleges violations of rights protected by the American Convention that took place within the territory of a state party to that instrument.

B. Requirements for admissibility of a petition

1. Exhaustion of domestic remedies

42. First of all, it is important to note that although the State referred to the status of certain domestic remedies, it did not object to the exception to exhaustion of domestic remedies, which, in accordance with the jurisprudence of the Inter-American Court of Human Rights, would be sufficient to conclude that the State tacitly relinquished its right to invoke failure to exhaust domestic remedies.[FN4]

[FN4] I/A Court H.R., Case of Castillo Páez. Preliminary Objections. Judgment of January 30, 1996, paras. 41-43; and, Case of Loayza Tamayo. Preliminary Objections. Judgment of January 31, 1996, paras. 41-43.

43. The Commission further notes that prior to the death of Víctor Hugo Maciel, the Paraguayan State initiated two judicial proceedings. One was initiated in military court on October 2, 1995, and concluded on December 4, 1995, by Resolution A.I. No. 28/95, issued by the Juzgado Primero de Instancia en lo Militar. The other judicial proceeding was brought in the

courts of the ordinary jurisdiction on October 18, 1995, when the Office of the Public Prosecutor of Paraguay [Fiscalía General del Paraguay] requested that preliminary criminal proceedings [instrucción de un sumario] be opened in the matter. This was done by the trial court for criminal matters [Juzgado de Primera Instancia en lo Criminal del Tercer Turno]. On September 18, 2003, the Public Prosecutor's Office requested that the case be closed, and confirmed this request on September 23, 2003, indicating as the grounds for closing the case the fact that there were no individual persons charged, and that the case had been paralyzed for six months. According to information provided by the parties in the hands of the IACHR, so far the court handling the case has not issued a decision on these requests.

44. In this regard, the Commission notes that the military court judgment of December 5, 1995 did not exhaust the remedies under domestic law. As for the proceedings in the courts of the ordinary jurisdiction, the Commission notes that said proceedings have not been concluded to date. On this point, the IACHR further notes that the death of Víctor Maciel occurred on October 2, 1995, and that over nine years have lapsed without a judgment ever having been pronounced by the trial court. The State has not offered any evidence to justify this delay.

45. The IACHR therefore concludes that although domestic judicial remedies have not been exhausted, there is cause for an exception to the exhaustion of domestic remedies, consisting in the "unwarranted delay in rendering a final judgment under the aforementioned remedies," as stipulated in Article 46(2)(c) of the American Convention.

46. It only remains to point out that use of the exceptions to the rule of exhaustion of domestic remedies provided for in Article 46(2) of the Convention is closely linked to determination of possible violations of certain rights enshrined therein, such as guarantees of access to justice. However, Article 46(2) of the American Convention, by its nature and purpose, is a rule that is independent of the substantive provisions of the Convention. Therefore, the issue of whether the exceptions to the rule of exhaustion of domestic remedies stipulated in that Article are applicable to the case in point must be determined prior to and separately from the analysis of the merits of the case, since it relies on a different standard for evaluation than the one used to determine a violation of Articles 8 and 25 of the Convention. It is important to clarify that the causes and effects that prevented exhaustion of domestic remedies in the present case will be studied, as relevant, in the analysis on the merits of the case, in order to ascertain whether they in fact constitute violations of the American Convention.

2. Deadline for presentation of the petition

47. Article 32 of the IACHR Rules of Procedure establishes that in those cases in which the exceptions to the requirement of exhaustion of domestic remedies are applicable, the petition must be lodged within a reasonable period of time, as determined by the Commission, taking into account the date on which the alleged violation occurred and the circumstances of each case.

48. In this regard, taking into account the date on which the alleged violation occurred and the status of the domestic remedies in Paraguay, and on the basis of the specific facts submitted to the IACHR for its consideration in this matter, the Commission is of the opinion that the petition under study was lodged within a reasonable period of time.

3. Characterization of the facts

49. The Commission considers that the report of the petitioners refers to facts that, if proven, could constitute a violation of the rights to personal liberty, humane treatment, and life, and the rights of the child, the right to a fair trial, and the right to judicial protection, enshrined, respectively, in Articles 7, 5, 4, 19, 8, and 25 of the American Convention, all of which are considered in relation to the general obligation to respect the rights referred to, contained in Article 1(1) of that instrument.

C. Conclusion on admissibility

50. The Commission concludes that it is competent to take cognizance of this petition and that it meets the requirements for admissibility, in accordance with Articles 46 and 47 of the American Convention and Articles 30, 37, and related provisions of its Rules of Procedure.

V. ANALYSIS ON THE MERITS

A. Introduction – Children and Military Service

51. The issue of enlistment of children in the armed forces is one of the major concerns in the international debate on the situation of children. The risks to the physical and psychological safety of children inherent in their involvement in military activities and armed conflicts have led to the formulation of rules of international humanitarian law^[FN5] and international human rights law that contemplate the need for clear restrictions to this type of practice.

[FN5] In international humanitarian law, the additional protocols to the Geneva Conventions of August 12, 1949 relating to the protection of victims of international armed conflicts (Protocol I) or internal armed conflicts (Protocol II) determine the need for specific protection of this group. Protocol I establishes that: “The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in the hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest.” Protocol II states in its Article 4 on Fundamental Guarantees (3): “Children shall be provided with the care and aid they require, and in particular: a) They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care; b) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated; c) Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities; d) The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph c) and are captured; e) Measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the

area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.”

52. The Convention on the Rights of the Child, since it was adopted in 1989, has served as a fundamental framework for determining the rights of children, as it is the international treaty with the most ratifications. Said Convention establishes in its Article 38, third paragraph that:

The States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.[FN6]

[FN6] Convention on the Rights of the Child, adopted and open for signature and ratification by the General Assembly in its Resolution 44/25, November 20, 1989. The Convention was ratified by Paraguay in 1990 by Law 57/90.

53. Despite the gains achieved with the extensive ratification of the Convention on the Rights of the Child, the UN General Assembly, concerned over the high number of children and adolescents involved in armed conflicts, issued Resolution 48/157 on December 20, 1993, in which it stipulated the appointment of an expert to make a study of the issue. Mrs. Graça Machel, the expert responsible for the study, presented an extensive report[FN7] to the U.N. General Assembly in August 1996.

[FN7] “Repercussions of Armed Conflicts on Children,” Report of the Secretary General’s expert, Mrs. Graça Machel, presented in accordance with Resolution 48/157: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/bdf752e7cd66ca7f80256706003ef3e5?Opendocument>

54. Among other things, the report notes that recruitment of children is sometimes done with force, by coercing them and their families, or by falsifying the records of the age of enlistees. With regard to the allegation that adolescents enlist on their own volition, it states that “it is a mistake to think that they do so voluntarily. Although youth apparently have chosen military service, it is not a choice that they have freely exercised. Perhaps they have been driven by one of several forces, which can be cultural, social, economic, or political pressures.”[FN8]

[FN8] *Idem*, Paragraph 38.

55. The report points out that contrary to the precepts of the Convention on the Rights of the Child, “once they are recruited, children generally receive treatment very similar to that of

adults.”[FN9] It highlights the severe physical and psychological consequences suffered by children who operate as soldiers, or who are directly exposed to armed conflict. In this regard, among other suggestions, the study recommends that a worldwide campaign be initiated with a view to eradicating the use of children under 18 years of age in the armed forces.

[FN9] *Idem*, Paragraph 44.

56. Other organizations, such as the International Red Cross and the U.N. Human Rights Commission, have also made the same recommendations on various occasions.[FN10] Moreover, it is important to point out that in June 1999, Agreement No. 182 of the International Labour Organization established in its Article 3, in relation to the worst forms of child labor and immediate action to eliminate them, that:

For the purposes of this Convention, the term “the worst forms of child labour” comprises:

a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.[FN11]

[FN10] In December 1995, the Twenty-Sixth International Conference of the Red Cross and Red Crescent referred to the need for special efforts to exclude children under 18 years of age in hostilities. The U.N. Human Rights Commission, in its Resolution 1999/80 on the Rights of the Child, referred to the urgent need to increase the minimum age limit established in Article 38 of the Convention on the Rights of the Child for recruitment and participation of any person in armed conflicts.

[FN11] Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted June 17, 1999 and ratified by Paraguay on January 10, 2001.

57. As a principal result of this process, on May 25, 2000, the Optional Protocol to the Convention on the Rights of the Child relating to the Participation of Children in Armed Conflicts was approved.[FN12] The Protocol prohibits compulsory recruitment of children less than 18 years of age in the armed forces.[FN13] In exceptional cases involving persons of more than 15 years of age, the third article of the Protocol establishes as follows:

1. States Parties shall raise the minimum age, counted in years, for the voluntary recruitment of persons in their national armed forces above the age established in paragraph 3 of Article 38 of the Convention on the Rights of the Child, taking into account the principles formulated in that Article, and recognizing that, by virtue of that Convention, children less than 18 years of age have the right to special protection.

2. Each State Party shall deposit a binding declaration upon ratification or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment

into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as minimum, that:

- a) Such recruitment is genuinely voluntary;
- b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- c) Such persons are fully informed of the duties involved in such military service;
- d) Such persons provide reliable proof of age prior to acceptance into national military service.

[FN12] General Assembly - Resolution A/RES/54/263 of May 25, 2000 – Optional Protocol of the Convention on the Rights of the Child relating to Participation of Children in Armed Conflicts - http://193.194.138.190/spanish/html/menu2/6/protocolchild_sp.htm - Signed by Paraguay on September 13, 2000 and ratified on September 27, 2002.

[FN13] Optional Protocol of the Convention on the Rights of the Child - Article 2.

58. Under the inter-American system of human rights, this topic has also been the source of great concern. In July 1999, the Latin American and Caribbean Conference on the Use of Children as Soldiers[FN14] considered any recruitment of adolescents by the armed forces as contrary to the precepts established in the Convention on the Rights of the Child, even if the person less than 18 years of age gave assurances that it was voluntary or it was assumed to be so.

[FN14] Sponsored by the Uruguayan Ministry of Foreign Affairs, the Coalition to Prevent the Use of Children in Armed Conflicts, and organized by the Inter-American Children's Institute (OAS)

59. In 1999, the Inter-American Commission also issued a general recommendation on eradication of recruitment and participation of children in armed conflicts.[FN15]

[FN15] 1999 Annual Report of the Inter-American Commission on Human Rights – Chapter 6 – Special Studies.

60. In the background information for that Recommendation, the IACHR pointed out that “despite the fact that most member countries have established in their legislation a minimum age of 18 for compulsory military recruitment, practices in violation of the human rights of children persist in this area, practices that the Commission purely and simply regards as situations comparable to slavery or forced servitude.”[FN16]

[FN16] Idem.

61. Among the recommendations made by the Commission to member states, the first one reads: “Revoke any legislation or directives that permit the voluntary or compulsory conscription of adolescents who are below the minimum age permitted under international instruments.”[FN17] In the second recommendation addressing states parties to armed conflicts, the Commission specifically recommends as follows: “Refrain from using any violent or persuasive means, involving pressure or payment to the families, in order that they facilitate or hand over their minor children for armed or bellicose activities.”[FN18]

[FN17] Idem, First recommendation.

[FN18] Idem, Second recommendation to all the parties participating in armed conflicts (states, paramilitary groups, and groups of armed dissidents).

62. Therefore, the tendency under international law is that children of less than 18 years of age should not be inducted into the Armed Forces and that in any event, children less than 18 years of age should not participate directly in hostilities and must receive special treatment that takes into account their age and corresponding requirements. Without prejudice to the foregoing, as explained *infra*, if the domestic law, as in the case of Paraguay, establishes that children of less than 18 years of age are prohibited in all circumstances from being inducted into the armed forces, such law is the standard that must be used.

Specific aspects of the Paraguayan situation

63. The 1992 National Constitution of Paraguay established in Chapter XI, Article 129 that:

All Paraguayans have the obligation to prepare for and provide their cooperation in the armed defense of the nation.

To this end, compulsory military service is established. The law shall regulate the conditions in which this duty shall be performed.

Military service must be fulfilled with full dignity and respect for the person. In times of peace, it may not exceed twelve months.

64. Rendering compulsory military service in Paraguay is further developed by Law No. 569/75 of December 24, 1975. This law establishes that the compulsory service referred to in the Constitution applies to “boys between the ages of eighteen and nineteen years.”[FN19] Article 56 of that Law establishes that:

Officials who recruit children of less than eighteen years of age or who retain in the service persons who are legally exonerated shall be discharged or disqualified from holding public office

for five years, unless otherwise stipulated in this law, and without prejudice to criminal liability. The parents, guardians, or persons responsible for the affected person may lodge a complaint with the closest authority, which must immediately communicate it to the Office of the Commander in Chief of the Armed Forces of the Nation.[FN20]

[FN19] Law N° 569/75 of December 24, 1975, “Compulsory Military Service,” Art.3^a a) and Art. 15.

[FN20] *Idem*, Art.56.

65. Despite the fact that Paraguayan legislation is consistent with the international principles referred to earlier, in actual practice situations contrary to these principles have been observed. The special regime of the Military Instruction Centers for Training Student Reserves (CIMEFOR) offers the opportunity for secondary school students who have passed their fourth year to serve in the military for five week periods during their school vacations.[FN21] Such exceptional cases were authorized by the Defenders of Incompetent Persons [Defensores de Incapaces] up to 2000, and by juvenile trial court judges [Jueces de Primera Instancia de la Jurisdicción del Menor], effective that year.[FN22]

[FN21] *Ib.* Art. 36 stipulated that: Citizens who have passed the 4th year of secondary education shall be entitled to admission to Military Instruction Centers for Training Student Reserves (CIMEFOR).

[FN22] This authority is established by Decision 167 of April 13, 2000 issued by the Supreme Court of Justice. Art 1° of that decision places the authority for granting permission to minors to leave the country or enter the military service or the Military Student Instruction Center for Training Reserve Officers (CIMEFOR) under the jurisdiction of juvenile lower courts [Jueces de Primera Instancia de la Jurisdicción del Menor] in accordance with the law, in all judicial districts of the Republic. When the violations occurred, the authority for recruitment to CIMEFOR was established by decision No. 7 of October 18, 1983, which, in paragraph i) assigned jurisdiction for granting permission to minors to travel outside the country or enter CIMEFOR to the Defenders of Incompetents, until such time as the competent courts are formed.

66. In the Third Report on the Human Rights Situation in Paraguay, published by the Inter-American Commission in 2001, the IACHR stated that: “even though the law establishes that the age for serving in the military may be moved forward as an exception, for well-founded reasons and with the authorization of the parents, this exception is not unusual, and has practically become the rule.” [FN23]

[FN23] IACHR, Third Report on the Human Rights Situation in Paraguay – March 9, 2001, para. 37.

67. Thus, the Commission devoted part of the chapter on the situation of the rights of Paraguayan children in this report to exclusively address the issue of incorporating children into the armed forces. Among other things, the report referred to irregularities in enlistment procedures, and stated that, “in many cases, recruitment is done by intimidation of the parents of children who look physically fit for military service.”[FN24] In addition to reports of coercion of parents in recruitment of their sons, the Commission also mentioned reports of situation in which birth and nationality documents were falsified so that children could be recruited into military service.

[FN24] IACHR, Third Report on the Human Rights Situation in Paraguay – March 9, 2001.

68. The report prepared by the Commission described complaints involving cases of children who lost their lives or disappeared while in military service, and indicated that, according to these complaints, such cases were not duly investigated, and the persons ultimately responsible were not punished.

69. The Commission stated on the occasion that “children do not have the physical or emotional maturity to perform military service. Therefore, children are not fit for the military activities required of them, and this is why many collapse and die when they are cruelly and authoritatively ordered to perform beyond their physical capabilities.”[FN25]

[FN25] Idem, Paragraph 40.

70. In the Third Report on Paraguay, in reference to the cited Article 38 of the Convention on the Rights of the Child, the Commission mentioned that this Article includes not only establishment of the minimum age at 15 years, but also an inclination not to recruit persons less than 18 years of age. The IACHR further states that Paraguayan legislation establishes 18 years as the minimum age for performing military service. Finally, the Commission referred to the obligation to apply the most favorable standard. In this regard, the Commission concluded by reminding the Paraguayan State that “under its national body of law, it is not permitted to recruit persons of less than 18 years of age. For the rest, in view of the fact that international instruments do not make any distinction in this area, and by application of the same principle, this requirement may not be satisfied with the consent of the parents of the youth.”[FN26]

[FN26] IACHR, Third Report on the Human Rights Situation in Paraguay – March 9, 2001, para. 44.

71. Based on these considerations, the IACHR recommended to the Paraguayan State that:

It comply with the law in force which prohibits the entry in military service of persons of less than 18 years of age, and it investigate and punish cases involving the death of persons less than 18 years of age on military bases. The death of these children illegally serving in the military should not go unpunished.[FN27]

[FN27] *Idem*, I – Recommendations, paragraph 6.

72. The problem of recruitment of child soldiers in Paraguay has also been analyzed by organizations of the United Nations system. On June 18, 1997, in the Final Observations of the Committee on the Rights of the Child, in reference to the situation of children in Paraguay, it was pointed out that despite legal restrictions against enlisting children of less than 18 years of age, “we are concerned that in practice, this policy is not always applied, and that there are still children under 18 who are forced or pressured into military service.”[FN28] In view of this concern, one of the Committee’s recommendations was that the relevant legislation be strictly enforced.

[FN28] Concluding observations of the Committee on the Rights of the Child: Paraguay, 6/18/97, CRC/C/15/Add.75. (Concluding Observations/Comments) - paragraph 17.

73. The same Committee on the Rights of the Child again referred to the subject in 2001, when it stated that:

The Committee is deeply concerned that, despite the fact that legislation of the State Party establishes 18 years as the minimum age for military recruitment, a large part of the recruits in the armed forces and the national police of Paraguay are minors, and it seriously regrets that it has failed to implement the earlier recommendation (CRC/C/15/Add.75, para. 36) on this point. It is also extremely concerned over the numerous cases of torture and abuse of recruits, including children, by their superiors and the cases of unexplained deaths of recruits, also including minors. In particular, it notes with concern that the majority of those cases were not investigated, and that there have been reports of the forced recruitment of children, especially in rural areas, and of falsification of the documents attesting to their age.[FN29]

[FN29] Concluding observations of the Committee on the Rights of the Child: Paraguay, 6/18/97, CRC/C/15/Add.75. (Concluding Observations/Comments) - paragraph 45.

74. In this regard, and further on in the same document, the Committee specifically recommended to the Paraguayan State that it:

- a) Put an end to the practice of recruiting children for the armed forces and the national police of Paraguay, in accordance with our earlier recommendation (CRC/C/15/Add.75, para. 36), and punish the persons taking part in the forced recruitment of children;
- b) Investigate all cases of abusive treatment and death of recruits and suspend the officers implicated in these accidents from their functions;
- c) Bring to trial and punish the persons responsible for these violations of the rights of the child;
- d) Compensate the victims of human rights violations committed during military service, or their next of kin;
- e) Provide training on human rights, including the rights of the child, for army officers; and
- f) Ratify the Optional Protocol of the Convention on the Rights of the Child relating to Participation of Children in Armed Conflicts, and establish 18 years as the minimum age for military recruitment.[FN30]

[FN30] Idem, paragraph 46.

75. The report of violence against members of the Paraguayan armed forces was also taken up by the Committee against Torture in 2000. Among the concerns voiced by this Committee, reference was made to “information received by the Committee from reliable sources that the practices of torture and cruel, inhuman, or degrading treatment continue both in police facilities and in prisons and facilities of the armed forces, where soldiers performing their compulsory military service are subjected to frequent physical abuse.”[FN31]

[FN31] Conclusions and recommendations of the Committee against Torture: Paraguay, 5/10/2000. A/55/44, pars.146-151. (Concluding Observations/Comments) par.150.

76. As part of the friendly settlement procedure developed on the basis of the present case of Víctor Hugo Maciel and in other cases with similar reports of the death of children in the Paraguayan Armed Forces, a Joint Inter-Institutional Committee was set up to assess the situation of the Compulsory Military Service in Paraguay.[FN32] The Inter-Institutional Committee was composed of government and nongovernmental representatives, who inspected military facilities in various parts of the country, paying special attention to the age and health of enlistees and their living conditions while in service. The Committee visited 78 military units and interviewed 2,500 conscripts in the eastern and western parts of the country from April 2001 to July 2002.[FN33]

[FN32] The Committee was established by Presidential Decree 7302 of January 31, 2000.

[FN33] Record N° 4 and Record N° 5 of the National Human Rights Committee and partial report on visits to military units between April 24 and 27, 2001 and July 2 and 6, 2001.

77. According to information gathered by the Inter-Institutional Committee and offered by the Paraguayan State, it discovered 192 cases of children enlisted irregularly, 23 cases of conscripts with medical problems, 32 falsifications of documents, and 7 cases of indigenous conscripts.[FN34]

[FN34] Idem.

78. Based on information provided by Paraguay, the visits of the Joint Committee, together with the action of the Ombudsman in monitoring and controlling the Compulsory Military Service, resulted in the investigation of responsibilities for the irregularities encountered. Recently, according to the State, no cases of persons under 18 years of age serving in the Paraguayan armed forces have been identified. The petitioners contend that there are still irregularities. By Law No. 1897 of May 22, 2002, Paraguay also ratified the Protocol relating to Participation of Children in Armed Conflicts.

79. The Inter-American Commission acknowledges and appreciates the efforts made by the Paraguayan State to eliminate enlistment of children in its armed forces and to correct the situation of the compulsory military service to meet international standards. These efforts, as mentioned earlier, have stemmed in part from the process to negotiate a friendly settlement in the instant case and in other similar ones.

80. The present case, however, refers to an individual situation specifically related to the death of Víctor Hugo Maciel, which the Commission will now proceed to evaluate.

B. Established facts

81. The Inter-American Commission notes that the petitioners alleged a series of facts, which were not disputed by the State when it had an opportunity to respond. In fact, as mentioned earlier, the IACHR transmitted the relevant parts of the petition to the State on April 10, 1996, requesting it to respond within a period of ninety days, in accordance with the IACHR Rules of Procedure in force at the time. On July 3, 1997, a procedure for friendly settlement was initiated. In its brief of April 28, 2004 containing observations, the State disputed some of the facts alleged by the petitioners.

82. The Commission notes in this regard that Article 42 of its Regulations in force up to April 30, 2001 established as follows: "The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference, shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion." The content of this Article is similar to that of Article 39 of the present Rules of Procedure of the Commission, which establish that:

The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during

the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

83. The transcribed article implies that if the State does not dispute the alleged facts in a timely manner and there is no other evidence that could lead to a different conclusion, the Commission may presume that the alleged facts are true. In this regard, the Inter-American Court has established as follows:

The way in which the defense was conducted could suffice to determine that many of the facts asserted by the Commission are validly true, without any further evidence, by virtue of the principle that, except in criminal matters—which are not relevant to the present case, as has already been said—silence on the part of the respondent or an elusive or ambiguous response by it could be interpreted as acceptance of the facts of the petition, at least as long as the contrary is not apparent from the case documents or does not result from judicial certainty.[FN35]

[FN35] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 138.

84. Thus, even though the burden of the proof in the process of the Inter-American Commission in principle is on the complainants or petitioners, if the State does not contradict the substantive facts or produce evidence to question them, the Commission may presume that the alleged facts are true, provided there are no other prima facie elements that would lead it to a different conclusion.

85. The Commission is authorized to request information from the parties, to conduct on-site investigations into matters submitted to it for its consideration, and to collect the evidence it deems relevant. The State in turn, in addition to the burden of proving the facts on which its defense rests, has the obligation to cooperate, which includes providing the information requested of it by the Commission and providing all the necessary facilities for any investigations the Commission may conduct.[FN36] The Inter-American Court of Human Rights has stated that in processes involving violations of human rights, “the State’s defense may not rest on the impossibility on the part of the petitioner to offer evidence which, in many cases, cannot be obtained without the cooperation of the State. It is the State that has control of the means for clarifying acts that occurred within its territory. Although the Commission has the authority to conduct investigations, in practice, in order to conduct them within the jurisdiction of a state, it must rely on the cooperation and the means provided by the government.”[FN37]

[FN36] On this point, see, for instance, Article 48(a)(d) and (e) of the American Convention.

[FN37] I/A Court H.R., Velásquez Rodríguez Case, ob. cit., paras. 135 and 136.

86. Taking into account the above-mentioned rules on burden of proof and production of evidence, the evidence provided by both parties, and the evidence collected by the Commission,

a body of evidentiary elements is formed and evaluated by the Commission as the grounds for its decision.

87. In evaluating the evidence, the Commission takes into account criteria mentioned by the Inter-American Court of Human Rights. In this regard, the Court has found, for instance that:

Proceedings before it are not subject to the same formalities as domestic judicial proceedings, and the inclusion of specific pieces of evidence in the pool of evidence must be done with particular attention to the circumstances of the specific case and bearing in mind the limits provided by respect for legal security and for the procedural balance of the parties. Moreover, the Court has taken into account that international jurisprudence, in considering that international tribunals have the power to assess and evaluate evidence according to the criteria of sound judgment, has always avoided adopting a rigid position regarding the quantum of evidence required as grounds for a judgment. This criterion is particularly valid in relation to international human rights courts, which, in determining the international responsibility of a state for the violation of human rights, have ample flexibility in evaluating the evidence produced on the pertinent facts, according to the rules of logic and on the basis of experience.[FN38]

[FN38] I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, para. 41.

88. According to the foregoing, and based on the allegations of the parties, the copies of court records and other judicial documentary evidence, the aforesaid criteria regarding the burden of proof and evaluation of the evidence, and in the absence of other evidence that could lead the IACHR to conclude differently, the Commission will proceed to decide on the facts that it considers as established in the instant case.

89. Víctor Hugo Maciel was born on September 19, 1979.[FN39] On August 6, 1995, when he was 15 years of age, he was recruited by the Paraguayan armed forces to perform military service.

[FN39] Birth Certificate of Víctor Hugo Maciel – Ministry of Justice and Labor – Judicial inquest into the cause of death of cavalry soldier Víctor Hugo Maciel in the courts of the ordinary jurisdiction – p.265.

90. The recruitment of Víctor Hugo Maciel occurred when members of the armed forces presented themselves at the home of his family, farmers in the back country of Paraguay. Although the parents of the Maciel boy objected to his recruitment, he gave his “consent,” and on that basis, the members of the armed forces took him away to serve in the military.[FN40]

[FN40] In this regard, the “ABC” newspaper reported as follows: “...Virginio Maciel, the father of Victor Hugo, gave a pathetic account of how his son was recruited by a Lieutenant Maidana. In August, the soldier presented himself at his home in Pirapey and said that he would take his son to the military base if he wanted to go. Maciel told him that he was not yet of the legal age, but the lieutenant said to him “it does not matter” and that it depended on whether the boy wanted to go. Maciel continued the story, his voice breaking into sobs, and said that he spoke with his wife and that even although they did not want their son to do his military service yet, they asked him and he said that he wanted to go. “ABC”: “Victor Maciel was only 15 years old.” Asunción, October 11, 1995, page 4.

91. Upon entering the military service, Víctor Hugo Maciel underwent an examination, and the Department of the Recruitment and Mobilization Service declared him fit to perform Compulsory Military Service.[FN41]

[FN41] Register No. : 7800095 10001, Department of Recruitment and Mobilization Service, October 6, 1995; Inquest into the cause of the death of cavalry soldier Víctor Hugo Maciel, p.110.

92. At dawn on October 2, 1995, the Maciel boy said that he felt sick, apparently as a result of fever and chills.[FN42]

[FN42] In this regard, see the statement by cavalry soldier Miguel Angel Candia to the military court for preliminary proceedings [Juez de Instrucción Militar del Primer Turno], October 5, 1995 – Inquest into the cause of death of cavalry soldier Víctor Hugo Maciel, p. 66; and, Declaration of cavalry soldier Néstor Ale Vera Sotelo to the military court for preliminary proceedings, October 5, 1995 – Inquest into the cause of death of cavalry soldier Víctor Hugo Maciel, p.66 .

93. At around 6:00 a.m. on October 2, 1995, the Maciel boy participated in the regular activities of his squad, and because of a failing or error during the so-called “closed drill,” the entire squad was ordered by a second lieutenant to perform extra physical exercises, known in Paraguay as “descuereo” [a “flaying”].

94. According to eye witnesses, on the morning of October 2, 1995, the second lieutenant in charge ordered the soldiers to line up. This was supposed to be done energetically, so that the sound of the shoes or boots hitting the ground could be heard loudly. When their response to this order was not satisfactory to the instructor, as a punishment, he ordered all the members of the squad to perform a series of physical exercises, including lying down and getting up ten to twelve times, and then immediately afterwards, one hundred changes of knees with their hands behind their heads, followed immediately by one hundred jumps, and then 100 repetitions of a physical activity known as “payasito” [meaning unknown]. When the members of the squad had

done approximately 80 “payasitos,” Víctor Hugo Maciel fell unconscious to the ground,[FN43] and was pronounced dead that same day at San Jorge hospital, where he had been taken. The death certificate issued on the occasion said that the cause of death was “sudden death.”[FN44]

[FN43] Testimony of cavalry soldier Marcial Luis Lara to the military court for preliminary proceedings October 5, 1995 - Inquest into the cause of death of cavalry soldier Víctor Hugo Maciel, p.28; Testimony of cavalry soldier Víctor Zarza to the military court for preliminary proceedings, October 3, 1995 - Inquest into the cause of death of cavalry soldier Víctor Hugo Maciel, p.42; Testimony of cavalry soldier Víctor Jamirez Coronel to the military court for preliminary proceedings, October 3, 1995 - Inquest into the cause of death of cavalry soldier Víctor Hugo Maciel, p.45.

[FN44] Death certificate of Víctor Hugo Maciel, Inquest into the cause of death of cavalry soldier Víctor Hugo Maciel, p. 143.

95. The members of the Armed Forces reported to the father of Víctor Hugo Maciel that his son had suffered an “attack” and that he had been hospitalized for three days before passing away. They also gave the father of Víctor Hugo one million guaranies and persuaded him to sign a document in which he promised not to request an autopsy of his son.[FN45]

[FN45] Estela Acosta and Leopoldo Barrientos, “family members do not trust the official version of the death of the soldier,” “Hoy”, Wednesday, October 4, 1995, p. 5.

96. Military authorities stated that the parents of Víctor Hugo Maciel had not authorized an autopsy on the body.[FN46]

[FN46] See the case files, note No. 126/95 of October 5, 1995, from Brigadier General Fausto Facetti to the President of the Supreme Court of Military Justice, indicating that the parents of Víctor Hugo Maciel did not authorize an autopsy on the corpse.

97. The parents of the Maciel boy decided to request an investigation into what had happened, and asked that the body of their son be exhumed. On October 12, 1995, an autopsy was performed and concluded that died “suddenly, by a Chagas’ type enlarged cardiopathy, in the absence of signs of traumatic violence.[FN47] A physician who presented a more detailed description of the autopsy to the Defense Committee of the Chamber of Deputies, said that “the boy suffered from Chagas’ disease with “slight compensation of the cardiac region, that would have enabled him to live a good while longer, if he were to live a relatively quiet life, and that what precipitated his sudden death was the extreme physical effort he was subjected to, which exceeded the functional reserve of his heart, already diminished by his disease, thereby causing fatal acute cardiac failure.”[FN48]

[FN47] Autopsy report, October 18, 1995, Inquest into the Cause of Death of Cavalry Soldier Víctor Hugo Maciel, p. 146.

[FN48] “Hoy” newspaper, “Physician says that conscript died from extreme physical exertion,” p. 5.

98. On the date of the death of Víctor Hugo Maciel, October 2, 1995, the Commander of the Army’s First Cavalry Division sent a letter to the President of the Supreme Military Court of Justice, requesting that the lower military court on duty intervene. In response to the request, a preliminary investigation was initiated in military court. On October 12, 1995, the results of the exhumation were added to the court documents, and on October 25, 1995, the military prosecutor requested that the case be dismissed on the grounds that the facts investigated did not represent a crime.[FN49] On December 4, 2005, the military court in question issued Resolution A.I. No. 28/95, closing the case.[FN50]

[FN49] Opinion No. 116 As. 26-X-96 of military prosecutor - Inquest into the Cause of Death of Cavalry Soldier Víctor Hugo Maciel, p. 149.

[FN50] Resolution A.I. No. 28/95, military trial court - Inquest into the Cause of Death of Cavalry Soldier Víctor Hugo Maciel, p. 153.

99. In addition to the investigation conducted under the jurisdiction of the military, the ordinary courts opened an investigation, which began with a request from the Public Prosecutor of the State on October 18, 1995. On that basis, a preliminary investigation was initiated. It has not yet concluded as of this date, and no judgment has been issued by a court of original jurisdiction.

C. Right to liberty

100. Article 7 of the American Convention states that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

(...)

101. The analysis of this article in the framework of the inter-American human rights system has focused primarily on deprivation of physical liberty and detention by armed forces or the police, generally within the framework of police and/or judicial procedures, or for the purposes of causing the victims of said detention to disappear. In this regard, for instance, the Inter-American Commission has followed the practice of analyzing the compatibility between deprivation of liberty and the provisions of paragraphs 2 and 3 of Article 7 of the American Convention, by following three steps. The first consists in determining the legality of the detention in a material and formal sense, for which compatibility with the domestic legislation in the state in question must be established. The second step consists in analyzing the domestic provisions in the light of the guarantees established in the American Convention, in order to determine if they are arbitrary. Finally, in the case of a detention that meets the requirements of a rule of domestic law compatible with the American Convention, it must be determined whether the application of the law to the specific case has been arbitrary.[FN51]

[FN51] See, for example, IACHR Report N° 53/01 Case 11,565 Ana, Beatriz and Celia González Pérez, Mexico, April 4, 2001, paragraphs 23 and 27.

102. In application of these considerations to the present case, the Commission observes that, as a general rule, the American Convention not only does not prohibit military service but also explicitly permits it, by establishing as follows:

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoners
3. For the purposes of this article the following do not constitute forced or compulsory labor:

(...).
- b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

103. Military service entails restrictions to the freedom of movement normally enjoyed by civilians. Civilians generally have complete freedom to circulate and move from one place to another, virtually without any restrictions. However, for persons subject to compulsory military service, that freedom of movement is partially restricted, for reasons intrinsic in the military service. The general principle is that the sole fact of entering the military service and having restricted freedom of movement does not imply in and of itself a violation of the freedom to personal liberty enshrined in Article 7 of the American Convention. This general principle has

exceptions. One such exception provides that conscription of a person into compulsory military service must not be contrary to the American Convention, and another that the system of discipline entailed in certain specific cases must not imply a violation of the right to personal liberty.

104. For the purposes of analyzing whether the situation in which Víctor Hugo Maciel found himself when he performed his compulsory military service in Paraguay entailed a violation of his right to personal liberty, the Inter-American Commission points out that, as mentioned earlier, recruitment of persons less than 18 years of age to perform their compulsory military service is contrary to the Constitution of Paraguay and Paraguayan legislation on the subject.

105. As indicated earlier, the National Constitution of Paraguay establishes in its Article 129 that: “All Paraguayan men have the duty to prepare themselves for and assist in the armed defense of the nation. To this end, compulsory military service is established. The law regulates the conditions in which this duty shall be performed.” The referenced Law No. 569/75 of December 24, 1975 states that: “The authorities who recruit minors of less than eighteen years of age or retain in the service persons legally exonerated from the service, except as stipulated in this Law, shall be discharged or disqualified for five years from holding public office, without prejudice to criminal liability.”

106. Based on the agreed interpretation of the cited constitutional and legislative provisions, it is concluded that the Paraguayan Constitution guarantees that no person of less than 18 years of age may perform compulsory military service.

107. The American Convention, for its part, does not provide for a minimum age on the basis of which the states parties may establish eligibility of persons for military service. However, in accordance with the guidelines on interpretation of the Convention referred to in its Article 29,[FN52] if the Constitution expands the scope of a right protected by the Convention that is the content that should be given to it in interpreting the American Convention.[FN53]

[FN52] Article 29 of the American Convention establishes that: “No provision of this Convention shall be interpreted as: a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

[FN53] In this regard, in the *Awas Tingni Case*, the Inter-American Court considered Article 5 of the Nicaraguan Constitution and Article 29(b) of the American Convention, among other provisions, as limiting the content of Article 21 of the Convention, and concluded that the right to property enshrined therein includes the right to communal ownership of the land. I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community*, Judgment of August 31, 2001, para. 148 and 153). Similarly, in the *Case of Five Pensioners*, the Inter-American Court stated

that bearing in mind the provisions of Article 29(b) of the American Convention, the right to property enshrined in Article 21 of the Convention should be interpreted as protecting the character of acquired right that the Peruvian Constitution grants to certain severance pensions, I/A Court H.R., Case of Five Pensioners, Judgment of February 28, 2003, paras. 101 and 102).

108. Therefore, in interpreting Article 7 of the Convention in the case in point, the right to personal liberty enshrined in Article 7 of the American Convention should be interpreted as protecting the right of persons less than 18 years of age in Paraguay not to be recruited into compulsory military service in Paraguay. Therefore, recruitment of persons under 18 years of age to perform military service in Paraguay constitutes a violation per se of Article 7 of the American Convention.

109. Thus, by the mere fact of having recruited Victor Hugo Maciel, a 15-year old boy, to perform compulsory military service, the Paraguayan State violated the right to personal liberty to his detriment, since the freedom of movement that is normally implied in the military service was imposed in an illegal and arbitrary way. The Commission considers that it is important to point out that the fact that Victor Hugo Maciel gave his consent to entering the military service does not excuse the Paraguay State that admitted him. The Paraguayan constitutional provision does not say that it is optional for minors of less than 18 years of age to perform military service. Paraguayan law specifically prohibits recruitment of minors of less than 18 years of age, and the will of the victim is not a valid excuse for the State. In the present case, Victor Hugo Maciel was even recruited against the will of his parents. In this regard, it is important to note that in a case based on another factual assumption but also related to restriction of the freedom to which the victim, an indigent person, voluntarily subjected himself, by appearing at a police station and asking to be detained, the European Court stated that:

Finally, and most importantly, the right to liberty is too important in a democratic society, within the meaning of the Convention, for a person to lose the benefit of the protection of the Convention for the simple reason that said person turns himself in on his own account to be placed in detention. Detention may violate Article 5, even when the person has consented to it (...). The fact that a victim "reported voluntarily" in no way relieves the Court of its duty to verify whether there has been a violation of the Convention.[FN54]

[FN54] European Court of Human Rights, Case of De Wilde, Ooms and Versyp ("Vagrancy") V. Belgium, judgment of June 18, 1971, para. 65. (nonofficial translation).

110. The Commission concludes that the Paraguayan State violated, to the detriment of the boy, Victor Hugo Maciel, the right to personal liberty enshrined in Article 7 of the American Convention.

D. Right to humane treatment

111. Article 5 of the American Convention, entitled “Right to Humane Treatment,” establishes as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. (...).

112. On this Article, the Inter-American Court of Human Rights has determined that the circumstance of the involvement of children “requires application of a higher standard for characterization of acts that violate one’s personal integrity.”[FN55]

[FN55] I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, para. 170.

113. In the present case, the Commission notes that while Victor Hugo Maciel was on a military base, contrary to the provisions of the Constitution and other Paraguayan laws, he was required to perform physical exercises of such an intensity that they caused him to collapse and produced his death.

114. In this regard, the Inter-American Commission would point out, as indicated below, that prior to inducting Victor Hugo Maciel into military service, the Paraguayan Armed Forces failed to give him the relevant medical examinations that would have indicated that he was disqualified from performing compulsory military service.

115. Based on the preceding considerations, the Commission concludes that in the specific circumstances of this case, by subjecting Victor Hugo Maciel to physical exercises that caused his death, the Paraguayan State violated, to his detriment, the right to humane treatment enshrined in Article 5 of the American Convention.

E. Right to life

116. The American Convention establishes in its Article 4 that:

- a. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

117. The human right to life is a fundamental right, and the basis for the enjoyment of the other human rights. The Inter-American Court has determined that enjoyment of the right to life

Is a prerequisite for the exercise of the other human rights. If it is not respected, all the other rights lack meaning. By reason of the fundamental nature of the right to life, a restrictive interpretation of said right is not admissible. In essence, the fundamental right to life comprises not only the right of all human beings not to be deprived of life arbitrarily, but also the right not

to be prevented access to conditions that guarantee a life of dignity. States have the obligation to ensure the creation of the necessary conditions under which violations of this basic right will not occur, and, in particular, the duty to prevent their agents from violating this right.[FN56]

[FN56] Inter-American Court, The “Street Children” Case (Villagrán Morales et al.) Judgment of November 19, 1999, para. 144.

118. The Inter-American Court has also singled out the special dimension of the state’s obligation to respect the right to life of children, and has stated that:

This obligation takes a special form in the case of minors, bearing in mind the provision on protection of children established in the American Convention and the Convention on the Rights of the Child. The condition of the state as guarantor of this right requires it to prevent situations which could cause that right to be affected, either by action or omission.[FN57]

[FN57] I/A Court H.R., Case of the Gómez Paquiyauri Brothers, judgment of July 8, 2004, para. 124.

119. For its part, Article 1(1) of the American Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

120. The referenced provision contemplates general obligations of states in the area of human rights. The first is to respect the rights enshrined in the American Convention, and the second is to guarantee the exercise of those rights. The Inter-American Court of Human Rights has explained that as a result of the obligation to guarantee the exercise of the rights established in the Convention, states are required “to prevent, investigate, and punish any violation of the rights recognized by the Convention and further to ensure the restitution of the violated right and, if applicable, compensation for the damages produced as a result of the human rights violation.”[FN58]

[FN58] I/A Court H.R., Case of Velásquez Rodríguez, ob. cit., para.166.

121. With regard to the scope of states’ obligations related to the right to life, the Inter-American Court has specifically stated that:

Compliance with Article 4 of the American Convention, in relation to Article 1.1 of that instrument, not only presumes that no one will be deprived of his life arbitrarily (negative obligation), but it also requires states to take appropriate steps to protect and preserve the right to life (positive obligation), as part of their duty to guarantee the full and free exercise of the rights of all persons subject to their jurisdiction. This integral protection of the right to life by the state not only involves its legislators, but all state institutions, and the persons responsible for ensuring security, whether they be the police or armed forces. As a result, states must adopt all the necessary measures not only to prevent, prosecute, and punish deprivation of life as a result of criminal acts in general, but also to prevent arbitrary executions on the part of its own security agents.[FN59]

[FN59] I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, para. 129.

122. Thus, as regards the right to life, in accordance with the provisions of the Convention cited above, the state's obligation to "respect" said right implies, among other things, that the state must ensure that its agents refrain from depriving persons of their life.

123. With regard to the obligation to "guarantee" the human right to life, reading together Articles 4 and 1(1) of the American Convention implies that states parties to the American Convention are obligated to prevent violations of said right, to investigate violations of the right to life, punish the responsible parties, and provide for reparations for the victim's next of kin, whenever the responsible parties are agents of the state. With regard to children, the state is required to adopt an even higher standard in preventing situations that could affect the right to life of children.

Violation of the obligation to guarantee the right to life of Víctor Hugo Maciel

124. In applying the foregoing considerations to the present case, the Commission observes that the Paraguayan State did not comply with its obligation to guarantee the right to life of Victor Hugo Maciel, since it did not prevent that violation from occurring, by failing to conduct the appropriate medical examinations that were supposed to be performed prior to subjecting him to compulsory military service.

125. As indicated above, the regular activities of military service, such as the strenuous routine of physical activities or handling of weapons, put the life and physical integrity of children at serious risk, since they do not have the physical and psychological maturity to perform the activities of a soldier in military service.

126. In the case of Victor Hugo Maciel, subjecting him to compulsory military service ended his life, since Chagas' disease had affected his heart, and subjecting him to intensive physical efforts that his heart could not withstand caused his death.

127. In this regard, as indicated earlier, the autopsy performed on Víctor Hugo Maciel on October 12, 1995 concluded that Víctor Hugo Maciel died “suddenly, from enlarged cardiopathy of the Chagas’ type, in the absence of signs of traumatic violence.” [FN60] Similarly, as stated earlier, a physician who presented additional information on the autopsy to the Defense Committee of the Chamber of Deputies, reported that “the youth suffered from Chagas’ Disease with ‘the cardiac region slightly compensated,’ which would have enabled him to live a good while longer, if he were to live a relatively quiet life, and that what precipitated his sudden death was the exceptional physical duress he was subjected to, which exceeded the functional reserve of his heart, already diminished by his disease, and caused fatal acute cardiac failure.”[FN61]

[FN60] Autopsy Report, October 18, 1995, Inquest into the Cause of Death of Cavalry Soldier Víctor Hugo Maciel, p.146.

[FN61] “Hoy” newspaper, “Physician reports that conscript died from extreme physical exertion,” page 5.

128. The Pan American Health Organization, in the referenced technical opinion requested in this case, also stated, in response to the question regarding the effects of exposing a 16 year old boy with chronic Chagas’ Disease and enlarged cardiopathy to constant, intensive physical exercises, as follows:

What is most important is to assess and define the enlarged cardiopathy, and not the probable or confirmed Chagas’ etiology of that condition. A correct, concrete definition and medical evaluation of this enlarged cardiopathy are essential, as is an implicit and intrinsic evaluation of the damage in the case in question; the frequency and intensity of the physical exercises possible and/or tolerable for the affected person would be determined then on that basis.[FN62]

[FN62] Véase expediente. Opinión técnica de la Organización Panamericana de la Salud.

129. The Paraguay State specifically stated as follows in its observations on the merits of this case:

The State acknowledges that it did not perform an adequate examination to determine the disease afflicting Soldier Maciel, and it has pledged to compensate his next of kin in the amount of 20,000 U.S. dollars. On this point, the State accepts in part the claims of the petitioners and considers that there is nothing more to add to what has been agreed so far in the friendly settlement process. The State has recognized its responsibility, it has provided for the family members to receive a discretionary pension, and it has also made a commitment to pay compensation. It would, however, note that the cause of death was “sudden death,” as recorded in the medical certificates added to the case files being processed in the Commission.

130. Based on the foregoing considerations, the Inter-American Commission considers that the Paraguayan State could have prevented the death of Victor Hugo Maciel, if prior to inducting

him into compulsory military service, it had conducted medical examinations that would have prevented the death of Victor Hugo Maciel, since they would have clearly indicated that he could not be subjected to the physical exercises that caused his death.

131. This would be valid even if the person were older than 18 years of age. But since it was a child, as indicated earlier, the state's obligation to prevent situations that could, by action or omission, affect the right to life takes on special importance and dimensions, in accordance with the provisions on protection of children established in the American Convention and the Convention on the Rights of the Child.[FN63]

[FN63] I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, para. 124.

132. The failure of the Paraguayan State to fulfill its obligation of prevention therefore consists, contrary to the provisions of its Constitution and laws, in allowing a child of less than 18 years of age, namely Victor Hugo Maciel, to be inducted into compulsory military service in the Paraguayan armed forces, and further in failing to have the necessary medical examinations performed to determine that the condition of his health was such that performing military service would not cause his death.

133. According to the analysis below, the Paraguay State also failed to duly investigate the death of Victor Hugo Maciel, and the persons responsible for his death have not been duly punished by way of criminal or administrative sanctions, or any other type of penalty. Moreover, the State has not fully compensated the next of kin of Victor Hugo Maciel for the human rights violations committed against him by Paraguayan State agents.

134. Based on the foregoing considerations, the Commission concludes that the Paraguayan State violated, to the detriment of Victor Hugo Maciel and his next of kin, the state obligation to guarantee the right to life of Victor Hugo Maciel, which is enshrined in Articles 4 and 1(1) of the American Convention, interpreted together. This is because it failed to prevent the death of Victor Hugo Maciel, it failed to investigate and punish the parties responsible for his death, and it failed to provide for full reparations for his next of kin.

F. Rights of the child

135. The American Convention states in its Article 19:

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

136. According to this Article, states have a duty to observe an especially high standard in all matters related to guaranteeing and protecting children's human rights. The Inter-American Commission has stated as follows:

Respect for the rights of children is a fundamental value of a society that claims to practice social justice and human rights. This does not only entail providing care and protection for children, which are basic standards that formerly guided legal and doctrinal opinion on the content of these rights, but it also additionally means recognizing, respecting, and guaranteeing the child's individual character, as the holder of rights and obligations.[FN64]

[FN64] IACHR, Third Report on the Human Rights Situation in Colombia, 1999, Chapter XIII, paragraph 1.

137. The Inter-American Court of Human Rights has also declared:

Cases in which the victims of human rights violations are children take on special gravity, since their rights are recognized not only in the American Convention, but also in numerous international instruments that are widely accepted by the international community, including the United Nations Convention on the Rights of the Child, "which places on the state the duty to adopt special measures of protection and assistance for children under its jurisdiction."

In this matter, which is a matter of protecting the rights of the child and adopting measures to ensure that protection, the principle of the higher interest of the child governs, and it is based "on the very dignity of the human being, the characteristics of children, and the need to facilitate their development, and the full use of their potentials." [FN65]

[FN65] I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004, paragraphs 162 and 163.

138. The Commission considers that the Paraguayan State violated the right to special protection to which Victor Hugo Maciel was entitled in his capacity as a child. In fact, despite the specific prohibition in the Paraguayan Constitution and legislation, the Maciel boy was recruited as a fifteen-year-old child. The Armed Forces proceeded against the will of the father and the mother of Victor Hugo Maciel, who were opposed to his recruitment.

139. In addition to recruiting Victor Hugo Maciel at his home, and against the will of his parents, the Paraguayan State failed to perform the necessary medical examinations that would have prevented his death, since they would have shown that Victor Hugo Maciel was not in the physical condition required for performing military service.

140. The integral protection referred to in Article 19 of the Convention includes, in this case, fulfillment by the state of its national and international obligations to protect the different rights of the child. It implies that the armed forces would not induct Victor Hugo Maciel into compulsory military service. If the armed forces had complied with the Paraguayan Constitution, they would, by prevention, have avoided the death of Victor Hugo Maciel. But not only did they induct him in violation of the Constitution, but they also failed to conduct the medical

examinations that would have prevented his death. In other words, the State did not carry out the basic protections stipulated in its own national system.

141. The Commission concludes that Paraguay violated the right to special measures of protection for children enshrined in Article 19 of the American Convention, to the detriment of Victor Hugo Maciel.

G. Right to a fair trial and to judicial protection

142. Article 1(1) of the American Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

143. Article 8 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 and obligations of a civil, labor, fiscal, or any other nature.

144. Article 25 of the Convention states:

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

145. The states parties to the inter-American human rights system have the obligation to investigate and punish those responsible for human rights violations, and to compensate the victims of such violations, or their next of kin. Article 1 of the American Convention establishes the obligation of states to guarantee to all persons subject to their jurisdiction the free and full exercise of the rights and freedoms recognized in that Convention. The Inter-American Court of Human Rights has explained that as a result of that obligation, states are obligated “to prevent, investigate, and sanction any violation of the rights recognized by the Convention and additionally to ensure restitution of the violated right and, as appropriate, reparations for the damages caused by the human rights violation.”[FN66] Similarly, the Court has stated that “Article 1.1 clearly implies the state’s obligation to investigate and punish any violation of the rights recognized in the Convention as a way of guaranteeing such rights.”[FN67]

[FN66] I/A Court H.R., Case of Velásquez Rodríguez. Judgment of July 29, 1988, para.166.

[FN67] I/A Court H.R., The “Street Children Case (Villagrán Morales et al.) Judgment of November 19, 1999, para. 225.

146. The Inter-American Court of Human Rights has further explained, with regard to the provisions of the Convention transcribed above, that:

Article 25 of the American Convention, considered in relation to Article 1.1, obligates the state to guarantee access to justice to all persons, and in particular, prompt and simple recourse, in order to ensure, among other results, that the parties responsible for the human rights violations are prosecuted and to obtain reparations for the damage suffered. As this Court has stated, Article 25 “constitutes one of the basic pillars not only of the American Convention but also of the rule of law in a democratic society...”. This article is directly related to Article 8.1 of the American Convention, which establishes the right of every person to a hearing with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, to determine his rights of any kind.

Consequently, the state has the duty to investigate violations of human rights, bring the responsible parties to trial, and prevent impunity. The Court has defined impunity as “general failure to investigate, pursue, capture, prosecute, and convict persons responsible for violations of the rights protected by the American Convention,” and has stated that “the state has the obligation to combat such a situation with all available legal means, since impunity tends to lead to the chronic repetition of human rights violations and the complete defenselessness of victims and their next of kin.”[FN68]

[FN68] Inter-American Court, Case of Loayza Tamayo. Judgment of November 27, 1998, paras. 169 and 170.

147. As regards the scope of the state’s obligation to investigate and punish, the Inter-American Court has also stated that:

Only if it has clarified all the circumstances of a violation will the State have provided the victims and their next of kin with effective recourse, and complied with its general obligation to investigate and punish, thereby permitting the next of kin of the victim to learn the truth, not only as regards the whereabouts of his mortal remains, but also with regard to what happened to the victim.[FN69]

[FN69] I/A Court H.R., Case of 19 Merchants. Judgment of July 5, 2004, para. 176.

148. The state’s obligation to investigate and punish human rights violations must be seriously undertaken by states. The Inter-American Court has declared as follows in this regard:

In certain circumstances, it may be difficult to investigate the acts in violation of a person's rights. Investigation, like prevention, is an obligation of means or behavior, and the fact that the investigation does not produce a satisfactory result does not mean noncompliance with the obligation. However, it must be seriously undertaken, and not as a mere formality doomed in advance to be futile. It must be meaningful and be taken on by the state as its own legal duty, and not as a simple gesture on behalf of special interests, that relies on the procedural initiative of the victim or his next of kin or the private contribution of pieces of evidence, but does not include an effective effort by the public authority to seek the truth. This is valid no matter who the agent ultimately responsible for the violation may be, and even in the case of private parties, since, if the violations are not seriously investigated, the government in a way is acting as an accomplice in them, and this would cause the state to incur international responsibility.[FN70]

[FN70] I/A Court H.R., Case of Velásquez Rodríguez, ob. cit. para. 177.

149. The Inter-American Commission has likewise spoken to the obligation of states to conduct a serious investigation, in these terms:

The obligation to investigate is not breached only because a person is not convicted in a case or because, despite efforts made, it is impossible to substantiate the facts. However, to establish in a convincing and credible manner that this result did not occur because of a mechanical approach to implementing certain procedural formalities and a failure on the part of the state to effectively seek the truth, the state must demonstrate that it has conducted a prompt, exhaustive, serious, and impartial investigation.[FN71]

[FN71] IACHR 1997 Annual Report, Report No. 55/97, Case 11,137 (Juan Carlos Abella et al.), Argentina, para. 412. On the same subject, also see: IACHR 1997 Annual Report, Report No. 52/97, Case 11,218 (Arges Sequeira Mangas), Nicaragua, paras. 96 and 97.

150. Said obligation to investigate and punish any act involving a violation of the rights protected by the Convention requires that not only the actual perpetrators of the human rights violations be punished, but also the intellectual authors of these acts, and any accomplices.[FN72] The state incurs international responsibility when its judicial organs do not seriously investigate and punish, as applicable, the material and intellectual authors and accomplices or accessories for human rights violations.

[FN72] I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004 para. 146. Also see: I/A Court H.R., Case of Myrna Mack Chang. Judgment of November 25, 2003, para. 275; Case of Juan Sánchez. Judgment of June 7, 2003, para. 186; Case of the Constitutional Court. Judgment of September 29, 1999. Series C N° 71, para. 123, and Case of Blake. Reparations, judgment of January 22, 1999, Series C N° 48, para. 65.

151. For the purpose of determining violations of the obligation to investigate with which the Paraguayan State is charged in this case, the Commission notes that prior to the death of Victor Hugo Maciel, the Paraguayan State initiated two judicial proceedings: one in a military court, and another in an ordinary court. In this regard, the Commission will examine the two proceedings separately, to determine whether the Paraguayan State met its obligation to investigate the death of Victor Hugo Maciel in accordance with its international obligations.

Proceedings in military court

152. With regard to the proceedings opened in military court to determine responsibility for the death of Victor Hugo Maciel, the Commission notes that these proceedings were initiated on October 2, 1995, when the Commander of the Army's First Cavalry Division sent a letter to the President of the Supreme Court of Military Justice requesting the military court for preliminary proceedings [Juzgado de Instrucción Militar de Turno] to investigate the death of Víctor Hugo Maciel. As part of that military proceeding, an autopsy was performed on the body of Victor Hugo Maciel, and, among other steps to gather evidence, various witnesses testified, copies of the victim's enlistment card were obtained, and photographs of the body were taken. The proceeding concluded on December 4, 1995, with Resolution A.I. No. 28/95, issued by the military trial court [Juzgado Primero de Instancia en lo Militar], which dismissed the case and ordered the records to be filed. It stated in this regard that:

(...) this court is convinced, and the military prosecutor concurs, that since this death is attributable only to the cardiac disease the cavalry soldier was suffering from, and not to third parties, or to malice or negligence, there is neither a crime of any kind to investigate nor an offender to punish in the instant case. It is therefore appropriate to dismiss the present case (...).[FN73]

[FN73] See case files, Resolution A.I. No. 28/95, of December 4, 1995.

153. The Commission has determined that only certain offenses of military discipline and service may be judged by military courts, which must additionally ensure full respect for judicial guarantees:

Military justice should be used only to judge active soldiers for the alleged commission of crimes of duty [delitos de función] in the strict sense of the term. Human rights violations should be investigated, prosecuted, and punished pursuant to the law by criminal courts in the ordinary jurisdiction. A change in jurisdiction should not be permitted in these matters, since this distorts judicial guarantees under a false image of the efficiency of military justice, with serious institutional consequences, which call into question civilian courts and the prevalence of the rule of law.[FN74]

[FN74] Id. Para. 212.

154. The Commission specifically indicated that “it reiterates its conviction that judging common crimes in a military forum, by the mere fact that they were executed by soldiers, is a violation of the guarantee of an independent and impartial tribunal.”[FN75]

[FN75] IACHR 2000 Annual Report, Report N° 55/01 – Aluísio Cavalcanti et al., Cases 11,286 and others (Brazil), para. 153.

155. In applying these considerations to the present case, the Commission notes that Article 174 of the Paraguayan Constitution provides as follows:

Military courts shall only judge crimes or offenses that are military in nature, and are described as such by the law, and committed by soldiers on active duty. Their judgments may be appealed in the ordinary courts.

When a case involves an act that is stipulated and punished in both common criminal law and in military criminal law, it shall not be considered as a military crime, unless it was committed by a soldier on active duty in the exercise of his military functions. In the event of doubt as to whether the crime is common or military, it shall be regarded as a common crime. Only in the case of international armed conflict, and in the manner stipulated by law, may these courts have jurisdiction over civilian persons and retired military personnel.

156. The Commission notes that this Paraguayan constitutional provision contemplates various international standards described earlier. However, the problem in the present case was not the text of the Paraguayan Constitution, but the way it was applied by the armed forces.

157. In fact, in view of the specific circumstances of the present case, which include an illegally recruited child who died at a military base, because of failure to conduct the medical examination that would have shown that the boy was not fit for military service, and because he was subjected to physical exercises that caused his death, the Commission is of the opinion that this goes beyond the conceptual scope of what would constitute a crime of duty.

158. The IACHR has also found that “the problem of impunity is aggravated by the fact that most cases that entail human rights violations by members of state security forces are tried by the military criminal justice system.”[FN76] It has “repeatedly and consistently maintained that the military courts do not offer the guarantees of independence and impartiality required to judge cases involving punishment of members of the armed forces, hence impunity is guaranteed.”[FN77]

[FN76] IACHR, Second Report on the Human Rights Situation in Peru, June 2000, Chap. II, para. 209.

[FN77] IACHR, Third Report on Colombia, ob. cit., paragraphs 17 ff..

159. The Inter-American Court has determined that:

When military courts assume jurisdiction over a matter that should be heard by the ordinary courts, the right to a judge with general jurisdiction and, a fortiori, to due process, is affected,” and this in turn is closely linked to the very right of access to justice.[FN78]

[FN78] Refer to the Case of Las Palmeras, supra note 160, para. 52; Case of Cantoral Benavides, supra note 160, para. 112; and, Case of Castillo Petruzzi et al. Judgment of May 30, 1999, Series C No. 52, para. 128.

160. The Commission has also explained that the problem of impunity in the military criminal justice system is not linked exclusively to acquittal of defendants, but that “the investigation of cases of human rights violations by the military courts in and of itself entails problems of access to an effective and impartial judicial remedy.”[FN79] The Commission has also determined that:

The investigation of a case by the military courts precludes the possibility of an objective and independent investigation conducted by judicial authorities not linked to the hierarchy of command of the security forces. The fact that investigation of a case has been initiated by the military courts may make it impossible to issue a conviction, even if the case is subsequently transferred to the ordinary courts, since the necessary evidence has probably not been gathered opportunely and effectively. In addition, the investigation of cases that remain under military jurisdiction may be conducted in a way that prevents such cases from reaching the stage of final judgment.[FN80]

The military criminal justice system has certain specific characteristics that prevent access to effective and impartial judicial recourse under that jurisdiction. One of them is that the military jurisdiction cannot be regarded as a true judicial system, since it is not part of the Judicial Branch, but comes under the Executive Branch instead. Another trait of the system is that the judges in the military judicial system are generally members of the army on active duty, which puts them in the position of judging their companions in arms, thereby eroding the requirement of impartiality, since the members of the Army frequently feel obliged to protect the persons who fight with them in a difficult and dangerous situation.[FN81]

[FN79] IACHR, Second Report on the Human Rights Situation in Peru, ob. cit., para. 210.

[FN80] IACHR, Third Report on Colombia, ob. cit., paragraphs 17 and ff..

[FN81] IACHR, Second Report on the Human Rights Situation in Peru, ob. cit., para. 211.

161. In accordance with the foregoing considerations, and having concluded that, in the case in point, the death of Victor Hugo Maciel may not be validly considered as a crime of duty, the Commission considers that the investigation and proceeding which took place in a space of less

than two months under military jurisdiction were not carried out by an independent and impartial organ.

162. Consequently, the Commission is of the opinion that with this proceeding of the Paraguayan State, it did not fulfill its obligation to conduct an adequate and effective investigation into the circumstances of the death of the boy, Victor Hugo Maciel, in violation of Articles 8, 25, and 1(1) of the American Convention.

Proceedings in the courts of ordinary jurisdiction

163. In relation to the proceedings initiated in the courts of ordinary jurisdiction to investigate the death of Victor Hugo Maciel, the Commission notes that they began on October 18, 1995, the date on which the State's Public Prosecutor [Fiscal General del Estado] and the Assistant Prosecutor in the Human Rights Department requested that preliminary criminal proceedings be opened and that various steps be taken to gather evidence. On May 16, 1997, the preliminary proceedings were opened and arrangements were made to receive testimony from various witnesses.

164. In September and October 1998, the physicians who participated in the autopsy of Victor Hugo Maciel testified. After that, various evidentiary procedures were carried out. On September 18, 2003 and September 25 of that year, the Public Prosecutor's Office requested that the case be closed, stating in this regard that the investigation encountered:

Difficulties in obtaining the cooperation of justices of the peace for the purpose of gathering more information and testimony (...) That, at this stage in the proceedings there is no person, and no one to be found with certainty, in order to determine responsibility for the death of the soldier, Víctor Hugo Maciel...".

165. Now more than nine years have gone by since the death of Victor Hugo Maciel in 1995, and not even the trial court has issued a judgment in the case. As mentioned earlier, the latest proceedings in the case have to do with requests to close the case issued by the Ministerio Público. Nor has the State made allegations or offered evidence to justify such a prolonged delay in the investigative process.

166. After more than nine years have lapsed since the events occurred, the State has not punished anyone for the death of Victor Hugo Maciel, nor has even an administrative sanction been imposed in the case of his death.

167. Based on the foregoing, the Commission concludes that the Paraguayan State has not provided the next of kin of Victor Hugo Maciel with the guarantee of an effective, adequate, impartial trial under domestic law, to punish the persons responsible for the arbitrary detention and death of the boy.

168. In conclusion, the Commission considers that the State did not fulfill the obligation to conduct an adequate and effective investigation into the death of the boy, Victor Hugo Maciel, in violation of Article 1(1) of the American Convention, considered in relation to Article 8 of that

instrument. It further violated the right to effective recourse for punishment of the guilty parties, in violation of the provisions of Article 25 of the Convention, considered in connection with Article 1(1) of the same, all to the detriment of the next of kin of Víctor Hugo Maciel.

H. Violation of Article 1(1) of the Convention: State's obligation to respect and guarantee individual rights

169. Based on the preceding analysis, it is patent that the Paraguayan State did not fulfill the obligation to respect the rights and freedoms of the individuals under its jurisdiction, as contemplated in Article 1(1) of the American Convention, since it violated the rights established in Articles 7, 5, 4, 19, 25, and 8 of that instrument.

170. As the Inter-American Court has pointed out, "pursuant to Article 1(1), any form of exercise of public power that violates the rights recognized in the Convention is illegal. In this context, whenever a state organ or official or a public institution in any circumstances unduly causes prejudice to one of those rights, it is assumed as failure to comply with the duty of respect enshrined in that Article." [FN82]

[FN82] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C N° 4, para. 169.

171. The second obligation stipulated in Article 1(1) is to guarantee the free and full exercise of the rights and freedoms recognized in the Convention. The Commission concludes that by violating the right to life, to humane treatment, to judicial protection, and to a fair trial, to the detriment of the victims referred to in this report, the Paraguayan State failed to comply with the obligation to guarantee the free and full exercise of the rights of all persons subject to its jurisdiction.

172. The Commission emphasizes that even when the Paraguayan State considered and even adopted certain relevant measures pertaining to the general situation of recruitment of children in Paraguay, in the specific case in point, it did not take the necessary action to clarify the human rights violations committed to the detriment of Victor Hugo Maciel, neither did it provide for full reparations to his next of kin.

I. Other rights allegedly violated

173. In its brief containing observations on the merits of the case, the petitioners alleged that Article 11 of the American Convention (Right to Privacy) was violated, as a result of the arbitrary and abusive interference of the Armed Forces in the home of the family of Victor Hugo Maciel, at the time of his recruitment. In this case, the Commission does not consider it necessary to give its opinion on the possible violation of this right, since it believes that the key aspects of this case have been covered with the violations already determined in this report.

VI. CONCLUSIONS

174. Based on the factual and legal considerations set forth in this report, the Inter-American Commission confirms its conclusion to the effect that the Paraguayan State is responsible for violation of the right to personal liberty, humane treatment, life, special measures for protection of children, judicial protection, and a fair trial, enshrined in Articles 7, 5, 4, 19, 25, and 8, respectively, of the American Convention. This is based on the understanding that in the case of violation of Articles 7, 5, 4, and 19, the injured party is Victor Hugo Maciel, whereas the violations of Articles 8 and 25, considered in conjunction with Article 1(1) of the Convention, were to the detriment of his family. The Commission further determines that the State also violated the obligation imposed in Article 1(1) to respect and guarantee the rights established in the Convention.

VII. RECOMMENDATIONS

175. Based on the analysis and conclusions of this report, the Inter-American Commission on Human Rights would make the following recommendations to the Paraguayan State:

- 1) That it publicly recognize its international responsibility for all the human rights violations determined by the IACHR in this report. In this regard, that, in the presence of its high authorities, it hold a public event for recognition of international responsibility for the violations established in this case.
- 2) That it ensure an effective investigation into the facts of this case by nonmilitary institutions, for the purpose of identifying, judging, and punishing the parties responsible for the death of Victor Hugo Maciel, and that it publish the results of this process.
- 3) That it provide for full reparations to the next of kin of Victor Hugo Maciel for the physical damages and moral prejudice suffered as a result of his death. These reparations should include compensation to be paid by the Paraguayan State, and computed according to international standards, and it should be in a sufficient amount to indemnify both the physical damages and the pain and suffering caused by the human rights violations referred to in this report. Payment of this compensation must not be subject to the requirement that the family file any appeal or bring any action provided for in Paraguayan legislation. The Commission would clarify in this regard that the pension currently received by the mother of Victor Hugo Maciel constitutes a part of said reparations, but does not imply full compliance by the State with this recommendation.
- 4) That it pay the next of kin of the victim for the reasonable expenses and costs it incurred in the domestic proceedings and in the present international procedures in the inter-American human rights system.

VIII. ACTIONS SINCE REPORT No. 34/05

176. On March 8, 2005, during the 122nd period of sessions, the IACHR approved Report No. 34/05, in accordance with Article 50 of the American Convention. The report was transmitted to the State of Paraguay on April 20, 2005, with a deadline of two months for compliance with its recommendations. On April 20, 2005, the IACHR informed the petitioners of the adoption of Report N° 34/05 and requested information from them on their position on submission of the

case to the Inter-American Court of Human Rights. On May 5, 2005, the IACHR sent the petitioners the pertinent parts of Report N° 34/05. The petitioners sent a note to the IACHR on May 20, 2005.

177. In note N° 557/05 of June 17, 2005, the State asked for suspension of the period established in Article 51.1 of the American Convention and formally requested reopening the possibility of seeking a friendly settlement on the basis of recognition of its international responsibility for the facts that gave rise to this case. This note was forwarded to the petitioners on June 22, 2005. In a communication submitted on June 27, 2005, the petitioners expressed concurrence with the suspension of the period in Article 51.1 of the Convention and requested the immediate adoption of a timeline for achieving a friendly settlement between the parties.

178. On July 13, 2005, the IACHR granted an extension of three months for the State to comply with the recommendations contained in Report N° 34/05. On October 11, 2005, the Paraguayan State requested an extension of 30 business days from the IACHR, which was granted in the IACHR's note of October 13, 2005. The petitioners, in a note received by the IACHR on October 11, 2005, concurred with the granting of that extension. On November 11, 2005, the State requested another three-month extension. This note was transmitted to the petitioners on November 15, 2005, and they submitted observations in a communication of November 17, 2005. On November 18, 2005 the IACHR notified the State that its request for an extension had been accepted for one month, and set the deadline for December 20, 2005. The State of Paraguay again requested an extension for 90 days on December 16, 2005, which was forwarded to the petitioners on the same date. They submitted their observations on December 19, 2005. In a note of December 20, 2005, the IACHR granted the extension requested by the State.

179. The State sent information to the IACHR on January 30, 2006, which was forwarded to the petitioners on February 8, 2006. The petitioners presented information to the IACHR in notes of February 21 and March 9 and 10, 2006. The IACHR received a note from the State on March 7, 2006. In a note of February 23, 2006, the State asked for a working meeting during the 124th regular period of sessions of the IACHR, which was held on March 8, 2006, at the IACHR headquarters with participation of both the State and the petitioners. On March 16, 2006, the State requested an extension of 10 days from the IACHR. In a note of March 17, 2006, the IACHR granted an extension of 30 days to the State of Paraguay. In a communication of March 27, 2006, the State reported to the IACHR that on March 22, 2006, the petitioners and the State had signed a friendly settlement agreement, and sent a copy of it. On April 6, 2006, the IACHR sent that communication from the State to the petitioners, giving them five days to submit observations. The petitioners presented observations on April 11, 2006. On June 22, 2006, the State sent the IACHR the minutes of the public event for acceptance of international responsibility in this case. The IACHR acknowledged receipt of this communication on July 11, 2006. On July 18, 2006, the State sent information to the IACHR on compliance with the friendly settlement agreement. On July 31, 2006, the IACHR received information from the petitioners, which was forwarded to the State on September 13, 2006.

180. In a note of September 6, 2006, the petitioners asked for a working meeting during the 126th regular period of sessions of the IACHR, which was held on October 20, 2006. On

October 10 and 16, 2006, the State sent two communications to the IACHR. The IACHR transmitted these notes to the petitioners on November 2, 2006. On December 7, 2006, the IACHR received another note from the State, for which it acknowledged receipt on December 8, 2006.

181. On January 15, 2007, the petitioners asked the IACHR for a working meeting with representatives of the State. The meeting took place on March 5, 2007 at the headquarters of the Commission during the 127th regular period of sessions. In a note of April 19, 2007, the petitioners asked for a copy of the documents presented by the State during the hearing, and the IACHR sent it on April 27, 2007.

182. In note N° 366/07/MPP/OEA of June 22, 2007, the State submitted its observations on the second progress report on compliance with the friendly settlement agreement presented by the petitioners. The IACHR forwarded this report to the petitioners in a note of June 28, 2007. In a note received on August 3, 2007, the petitioners reported to the IACHR on the status of compliance with the friendly settlement agreement. This information was transmitted to the State on August 15, 2007.

183. On September 4, 2007 there was a working meeting of the petitioners and the State in Asunción, Paraguay, during the Commission's 129th special period of sessions. The State reported to the IACHR in a note of September 18, 2007 on progress in compliance with the friendly settlement agreement, and this information was sent to the petitioners on October 25, 2007. The petitioners sent a new report to the Commission on November 27, 2007, which was forwarded to the State in a note of December 3, 2007.

184. The State submitted observations on January 4 and February 20, 2008, which were made known to the petitioners on February 21 and 25, 2008, respectively. On October 24, 2008, the IACHR received information from the State on the state of compliance with the friendly settlement agreement, which was sent to the petitioners on December 5, 2008, giving them one month to present observations. On February 27, 2009, the State sent a new report to the IACHR.

IX. COMPLIANCE WITH THE RECOMMENDATIONS

185. In the instant case, the State and the petitioners signed a friendly settlement agreement on March 22, 2006, in the following terms:

On March 14, 1996, SERPAJ-PY [the Peace and Justice Service] and CEJIL [the Center for Justice and International Law], representing the victim and his family members, lodged a petition against the State of Paraguay for the recruitment and death of Víctor Hugo Maciel. On that occasion they alleged the violation of rights to personal liberty, humane treatment, life, child protection, a fair trial, and judicial protection, guaranteed respectively in Articles 7, 5, 4, 19, 8, and 25 of the American Convention, all in connection with Article 1.1 of that treaty.

After the respective processing in the Inter-American Commission on Human Rights, on May 5, 2005, the IACHR issued its Report N° 34/05 (Article 50 of the American Convention), with conclusions and recommendations not for publication.

The friendly settlement process between the parties formally began on July 13, 2005. In that process, in accordance with the provisions of Articles 1, 2, and 48.1.f of the American Convention on Human Rights and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights, the parties reached the following agreement in Case N° 11.607, Víctor Hugo Maciel vs. Paraguay.

First: Recognition of international responsibility

- a) The State of Paraguay, in strict compliance with its obligations assumed from the signature and ratification of the American Convention on Human Rights and the other international human rights instruments to which it is a party, understanding that any violation of an international obligation that has caused damage entails the duty to make suitable reparation, consisting of compensation to the victim, investigation of the facts, and the administrative, civil, and criminal punishment of the responsible parties as the fairest form of so doing, recognizes its international responsibility in Case N° 11.607, Víctor Hugo Maciel, for the violation of rights to personal liberty, humane treatment, life, child protection, a fair trial, and judicial protection, guaranteed respectively in Articles 7, 5, 4, 19, 8, and 25 of the American Convention, all in connection with the general duty of the State to respect and guarantee the rights as established in of the American Convention on Human Rights.
- b) This recognition of international responsibility shall be disseminated in a public event within 60 days after the signature of the agreement, in the presence of the Minister of Foreign Affairs, the Minister of Defense, the Commandant of the Armed Forces, the victim's next of kin and the petitioners in the case, as well as other national authorities and national and international human rights organizations, and through a text prepared by mutual agreement between the petitioners and representatives of the victim.
- c) The recognition shall be widely aired on National Radio (in Spanish and Guaraní), as well as by the other media.
- d) In addition, the State undertakes to publish: i) the full text of the friendly settlement agreement in a newspaper of national circulation and the Official Gazette, and ii) the full text of the friendly settlement agreement and the report prepared by the IACHR in accordance with Article 50 of the American Convention on the website of the Ministry of Foreign Affairs, with a link on the site of the Office of the President.

Second: Guarantees of justice

- a) The State of Paraguay undertakes to move forward with the investigation of the facts to identify, try, and punish all those responsible for the violations of human rights committed to the detriment of the child Víctor Hugo Maciel, as established by the Inter-American Commission on Human Rights in its report prepared under Article 50 of the American Convention. The State undertakes to present a copy of the document confirming that the case has been reopened.
- b) To designate a prosecutor of the Special Unit for Human Rights in the Public Prosecutor's Office to head the investigation, which shall proceed in the regular courts. In execution of this clause the State appointed the attorney Juan de Rosa Avalos Portillo as the prosecutor responsible for the investigation. Confirmation of his appointment is attached as ANNEX 1.

- c) To guarantee the victim's family members full access and opportunity to act in all phases and levels of said investigations, pursuant to domestic law and the norms of the American Convention.
- d) To seek by all means to prevent impunity in the investigated case, respecting the procedural guarantees contained in the Constitution and legislation, the American Convention, and the jurisprudence of the Inter-American Court where applicable.
- e) To report to the petitioners regularly on progress in the investigation.
- f) To publicize progress in the investigations so that society may know the truth of what happened, respecting the principle of the Constitution and the Convention regarding publication of cases and the presumption of innocence.

Third: Measures for satisfaction

The State of Paraguay undertakes to propose that the appropriate municipal authorities give the name of Víctor Hugo Maciel to a plaza or street in the city of San Juan Bautista, Misiones Department. A plaque with an explanatory text prepared in consultation with the family and its representatives shall be placed in the plaza or street.

Fourth: Guarantees to prevent repetition

- a) To amend the reservation deposited with the General Secretariat of the United Nations to the Optional Protocol to the Convention on the Rights of the Child relating to the Participation of Children in Armed Conflicts, specifying a minimum age of 18 years for compulsory or voluntary military service. In execution of this clause, on March 14, 2006, the President of the Republic of Paraguay signed a statement that will replace the one deposited with the instrument of ratification on September 27, 2002.
- b) To propose and actively support approval of draft legislation to amend Military Service Law N° 569/75, derogating Article 10 and altering Article 5 for a total ban on the incorporation of children under the age of 18 in military service. In execution of this clause the State has begun processing of file N° 2065/06 FFMM and undertakes to submit it to Congress within 60 days from the signature of the agreement.
- c) To propose and actively support approval of draft legislation to amend Law 123/52, regarding the establishment of CIMEFOR (Centers for Military Instruction for Students and Training for Reserve Officers), amending Article 10 for a total ban on service by children under the age of 18. In execution of this clause the State has begun processing of file N° 2065/06 FFMM and undertakes to submit it to Congress within 60 days from the signature of the agreement.
- d) That the President, as Commander-in-Chief, shall issue a general order banning recruitment of persons under the age of 18, and establishing military, criminal, and administrative sanctions for members of the armed forces who ignore this order. To carry out this clause, the Commander-in-Chief of the armed forces of the nation signed Special Order N° 42 on March 3, 2006. A copy is attached as ANNEX II.
- e) To order the conduct of compulsory and comprehensive medical exams before, during, and prior to discharge from military service for all personnel by a certified doctor, who shall prepare a medical record with all pertinent medical data. In execution of this clause Circulars N°

8 and 146 were both issued on July 14, 2005, which order a medical exam prior to military service and one month before termination. A copy of these circulars is attached as ANNEX III.

f) To disseminate on all bases, through a written notice to youth entering military service, and posters in visible places, the address and telephone number of the Public Prosecutor's Office, and other offices that receive and process complaints for mistreatment, harassment, torture, servitude, or other violations of soldiers' human rights.

g) To organize a dissemination campaign through the media to publicize the total ban on persons under age 18 in the military service. Specifically, when sending a draft notice for compulsory military service, the State shall include the following statement in the notice: "In compliance with international obligations and domestic law it is forbidden to recruit persons under 18 years of age. Violation of this provision is punishable by law (Article 56 of Law 569/75).

Fifth: Monetary reparation

a) For monetary compensation the State shall pay the victim's next of kin the sum of Gs. 146,750,000 (one hundred forty-six million seven hundred fifty thousand guaraní) equivalent at today's exchange rate to US\$25,000 (twenty-five thousand U.S. dollars), a sum that shall be paid at the same act, with this instrument as satisfactory receipt, in accordance with the following details: check N° 6548948 on the Banco Nacional de Fomento, for Gs. 110,000,000 (one hundred ten million guaraní), and in cash the amount of Gs. 36,750,000 (thirty-six million seven hundred fifty thousand guaraní).

b) The amount of compensation paid by the State that is presented at this act shall be exempt from any present or future tax, levy, or fee.

c) The parties agree that the amount and the names of the beneficiaries shall be strictly confidential. Under no circumstances shall they be released. In accordance with this clause, when this agreement is published (see first clause), this fifth clause shall be deleted.

Sixth: Follow-up mechanism

To monitor the observance of this agreement until its effective fulfillment, the parties shall prepare quarterly progress reports, which shall be submitted to the Inter-American Commission on Human Rights.

Seventh: Interpretation

The meaning and scope of this agreement shall be interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, as applicable, and the principle of good faith. In case of doubt or disagreement between the parties on the content of this agreement, the Inter-American Commission on Human Rights shall decide on its interpretation. It shall also be responsible for verifying compliance, and the parties are required to report every three months on the agreement's status and compliance.

Eighth: Adoption

The Government of Paraguay and the petitioners shall present this friendly settlement to the Inter-American Commission on Human Rights for adoption and publication in accordance with the provisions of Article 49 of the American Convention on Human Rights and Article 41.5 of the Rules of Procedure of the Inter-American Commission on Human Rights.”

186. Based on the information provided by the petitioners and the State as of the date of this report, the Commission has the following observations on the commitments undertaken in the framework of the friendly settlement agreement of March 22, 2006:

a. Recognition of international responsibility and its dissemination in a public event

187. Concerning subparagraphs (a) and (b) of this clause of the agreement, the State reported in a note of June 21, 2006, that the public act for recognition of international responsibility of the Paraguayan State in this case took place on June 6, 2006, in the ceremonial hall of the Benigno López Palace of the Ministry of Foreign Affairs. Participants included the next of kin of the victim and their legal representatives, the senior officials of the Ministry of Foreign Affairs, the Ministry of Defense, the Ministry of Justice and Labor, the Attorney General of the State, the Commander of the Armed Forces and other senior military officers, representatives of Congress, representatives of the Truth and Justice Commission, the Ombudsman’s Office, and national and international nongovernmental organizations.

188. With respect to section (c) of this clause, the State reported that on June 20, 2006, National Radio of Paraguay transmitted the public act for recognition of international responsibility of the Paraguayan State simultaneously in Guaraní and Spanish. On June 22, 2006, the State submitted the minutes of the event to the IACHR.

189. As regards section (d), on May 19, 2006 the State published the text of the friendly settlement agreement in the Official Gazette and posted it on the Internet site of the Ministry of Foreign Affairs and of the Human Rights Office.

190. Based on the foregoing, the Commission concludes that this commitment has been satisfied.

b. Regarding guarantees of justice

191. Concerning this clause, the State reported in a note of March 27, 2006, that case N° 11.607 “V́ctor Hugo Maciel” was lodged with the Criminal Prosecutor and Human Rights Crimes Specialist of Unit N° 1, attorney Juan De Rosa Avalos. The State said in a note of October 16, 2006, that on March 22, 2006 the criminal prosecutor in charge of the case requested reopening of the investigation in the case “Complaint Filed by the Office of the Public Prosecutor of the State regarding the death of draftee V́ctor Hugo Maciel,” and began the appropriate actions in this process. In a communication of September 18, 2007, the State reported that the investigation under prosecutor Juan de Rosa Ávalos was focusing at that time on the physical exam that qualified the minor for military service. Subsequently, in a note of February 14, 2008, the State reported on various actions taken by the prosecutor in charge of the case.

192. The Commission notes that although the State has taken a series of steps to comply with this commitment, as of this date it has not been fully satisfied.

c. Regarding measures of satisfaction

193. The State reported in a note of June 4, 2007, that on December 28, 2006, the city council of San Juan Bautista issued a negative decision in Resolution 280/2006 to the Foreign Ministry's official request to give a plaza or street in the city the name of Víctor Hugo Maciel. Therefore, and after reaching an agreement with the petitioners and the mother of the minor Víctor Hugo Maciel, the State promised to begin negotiations with the city of María Auxiliadora, in Tomás Romero Pereira District, Itapúa, to name a plaza or street after Víctor Hugo Maciel. The State informed that this action was completed on December, 18, 2008.

194. Based on the foregoing, the Commission concludes that this commitment has been satisfied.

iv. Regarding guarantees to prevent repetition

195. Concerning section (a) of this clause, the State reported in a note of June 22, 2006, that on March 22, 2006, it had replaced the presidential declaration regarding the Optional Protocol to the United Nations Convention on the Rights of the Child relating to the Participation of Children in Armed Conflicts, in order to ban the entry of children under the age of 18 in Paraguay's military service. In a note of September 18, 2007, the State reported that the website of the United Nations High Commissioner for Human Rights had been updated, replacing the former declaration of the State of Paraguay regarding the Optional Protocol of the Convention on the Rights of the Child with the declaration of March 22, 2006.

196. With respect to sections (b) and (c) of this clause, the State reported in a note of June 22, 2006, that the Commander of the Armed Forces of Paraguay had signed for submission to Congress a bill to amend Law N° 569/75, on "Compulsory Military Service," and Law N° 123/52, on "CIMEFOR." Finally on February 19, 2007, the President submitted these bills to Congress for amendment of Law 569/75 "Compulsory Military Service" (derogation of Article 10 and amendment of Article 5) and of Law 123/52 "CIMEFOR" Article 10, paragraph (a). In a note of January 4, 2008, the State reported the promulgation on November 21, 2007, of Law 3360, which amends Law 569/75 "Compulsory Military Service," by derogating Article 10 and amending Article 5 of said law, setting 18 years as the minimum age for military service. The State reported the promulgation on May 20, 2008, of Law 3485, which amended Article 10 (a) of Law 123/52 on CIMEFOR, so that the special courses of military instruction and training of reserve officers and noncommissioned officers are offered to students who are at least 18 years old.

197. Concerning section (d) of this commitment, the State reported that the Commandant of the Armed Forces issued Special Order N° 13 on January 12, 2007, which provides that any person in CIMEFOR under the age of 18 shall be exempt from basic military instruction. The State added in a note of June 22, 2007, that based on the agreement signed in the instant case the

Children's and Adolescents' Courts are rejecting requests from parents who want their underage sons to enter military service.

198. Regarding section (e) of this commitment, as noted in the friendly settlement agreement the State issued Circulars N° 8 and 146, both of July 14, 2005, which require one medical exam prior to entry in military service and another one month before separation.

199. With respect to section (f) of this commitment, on May 24, 2006 the Armed Forces Command issued Special Order N° 105, which approved the placement of posters announcing institutions that receive and process complaints of human rights violations. On August 31, 2007, Circular N° 165 reiterated the need for strict compliance with that special order. On June 28, 2007, the Commander-in-Chief of the Armed Forces issued General Order N° 112, which approved and ordered distribution to all military personnel of the "Handbook on Humanitarian Rules—Human Rights and International Humanitarian Law in the Armed Forces," prepared by the Office of Legal Affairs, Human Rights, and International Humanitarian Law of the Ministry of Defense. Later, on July 10, 2007, the State submitted a copy of a note from the Ministry of Defense of Paraguay that reported the event for release of the training material "Soldier's Guide—application of basic rules of human rights and international humanitarian law," and sent a copy of the material on July 17, 2007. In addition, the State said in a communication of September 18, 2007, that it had given every soldier a copy of the "Soldier's Guide," which specifies what to do if one is a victim or a witness of human rights violations on the bases, with the name of the institutions and offices with their respective telephone numbers and addresses.

200. The petitioners reported in a note of July 28, 2006, that the State had complied with points (a) (b) (c) (d) and (e) of the friendly settlement agreement concerning guarantees to prevent repetition.

201. The Commission notes that for commitment (g)[FN83] the State has not reported on actions to organize a media campaign to publicize the total ban on entry of children under age 18 in the military service. However, since the State is carrying on an active campaign on the bases as reflected in compliance with commitment (f), and has just approved two laws establishing a minimum age of 18 for both military service and the special courses and military training in CIMEFOR, the Commission considers that the commitment regarding guarantees to prevent repetition has been satisfied.

[FN83] "g) To organize a dissemination campaign through the media to publicize the total ban on persons under age 18 in the military service. Specifically, when sending a draft notice for compulsory military service, the State shall include the following statement in the notice: "In compliance with international obligations and domestic law it is forbidden to recruit persons under 18 years of age. Violation of this provision is punishable by law (Article 56 of Law 569/75)."

v. Regarding monetary reparation

202. The State complied with the payment of US\$25,000 for compensation to the victim's next of kin.

vi. Latest actions

203. On March 20, 2009, the IACHR adopted Report No. 34/09, pursuant to Article 51 of the American Convention. On April 13, 2009, the Inter-American Commission transmitted the report to the State and to the petitioners, as stipulated in Article 51.2 of the American Convention, and granted the State one month to report on compliance with the recommendations of the Commission. On May 19, 2009, the State presented information related to the pending recommendation. The State indicated that the Special Penal Unit on Acts against Human Rights (Unidad Penal Especializada en Hechos Punibles contra Derechos Humanos) requested the presence of three militaries who were in active service in 1995, year in which Victor Hugo Maciel was declared apt for military duty.

204. On May 20, 2009, the Commission sent the petitioners the information presented by the State. The petitioners sent their observations on June 29, 2009, they stated that the information given by the State does not comply with the obligation established by the Commission. Furthermore, they argued that the response does not present a detailed report on a complete, impartial and effective investigation of the facts regarding Victor Hugo Maciel's case. They argued that the General Prosecutor in charge of the judicial procedure was still the same person that the petitioners had argued before, in November 2007, had no impartiality to continue with the investigation of the case. On July 13, 2009, the Commission sent a note to the State with the observations of the petitioners, granting it a month to present a response.

X. CONCLUSIONS

205. Based on the foregoing, the Commission notes again with satisfaction, the significant progress in compliance with the friendly settlement agreement of March 22, 2006. However, the Commission notes with regard to the commitment assumed in the agreement's second point (Guarantees for justice), that it has only been partially met.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES TO THE STATE OF PARAGUAY THE FOLLOWING RECOMMENDATIONS:

1. That it complete a full, fair, and effective investigation of the facts of this case for the purpose of trying and punishing the material and intellectual authors of the human rights violations committed to the detriment of Víctor Hugo Maciel Alcaraz.

XI. PUBLICATION

206. The Commission agrees to transmit this report to the Paraguayan State and decides to publish this report and include it in its Annual Report to the OAS General Assembly. Pursuant to its mandate, the Inter-American Commission on Human Rights will continue to evaluate measures adopted by the State of Argentina until the recommendations have been fully implemented.

Done and signed in the city of Washington, D.C., on the 6th day of the month of August 2009.
(Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president;
Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Paolo G. Carozza, members of the Commission.