



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Initial reports of States parties due in 2004

**Paraguay\***

[20 October 2010]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## **I. Introduction**

1. As a State Member of the United Nations, Paraguay ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in September 2002 through the promulgation of Act No. 1897/2002 on 27 May 2002. The incorporation of this instrument into the national legal order marked a crucial step in halting the voluntary and/or forced recruitment of children and adolescents into the military and police forces, bringing about a permanent cessation of this practice.

## **II. General implementation measures**

### **A. Background**

2. The present report was prepared in cooperation with the Ministry of National Defence, Ministry of the Interior, Ombudsman's Office and Public Prosecution Service, with strategic coordination by the Ministry of Foreign Affairs. Drawing on information gathered from reports by the various institutions responsible for implementing the Optional Protocol, its contents have been agreed in a series of meetings convened by the Ministry of Foreign Affairs.

### **B. Definition of the child in Paraguayan legislation**

3. Act No. 2169/2003, promulgated on 15 July 2003, establishes the following definitions:

- (a) Child: Any individual from conception to the age of 13 years;
- (b) Adolescent: Any individual between the ages of 14 and 17 years;
- (c) Adult: Any individual aged 18 years or over.

4. Article 2 of the Act states that if there is doubt about an individual's age, it shall be presumed that he or she falls into the younger of the two age brackets in other words:

- (a) An individual who could be a child or an adolescent is presumed to be a child;
- (c) An individual who could be an adolescent or an adult is presumed to be an adolescent.

### **C. Principle of the best interests of the child**

5. The principle of the best interests of the child is enshrined in Paraguayan law in article 3 of the Code on Children and Young Persons, which stipulates:

“Any measure taken concerning children or adolescents shall be based on their best interests, with the aim of ensuring their overall development and the full enjoyment of their rights and guarantees.

6. “To determine their best or predominant interests, consideration shall be given to their family ties, their education and their ethnic, religious, cultural and linguistic origins. Their views, the balance between their rights and duties and their status as developing individuals shall also be taken into account.”

## D. Scope of legislative implementation of the Optional Protocol

7. Under article 137 of the Constitution of Paraguay, “The Constitution is the supreme law of the Republic. The Constitution, the international treaties, conventions and agreements that have been approved and ratified by Congress the laws adopted by Congress and other related legal provisions of lesser rank make up Paraguay’s corpus of positive law, in the order of precedence in which they appear above.”

8. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was effectively incorporated into the national legislative framework through Act No. 1897/02, which ratified the instrument and provided for its nationwide implementation.

## III. Information on implementation of the articles of the Optional Protocol

### Article 1

9. The coalition to stop the use of child soldiers in Paraguay, with the support of UNICEF, helped achieve the withdrawal of the reservation regarding voluntary recruitment made by the State party upon its ratification of the Optional Protocol.

10. This inter-institutional coalition has undertaken a number of activities, including reporting on the continuing presence of a considerable number of minors in army barracks, some of whom are in poor health and in possession of falsified birth certificates, and the death of at least 57 child soldiers between 1989 and 2004.

11. The coalition made documentation and information available to the general public and to national and international authorities in order to promote the practical and legislative changes that would make it possible to prohibit the enlistment of children and adolescents. Complaints showed that in some rural areas the unlawful recruitment of adolescents was continuing either as a means of survival owing to families’ lack of resources, as a punishment or as a gateway to education.

12. Implementation of the Optional Protocol was complicated primarily by the persistence of forced recruitment owing to the failure to amend domestic legislation in order to suppress the practice, and by the fact that some families encouraged their children to enlist in the armed forces or the police in the belief that the children would thereby have better prospects for personal and academic development; to that end, they lied about their age or falsified documents to show that a minor was old enough to enlist.

13. Act No. 3360/2007, promulgated on 6 November 2007, repealed article 10 and amended article 5 of Act No. 569/75 on compulsory military service in the following terms:

“Article 5: Citizens obliged to provide the services referred to in articles 3 and 4<sup>1</sup> shall be permitted to apply, on justifiable grounds, for deferred discharge of that

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<sup>1</sup> Articles 3 and 4 of Act No. 568/75 stipulate the following:

“Art. 3 – The length of service shall be 33 years, divided as follows:

a. STANDING:

From the age of 18 years to 19 years, in the armed forces or police institutions.

obligation. No one under 18 years of age shall be allowed to serve. The length of service shall be determined from the date of entry into the standing army, navy, air force or police institution.”

14. Article 129 of the Constitution of Paraguay, entitled “Military service”, provides that:

“All Paraguayans have an obligation to prepare for and assist in the armed defence of the homeland. For this purpose, compulsory military service is hereby established. The law shall regulate the conditions for the performance of this duty. Military service shall be carried out with full respect for human dignity. In peacetime, the length of service may not exceed 12 months. Women shall not perform military service except as auxiliaries, if necessary, in the event of international armed conflict. Anyone who declares himself to be a conscientious objector to military service shall perform services for the benefit of the civilian population through social centres designated by law and under civil jurisdiction. The regulation and exercise of this right shall not be of a punitive character or impose obligations exceeding those established for military service. Any form of military service not defined by law or for the personal gain or profit of individuals or private entities is prohibited. The law shall regulate the contribution of foreigners to national defence.”

15. This article of the Constitution thus establishes military service as compulsory in Paraguay, with the possibility of declaring conscientious objection to fulfilling that obligation and performing alternative services for the benefit of the civilian population.

16. Act No. 4013, dated 17 June 2010, regulates the exercise of the right to conscientious objection to compulsory military service and establishes alternative services, offering citizens the possibility of refusing to perform compulsory military service on ethical or religious grounds.

17. A declaration of conscientious objection has the effect of suspending enlistment of the objector into the armed forces for compulsory military service. The declaration must be set down in writing and addressed to the Ombudsman if the objector is in Paraguay or to a Paraguayan consular official if he is in a foreign country. It must contain: the objector’s personal details; his ethical or religious grounds for objection; the location in which he would prefer to perform alternative services for the benefit of the civilian population; and his signature authenticated by the legal means available to him if the declaration was not signed before a public official authorized to receive it.

## Article 2

18. In accordance with the provisions of Act No. 3360, only persons aged 18 years or over are allowed to perform military service in Paraguay.

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b. RESERVE:

From the age of 20 years to 50 years.

Art. 4 – The Reserve shall be divided into three service categories:

a. Standing Reserve:

From the age of 20 years to 32 years.

b. National Guard:

From the age of 33 years to 44 years.

c. Territorial Guard: From the age of 45 years to the 50th birthday.”

19. The National Council for Children and Adolescents is the competent national authority for monitoring implementation of the Convention on the Rights of the Child, its Optional Protocol on the involvement of children in armed conflict and other legal instruments relating to children. Presided over by the Executive Secretary of the National Secretariat for Children and Adolescents, the Council comprises representatives of the Ministry of Public Health and Social Welfare, Ministry of Education and Culture, Ministry of Justice and Labour, Public Prosecution Service, Ministry of Public Defence, departmental councils and national non-profit NGOs concerned with public welfare.

20. The fundamental role of the Council is to develop policies to promote, address and protect the rights of the child and the adolescent. It was designated the national coordinating body of the System for the Promotion and Protection of the Rights of the Child, which was established in accordance with Act No. 1680/01 (Code on Children and Young Persons).

21. Other Government agencies responsible for the protection of human rights include the Executive Branch's Human Rights Network, which was established by Decree No. 2290/09 "to coordinate and harmonize policies, plans and programmes developed within the Executive".

22. Likewise, the Supreme Court of Justice comprises a human rights directorate, which is responsible for protecting and promoting human rights within the legal system.

23. The Public Prosecution Service also comprises a human rights directorate, which provides technical support to public prosecutors nationwide and assigns cases of human rights offences to criminal prosecutors.

24. There are standing human rights committees in both chambers of the Legislature; they are responsible for formulating and promoting laws relating to the protection of human rights.

25. The Department for Children and Adolescents within the Ombudsman's Office was established through resolution No. 979/05. The Department is mandated, inter alia, to defend the rights and safeguards of the child and the adolescent as set forth in the Constitution and relevant international instruments, and to receive reports, complaints and appeals regarding violations of those rights.

26. The Department is responsible for publicity activities and for ensuring and monitoring respect for, and protection of, the rights of the child and the adolescent. Since its creation, it has focused mainly on promoting these rights and contributing to intersectoral efforts to ensure their full realization.

27. In addition, the Department participates in round-table discussions on issues relating exclusively to children and adolescents in order to help implement plans, programmes and projects in that area.

28. It also acts as a conduit for processing reports, complaints and appeals relating to child and adolescent rights violations, and forwarding them to the relevant authorities.

29. The Department comprises an executive committee and committees for prevention and publicity, welfare, assistance and monitoring, each with its own plans and targets for strengthening the overall protection of children and adolescents.

### **Article 3**

30. The following laws have been enacted to fully harmonize domestic legislation with international standards regarding the recruitment of persons under 18 years of age into the armed forces:

(a) Act No. 1897, which approves the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(b) Act No. 3360/2007, which repeals article 10 and amends article 5 of Act No. 569/75 on compulsory military service to include the provision: “No one under 18 years of age shall be allowed to serve”;

(c) Act No. 3485, dated 20 May 2008, which amends Act No. 123/52 “abrogating Decree-Law No. 5689 of 24 October 1944 and Decree-Law No. 7687 of 10 October 1949 on the establishment of a special commissioned and non-commissioned officer training course for members of the student reserve (CIMEFOR)”. Article 10 of Act No. 123/52 is amended to include the provision: “Special military training courses for commissioned and non-commissioned officers from the reserve are available to Paraguayan students aged 18 years or over.”

31. With regard to administrative measures, the President of the Republic of Paraguay signed a declaration in 2006 stipulating that in order to perform military service, whether compulsory or voluntary, an individual must be 18 years of age or older. In addition, the Commander-in-Chief of the armed forces issued Special Order No. 42 to highlight the “prohibition of the recruitment of persons under 18 years of age and the military, criminal and administrative responsibility of members of the armed forces who do not comply with this order”.

#### **Paragraphs 1 and 2**

32. The Paraguayan Government recognizes neither the recruitment nor the entry into the armed forces of persons under 18 years of age.

33. Act No. 3360/2007 provides that: “No one under 18 years of age shall be allowed to serve.”

34. Act No. 3485/08, amending Act No. 123/52, modifies article 10 to read: “Military training courses for commissioned and non-commissioned officers from the reserve are offered to Paraguayan students aged 18 years or over.”

#### **Paragraphs 3 and 4**

35. The minimum age of admission to the military school of the national armed forces is 14 years, according to the report of the Directorate-General of Civilian Affairs of the Joint Chiefs of Staff of the Armed Forces, within which the school operates. The school, and its civilian studies curriculum in particular, are supervised and monitored by the Ministry of Education and Culture. The military studies curriculum contains courses on human rights and international humanitarian law.

36. Enrolment in military schools is entirely voluntary. There is a mechanism in place for reporting any cases of ill-treatment, based on the criminal and disciplinary responsibility of the school authorities and the duty of military commanders to prevent and report such offences.

#### **Article 4**

37. Since March 2008, according to documents found during a police investigation in Horqueta (Concepción Department), a group known as the Paraguayan People’s Army (EPP) has been established in Paraguay. This group is alleged to be responsible for innumerable offences, specifically in relation to abduction. It was formerly associated with Patria Libre, a political party that took part in the 2003 national elections and was

subsequently disbanded for advocacy of crime, in accordance with national electoral legislation.

38. The EPP declares itself to be a revolutionary political-military organization with Marxist and Leninist roots. The Prosecutor-General's Office has announced that it is in possession of sufficient evidence to prove a strong connection between the EPP and the Revolutionary Armed Forces of Colombia (FARC). To date, there has been no report of the EPP having recruited children or adolescents into its ranks.

39. The Paraguayan Government considers this "army" to be an armed group run by organized crime, according to statements by the Minister of the Interior, Rafael Filizzola.

40. The Government is taking practical steps to eradicate the group. For example, on 23 April 2010, it promulgated Act No. 3994 declaring a state of emergency in the departments of Concepción, San Pedro, Amambay, Alto Paraná and Presidente Hayes. This was in response to the serious disturbances caused by EPP operations in those areas which were endangering the life, liberty and rights of individuals and their property.

41. The declaration was duly notified to the Secretary-General of the United Nations, in accordance with the International Covenant on Civil and Political Rights, and to other high-level international authorities.

42. While the state of emergency was in effect, the Executive widely disseminated information about the law declaring the emergency through its Human Rights Network and set up offices in the chief towns of the affected departments to receive complaints of human rights violations. No such complaints were received during the state of emergency.

## **Article 5**

43. None of the provisions of the Optional Protocol conflicts with Paraguay's domestic legislation. However, once the Optional Protocol had been integrated into the national legal framework through Act No. 1897/02, a number of significant legislative adjustments were made to facilitate the necessary changes with regard to compulsory military service and procedures for declaring conscientious objection.

## **Article 6**

44. Act No. 3360/2007, which establishes the minimum age of recruitment, also specifically provides for the exclusion and release of minors from military service.

45. The following are regulated by legal measures of the ordinary justice system: plans, programmes, budget and measures for the social reintegration of children; confidentiality safeguards; the criminalization of child recruitment; measures to ensure respect for the rights of children as either victims or witnesses of recruitment; and the criminal responsibility of children for offences committed while in the armed forces.

46. Measures taken to publicize and implement the Optional Protocol include deploying members of the national armed forces on United Nations peace missions in Cyprus, Haiti, the Democratic Republic of the Congo, Sudan, Nepal, Western Sahara, Côte d'Ivoire and Afghanistan. For this purpose, all personnel have received training in human rights and international humanitarian law.

47. Human rights subjects, including those embodied in the Optional Protocol, have been incorporated into the standard training programmes and courses of the Paraguayan armed forces.



48. The present report will be published on the website of the National Secretariat for Children and Adolescents.<sup>2</sup> Hard copies will be printed to facilitate its discussion and the formulation of any recommendations.

### Specific cases

49. The State of Paraguay is fully committed to meeting its obligations resulting from specific cases concerning the involvement of children and adolescents in the armed forces, which have been filed with the Inter-American Commission on Human Rights (IACHR). A number of cases are listed below.

#### *Case No. 12,300: Gerardo Vargas Areco v. Paraguay*

50. Gerardo Vargas Areco was recruited for military service in the Paraguayan armed forces on 26 January 1989 at the age of 15. On 30 September 1989, he was hit in the back by a shot fired by a non-commissioned officer and killed. The State unconditionally accepted the claim and expressed its readiness to comply with any decision reached by the Inter-American Court of Human Rights.

51. The person responsible for the death of Vargas Areco was sentenced to 1 year of imprisonment in the case entitled “Aníbal López Insfrán and Eduardo Riveros concerning residence in Villarrica”. However, steps to investigate allegations that Vargas Areco had been tortured are apparently still pending.

52. In December 2008, the State organized a ceremony at which it issued a public apology and acknowledgement of international responsibility, with the participation of national authorities and relatives of the victim.

53. It also undertook to devise and implement standard training programmes and courses on human rights for all members of the Paraguayan armed forces.

54. Pursuant to the provision in the decision relating to medical assistance, the State, through the Human Rights Unit of the Ministry of Public Health and Social Welfare, supplied the victim’s relatives with identification papers which would enable them to access the various health-care services, medication and psychological assistance if needed, all free of charge.

55. The State discharged its obligations regarding financial reparation by paying the relatives a total of 341,640,000 guaraníes. Action is currently under way to ensure payment of interest.

#### *Case No. 11,607: Víctor Hugo Maciel*

56. The State has been engaged in intense negotiations with the legal representatives of the victim’s relatives before the IACHR with the aim of reaching an amicable settlement. The negotiations are currently in the final phase, proceeding on the basis of a mutually agreed text.

57. The settlement agreement contains a number of obligations on the part of the State to prevent a repetition of the events in question, including a commitment to replace the Presidential Declaration on the Optional Protocol, stipulating that in order to perform military service, whether compulsory or voluntary, an individual must be 18 years of age or older.

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<sup>2</sup> www.sna.gov.py.

58. Likewise, the State has undertaken to amend the legislation on compulsory military service and the officer training course for members of the student reserve (CIMEFOR), to issue general orders, to step up medical inspections and to conduct awareness-raising campaigns.

59. The petitioners will receive \$25,000 in compensation, which is already provided for in the budget of the Ministry of National Defence.

*Case No. 12,329: Vicente Ariel Noguera*

60. On 24 October 2000, the IACHR informed the State of Paraguay of a communication addressed to it by Ms. María Noguera. In this communication she stated: that her son, Vicente Ariel Noguera, had died on 11 January 1996 at the age of 17 during his second period of military service at the CIMEFOR centre when holding the rank of trainee corporal; that he had begun compulsory military service at the age of 15; and that the circumstances of his death had not yet been clarified by the civil courts.

61. Ms. Noguera reported, inter alia, that official versions of her son's cause of death ranged from "sudden death", to hantavirus, and finally to generalized infection.

62. The State responded to this claim on 14 November 2000.

63. On 7 December 2000, Ambassador Diego Abente Brum, Permanent Representative of Paraguay to the Organization of American States at the time, sent a note to the Executive Secretary of the IACHR informing him that the State of Paraguay was willing to initiate the amicable settlement procedure.

64. After a lengthy exchange of communications between the State and the IACHR, and in light of the lack of progress towards a settlement, an inter-institutional working meeting with the petitioner was held in June 2009 at the offices of the Attorney-General of the Republic.

65. At that meeting, the petitioner undertook to submit a draft amicable settlement agreement to the Attorney-General. She submitted that document in May 2010 (one year later) to the Minister of Foreign Affairs, Héctor Lacognata, in the course of a hearing.

*Action by the State of Paraguay following submission of the draft amicable settlement*

66. On 10 May 2010, the draft settlement was transmitted to the Attorney-General of the Republic, the Supreme Court of Justice and the Ministry of National Defence with a view to convening an inter-institutional meeting to analyse the text.

67. An inter-institutional meeting was subsequently held, during which the participants discussed the text and the willingness of the State to begin talks with the petitioner.

68. The Ministry of National Defence was requested to issue a detailed report on all actions recorded to date in connection with the case. The report was sent to this Directorate on 7 June 2010.

69. In notes dated 22 June 2010, the High Authorities of the Attorney-General of the Republic, Ministry of National Defence, Supreme Court of Justice, Ministry of Justice and Labour, Ministry of Finance and Ministry of Public Health and Social Welfare were requested to express their views in order to determine the State's position and to expedite the case.

70. Lastly, the Permanent Mission of Paraguay to the Organization of American States was requested to explain the State's position regarding the "admissibility" of the claim. On 8 August 2010, following a meeting with the IACHR technical team, the Permanent Mission replied that the IACHR had not issued any report on admissibility.

*Case No. 12,330: Marcelino Gómez and Cristián Ariel Núñez*

71. On 17 October 2000, Ms. Deogracia Lugo de Núñez and Ms. Zulma Paredes de Gómez, and the organizations Centre for Justice and International Law (CEJIL) and Peace and Justice Service – Paraguay (SERPAJ-PY) presented a petition against the State.

72. The petitioners alleged that two boys named Marcelino Gómez Paredes and Cristián Ariel Núñez, both aged 14, had disappeared while performing compulsory military service in the armed forces.

73. In August 1997, the boys went voluntarily to the recruitment centre in the town of Caaguazú. Both were ordered to serve at Military Post No. 1 (“General Patricio Colmán”), 5th Infantry Division, Lagerenza (Alto Paraguay Department).

74. In February 1998, the families were notified that both boys were missing. On 14 June 2000, they presented a petition for reparative habeas corpus to the Supreme Court of Justice, requesting that the Commander-in-Chief of the Paraguayan armed forces be ordered to present the boys Marcelino Gómez and Cristián Ariel Núñez. On 12 July 2000, the Criminal Division of the Supreme Court dismissed the petition.

75. On 22 October 2003, the IACHR declared the petition admissible on the basis of the facts described and in respect of the violation of the right to personal liberty, the right to integrity of the person, the right to life, the right to legal safeguards, the right to legal protection and the rights of the child, all of which are embodied in the American Convention on Human Rights and consistent with the Inter-American Convention on Forced Disappearance of Persons.

76. During meetings held at IACHR headquarters in Washington D.C. on 24 October 2008, the petitioners expressed their views on the initial draft text submitted by the State of Paraguay.

77. On 14 May 2009, the CEJIL issued the draft amicable settlement agreement as amended at the latest meetings between the State and the petitioners.

78. On 24 June 2009, the petitioners’ legal representative announced that the mothers would sign the agreement.

79. On 11 August 2009, the State received a communication from the IACHR containing additional information from the petitioners, which required a response. The State duly replied on 23 September 2009.

80. Finally, after numerous meetings with the other State institutions involved in the case and, in turn, with the petitioners, the parties agreed on a final version of the settlement agreement.

81. On 4 November 2009, the State presented the agreed text to a commissioner during working meetings at the IACHR in Washington D.C. It was immediately signed by representatives of the State of Paraguay and the petitioners, and an annex to the agreement was endorsed by the mothers of the victims, Ms. Deogracia Lugo de Núñez and Ms. Zulma Paredes de Gómez.

82. Since March 2010, the Truth and Justice Commission has been working to honour the State’s obligation within the agreement to do everything within its power to investigate the events surrounding the violations perpetrated against Marcelino Gómez Paredes and Cristián Ariel Núñez and to punish all those responsible.

83. The Truth and Justice Commission comprises representatives of the Ministry of National Defence, Ministry of Foreign Affairs, Ministry of the Interior, National Secretariat for Children and Adolescents, and Office of the Deputy Minister for Justice and Labour, together with civil society representatives.

84. To date, members of the Commission have travelled to the departments of Caaguazú and Alto Paraná to interview ex-comrades and family members of the disappeared boy soldiers, as well as the officers in charge of the detachment from which they disappeared and other key informants. The Commission has also reviewed documents and files relating to the case.

### **Article 7**

85. Paraguay has neither received nor provided international cooperation in this regard.

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