

HUMAN RIGHTS WATCH

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August 14, 2002

His Excellency D. Luís Alberto González
Macchi
President of the Republic
Palacio de López
El Paraguayo Independiente y Ayolas
Asunción, Paraguay

Dear President González Macchi:

We write to express our concern at reports of the use of child soldiers in Paraguay, the striking numbers of unexplained deaths of children serving as recruits, and Paraguay's failure to provide compensation or other reparations to the families of deceased child soldiers.

We welcome Paraguay's signature to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on September 13, 2000, and we understand that the national parliament approved its ratification in May 2002. Paraguay has also ratified the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and it has signed but not ratified the ILO Minimum Age Convention, 1973 (No. 138).

We recognize that Paraguay has taken additional positive steps since April 2001, when Amnesty International published a report on these issues. Paraguay adopted its new Child and Adolescents Code in May 2001 after two years of negotiation, enacting into its domestic law many of the protections of the Convention on the Rights of the Child. It has also recently appointed a *defensor del pueblo* (ombudsman), a post which had remained vacant since the 1992 Constitution mandated its establishment.

In addition, a commission of state and nongovernmental organization representatives has conducted a series of visits to military barracks around the country, and the courts have placed greater controls on the process of obtaining judicial authorization for enlistment by those under eighteen years of age.

Nevertheless, we remain concerned at the apparent lack of progress in investigating the unexplained deaths that occurred through 2001, and we are troubled by reported threats against activist María Noguera, president of the Association of Families of the Victims of Military Service (Asociación de Familiares de Víctimas de Servicio Militar, AFAVISEM). We urge the

government to carry out an independent and impartial investigation of these cases and to take all appropriate measures to prosecute and punish those responsible for any human rights violations. We also urge Paraguay to change its conscription and enlistment practices to comply with the Optional Protocol. Specifically, Paraguay must ensure that persons who have not attained the age of eighteen years are not compulsorily recruited into its armed forces. In accordance with article 3 and the special protection to which persons under age eighteen are entitled, Human Rights Watch strongly recommends that Paraguay also raise to eighteen the minimum age for the voluntary recruitment of persons into the national armed forces.

Full implementation of the Optional Protocol will require Paraguay to implement a reliable, effective birth registration system. We hope that Paraguay, with the assistance of the international community, will continue its efforts to secure this right.

Lack of Progress in Investigating Unexplained Deaths

One hundred twelve members of Paraguay's military and police forces have died in unexplained, often suspicious circumstances in the last thirteen years, according to AFAVISEM. The association reports that approximately 70 percent of those who died were children under the age of eighteen.

We note that the number of deaths has fallen in recent years. At least eight soldiers and police officers under the age of eighteen died in 2000, according to AFAVISEM. There were three such deaths in 2001, and none in the first six months of 2002.

But this statistical improvement is no consolation to the families of these children, who have generally received little or no information about the circumstances of their deaths. In some cases, they received nothing more than the bodies of their loved ones. In other cases, family members were given improbable explanations of the circumstances of these deaths.

Investigations in the majority of these cases have languished for years without resolution, often in the military court system. AFAVISEM reports that only one of these cases, that of Ricardo Lugo Maciel, has led to a conviction. Maciel, a seventeen-year-old assigned to the Comisaría No. 10 de la Colonia Fram in Itapúa, died of a gunshot wound to the chest on March 18, 2000. There was a conviction in the case on May 26, 2000, with the accused receiving a sentence of two years in prison. There has been no progress on any of the other cases, according to AFAVISEM. "For us, it's humiliating, the way that we have to beg for a little justice," María Noguera told Human Rights Watch in June 2002. "I have the right to know how my son died, to know who killed my son, to see him declared guilty."¹

The following cases are among those from 2000 and 2001:

- **Pedro Antonio Centurión**, a fourteen-year-old Argentine national, died on September 12, 2000, from a rifle shot that entered below his jaw and exited at the top of his head. Authorities initially described his death as a suicide. The prosecutor eventually

¹ Human Rights Watch interview with María Noguera, president, AFAVISEM, Asunción, Paraguay, June 8, 2002.

characterized his death as a homicide when forensic tests established that he had not fired the rifle. A key witness has reportedly gone into hiding, stalling progress in the case.²

- **Heriberto Lugo Fernández**, either seventeen or eighteen at the time of his death on December 18, 2000, was in the Frontera No. 2 “Capitán Bado,” Fourth Infantry Division, in Amambay department. According to the official account of his death, he was buying *chipas* (traditional pastries) when his rifle discharged accidentally.³ Military officials reportedly refused to permit María Noguera and Sen. Elba Recalde to enter the morgue to inspect Fernández’s body.⁴
- **Héctor Adán Maciel**, sixteen at the time of his enlistment in the Artillery Command in Paraguari, died on April 11, 2001, after suffering what the military report described as an accidental shot. The nongovernmental organization Servicio de Paz y Justicia-Paraguay (SERPAJ-PY) reported that “the fact that Maciel, gravely wounded, was transferred from the Itauguá National Hospital to Medical Emergencies in the capital, and from there to the Military Hospital, would have worsened his condition.”⁵
- **Sydney Moraes**, a seventeen-year-old assigned to the Santafé Police Station in Alto Paraná, suffered a gunshot wound in April 2000 and died on July 18, 2000, reportedly from complications due to a lack of medical attention. Amnesty International reported in April 2001 that “he received no treatment as the Police station was allegedly unable to pay for it.”⁶
- **Miliciades Ojeda**, a sixteen-year-old with the Third Army Corps, died from a head injury after ten days in a military hospital. Military officials told his family that he received a blow to the head when he fell off a tractor. One of the doctors who examined Ojeda later told María Noguera that the severity of the injury was inconsistent with a fall from a tractor seat, a height of less than two meters. Ojeda’s head reportedly disappeared from the morgue shortly after the autopsy, effectively preventing further inquiry into the circumstances of his death.⁷
- **Guillermo Daniel Patiño**, seventeen, died on May 17, 2000, of a rifle shot to the head. He had been assigned to the Dirección del Servicio de Reclutamiento y Movilización of the Armed Forces. As in Centurión’s case, the bullet entered below the jaw and exited at the top of the head. At least one official report of his death characterized it as a suicide.⁸ Although it is certainly possible to commit suicide with a rifle in this fashion, the location of the bullet wound is also consistent with an attack upon a sleeping individual.

² Human Rights Watch interview with María Noguera, Asunción, Paraguay, June 15, 2002.

³ Military investigation report, December 2000.

⁴ Human Rights Watch interview with María Noguera, June 15, 2002.

⁵ Orlando Castillo and Ana Couchonnal, “Fuerzas armadas y derechos humanos,” in *Derechos Humanos en Paraguay 2001* (Asunción: Coordinadora de Derechos Humanos en Paraguay, 2001), p. 311.

⁶ Amnesty International, *Paraguay: Conscription: Recruitment of Children, Routine Ill-Treatment, and Unexplained Deaths* (London: Amnesty International, 2001), p. 11.

⁷ Human Rights Watch interview with María Noguera, June 15, 2002.

⁸ *Ibid.*

- **Hugo Javier Ramírez**, an eighteen-year-old who joined the police at the age of seventeen, died on July 3, 2000, from a rifle shot to the chest. The location of the wound and the nature of the weapon would suggest that Ramírez was not responsible for his own death, but the police reported that Ramírez left a suicide note.⁹ Based on the note, the coroner classified his death as a probable suicide. His relatives reported to AFAVISEM that the note was not in his handwriting, and they suggested that the fact that he was in the police station's kitchen preparing a meal when he was shot indicated that he had no intention of taking his life.¹⁰
- **Iison de Maura Suárez**, seventeen, died on September 26, 2000, when he was shot with a police firearm while in a vehicle. There are conflicting accounts of the circumstances that led to his death, with some suggesting that the firearm discharged accidentally and others alleging that he was shot during a fight with a superior.¹¹
- **Gustavo Báez Ramos**, seventeen when recruited to serve in a police station and eighteen at the time of his death, died of a gunshot on May 9, 2001. As in Centurión's case, the bullet exited at the top of the skull. Military officers suggested to Báez's parents that he died when his rifle discharged accidentally as he was playing with it in bed.¹²

The International Covenant on Civil and Political Rights and the American Convention on Human Rights, treaties to which Paraguay is a party, reaffirm the right to life, liberty, and security of persons.

Paraguay has the obligation to prevent, investigate, and punish violations of these and other rights.¹³ In addition, as the Inter-American Commission on Human Rights has observed, "Every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be permitted, in order to prevent repetition of such acts in the future"¹⁴

Accordingly, Paraguay must investigate credible reports that its soldiers committed serious human rights abuses. It should make the results of these investigations public. If its investigations establish that such violations took place, Paraguay must call to account those responsible, including superior officers who knew or should have known of the abuses committed under their watch.

The Lack of Reparations

Paraguay has not provided compensation or other reparations to the families of the deceased, and only four families have received the pensions, amounting to some 770,000 guaraníes per month (about U.S.\$154 at the current rate of exchange), to which they are entitled under Paraguayan law.

⁹ Report No. 702, Jefatura, Seventh Department Itapúa, National Police, Encarnación, July 4, 2000.

¹⁰ Human Rights Watch interview with María Noguera, June 15, 2002.

¹¹ Amnesty International, *Paraguay: Conscription*, p. 13.

¹² Human Rights Watch interview with María Noguera, June 15, 2002.

¹³ See *Velázquez-Rodríguez Case*, Sentence of July 29, 1988, I.A.C.H.R. ser. C, no. 4, para. 166.

¹⁴ *Annual Report of the Inter-American Commission on Human Rights, 1985-1986* (Washington, D.C.: Organization of American States, 1986), p. 193.

Frustrated with the apparent lack of progress in these cases, the parents of five deceased child soldiers have asked the Inter-American Commission on Human Rights to award them reparations for the deaths of their children. After persistent delays by the government during negotiations under the commission's friendly settlement (*solución amistosa*) procedures, family members in two of the cases asked the commission in July to rule on their claims. The family members in one of the other cases are also likely to abandon efforts to reach a friendly settlement with the government, according to Center for Justice and International Law attorney Raquel Talavera.¹⁵

The victims of human rights violations have a right to reparations. In addition to financial compensation, reparations may include measures such as the public disclosure of the truth, an apology or acknowledgement of wrongdoing, the prosecution and punishment of the individual violators, and the implementation of measures to prevent a recurrence of the violation.¹⁶

The state should provide family members with full accounts of the circumstances of their loved ones' deaths and should conduct full investigations and, where appropriate, prosecutions in these cases. The state should also resolve the cases now before the Inter-American Commission, the oldest of which dates to 1996. Finally, regardless of whether complete investigations reveal extrajudicial executions or other human rights violations, the state should ensure that family members of deceased soldiers receive the pensions to which they are entitled under Paraguayan law.

The Unlawful Recruitment of Children

Paraguayan law sets eighteen as the minimum age for obligatory service in the armed forces or national police, but youth under the age of eighteen may enlist voluntarily with parental permission and judicial authorization. Serpaj and other nongovernmental organizations report that despite these provisions, children are sometimes recruited by force; in other cases, authorities permit them to enlist with falsified documents. In addition, the practice has been that seventeen-year-olds may be obligated to serve in the military if they will turn eighteen in the year that they begin their service.

Forcible recruitment and irregular enlistment is most likely to occur during periodic local recruitment drives. As described to us by many local activists, these recruitment drives are often akin to press gangs—soldiers often sweep the streets or go door to door in rural areas, inducting young men who cannot produce a certificate of military service. During such roundups, children who cannot produce birth registration documents are at risk of being forced to begin military service well before they reach the age of eighteen.

Juan Carlos Yuste described one such case, which took place in May 2002 and involved four youth, two under the age of eighteen. “They went to play football, and a military truck came by

¹⁵ Human Rights Watch telephone interview with Raquel Talavera, representative, Center for Justice and International Law, Asunción, Paraguay, July 23, 2002.

¹⁶ See, for example, U.N. Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: Final Report Submitted by Mr. Theo Van Boven, Special Rapporteur*, U.N. Doc. E/CN.4/SUB.2/1993/8, July 2, 1993.

close to the football field,” picking them up. “They couldn’t tell their parents. They were taken directly to the barracks,” he said. “Every month there are complaints like this.”¹⁷

In visits to sixty-five barracks in 2001 and 2002, an investigatory commission found 195 children under the age of eighteen serving in military units. In thirty of these cases, the commission found that children had enlisted with altered birth certificates.¹⁸

As we have noted, Paraguay has taken several positive steps to address the forcible recruitment of children and other irregularities in their enlistment.

Paraguay’s movement toward ratification of the Optional Protocol is an important first step in addressing these abuses. The state should act quickly to implement the provisions of the protocol.

We also strongly urge Paraguay to act under article 3 of the protocol to raise the minimum age for “voluntary” military service to eighteen, in recognition of the special protections to which persons under age 18 are entitled. The risk of physical injury, psychological trauma, and death that all soldiers face is more acute for children, whose physical and emotional maturity puts them at a disadvantage in relation to adults. Child soldiers are far more likely to be subjected to “hazing” and other forms of harassment and abuse than adults are. They suffer disproportionately from the rigors of military life, and they may be at increased risk of drug and alcohol abuse and sexually transmitted disease, including HIV.

Establishing the age of eighteen as the minimum age for military service is consistent with the ILO Worst Forms of Child Labour Convention, 1999, which prohibits “forced or compulsory recruitment of children for use in armed conflict” and “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children” as among the worst forms of child labor. Eighteen is the general age of majority set forth in article 1 of the Convention on the Rights of the Child. The age of eighteen is recognized in international law as a significant demarcation line; for example, the application of the death penalty to those under the age of eighteen is strictly prohibited.¹⁹

We also welcome the creation of the investigatory commission, composed of government and nongovernmental representatives, to monitor conditions in military barracks. The commission should continue its important work, conducting regular, unannounced inspections of military facilities throughout the country.

In addition, the Supreme Court has tightened the procedure for obtaining judicial authorization to enlist under the age of eighteen with parental permission.

¹⁷ Human Rights Watch interview with Juan Carlos Yuste, executive director, Decidamos, Asunción, Paraguay, June 11, 2002.

¹⁸ Human Rights Watch interview with Orlando Castillo, Serpaj-Py, Asunción, Paraguay, June 11, 2002.

¹⁹ See, for example, Convention on the Rights of the Child, art. 37(a); ICCPR, art. 6(5); and American Convention on Human Rights, art. 4(5).

Finally, the Paraguayan constitution allows an exemption from obligatory service for conscientious objectors. Nevertheless, we interviewed witnesses who gave us varying accounts of the extent to which conscientious objector status is available to youth, with some suggesting that documentation of conscientious objector status is available from only a few local government offices and the national parliament. The state should make the constitutional exemption for conscientious objectors available to all on an equal basis.

The Need for an Effective Birth Registration System

Neither existing standards nor an eventual ban on military service by those under the age of eighteen can be implemented without an effective birth registration system. We heard numerous accounts from activists of fifteen- and sixteen-year-olds who were forced to join the military when they could not prove their ages. UNICEF reports that nearly one-half of all births in Paraguay take place outside of hospitals, often in remote areas; many of these births go unregistered.²⁰

The accounts we heard strongly suggest that children without proper registration of their birth are more vulnerable to forced recruitment. Graça Machel, the U.N. Secretary-General's expert on the impact of armed conflict on children, has found that inadequate birth registration systems are a factor in the improper recruitment of children throughout the world. To prevent such recruitment, she and others who have studied the use of children as soldiers recommend that all children be registered at birth and receive documentation of their age, in compliance with article 7 of the Convention on the Rights of the Child.²¹

Threats Against AFAVISEM Activist

María Noguera, president of AFAVISEM, told Human Rights Watch that she has received numerous threatening telephone calls since she began the organization after the death of her son in 1996. The most recent of these calls was on May 19, 2002, when a caller told her, "I only want to ask you not involve yourself with General Quiñonez. He is never with his unit. Here the one who is in charge is Colonel García, the fat one. He's mean and likes to shoot." She had recently met with General Quiñonez, receiving a promise from him that the military would act against its members who committed abuses. She reported that the caller then said, "Doña María, you are going to come to Curuguaty. Be careful on the road. It is very dangerous." She interpreted these statements as threats to her safety.²²

Paraguayan authorities should investigate these threats and should take steps to ensure Ms. Noguera's safety.

Conclusion

We urge Paraguay to investigate fully all cases of unexplained deaths of child soldiers and to take all appropriate measures to prosecute and punish those responsible for any human rights

²⁰ Human Rights Watch interview with Paul Martin, representative, United Nations Children's Fund, Asunción, Paraguay, June 12, 2002.

²¹ See U.N. General Assembly, *Impact of Armed Conflict on Children: Report of the Expert of the Secretary-General, Ms. Graça Machel, Submitted Pursuant to General Assembly Resolution 48/157*, U.N. Doc. A/51/306 (1996), paras. 38, 60; Rachel Brett and Margaret McCallin, *Children: The Invisible Soldiers* (Växjö, Sweden: Rädda Barnen, 1998), p. 174.

²² Human Rights Watch interview with María Noguera, June 15, 2002.

violations. The state should also investigate reported threats against activist María Noguera, president of AFAVISEM, and take steps to guarantee her safety.

With regard to conscription and enlistment practices, Paraguay should ensure that persons who have not attained the age of eighteen years are not compulsorily recruited into its armed forces. In accordance with article 3 of the Optional Protocol and the special protection to which persons under age eighteen are entitled, we strongly urge Paraguay to raise to eighteen the minimum age for the voluntary recruitment of persons into the national armed forces.

Finally, we hope that Paraguay, with the assistance of the international community, will continue its efforts to implement a reliable, effective birth registration system.

Please accept, Mr. President, the assurances of our highest consideration.

Sincerely,

A handwritten signature in cursive script that reads "Michael Bochenek".

Michael Bochenek
Counsel
Children's Rights Division