

# Noguera et al. v. Paraguay

## ABSTRACT<sup>1</sup>

*This case is about the death of a minor enlisted in the Paraguayan armed forces, possibly due to hazing. Although investigations into the death were inconclusive, death of enlisted personnel, and in particular minors, due to hazing was not a rare occurrence in the Paraguayan armed forces. Eventually, Paraguay admitted international responsibility and the Court found it in violation of the American Convention.*

## I. FACTS

### A. Chronology of Events

**April 29, 1978:** Mr. Vicente Ariel Noguera is born in Asunción, Paraguay to Ms. María Ramona Isabel Noguera Domínguez.<sup>2</sup>

**December 1, 1994:** The State’s Military Training Center (*el Centro de Instrucción Militar para Estudiantes y Formación de Oficiales de Reserva*; “CIMEFOR”) drafts Mr. Noguera for compulsory military service at sixteen years old, with his mother’s consent.<sup>3</sup>

**January 2, 1996:** During his second year of service, Mr. Noguera is transferred to another division of the CIMEFOR in Mariscal Estigarribia, a town in the State’s Chaco region.<sup>4</sup>

**January 10, 1996:** Mr. Noguera participates in typical military pre-training activities.<sup>5</sup> At the end of the day, Mr. Noguera bathes and eats

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<sup>2</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, Judgement, Inter-Am Ct. H.R. (ser. C) No. 401, ¶ 38 (March 9, 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* ¶ 39.

<sup>5</sup> Noguera et al. v. Paraguay, Report on Merits, Report No. 23/18, Inter-Am. Comm’n H.R., Case No. 12.329, ¶ 25 (Feb. 24, 2018).

dinner then goes to the barracks for roll call.<sup>6</sup> Mr. Noguera is in his bunk around 8:30 p.m.<sup>7</sup>

**January 11, 1996:** At 1:30 a.m., Mr. Noguera's fellow cadets hear him screaming from his bunk in the dormitory and they approach him believing he is having a nightmare.<sup>8</sup> Mr. Noguera initially sits up on his bed but then lays back down to go back to sleep.<sup>9</sup> At 5:00 a.m., Mr. Noguera does not get up as scheduled and other cadets are unable to wake him.<sup>10</sup> A paramedic, examines Mr. Noguera who shows no vital signs.<sup>11</sup> He is subsequently transferred to a hospital, where a nurse unsuccessfully administers first-aid.<sup>12</sup>

The Military Court of Investigation orders a preliminary inquiry into Mr. Noguera's death.<sup>13</sup> The medical examiner finds that Mr. Noguera's body has no signs or indications of physical violence.<sup>14</sup>

**January 17, 1996:** Ms. Noguera Domínguez writes a letter to the Attorney General stating that she does not believe Mr. Noguera's death was accidental and requests the Attorney General to investigate her son's death.<sup>15</sup>

**February 23, 1996:** The autopsy report demonstrates that the principal cause of death was a buildup of fluid in the lungs which caused inflammation and scarring.<sup>16</sup> The toxicology results are negative for drugs and other substances.<sup>17</sup>

**March 20, 1996:** The Center for Disease Control and Prevention (CDC) in the United States issues a report after receiving a lung tissue sample from Migone Hospital.<sup>18</sup> The report confirms the scarring of the lung tissue but rules out Hantavirus Pulmonary Syndrome (HPS) and other diseases.<sup>19</sup>

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<sup>6</sup> Noguera et al. v. Paraguay, Report on Merits, ¶ 25.

<sup>7</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 42.

<sup>8</sup> Noguera et al. v. Paraguay, Report on Merits, ¶ 26.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* ¶ 27.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* ¶ 38.

<sup>14</sup> Noguera et al. v. Paraguay, Report on Merits, ¶ 38.

<sup>15</sup> *Id.* ¶ 44.

<sup>16</sup> *Id.* ¶ 46.

<sup>17</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 46.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

**July 29, 1996:** Ms. Noguera Domínguez sends a second letter requesting the Attorney General to investigate her son's death.<sup>20</sup>

**August 2, 1996:** The Public Prosecutor's Office recommends an exhumation of Mr. Noguera's body for a new autopsy.<sup>21</sup>

**September 5, 1996:** The Criminal Trial Court of the 11th Rotation (the "Criminal Trial Court") orders the exhumation of Mr. Noguera's body.<sup>22</sup>

**September 6, 1996:** Ms. Noguera Domínguez files a formal private criminal complaint with the Criminal Trial Court stating Mr. Noguera was a victim of homicide.<sup>23</sup> Ms. Noguera Domínguez asserts that her son's body had several lesions which she believes were the result of "descuereo", a form of hazing where a person is forced to perform extremely demanding physical exercises.<sup>24</sup> Further, she claimed her son's underwear was blood-stained evidencing sexual abuse.<sup>25</sup>

**September 9, 1996:** Mr. Noguera's body is exhumed and reexamined, and the report shows no evidence of trauma and confirms the original cause of death.<sup>26</sup>

**October 2, 1997:** The Criminal Trial Court admits Ms. Noguera Domínguez's criminal complaint the crimes of homicide, bodily injury and abuse of authority all against unnamed persons.<sup>27</sup>

**October 21, 1997:** The Military Court of Investigation dismisses Mr. Noguera's complaint stating no crime had occurred and there was no responsible party to prosecute.<sup>28</sup>

**April 9, 1999:** The Prosecutor's Office takes back over the investigation after a jurisdictional dispute halted the process.<sup>29</sup>

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<sup>20</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 44.

<sup>21</sup> *Id.* ¶ 46.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* ¶ 44.

<sup>24</sup> *Id.* ¶ 4 n.3; 44.

<sup>25</sup> *Id.* ¶ 44.

<sup>26</sup> Noguera et al. v. Paraguay, Report on Merits, ¶ 46-47.

<sup>27</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 51.

<sup>28</sup> Noguera et al. v. Paraguay, Report on Merits, ¶ 43.

<sup>29</sup> *Id.* ¶ 49.

**July 18, 2001:** The Public Prosecutor requests witness information from the Chief of the Armed Forces of the Nation.<sup>30</sup>

**August 31, 2001:** The Chief Justice of the Military Supreme Court forwards the Public Prosecutor's Office the order to dismiss Ms. Noguera Domínguez's case.<sup>31</sup>

**November 6, 2002:** The Criminal Judge for Liquidations and Sentencing dismisses the private criminal complaint due to procedural inactivity.<sup>32</sup>

### *B. Other Relevant Facts*

**1989-2012:** The Coordinating Office for the Rights of Children and Adolescents (*La Coordinadora por los Derechos de la Infancia y la Adolescencia de Paraguay*; "CDIA") finds that between 1989 and 2012 there were around 150 deaths of minors enlisted in the Armed Forces.<sup>33</sup> Further, approximately 400 minors suffered injuries while in the military that resulted in serious physical impairments and psychological issues resulting from stress, humiliation, beatings and mistreatment.<sup>34</sup> The State did not properly investigate the deaths.<sup>35</sup>

**2008:** The State ceases permitting minors under eighteen years old to voluntarily enlist in the military.<sup>36</sup>

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**October 17, 2000:** Ms. Noguera Domínguez presents a petition on behalf of herself and Mr. Noguera to the Inter-American Commission on Human Rights.<sup>37</sup>

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<sup>30</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 51.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* ¶ 53.

<sup>33</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 37.

<sup>34</sup> *Id.*; Noguera et al. v. Paraguay, Report on Merits, ¶ 18.

<sup>35</sup> Noguera et al. v. Paraguay, Report on Merits, ¶ 18.

<sup>36</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 103.

<sup>37</sup> Noguera et al. v. Paraguay, Admissibility Report, Report No. 10/11, Inter-Am. Comm'n H.R., Case No. 12.329, ¶ 5 (March 22, 2011).

**December 7, 2000:** The State expresses its willingness to reach an amicable settlement agreement.<sup>38</sup>

**September 22, 2005:** The petitioner notifies the Commission of her withdrawal from settlement negotiations with the State due to lack of progress.<sup>39</sup> The State argues that due diligence was taken in investigating Mr. Noguera's death as requested by the petitioner.<sup>40</sup>

**March 22, 2011:** The Commission issues the Admissibility Report No. 10/11, which declares the petition admissible with respect to the alleged violations of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 19 (Rights of the Child), and 25 (Right to Judicial Protection).<sup>41</sup>

**August 5, 2011:** A settlement agreement is signed by the State and the representatives, wherein the State acknowledges responsibility for the death of Mr. Noguera while in the custody of the Armed Forces.<sup>42</sup>

**November 30, 2015:** The petitioner withdraws from further settlement negotiations with the State because the State fails to comply with agreed upon terms.<sup>43</sup>

**February 24, 2018:** The Commission issued Merits Report No. 23/18.<sup>44</sup>

The Commission concludes the State of Paraguay is responsible for violating the rights enshrined in Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 19 (Rights of the Child), and 25(1) (Right of Recourse Before a Competent Court) of the American Convention in connection with the obligations set forth in Article 1(1) thereof, to the detriment of Mr. Noguera and Ms. Noguera Domínguez.<sup>45</sup>

The Commission recommends the State: (1) compensate the petitioner for physical and moral damages; (2) provide the petitioner with

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<sup>38</sup> Noguera et al. v. Paraguay, Admissibility Report, ¶ 5.

<sup>39</sup> *Id.* ¶ 8.

<sup>40</sup> *Id.* ¶ 16.

<sup>41</sup> *Id.* ¶ 39(1).

<sup>42</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶¶ 2; 17.

<sup>43</sup> Noguera et al. v. Paraguay, Report on Merits, ¶ 2 n.2.

<sup>44</sup> *Id.* ¶ 102.

<sup>45</sup> *Id.*

physical and mental health care; (3) conclude the criminal investigation surrounding Mr. Noguera's death that was reopened on May 28, 2012 and prosecute those responsible; and (4) adopt measures to prevent further human rights violations like Mr. Noguera's case, including: (i) train members of the Armed Forces on limitations of military discipline under international law; (ii) create an independent and effective means of accountability regarding abuses within the Armed Forces; and (iii) cease using military justice and strengthen the capacity to investigate deaths or other abuses that occur while under military custody.<sup>46</sup>

### B. Before the Court

**July 2, 2018:** The Commission submits the case to the Court, after the State failed to adopt its recommendations.<sup>47</sup>

**April 12, 2019:** The State submits a brief to the Court acknowledging partial responsibility for Mr. Noguera's death.<sup>48</sup>

#### 1. Violations Alleged by Commission<sup>49</sup>

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 19 (Rights of the Child)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention to the detriment of Mr. Noguera and Ms. Noguera Domínguez.

#### 2. Violations Alleged by Representatives of the Victims<sup>50</sup>

Same Violations Alleged by Commission.

<sup>46</sup> Noguera et al. v. Paraguay, Report on Merits, ¶¶ 102(1)-(4).

<sup>47</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 3.

<sup>48</sup> *Id.* ¶ 6.

<sup>49</sup> Noguera et al. v. Paraguay, Report on Merits, ¶ 102.

<sup>50</sup> Noguera et al. v. Paraguay, Admissibility Report, ¶ 37. Maria Noguera Domínguez, mother of the victim, Vicente Ariel Noguera, and Alejandro Nissen Personali, member of the Asociación de Familiares Víctimas del Servicio Militar, served as representatives of the victim and petitioners. Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 4 n.3.

## III. MERITS

A. *Composition of the Court*<sup>51</sup>

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

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

B. *Decision on the Merits*

**March 9, 2020:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>52</sup>

The Court found unanimously that Paraguay had violated:

Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 19 (Rights of the Child), all in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Vicente Noguera,<sup>53</sup> because:

*The Court held that the State's acknowledgment of its violations of the Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 19 (Rights of the Child) for the death of Mr. Noguera was proof that the State was internationally responsible.*<sup>54</sup>

*The Court turned its attention to whether there was sufficient evidence of Mr. Noguera's alleged mistreatment in the military facility that supposedly resulted in his death.*<sup>55</sup> *Despite statistics on children enlisted in the Paraguayan military who were abused and killed due to mistreatment,*

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<sup>51</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, p. 1 n. 1. For undisclosed reasons, Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto did not participate in the deliberation.

<sup>52</sup> *Id.* p. 1.

<sup>53</sup> *Id.* ¶ 129(1).

<sup>54</sup> *Id.* ¶ 70.

<sup>55</sup> *Id.* ¶ 71.

*the Court noted it only has the authority to rule on the specific alleged instance.<sup>56</sup> Due to conflicting accounts between the medical examiners and witness reports as to whether Mr. Noguera's body showed signs of physical abuse, the Court found insufficient evidence to determine whether Mr. Noguera's death resulted from alleged mistreatment.<sup>57</sup>*

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Noguera Domínguez,<sup>58</sup> because:

*Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) impose on states the duty to investigate independent of requests by the victim.<sup>59</sup> This duty further requires the investigation use all means necessary to obtain the pursued result.<sup>60</sup> The Court noted that early investigation is crucial and any delays may negatively impact the entire investigation.<sup>61</sup> Indeed, prolonged delay may constitute a violation of judicial guarantees.<sup>62</sup>*

*The Court examined four elements to determine the reasonableness of a delay: 1) the complexity of the case; 2) the procedural activity of the concerned party; 3) the judicial authorities' conduct; and 4) the delay's effect on the alleged victim's legal situation.<sup>63</sup> Here, the Court found no complexity warranting a delay and the petitioner's had acted reasonably in the proceedings.<sup>64</sup> On the other hand, the State's actions, including archiving the case for over a decade, created unreasonable delays for more than 23 years.<sup>65</sup> Although there was insufficient evidence to determine the impact on the petitioner's legal situation, the Court found the State had violated the guarantees enshrined in Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent*

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<sup>56</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 74.

<sup>57</sup> *Id.* ¶¶ 72-73; 75.

<sup>58</sup> *Id.* ¶ 129(2).

<sup>59</sup> *Id.* ¶ 81.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* ¶ 82.

<sup>62</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 83.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* ¶ 84.

<sup>65</sup> *Id.*



*Tribunal) and 25(1) (Right of Recourse Before a Competent Court) of the Convention.*<sup>66</sup>

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Noguera Domínguez,<sup>67</sup> because:

*The Court held that the State's acknowledgment of its violations of the Article 5(1) (Right to Physical, Mental, and Moral Integrity) was proof that the State was internationally responsible.*<sup>68</sup>

The Court found unanimously that Paraguay had not violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Noguera Domínguez,<sup>69</sup> because:

*Article 8(1) includes the right to a natural judge.*<sup>70</sup> *The Court found that the State conducted various investigative actions including forensic autopsies and laboratory tests in private establishments both inside and outside the State, all of which reached similar conclusions as the military judge.*<sup>71</sup> *Therefore, the Court concluded that the State did not violate the principle of a natural judge.*<sup>72</sup>

#### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

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<sup>66</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 85.

<sup>67</sup> *Id.* ¶ 129(3).

<sup>68</sup> *Id.* ¶ 23.

<sup>69</sup> *Id.* ¶ 129(4).

<sup>70</sup> *Id.* ¶ 87.

<sup>71</sup> *Id.* ¶ 86-87.

<sup>72</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 87.

*A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Judgment as a Form of Reparation

The Court indicated that the Judgment itself is a form of reparation.<sup>73</sup>

2. Continue and Complete the Criminal Investigation

The Court ordered the State to complete the investigation into the victim's death that was reopened in 2018.<sup>74</sup>

3. Publish the Judgment

The State must publish, within six months, the official summary of the judgement both in the Official Gazette and a widely circulated newspaper, and publish the judgment in its entirety on an official website accessible to the public for one year.<sup>75</sup> The State must notify the Court when each publication is issued, regardless of any time period restrictions.<sup>76</sup>

4. Establish Human Rights Curriculum

The Court ordered the State to ensure that military training includes a human rights curriculum.<sup>77</sup>

5. Legislative Reform

The State must submit a report that details the proposed legislative reform of the military justice system to comply with international standards.<sup>78</sup>

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<sup>73</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 129(5).

<sup>74</sup> *Id.* ¶ 93.

<sup>75</sup> *Id.* ¶ 96.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* ¶ 103.

<sup>78</sup> *Id.* ¶ 104.

*B. Compensation*

The Court awarded the following amounts:

## 1. Pecuniary Damages

The Court ordered the State to pay \$20,000 to Ms. Noguera Domínguez as compensation for consequential damages incurred while seeking justice for her son.<sup>79</sup>

## 2. Non-Pecuniary Damages

[None]

## 3. Costs and Expenses

The Court awarded \$15,000 to the victims' representatives for costs and expenses.<sup>80</sup> The Court also ordered the State to reimburse \$1,994.88 to the Victims' Legal Assistance Fund.<sup>81</sup>

## 4. Total Compensation (including Costs and Expenses ordered):

\$36,994.88

*C. Deadlines*

The State must pay pecuniary damages as well as costs and expenses within one year of the judgement.<sup>82</sup>

The State must reimburse the Victims' Legal Defense Fund within ninety days of the Judgment.<sup>83</sup>

The State must submit a report on its legislative reforms in the military justice system within one year of the Judgment.<sup>84</sup>

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<sup>79</sup> Noguera et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 115.

<sup>80</sup> *Id.* ¶ 120.

<sup>81</sup> *Id.* ¶ 122.

<sup>82</sup> *Id.* ¶ 123.

<sup>83</sup> *Id.* ¶ 122.

<sup>84</sup> *Id.* ¶ 104.

The State must add a human rights curriculum to its military training program within one year of the Judgment.<sup>85</sup>

The State must publish the Judgment within one year.<sup>86</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

#### VI. COMPLIANCE AND FOLLOW-UP

[None]

#### VII. LIST OF DOCUMENTS

##### *A. Inter-American Court*

##### 1. Preliminary Objections

[None]

##### 2. Decisions on Merits, Reparations and Costs

*Noguera et al. v. Paraguay, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 401 (Mar. 9, 2020).*

##### 3. Provisional Measures

*Noguera et al. v. Paraguay, Provisional Measures, Order of the President of the Court, Inter-Am Ct. H.R. (ser. E) (July 8, 2019).*

##### 4. Compliance Monitoring

[None]

##### 5. Review and Interpretation of Judgment

[None]

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<sup>85</sup> *Noguera et al. v. Paraguay, Merits, Reparations, and Costs*, ¶ 103.

<sup>86</sup> *Id.* ¶ 96.

*B. Inter-American Commission*

## 1. Petition to the Commission

[None]

## 2. Report on Admissibility

Noguera et al. v. Paraguay, Admissibility Report, Report No. 10/11, Inter-Am. Comm'n H.R., Case No. 12.329 (Mar. 22, 2011).

## 3. Provisional Measures

[None]

## 4. Report on Merits

Noguera et al. v. Paraguay, Report on Merits, Report No. 23/18, Inter-Am. Comm'n H.R., Case No. 12.329 (Feb. 24, 2018).

## 5. Application to the Court

Noguera et al. v. Paraguay, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.329 (July 2, 2018).

## VIII. BIBLIOGRAPHY

[None]