

PARAGUAY: State on trial over military's killing of child soldier

Summary

After a child soldier was shot in the back and killed at a military base in Paraguay his parents spent 16 years asking why there was not a timely or effective investigation by the State. After bringing their case to the Inter-American Court of Human Rights they finally got answers, an apology and changes to the country's recruitment practices.

Background

[Compulsory national service](#) has been included in Paraguay's laws since at least 1975, with the vast majority of young men opting to join the armed forces, rather than registering as conscientious objectors. For boys, enlisting in the armed forces was long considered as a rite of passage, and heaping praise on child soldiers is an important part of the celebrations during Children's Day on 16 August.

The day itself is inexorably linked to child soldiers, as it is held on the same day as a crushing military defeat which, in 1869, saw an 'army' of [an estimated 4,000 ill-equipped Paraguayan children massacred](#). The children were reportedly wearing false beards to hide their age, carrying obsolete, or outright fake weaponry and all but naked due to the poor quality of their uniforms.

Born in the city of Bella Vista Norte, part of an impoverished area of Paraguay, Gerardo Vargas-Areco was just 15 when he joined the Paraguayan Armed Forces in January 1989. He decided to enlist with the armed forces voluntarily and planned to return home after his service to provide for his family. His parents and eight siblings later said they were proud when Gerardo decided to join the army.

Most parents who authorised the enrolment of their children in the army at the time saw it as an opportunity for their child to grow up with an [education, healthcare, a reliable source of food and wages](#). This kind of recruitment was not uncommon in the Americas, and remains possible to this day in at least ten countries which [still allow under-18s to enlist voluntarily](#).

The positive image of the child soldiers was backed by the Paraguayan State when Gerardo was recruited. At the time, under Law No. 569/75, the recruitment of citizens under the age of 18 was allowed in exceptional circumstances, subject to approval by their parents and authorisation from a juvenile court. In practice, the military did not respect these legal requirements when dealing with Gerardo, and were reported to have routinely recruited children from 14 for compulsory military service without permission from the courts.

Evidence later submitted in Gerardo's case by a sociologist recounted how in the 1980s and 1990s officers recruited children in public places, on buses, and football pitches, sometimes going door to door and pressuring parents into giving consent for their children to enlist. Some recruiters terrorised parents to make them surrender their children for compulsory military service. The evidence added that most of the parents who accepted and signed such authorization documents were illiterate.

After 11 months serving in the Paraguayan armed forces he was granted five days of leave to visit his family during the Christmas holidays of 1989. At the end of his leave, Gerardo decided he did not want to return to the military - the second time he had expressed his wish to leave the military and stay with his family. When his commanders became aware of this, Gerardo was arrested and faced punishment for failing to return to his post voluntarily and in a timely manner.

The official reports claim Gerardo was taken back to his barracks and then to the infirmary due to a nosebleed. The army's account said that while leaving the infirmary he tried to run. While military protocol required runaway prisoners to be shot in the legs, Gerardo was shot in the back by Aníbal López-Insfrán, the officer who was escorting him.

Gerardo's body was found the next morning, on 31 December, almost 100 metres from the post's infirmary. A forensic physician stated that the cause of death was "acute bleeding due to a gunshot wound". Gerardo's family was told about their son's death over the phone and his body was delivered to them the same day as the news of his death, with express orders from the military for them not to open the coffin in which he had arrived. The family ignored the demand and the next day requested a medical examination of the corpse. The coffin was welded shut and Gerardo's father had to enlist the help of the local authorities to see his son's remains.

Upon opening the coffin a medical investigation confirmed that the cause of death was a gunshot wound, but also showed the presence of other injuries, including second-degree burns “caused by boiling liquid and flaming fuel”, and loss of skin. All of these injuries, the doctor determined, were inflicted before the boy’s death.

Gerardo’s parents testified separately that one of his eyes was completely out of its socket, that all of his teeth had been removed, and that there were signs of scratches and broken bones across his head. After the results of the medical examination, Gerardo’s parents filed a criminal complaint regarding the death of their son. No autopsy was carried out by Paraguayan authorities at the time.

Bringing Gerardo’s case before Paraguay’s courts

On the day of Gerardo’s death, before his body was sent to his family, a military investigation into the killing was ordered. A month later, on 1 February 1990, the military prosecutor brought criminal charges against a non-commissioned officer, Aníbal López-Insfrán, for the military crime of “homicide committed in the performance of duties.”

The military court dealing with the case in the first instance found López-Insfrán not guilty on the grounds that the killing of the boy was committed “in the course of duty”. After an appeal in March 1990, the Supreme Military Court of Justice convicted and sentenced him to one year in a military prison for killing Gerardo.

After Gerardo’s parents issued their own criminal complaint in the ordinary court system, a first instance court launched an investigation in January 1990. Around this time the [Paraguayan Peace and Justice Service](#) (SERPAJ PY), approached the family, as it was searching for cases to do with child soldiers and suggested that it could lend legal expertise to their side. Together they submitted photographs of Gerardo’s corpse and the results of the medical examination as evidence.

After eight more months of work, the Paraguayan Supreme Court confirmed that ordinary courts have jurisdiction over the case. According to the Military Criminal Code, officers found guilty of a common crime must be submitted to the jurisdiction of the ordinary criminal courts. The Code added that, when a crime is punishable under both the military and the civilian penal code, the jurisdiction of the ordinary courts will prevail.

Several members of the armed forces were subsequently ordered to give testimony before the ordinary courts, but they failed to appear. From 1991 to 1997, Gerardo’s case was deadlocked. The witnesses called to speak about the case only gave their testimony in 2000, more than a decade after the beginning of the original investigation.

On 10 April 2001, a District Court declared the investigation into López-Insfrán's actions completed and agreed that the case warranted a full trial. Due to the accusations of torture and the inconsistencies between the military examination of Gerardo's body and the examination ordered by his family, the court ordered a third examination in May 2002.

This investigation, which only analysed the photographs of Gerardo's body, confirmed that the boy died after being shot, but also established that "the alleged burns" were caused by the natural processes of decomposition rather than torture.

Two years later, López-Insfrán was found guilty of "wrongful homicide", for causing Gerardo's death, and was declared as the sole perpetrator of the death of Gerardo, with the allegations of torture dismissed. The judge further noted that because López-Insfrán tried to follow procedure and was hampered by having to shoot in the dark he was not guilty of willful murder. He was sentenced to one year in prison, but because he had already been imprisoned by the military court, the civilian sentence was cleared.

Petitioning the Inter-American Commission on Human Rights

In July 1999, during the delay in the case before the district court, Gerardo's parents, together with the [Center for Justice and International Law](#) (CEJIL) and the SERPAJ PY, filed a petition to the Inter-American Commission on Human Rights against the State of Paraguay over their son's death.

In October 2000, the government of Paraguay asked the Commission to help the parties reach a friendly settlement. Gerardo's parents engaged with the settlement process, but by May 2003 formally stated their intention to abandon negotiations, claiming the government was not cooperating with them.

"The case wasn't moving forward and there was a possibility that it would remain unpunished," explained Liliana Tojo, programme director for Bolivia and the Southern Cone at CEJIL. "In that moment, we thought that it could have potential to show, at the Inter-American Court, the recruitment of children in the military forces".

In 2004 the Commission found that Paraguay violated the rights to personal liberty, to personal integrity, to life and the rights of the child in the [American Convention on Human Rights](#). The rights to a fair trial and to judicial protection, as well as the State's obligation to respect rights, were also deemed to have been violated.

The Commission published a set of recommendations to be fulfilled by the State, including acknowledging responsibility for and investigating the facts of the incident, identifying, prosecuting, and punishing those responsible, paying compensation to Gerardo's family and

paying their legal costs from the previous cases. Paraguay [failed to comply with these recommendations](#) and the case was submitted to the Inter-American Court in 2005.

The ruling of the Inter-American Court of Human Rights

Because Paraguay accepted the jurisdiction of the Inter-American Court in 1993, four years after Gerardo's death, the alleged violations could only relate to the State's failure to implement or respect the rights of Gerardo's family after his death. The court had no jurisdiction over events occurring before that time, including violations of the boy's right to life or over Paraguay's recruitment of children before 1993.

In a [unanimous decision released in 2006](#) the court held that the State had violated the rights of Gerardo's family to physical, mental, and moral integrity, the right to fair trial and to judicial protection provided for in the [American Convention on Human Rights](#). The judges also ruled that Paraguay had failed to take effective measures to prevent, punish and impartially investigate allegations of torture within their jurisdiction as required by the [Inter-American Convention to Prevent and Punish Torture](#).

Despite its inability to rule on Gerardo's death, the court ruled that the State should make a public apology regarding the violations that were established, provide medical, psychological and psychiatric treatment to Gerardo's family and pay the family compensation. The court also ruled that the State ought to take all necessary measures to identify, prosecute and punish the people responsible for Gerardo's death.

Furthermore, the court called for the design and implementation of training programmes and regular courses in human rights for all members of the Paraguayan Armed Forces, and for domestic legislation regarding the recruitment of minors to be brought in line with international standards. The ruling went on to note that Paraguay had violated its responsibility to guarantee the rights set out in the American Convention on Human Rights, signed before Gerardo was killed, but before it accepted the jurisdiction of the court.

The judges held that "the duty to investigate is a compulsory obligation of the State embodied in international law, which cannot be mitigated by any domestic legislation or act whatsoever", adding, "in cases of brazen violations of fundamental rights, the imperious need to avoid repetition can only be satisfied by fighting impunity and by respecting the right of the victims and society as a whole to know the truth about the events."

Impact

While Gerardo's case shone a light on recruitment practices, reform did not come overnight. Several more cases helped to erode the tradition of recruiting child soldiers and eventually resulted in the banning of the practice altogether.

In 2002, while the case was pending before the Inter-American Commission, Paraguay ratified the [Optional Protocol](#) to the Convention on the Rights of the Child on the involvement of children in armed conflict, and established that the minimum age for recruitment into Paraguayan military service was 16 years old. In November 2007, the government repealed the law allowing for recruitment of minors, raising the minimum age for compulsory military service to 18. In January 2007 the commander of Paraguay's armed forces [dismissed all cadets under 18](#) years old after SERPAJ uncovered the case of 16-year-old cadet Víctor José Coronel, who was hospitalised after enduring severe physical and psychological abuse, reportedly at the hands of his superiors.

In August 2008 the State released [a report from the Truth and Justice Commission of Paraguay](#), covering human rights violations from 1954 to 2003, admitting that the killings of child soldiers was a breach of their human rights. In December 2008 the State issued [a formal, public apology](#) to Gerardo's family and, in 2011, issued apologies to the families of two other child soldiers who [disappeared while on duty](#) and named streets in their memory.

By 2012 Paraguay had fully complied with several sections of the judgment, [with the Inter-American Court noting](#) that human rights training was now in place for its troops and that the State had paid interest on the damages awarded to Gerardo's family. The Court noted, however, that the State had only partially complied with its obligation to identify, prosecute, and punish those responsible and its obligation to provide Gerardo's family with free medical and psychological treatment.

"The [Inter-American Court] ruling represented a clear recognition that the recruitment of children at that time was a clear violation of human rights which the State finally recognised", explained Tojo, "for a family coming from an impoverished area, obtaining justice is something exceptional."

Further information

- Read CRIN's case summary of [Vargas Areco v. Paraguay](#).
 - Find out more about [strategic litigation](#).
 - See CRIN's [country page on Paraguay](#).
 - Read CRIN's report on [access to justice for children in Paraguay](#).
-

[CRIN's collection of case studies](https://www.crin.org/en/home/law/strategic-litigation/strategic-litigation-case-studies) illustrates how strategic litigation works in practice by asking the people involved about their experiences. By sharing these stories we hope to encourage advocates around the world to consider [strategic litigation](#) to challenge children's rights violations. For more information, please visit:

<https://www.crin.org/en/home/law/strategic-litigation/strategic-litigation-case-studies>.