

# Loayza Tamayo v. Peru

## ABSTRACT<sup>1</sup>

*In this case, Peru arrested and detained Universidad San Martín de Porres Professor Maria Elena Loayza Tamayo on suspicion of participating in alleged terrorist group Sendero Luminoso. Prior to her arrest, the State did not investigate her alleged participation in Sendero Luminoso or obtain a warrant for her arrest. Following Ms. Loayza Tamayo's arrest, the State tried Ms. Loayza Tamayo for both treason and terrorism, prevented her from communicating with her family, tried her before a faceless court, and kept her in detention though she had been acquitted of all crimes. Following the Court's Reparations and Costs Judgment, the State declared that the Court's decision was not enforceable, and withdrew from the Court's jurisdiction. At a later date, the State reinstated its acceptance of the Court's jurisdiction.*

## I. FACTS

### A. Chronology of Events

**February 6, 1993:** Maria Elena Loayza Tamayo, a professor at the Universidad San Martín de Porres, is accused of being part of the Sendero Luminoso by one of her students.<sup>2</sup> Some claim that the student is a Sendero Luminoso member who identified 20 innocent people, including her professor, in an effort to be forgiven under the repentance law.<sup>3</sup>

The National Counter-Terrorism Bureau (*Dirección Nacional Contra el Terrorismo*) arrests Ms. Loayza Tamayo almost immediately after the accusation, without a prior investigation on the charge, nor a

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1. Griselda Perez, Author; Jenna Eyrich, Senior Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Loayza Tamayo v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 46(a) (Sep. 17 1997); Carolina Loayza Tamayo, *Legal Practice Within the Interamerican System of Human Rights from the Point of View of a Practicing Lawyer*, at 318-19.

3. Carolina Loayza Tamayo, *Legal Practice Within the Interamerican System of Human Rights from the Point of View of a Practicing Lawyer*, at 319.

court order for the arrest.<sup>4</sup> Ms. Loayza Tamayo's family is unaware of Ms. Loayza Tamayo's arrest.<sup>5</sup>

**February 8, 1993:** Ms. Loayza Tamayo's family members receive an anonymous call informing them of the arrest.<sup>6</sup> They are unable, however, to file a *habeas corpus* petition because State law No. 25.659 prohibits *habeas corpus* when the crime involves terrorism.<sup>7</sup>

While detained, a doctor examines Ms. Loayza Tamayo and notes bruising on her body.<sup>8</sup>

**February 6 – February 26, 1993:** Ms. Loayza Tamayo is not taken before the Special Naval Court immediately, as required by law.<sup>9</sup> On the night of her arrest, arresting officers take her to a beach, rape her, and threaten to drown her in an effort to coerce her to confess.<sup>10</sup> For the next ten days, State officers torture her and prohibit her from any communication with the outside world.<sup>11</sup> All the while, Ms. Loayza Tamayo stands by her innocence.<sup>12</sup>

During this time, Ms. Loayza Tamayo is tried for treason in a military court, in a group trial with other defendants.<sup>13</sup>

**February 25, 1993:** The police open a file for Ms. Loayza Tamayo's alleged crime of treason.<sup>14</sup>

**February 26, 1993:** The Police present Ms. Loayza Tamayo to the press in a prison-striped suit and charge her with treason.<sup>15</sup> Shortly thereafter, she is taken to a former Army Veterinary Station where she is held for several days.<sup>16</sup>

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4. *Id.*

5. Loayza Tamayo v. Peru, Merits, ¶ 46(c). Ms. Loayza Tamayo's family consisted of her children: Gisselle Elena Zambrano Loayza and Paul Abelardo Zambrano Loayza; her parents: Julio Loayza Sudario and Adelina Tamayo Trujillo; and her siblings; Delia Haydée Loayza Tamayo, Carolina Maida Loayza Tamayo, William Julio and Rubén Edilberto Loayza Tamayo. Loayza Tamayo v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 53, ¶ 41 (Nov. 27, 1998).

6. Loayza Tamayo v. Peru, Merits, ¶ 46(c).

7. *Id.*

8. *Id.* ¶ 46(e).

9. *Id.* ¶ 46(b).

10. *Id.* ¶ 3(b).

11. *Id.*

12. *Id.*

13. *Id.* ¶ 46(f).

14. *Id.*

15. *Id.* ¶¶ 46(d),(f).

16. *Id.*

**March 3, 1993:** Ms. Loayza Tamayo is transferred to the Chorrillos Women's Maximum Security Prison.<sup>17</sup>

**March 5, 1993:** The Special Naval Court acquits Ms. Loayza Tamayo, but she remains incarcerated.<sup>18</sup>

**April 2, 1993:** The Special Naval Court Martial convicts Ms. Loayza Tamayo of treason.<sup>19</sup>

**August 11, 1993:** The Special Tribunal of the Supreme Council of Military Justice acquits Ms. Loayza Tamayo for the crime of treason.<sup>20</sup>

**September 24, 1993:** The Full Chamber of the Special Supreme Military Tribunal upholds the acquittal.<sup>21</sup>

**September 24, 1993 – October 8, 1993:** Ms. Loayza Tamayo remains detained despite the multiple acquittals.<sup>22</sup>

**October 8, 1993:** The Forty-third Criminal Court of Lima begins the proceedings for a civil trial against Ms. Loayza Tamayo for the crime of terrorism.<sup>23</sup>

**October 10, 1994:** A faceless civil court Special Tribunal sentences Ms. Loayza Tamayo to twenty years in prison.<sup>24</sup>

**October 6, 1995:** The Supreme Court of Justice upholds the October 10,

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17. *Id.*

18. *Id.* ¶ 46(f).

19. *Id.*

20. *Id.*

21. *Id.* ¶ 46(g).

22. *Id.*

23. *Id.* ¶ 46(h).

24. *Id.* Faceless courts are tribunals where presiding judges hide their identities with masks or screens. Jess Portmess, *International Standards and Prosecution of Persons Accused of Terrorism in Peru*, HUMAN RTS. BR. (Oct. 27, 2010), <http://hrbrief.org/2010/10/international-standards-and-prosecution-of-persons-accused-of-terrorism-in-peru/>. For example, one person convicted through this type of tribunal described it as six hooded prosecutors wearing military uniforms question[ing] her in a windowless, concrete room for two months. Craig Mauro, *Peru Paid Price for Military Tribunals*, SEATTLEPI, (Dec. 25, 2001, 10:00 PM), <http://www.seattlepi.com/national/article/Peru-paid-price-for-military-tribunals-1075563.php>.

1994 decision.<sup>25</sup>

**September 17, 1997:** Ms. Loayza Tamayo remains incarcerated in the Chorrillos Women's Maximum Security Prison.<sup>26</sup> She is in a tiny cell in Block C and is allowed merely thirty minutes of sunlight every day.<sup>27</sup> Further, she is kept in isolation, and visits – even from her family - are highly restrictive.<sup>28</sup>

**October 16, 1997:** Ms. Loayza Tamayo is released from the Chorrillos Women's Maximum Security Prison.<sup>29</sup>

### *B. Other Relevant Facts*

[None]

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**May 6, 1993:** The Commission receives a petition challenging Ms. Loayza Tamayo's detention.<sup>30</sup>

**September 26, 1994:** The Commission adopts Merits Report No. 20/94.<sup>31</sup> The Commission decides that the State violated Ms. Loayza Tamayo's rights to personal liberty, humane treatment, and judicial protection, granted in Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 25 (Right to Judicial Protection) of the American Convention on Human Rights.<sup>32</sup> The Commission also recommends that the State immediately release Ms. Loayza Tamayo and compensate her for the unlawful deprivation of her liberty.<sup>33</sup>

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25. Loayza Tamayo v. Peru, Merits, ¶ 46(h).

26. *Id.* ¶ 46(k).

27. *Id.*

28. *Id.*

29. Loayza Tamayo v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 53, ¶ 4 (Nov. 27, 1998).

30. Loayza Tamayo v. Peru, Merits, ¶ 4(a). The Merits document does not indicate who submitted the complaint to the Commission.

31. *Id.* ¶ 4(d).

32. *Id.*

33. *Id.*

*B. Before the Court*

**January 12, 1995:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>34</sup>

**March 13, 1995:** The State's thirty-day deadline to present any preliminary objections expires.<sup>35</sup>

**March 24, 1995:** The State submits a preliminary objection with the Court, alleging that all domestic remedies had not yet been exhausted.<sup>36</sup>

**April 3, 1995:** The State submits a brief containing arguments regarding the thirty-day deadline.<sup>37</sup>

**April 24, 1995:** The Commission urges the Court to declare the preliminary objection inadmissible.<sup>38</sup>

**May 17, 1995:** The Court declares the preliminary objection inadmissible because the State's failure to meet the deadline was not an exceptional situation and could not be justified.<sup>39</sup>

**May 5, 1995:** The State submits an answer.<sup>40</sup>

**May 23, 1995:** The State submits a brief arguing that it had been deprived of its right to file a preliminary objection.<sup>41</sup>

**September 23, 1995:** The Court holds a public hearing.<sup>42</sup>

First, the Court addresses the admissibility of the preliminary objection.<sup>43</sup> The State argues that the thirty-day deadline should only include working days.<sup>44</sup> The Court rejects the State's argument, stating that international and national proceedings are not based on the same criteria as the State's domestic norms, and that all periods indicated in

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34. *Id.* ¶ 4(f).

35. Loayza Tamayo v. Peru, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 25 ¶ 6 (Jan. 31, 1996).

36. *Id.* ¶ 7.

37. *Id.*

38. *Id.*

39. *Id.* ¶ 8.

40. *Id.* ¶ 9.

41. *Id.* ¶ 11.

42. *Id.* ¶ 13.

43. *Id.* ¶ 22.

44. *Id.* ¶¶ 23-24.

the Regulations of the Commission shall be calculated in calendar days.<sup>45</sup>

However, the Court points out that the procedural system is a means of attaining justice.<sup>46</sup> The State's preliminary objection was presented only a few days after the thirty-day period expired and such delay was not considered excessive.<sup>47</sup> Timeliness and reasonableness limits are considered necessary to excuse a failure to meet a deadline, and the Court is able to grant extensions if such limits are met under Article 31(1) of the Rules of Procedure.<sup>48</sup> The Court considers that while the State did not request an extension, likely because of the period calculation confusion, the extension is granted and the preliminary objection may proceed.<sup>49</sup>

Second, the Court reviews the preliminary objection.<sup>50</sup> The Court, however, determines that the State waived the right to file an objection of non-exhaustion of domestic remedies, and decides unanimously to dismiss the preliminary objection.<sup>51</sup> The State had the obligation to expressly, and in a timely manner, invoke the rule of non-exhaustion if it sought to challenge the complaint's admissibility, yet it failed to do so at the beginning of the Commission proceedings.<sup>52</sup>

In a Separate Opinion, Judge Antônio Augusto Cançado Trindade concurred with the Court's decision, and further discussed his perspective on the State's objection that the petitioners did not exhaust domestic remedies.<sup>53</sup>

**June 12, 1996:** The President of the Court issues Provisional Measures requiring the State to ensure the physical, psychological and moral integrity of Ms. Loayza Tamayo, and to submit a report no later than June 25, 1996 on the measures taken.<sup>54</sup>

**July 2, 1996:** The Court (1) ratifies the President's June 12<sup>th</sup> Order, (2) asks the State to ensure the physical, psychological and moral integrity of Ms. Loayza Tamayo, and (3) requests that the State continue

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45. *Id.* ¶¶ 27-30.

46. *Id.* ¶ 33.

47. *Id.* ¶ 34.

48. *Id.*

49. *Id.* ¶ 35.

50. *Id.* ¶¶ 36-39.

51. *Id.* ¶ 44.

52. *Id.* ¶ 42.

53. See *Loayza Tamayo v. Peru*, Preliminary Objections, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 25 (Jan. 31, 1996).

54. *Loayza Tamayo v. Peru*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Decides," ¶ 1 (Sep. 13, 1996).

reporting every two months on provisional measures taken.<sup>55</sup>

**September 13, 1996:** The Court issues Provisional Measures and required the State to (1) improve the conditions in which Ms. Loayza Tamayo was being held to comply with Article 5 (Right to Humane Treatment) of the American Convention, (2) provide Ms. Loayza Tamayo with medical treatment without further delay, (3) inform the Court of measures taken to comply with this order within fifteen days.<sup>56</sup>

**November 11, 1997:** After receiving news that Ms. Loayza Tamayo has been released, the President of the Court issues an Order deciding to lift all provisional measures, and close the provisional measures file.<sup>57</sup>

### 1. Violations Alleged by Commission<sup>58</sup>

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

### 2. Violations Alleged by Representatives of the Victims<sup>59</sup>

Same Violations Alleged by Commission

## III. MERITS

### A. Composition of the Court<sup>60</sup>

Hernán Salgado Pesantes, President

Antônio Augusto Cançado Trindade, Vice-President

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55. *Id.* "Having Seen" ¶ 2.

56. *Id.* "Decides" ¶¶ 1-3.

57. Loayza Tamayo v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Considering," "Decides" ¶¶ 1-3, (Nov. 11, 1997).

58. Loayza Tamayo v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 1 (Sep. 17 1997).

59. *Id.* Juan Méndez, José Miguel Vivanco, Carolina Loayza, Viviana Krsticevic, Verónica Gómez, and Ariel E. Dulitzky served as representatives of Ms. Loayza Tamayo. *Id.* ¶ 5.

60. Though the State was offered the opportunity to appoint an *ad hoc* judge, the Provisional Measures and Merits judgments do not indicate that the State did so. Loayza Tamayo v. Peru, Preliminary Objections, ¶ 4; *see generally* Loayza Tamayo v. Peru, Merits.

Héctor Fix-Zamudio, Judge  
Alejandro Montiel Argüello, Judge  
Máximo Pacheco Gómez, Judge  
Oliver H. Jackman, Judge  
Alirio Abreu Burelli, Judge

Manuel E. Ventura Robles, Secretary  
Víctor Manuel Rodríguez Rescia, Interim Deputy Secretary

*B. Decision on the Merits*

**September 17, 1997:** The Court issues its Judgment on Merits.<sup>61</sup>

The Court found unanimously that Peru had violated:

Articles 7 (Right to Personal Liberty) and Articles 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention, to the detriment of Ms. Loayza Tamayo,<sup>62</sup> because:

*The State unlawfully deprived Ms. Loayza Tamayo of her right to personal liberty and judicial protection.*<sup>63</sup>

*Article 6 of Decree Law No. 25.659, which defines treason, did not allow those charged with the crime of treason to pursue remedies, including habeas corpus, to challenge their conviction.*<sup>64</sup> *In this particular case, the Court found that the State unlawfully suspended Ms. Loayza Tamayo's right to file a petition, and unlawfully held her incommunicado.*<sup>65</sup> *The Court also observed that the State continued to detain Ms. Loayza Tamayo after the final military court judgment, until the date of her civil court hearing.*<sup>66</sup> *During that period, the State did not allow her to seek remedies.*<sup>67</sup>

*As a result, the Court determined that the State violated Articles 7*

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61. *Id.*

62. *Id.* ¶ 55. In ¶ 55, the Court indicated that the State violated Articles 7 (Right to Personal Liberty) and 25 (Right to Judicial Protection) in relation to Article 1(1), but in "Decides" ¶ 1, the Court indicates that the State violated Article 7 in relation to Articles 25 and 1(1). *See id.* ¶ 55, "Decides" ¶ 1.

63. *Id.*

64. *Id.* ¶ 51.

65. *Id.* ¶¶ 52-53.

66. *Id.* ¶ 54.

67. *Id.*



(Right to Personal Liberty) and 25 (Right to Judicial Protection).<sup>68</sup>

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Ms. Loayza Tamayo,<sup>69</sup> because:

*The State violated Ms. Loayza Tamayo's right to humane treatment.<sup>70</sup> A State may violate Article 5 (Right to Humane Treatment) via physical or psychological harm inflicted through humiliating, cruel, inhumane and degrading treatment.<sup>71</sup> The Court observed that the European Court of Human Rights has declared that psychological and moral suffering, during questioning is exacerbated when an individual is unlawfully detained.<sup>72</sup>*

*The Court found, that while Ms. Loayza Tamayo's alleged rape could not be verified, she had been held incommunicado, subject to (1) solitary confinement in a tiny cell, (2) blows, and (3) maltreatment, and was forced to wear degrading prisoner uniforms in front of the media.<sup>73</sup> The Court considered such treatment to be cruel, inhuman and degrading, in violation of Article 5 (Right to Humane Treatment).<sup>74</sup>*

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 8(2) (Right to Be Presumed Innocent), in relation to Article 25 and 1(1) of the Convention, to the detriment of Ms. Loayza Tamayo,<sup>75</sup> because:

*The State deprived Ms. Loayza Tamayo of her right to a fair trial.<sup>76</sup> A violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) occurs when there is a lack of independence and impartiality in the victim's trial.<sup>77</sup> Article 8(2) (Right to be Presumed Innocent) provides that everyone has a right to be presumed innocent.<sup>78</sup>*

*First, the Court did not find it necessary to find the military tribunal*

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68. *Id.* ¶ 55.

69. *Id.* ¶ 58.

70. *Id.* ¶ 56.

71. *Id.* ¶ 57.

72. *Id.*

73. *Id.* ¶ 58.

74. *Id.*

75. *Id.* "Decides" ¶ 3.

76. *Id.*

77. *Id.* ¶ 60.

78. *Id.* ¶ 63.

*lacked independence or impartiality because Ms. Loayza Tamayo was acquitted and, thus, suffered no legal injury.*<sup>79</sup>

*Second, the Court found that the State's military court lacked jurisdiction and competence.*<sup>80</sup> *The crime investigation and order of detention should have been administered by the National Police and the Ministry of the Interior and tried in a civil court, pursuant to Decree-Law No. 25.475, which defines the crime of terrorism.*<sup>81</sup>

*Third, the Court found that the State violated Ms. Loayza Tamayo's due process rights.*<sup>82</sup> *The State did not presume that Ms. Loayza Tamayo was innocent, she was not allowed to challenge evidence against her, and her attorney could not freely communicate with her.*<sup>83</sup> *The Court thus determined that the State completely disregarded the principle of presumed innocence embodied in Article 8(2).*<sup>84</sup>

*The Commission alleged that Ms. Loayza Tamayo was coerced to testify against herself, and also requested reparation to Ms. Loayza Tamayo's defense counsel for the intimidation tactics and false accusations the counsel was subject to.*<sup>85</sup> *The Court, however, rejected these allegations because the Commission did not provide supporting evidence and the counsel was not listed as a victim in the record.*<sup>86</sup>

The Court found by six votes to one that Peru had violated:

Article 8(4) (Prohibition of Double Jeopardy), in relation to Article 1(1) of the Convention, to the detriment of Ms. Loayza Tamayo,<sup>87</sup> because:

*The State failed to grant Ms. Loayza Tamayo the judicial guarantees in Article 8(4) (Prohibition of Double Jeopardy).*<sup>88</sup> *This Article is intended to protect an individual from being subject to a second trial on the same, previously tried, cause.*<sup>89</sup> *In making this determination, the Court*

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79. *Id.* ¶ 60.

80. *Id.* ¶ 61.

81. *Id.*

82. *Id.* ¶ 62.

83. *Id.* ¶ 63.

84. *Id.*

85. *Id.* ¶¶ 64-65.

86. *Id.*

87. *Id.* "Decides" ¶ 4.

88. *Id.*

89. *Id.* ¶ 66.

*applied the “same cause” measure, which is very broad and tends to favor the victim, as opposed to the same crime standard used in the United Nations International Covenant on Civil and Political Rights.*<sup>90</sup>

*The Court found that under State law the crime of treason and the crime of terrorism were closely linked because both actions were not strictly defined and left room for similar interpretation, and thus met the broad interpretation of the same cause.*<sup>91</sup> *The military court acquitted Ms. Loayza Tamayo for the crime of treason, after full consideration of the facts, on March 5, 1993, yet the State held her in detention and subjected her to a civil trial on October 8, 1993 for the crime of terrorism.*<sup>92</sup> *As a result, the Court found the State was in violation of Article 8(4) (Prohibition of Double Jeopardy).*<sup>93</sup>

### *C. Dissenting and Concurring Opinions*

#### 1. Dissenting Opinion of Judge Alejandro Montiel Argüello

In a separate opinion, Judge Montiel Argüello disagreed with the Court’s determination on Article 8(4) (Prohibition of Double Jeopardy) and on the Court’s order that the State must release Ms. Loayza Tamayo.<sup>94</sup> He argued that the military court’s decision on the crime of treason and the separate civil court decision on the crime of terrorism did not constitute double jeopardy.<sup>95</sup> For that reason, he argued the order for her release was not necessary.<sup>96</sup>

#### 2. Concurring Opinion of Judges Antônio Augusto Cançado Trindade and Oliver H. Jackman

In a separate opinion, Judge Cançado Trindade and Judge Jackman agreed with the Court’s determination, but stated that they believed the Court should have, while reviewing Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), ruled on the tribunal’s lack of independence and impartiality.<sup>97</sup> They

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90. *Id.*

91. *Id.* ¶¶ 67-68.

92. *Id.* ¶¶ 69-76.

93. *Id.* ¶ 77.

94. *Loayza Tamayo v. Peru, Merits, Separate Dissenting Opinion of Judge Alejandro Montiel Argüello, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 2 (Sep. 17 1997).*

95. *Id.* ¶¶ 3-11.

96. *Id.*

97. *See Loayza Tamayo v. Peru, Merits, Separate Concurring Opinion of Judges Antônio Augusto Cançado Trindade and Oliver H. Jackman, Inter-Am. Ct. H.R. (ser. C) No. 33 (Sep. 17*

explained that the military tribunal lacked the independence and impartiality imposed by Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) because it assumed a function that belonged to the Judicial Power when it rendered its judgment without providing a reason.<sup>98</sup>

#### IV. REPARATIONS

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

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

###### 1. Judgment as a Form of Reparation

The Court indicated that the Judgment itself should be understood as a form of reparation.<sup>99</sup>

###### 2. Reinstate Employment and Retirement Benefits

The Court ordered the State to reinstate Ms. Loayza Tamayo's employment as it had been at the time she was detained, including an appreciation in salary to reflect the value as of the date of this judgment.<sup>100</sup> Further, it found the State had an obligation to ensure that Ms. Loayza Tamayo had the same retirement rights as she would have had absent her detention.<sup>101</sup> However, because of her health, Ms. Loayza Tamayo was not in a condition to resume employment.<sup>102</sup> Thus, the State had to provide her with a salary and benefits up through the time she was capable of returning to work.<sup>103</sup>

###### 3. Nullify the Second Trial

The Court directed the State to nullify the conviction from the second trial and consider the record of the trial null and void, so that it

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1997).

98. *Id.*

99. *Loayza Tamayo v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 53, ¶ 158 (Nov. 27, 1998).*

100. *Id.* ¶ 113.

101. *Id.* ¶ 114.

102. *Id.* ¶ 115.

103. *Id.* ¶ 116.

does not have any legal effect.<sup>104</sup>

#### 4. Duty to Take Domestic Measures

The Court indicated that the State had a duty under Article 25 (Right to Judicial Protection) of the Convention to investigate the facts and punish those responsible, as well as to adopt domestic legal measures to ensure compliance.<sup>105</sup>

The Court ruled six votes to one that the State had the following obligations:

##### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court ordered the State to pay Ms. Loayza Tamayo \$32,690.30 for lost wages, \$1,000 for medical expenses during her incarceration, \$500 for travel expenses incurred by Ms. Loayza Tamayo's next of kin while visiting her at the Chorrillos Women's Maximum Security Prison, \$15,000 for Ms. Loayza Tamayo's future medical expenses and \$5,000 for each of her children's future medical expenses.<sup>106</sup>

#### 2. Non-Pecuniary Damages

The Court ordered the State to compensate Ms. Loayza Tamayo \$50,000, each of the victim's children and parents \$10,000, and \$3,000 to each of the victim's siblings for moral damages.<sup>107</sup>

#### 3. Costs and Expenses

The Court awarded \$20,000 in cost and fees, of which \$15,000 were to be awarded to Ms. Carolina Loayza Tamayo as attorney of the victim.<sup>108</sup>

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104. *Id.* ¶ 122.

105. *Id.* ¶¶ 170-71.

106. *Id.* ¶ 129.

107. *Id.* ¶¶ 139-43.

108. *Id.* ¶ 180.

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

\$187,190.30

*C. Deadlines*

The Court ordered the State to make reparations within six months following the date of notification of the judgment.<sup>109</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

**December 19, 1997:** The State submitted a brief to the Court requesting an interpretation of the judgment.<sup>110</sup> In its request, the State challenged and sought interpretation on the Court's decision.<sup>111</sup> Specifically, the State requested that the Court deliver a specific ruling on the exhaustion of domestic remedies and examine the State's prior argument that it was in a state of emergency at the time of the facts and was acting pursuant to Article 27 (Suspension of Guarantees).<sup>112</sup> The State also contested the Court's order to release Ms. Loayza Tamayo, several portions of the Court's decision, the validity of several witnesses' testimony, and argued that the Court should not have compensated Ms. Loayza Tamayo's relatives.<sup>113</sup>

*A. Composition of the Court*<sup>114</sup>

Hernán Salgado Pesantes, President  
 Antônio Augusto Cançado Trindade, Vice-President  
 Héctor Fix-Zamudio, Judge  
 Alejandro Montiel Argüello, Judge  
 Máximo Pacheco Gómez, Judge  
 Alirio Abreu Burelli, Judge

Manuel E. Ventura Robles, Secretary  
 Víctor Manuel Rodríguez Rescia, Interim Deputy Secretary

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109. *Id.* ¶ 185.

110. *Loayza Tamayo v. Peru*, Interpretation of Merits, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 47, ¶ 1 (Mar. 8, 1998).

111. *Id.*

112. *Id.* ¶¶ 12(a),(b).

113. *Id.* ¶¶ 12(c)-(f).

114. *Id.* Judge Oliver Jackman did not participate in the Interpretation of Judgment.

*B. Merits*

The Court determined that the State's Interpretation of Judgment request was a veiled attempt to amend the judgment rendered by the Court.<sup>115</sup> The Court unanimously decided to reject the request for interpretation.<sup>116</sup>

## VI. COMPLIANCE AND FOLLOW-UP

**June 3, 1999:** The State requested an interpretation on the Reparations ordered on November 27, 1998.<sup>117</sup> The Court only declared portions of this request that pertained to Ms. Loayza Tamayo's attorney's fees and costs admissible.<sup>118</sup> The Court again ordered that the State pay \$20,000 for fees and costs, and indicated that this amount should not be subject to any deductions or taxes.<sup>119</sup>

**June 25, 1999:** The State declared that the Judgment on Reparations of November 27, 1998 was not enforceable.<sup>120</sup>

**July 16, 1999:** The Peruvian Ambassador to Costa Rica delivered a letter dated July 15, 1999, signed by the Minister for Foreign Affairs of Peru.<sup>121</sup> The letter stated, "By Legislative Resolution No. 27,152, dated July 8, 1999, the Congress of the Republic approved the withdrawal of the recognition of the contentious jurisdiction" of the Court.<sup>122</sup> It further stated, "The withdrawal of the recognition of the Court's contentious jurisdiction takes immediate effect as of" July 9, 1999, the date on which "the instrument declaring withdrawal from its declaration consenting to the optional clause of in the American Convention recognizing the jurisdiction of the Court was submitted to the General Secretariat of the Organization of American States" and that this applied to any case in which the State has "not yet answered the application filed with the Court."<sup>123</sup>

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115. *Id.* ¶ 17.

116. *Id.* "Resolves"

117. *Loayza Tamayo v. Peru, Interpretation of Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 47 "Decides" ¶ 1 (Jun. 3, 1999).*

118. *Id.*

119. *Id.* "Decides" ¶ 2, "Composition" ¶ 23.

120. *Id.* "Having Seen" ¶ 6.

121. *Constitutional Court v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 71, ¶ 18 (Jan. 31, 2001).*

122. *Id.*

123. *Id.*; see *Ivcher-Bronstein v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 25 (Feb. 6, 2001).*

**November 17, 1999:** Ms. Loayza Tamayo wrote to the Court on July 23, 1999 and informed it that the State had failed to comply with the reparations set forth in the November 27, 1998 decision.<sup>124</sup> The Court issued an order of compliance, holding that the State had a duty to comply with the Reparations pursuant to Article 68(1) of the Convention and the principle of *pacta sunt servanda*.<sup>125</sup>

**December 13, 2000:** The Court issued Provisional Measures after receiving a report from Ms. Loayza Tamayo's representatives explaining that the State failed to implement the reparations ordered by the Court, and that Ms. Loayza Tamayo was living in Santiago, Chile due to worsened conditions in Peru.<sup>126</sup> The President of the Court required the State ensure Ms. Loayza Tamayo's return to her country, and to guarantee her physical, physiological, and moral integrity.<sup>127</sup>

The President, further, required the State and the Commission to file a detailed report on the situation by January 12, 2001.<sup>128</sup> The Court ordered the State to continue informing the Court every six weeks of measures taken to comply with the Court's order.<sup>129</sup>

**June 1, 2001:** The State rescinds its previous withdrawal of its acceptance of the Courts jurisdiction.<sup>130</sup> The Court took note of the State's progress as it pertained to the Loayza Tamayo and other cases.<sup>131</sup>

**August 28, 2001:** The Court issued a Provisional Measure order lifting the provisional measures required on December 13, 2000.<sup>132</sup>

**November 27, 2001:** The Court held that the State had a duty to undertake all necessary measures to ensure the satisfaction of the

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124. Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 13 (Nov. 17, 1999).

125. *Id.* "Decides" ¶ 1. "The principle *pacta sunt servanda*, codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties, establishes that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." *Id.* "Having Seen" ¶ 14.

126. Loayza Tamayo v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Having Seen" ¶ 1 (Dec. 13, 2000).

127. *Id.* "Decides" ¶ 1.

128. *Id.* "Decides" ¶ 2.

129. *Id.* "Decides" ¶ 3.

130. Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 7 (June 1, 2001).

131. *Id.* "Decides" ¶ 1.

132. Loayza Tamayo v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Resolves," ¶ 1 (Aug. 28, 2001).



reparations ordered on November 27, 1998.<sup>133</sup> Further, it ordered the State to provide an updated report on the status of the satisfaction of the reparations by March 30, 2003.<sup>134</sup> It also ordered Ms. Loayza Tamayo and the Commission to present their observations within two months.<sup>135</sup>

**November 29, 2001:** The State indicated that it paid \$99,190.30 of the reparations to Ms. Loayza Tamayo and to her next of kin.<sup>136</sup>

**February 12, 2003:** Ms. Loayza Tamayo reported that the State had not annulled her twenty-year prison sentence.<sup>137</sup> She also indicated that she remained in exile because she feared for her own security in Peru.<sup>138</sup>

**March 12, 2003:** The State reported that, in addition to paying Ms. Loayza Tamayo, they had also paid \$20,000 in fees and expenses to Ms. Carolina Loayza Tamayo.<sup>139</sup> It further indicated that Ms. Loayza Tamayo should not fear for her safety because they were in the process of complying with the judgment on reparations.<sup>140</sup>

**November 27, 2003:** The Court considered the various reports submitted by the victim, the State, and the Commission.<sup>141</sup> The Commission's report stated that while the State had made efforts to comply with the reparations, they had not done so fully.<sup>142</sup> While the State had reinstated Ms. Loayza Tamayo as a teacher, the institution and job were not equivalent to what had been ordered in the judgment.<sup>143</sup> In addition, it pointed out that the State attempted to revive a second proceeding against Ms. Loayza Tamayo for the crime of terrorism.<sup>144</sup>

The Court again ordered the State to adopt any and all necessary measures to ensure compliance with the reparations issued on November 27, 1998.<sup>145</sup> It requested the State file a status report on compliance by April 1, 2004, and requested Ms. Loayza Tamayo and

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133. Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resuelve" ¶ 1 (Nov. 27, 2002).

134. *Id.* at "Resuelve" ¶ 2.

135. *Id.* at "Resuelve" ¶ 3.

136. Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 23 (Nov. 27, 2003).

137. *Id.* "Having Seen" ¶¶ 24-25.

138. *Id.*

139. *Id.* "Having Seen" ¶ 26.

140. *Id.*

141. *Id.* "Having Seen" ¶ 32.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* "Decides" ¶ 1.

the Commission to file updates within two months.<sup>146</sup>

**September 22, 2006:** The Court requests that the State promptly and effectively comply with the judgment on reparations.<sup>147</sup> It also requested the State to submit a detailed report on the adoptions of the reparations by January 20, 2007.<sup>148</sup> Ms. Loayza Tamayo and the Commission were also requested to submit their observations, within for and six weeks, respectively.<sup>149</sup>

**February 6, 2008:** The Court ordered the State to fully comply with the Reparations Judgment.<sup>150</sup> It further urged the State to hold a settlement meeting within two months.<sup>151</sup> The Court requested that the State submit a detailed report by April 28, 2008 showing the measures taken to comply with the reparations.<sup>152</sup> The Court also requested that the Commission and the victim report their observations within six and four weeks, respectively.<sup>153</sup>

**July 11, 2011:** The Court found that the State had complied with its duty to reinstate Ms. Loayza Tamayo as a teacher in a public institution, and had met the obligation to expunge Ms. Loayza Tamayo's criminal record.<sup>154</sup> The State, however, was ordered to promptly comply with all remaining reparations and to provide a report indicating the adopted measures by December 5, 2011.<sup>155</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

#### [Loayza Tamayo v. Peru, Preliminary Objections, Judgment, Inter-Am.](#)

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146. *Id.* "Decides" ¶¶ 2-3.

147. *Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Decides" ¶ 1 (Sep. 22, 2006).*

148. *Id.* "Decides" ¶ 2.

149. *Id.* "Decides" ¶ 3.

150. *Id.* "Decides" ¶ 1.

151. *Id.* "Having Seen" ¶ 10, "Decides" ¶ 2.

152. *Id.* "Decides" ¶ 3.

153. *Id.* "Decides" ¶¶ 4-5.

154. *Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶¶ 12, 23 (Jul. 11, 2011).*

155. *Id.* "Decides" ¶¶ 1-2.

[Ct. H.R. \(ser. C\) No. 25 \(Jan. 31, 1996\).](#)

[Loayza Tamayo v. Peru, Preliminary Objections, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 25 \(Jan. 31, 1996\).](#)

## 2. Decisions on Merits, Reparations and Costs

[Loayza Tamayo v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 33 \(Sep. 17, 1997\).](#)

[Loayza Tamayo v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(Ser. C\) No. 53 \(Nov. 27, 1998\).](#)

## 3. Provisional Measures

[Loayza Tamayo v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Aug. 28, 2001\).](#)

[Loayza Tamayo v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 3, 2001\).](#)

[Loayza Tamayo v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Dec. 13, 2000\).](#)

[Loayza Tamayo v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 11, 1997\).](#)

[Loayza Tamayo v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sep. 13, 1996\).](#)

## 4. Compliance Monitoring

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jul. 11, 2011\).](#)

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 6, 2008\).](#)

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 13, 2007\) \(Available only in Spanish\).](#)

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sep. 22, 2006\).](#)

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Mar. 3, 2005\) \(Available only in Spanish\).](#)

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 27, 2003\).](#)

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 27, 2002\) \(Available only in Spanish\).](#)

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 1, 2001\).](#)

[Loayza Tamayo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 17, 1999\).](#)

## 5. Review and Interpretation of Judgment

[Loayza Tamayo v. Peru, Interpretation of Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(Ser. C\) No. 47 \(June 3, 1999\).](#)

[Loayza Tamayo v. Peru, Interpretation of Merits, Judgment, Inter-Am. Ct. H.R. \(Ser. C\) No. 47 \(Mar. 8, 1998\).](#)

### *B. Inter-American Commission*

#### 1. Petition to the Commission

[Not available]

#### 2. Report on Admissibility

[Not available]

#### 3. Provisional Measures

[None]

## 4. Report on Merits

[Not available]

## 5. Application to the Court

[Not available]

## VIII. BIBLIOGRAPHY

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