

Cayara v. Peru

ABSTRACT¹

This case is about a series of massacres committed by the Peruvian armed forces in 1988 while fighting against Sendero Luminoso. The Court rejected the case due to several procedural missteps of the Inter-American Commission.

I. FACTS

A. Chronology of Events

1980-1989: The area around Erusco, within the District of Cayara, Province of Víctor Fajardo, Region of Ayacucho, Peru, is plagued by serious acts of violence that begin when Sendero Luminoso – a group of the Peruvian Communist Party – revolts against the Peruvian constitutional system.² The Peruvian Government deems Sendero Luminoso to be a terrorist organization.³

May 13, 1988: In Erusco, a convoy belonging to the Peruvian Army is ambushed by Sendero Luminoso.⁴ Four members (“Senderistas”) of Sendero Luminoso and four members of the Peruvian Army are killed in the ambush.⁵

May 14, 1988: The Peruvian army enters the District of Cayara, in the Province of Víctor Fajardo, and begins arbitrarily executing and

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² Cayara v. Peru, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 10.206, “Statement of the Facts” ¶ 1 (Feb. 14, 1992).

³ *Id.* “Statement of the Facts” ¶ 2.

⁴ *Id.* “Statement of the Facts” ¶ 1.

⁵ Cayara v. Peru, Report on Merits, Report No. 29/91, Inter-Am. Comm’n H.R., Case Nos. 10.264, 10.206, 10.276, and 10.446, “Facts Being Denounced” ¶ 1 (Oct. 27, 1991).

torturing the residents.⁶ Many of those arrested are disappeared.⁷ After the surviving residents bury their dead, the soldiers unearthen and steal the bodies.⁸ Meanwhile, soldiers detain five individuals, questioning and torturing them through the night.⁹

May 17, 1988: Various complaints are filed regarding the missing individuals.¹⁰ The Council of Ministers requests the Attorney General conduct an investigation, with the full support of the executive branch.¹¹

May 18, 1988: The Peruvian Army returns to Cayara and establishes a permanent base.¹² General José Valdivia Dueñas gathers the Cayara residents and reads a list of names (the “List”), asking those people to come forward, believing they are subversive.¹³ Many people object to General Valdivia Dueñas’s accusations and none of those named are located.¹⁴ Those listed are eventually found and detained at the nearby school.¹⁵

May 19, 1988: The Attorney General’s Office orders the Superior Commissioner Prosecutor to take over the investigation regarding the missing individuals.¹⁶

May 20, 1988: The Cangallo Provincial Judge attempts to carry out an inspection in Cayara but is halted by shots coming from a nearby hill.¹⁷ More individuals named on the List are detained.¹⁸

⁶ Cayara v. Peru, Petition to the Court, “Statement of the Specific Facts” ¶ 1; Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 14, ¶ 15 (Feb. 3, 1993).

⁷ Cayara v. Peru, Petition to the Court, “Statement of the Facts,” ¶ 2.

⁸ *Id.* “Coverage and Obstruction Actions of the Administration of Justice,” ¶ 2.

⁹ *Id.* “Tortured in the District Council of Cayara” ¶ 1.

¹⁰ *Id.* “The Public Ministry” ¶ 1.

¹¹ *Id.* “The Executive Branch” ¶ 1.

¹² *Id.* “The Facts Being Denounced” ¶ 3.

¹³ Cayara v. Peru, Petition to the Court, “Arrests and Subsequent Death of Alejandro Echeccaya Villagaray, Samuel García Palomino and Jovita García Suarez” ¶ 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* “The Public Ministry” ¶ 1.

¹⁷ *Id.* “Deaths and Disappearances in Ccechuaypampa, Actions of Obstruction of Proceedings and Concealment,” ¶ 3.

¹⁸ *Id.* “Arrests and Subsequent Death of Alejandro Echeccaya Villagaray, Samuel García Palomino and Jovita García Suarez” ¶ 3.

May 21, 1988: The Council of Ministers reports that an investigation committee found no evidence of the alleged violence in Cayara.¹⁹ The Superior Prosecutor Commissioner carries out a subsequent inspection and notes damage and looting of several Cayara properties.²⁰ Military forces prevent the Cangallo Provincial judge and his team from exhuming bodies.²¹

May 27, 1988: The Cangallo Provincial judge orders an exhumation in Ccechuaypampa, which confirms five empty graves smelling of corpses and containing human remains.²² The remains are identified as corresponding to the date of the executions.²³

June 11, 1988: The Cangallo Provincial judge investigates reports from several witnesses of the removal of corpses on an animal's back.²⁴ He discovers traces of human hair and skin tangled in plants lining the road, consistent with witness reports.²⁵

June 29, 1988: Peruvian military members detain Mr. Gúzman Bautista Palomino, Mr. Gregorio Ipurre Ramos, Mr. Humberto Ipurre Bautista, Ms. Benigna Palomino Ipurre, and Ms. Catalina Ramos Palomino.²⁶ Both Mr. Bautista Palomino and Mr. Ipurre Ramos witnessed the May 14, 1988 massacre, and Mr. Bautista Palomino had spoken with news outlets and state officials about the events.²⁷ The detainees' relatives file complaints with authorities, but the detainees remain disappeared.²⁸

August 19, 1988: The Superior Criminal Prosecutor orders an exhumation of three corpses previously found on the Pucutuccasa Hill, only to discover that the bodies had disappeared.²⁹

¹⁹ Cayara v. Peru, Petition to the Court, "Executive Branch" ¶ 2.

²⁰ *Id.* "Material Damage" ¶ 2.

²¹ *Id.* "Deaths and Disappearances in Ccechuaypampa, Actions of Obstruction of Proceedings and Concealment" ¶ 4.

²² *Id.* "Deaths and Disappearances in Ccechuaypampa, Actions of Obstruction of Proceedings and Concealment" ¶ 6.

²³ *Id.* "Deaths in the Church of Cayara" ¶ 4.

²⁴ *Id.* "Deaths and Disappearances in Ccechuaypampa, Actions of Obstruction of Proceedings and Concealment" ¶ 6.

²⁵ Cayara v. Peru, Petition to the Court, "Deaths and Disappearances in Ccechuaypampa, Actions of Obstruction of Proceedings and Concealment" ¶ 6.

²⁶ *Id.* "Disappearance of Guzmán Bautista Palomino, Gregorio Ipurre Ramos, Humberto Ipurre Bautista, Benigna Palomino de Ipurre and Catalina Ramos Palomino" ¶ 1.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* "Arrests and Subsequent Death of Alejandro Echeccaya Villagaray, Samuel García Palomino and Jovita García Suarez" ¶ 5

October 3, 1988: The Supreme Criminal Prosecutor requests the Superior Criminal Prosecutor provide a report on the investigation.³⁰

October 13, 1988: The Superior Criminal Prosecutor provides his final report concluding there is sufficient evidence to support homicide and robbery charges against General Valdivia Dueñas and other members of the Peruvian Army, with respect to many of the executed, disappeared and tortured victims.³¹

November 11, 1988: The Attorney General orders the Cangallo Provincial Prosecutor to expand research into the investigation.³²

November 24, 1988: The Provincial Prosecutor declines to formalize the complaint, finding it impossible to identify the perpetrators of the alleged crimes.³³

December 14, 1988: The Mayor of Cayara, who was named on the List, along with his secretary and an important witness to the events in Cayara are murdered by a group of hooded men who forcibly stop their vehicle.³⁴

August 29, 1989: The Attorney General annuls the Provincial Prosecutor's decision not to file a complaint against the Peruvian military members, and orders the Cangallo Public Prosecutor to expand the investigations.³⁵

September 8, 1989: Eight hooded individuals in military uniform enter the home of another key witness to the events in Cayara, Ms. Martha Crisóstomo García, who had made direct accusations against General Valdivia Dueñas, and execute her.³⁶ Consequently, there are now thirty-three arbitrary executions, seven disappeared people, six torture survivors, and significant damage to public and private property.³⁷

³⁰ Cayara v. Peru, Petition to the Court, "The Public Ministry" ¶ 2.

³¹ *Id.*

³² *Id.* "The Public Ministry" ¶ 4.

³³ *Id.* "The Public Ministry." ¶ 4.

³⁴ *Id.* "Death of Justiniano Tinco García, Fernando Palomino Quispe, and Antonio García" ¶¶ 1-2.

³⁵ *Id.* "The Public Ministry" ¶ 5.

³⁶ Cayara v. Peru, Petition to the Court, "Death of Martha Crisóstomo García" ¶ 1-2.

³⁷ *Id.* "Statement of the Facts" ¶ 2.

January 23, 1990: The Public Prosecutor decides not to file a complaint and to archive the case.³⁸

January 30, 1990: The Superior Prosecutor's office confirms the Public Prosecutor's decision.³⁹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

May 18 - 24, 1988: The Inter-American Commission on Human Rights (the "Commission") receives several complaints from the Association for Human Rights (*Asociación Pro Derechos Humanos*, "APRODEH") regarding the events in Cayara.⁴⁰

July 14, 1988: The Commission receives a petition regarding the June 29, 1988 detentions and disappearances of Mr. Bautista Palomino, Mr. Ipurre Ramos, Mr. Ipurre Bautista, and Ms. Ramos Palomino.⁴¹ The State does not respond to the petition.⁴²

November 17, 1988: Americas Watch files a petition with the Commission regarding the events in Cayara from May 13, 1988 to the present.⁴³ The State does not respond to the petition.⁴⁴

December 16, 1998: The Commission receives a third petition after the December 14, 1988 killing of the Cayara mayor.⁴⁵ The State does not respond to the petition.⁴⁶

³⁸ Cayara v. Peru, Petition to the Court, "The Public Ministry" ¶ 5.

³⁹ *Id.* "The Public Ministry." ¶ 5.

⁴⁰ Cayara v. Peru, Report on Merits, "Background" ¶ 2.

⁴¹ *Id.* "Regarding the Events that Occurred on June 29, 1988," ¶ 33(1).

⁴² Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 16.

⁴³ *Id.* ¶ 15.

⁴⁴ *Id.* ¶ 19.

⁴⁵ *Id.* ¶ 17.

⁴⁶ *Id.*

September 13, 1989: The Commission receives a fourth petition after the September 8, 1989 killing of Ms. Crisótomo García, a key witness to the Cayara events.⁴⁷ The State does not respond to the petition.⁴⁸

March 26, 1990: The Commission approves Amnesty International as Americas Watch's co-petitioner.⁴⁹

February 20, 1991: The Commission issues Merits Report No. 29/91 and concludes that the State violated Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), Article 21 (Right to Property) and Article 25 (Right to Judicial Protection), all in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention.⁵⁰

In light of the foregoing violations, the Commission makes the following recommendations: (1) the State conduct an impartial and comprehensive investigation of the facts, and prosecute those responsible; (2) provide a report of the investigation to the Commission within sixty days; and (3) compensate the victims and their families within sixty days.⁵¹

March 1, 1991: The Commission transmits the Merits Report to the State.⁵²

April 5, 1991: The State receives the Merits Report.⁵³

May 27, 1991: The State argues that the Commission violated its right to defense by failing to properly transmit all relevant case documents.⁵⁴ Accordingly, the State requests that the Commission refrain from submitting the case to the Court without first making the appropriate procedural corrections.⁵⁵

May 30, 1991: The Commission jointly submits all four petitions/cases to the Court.⁵⁶

⁴⁷ Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 18.

⁴⁸ *Id.* ¶ 18.

⁴⁹ *Id.* ¶ 22.

⁵⁰ Cayara v. Peru, Report on Merits, "Conclusions and Recommendations" ¶¶ 48(1)-(2).

⁵¹ *Id.* "Conclusions and Recommendations" ¶¶ 48(3)-(5).

⁵² Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 36.

⁵³ *Id.*

⁵⁴ *Id.* ¶ 25.

⁵⁵ *Id.*

⁵⁶ *Id.* ¶ 26.

June 20, 1991: The Commission withdraws the case from the Court to reconsider and potentially re-submit the case at a later date.⁵⁷

August 26 1991: The State responds to the Commission's withdrawal, clarifying that it did not request reconsideration of the case.⁵⁸ Rather, it pointed out the Commission's procedural omissions that made it inadvisable for the Commission to submit the case to the Court.⁵⁹

October 27, 1991: The Commission issues Merits Report No. 1/91, which contains the same conclusions and recommendations as Merits Report 29/91 but amends the procedural errors raised by the State.⁶⁰

B. Before the Court

February 14, 1992: The Commission submits the case to the Inter-American Court of Human Rights (the "Court") after the State fails to adopt its recommendations.⁶¹

March 26, 1992: The State raises twelve preliminary objections.⁶² The State argues: (1) the Commission lacked jurisdiction to bring this case; (2) anticipated termination of the case (*litis finitio*); (3) the deadline to file the case has expired; (4) the State was deprived of its right to defense; (5) Resolution No. 1/91 was invalid; (6) Resolution No. 29/91 was invalid; (7) the Commission is estopped from bringing this case; (8) the Commission improperly accepted the petitioner's replies past the deadline; (9) the Commission improperly accepted of Amnesty International as co-petitioner; (10) the Commission improperly joined the four petitions, (11) the Commission has exhibited improper bias against the State; and (12) the Court lacks jurisdiction to hear the case.⁶³

1. Violations Alleged by Commission⁶⁴

Article 4 (Right to Life)

⁵⁷ Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 26.

⁵⁸ *Id.* ¶ 29.

⁵⁹ *Id.*

⁶⁰ *Id.* ¶ 30.

⁶¹ *Id.* ¶ 1.

⁶² *Id.* ¶ 6.

⁶³ Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 6.

⁶⁴ Cayara v. Peru, Report on Merits, "Conclusions and Recommendations" ¶¶ 1-2.

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 21 (Right to Property)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁶⁵

Same Violations Alleged by Commission.

III. MERITS

A. *Composition of the Court*⁶⁶

Héctor Fix-Zamudio, President

Sonia Picado-Sotela, Vice President

Rafael Nieto-Navia, Judge

Alejandro Montiel-Argüello, Judge

Hernán Salgado-Pesantes, Judge

Asdrúbal Aguiar-Aranguren, Judge

Manuel Aguirre-Roca, *ad hoc* Judge

Manuel E. Ventura-Robles, Secretary

Ana María Reina, Deputy Secretary

B. *Decision on the Merits*

February 3, 1993: The Court issues its Judgment on Merits, Reparations and Costs.⁶⁷

⁶⁵ Cayara v. Peru, Report on Merits, "Conclusions and Recommendations" "Background" ¶ 1.

⁶⁶ Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, p. 1.

⁶⁷ *Id.*

The Court decided unanimously:

To admit the State's first three preliminary objections and dismiss the case:⁶⁸

The State's first preliminary objection regarding the Commission's lack of jurisdiction contended that after the Commission submitted the case to the Court on May 30, 1991, it lost jurisdiction and therefore subsequent acts to regain jurisdiction and correct errors were invalid.⁶⁹ The State's second objection, "litis finitio," posited that the Commission's withdrawal of the case from the Court constituted an abandonment of the case, regardless of the Commission's intention.⁷⁰ The third objection State's objection claimed that the Commission's withdrawal did not restart the timeline it had to submit the case to the Court, thereby forfeiting any possibility of resubmitting the application.⁷¹

Article 51(1) of the Convention provides the deadline for the Commission to submit a case to the Court.⁷² The Article states that if a case has not been settled by the parties or submitted to the Court within three months of the date of the Commission's merits report, the Commission may set forth its own opinion and conclusions regarding the case.⁷³ The three month timeframe, however, may be stalled or restarted in reasonable circumstances.⁷⁴

The Court balanced the purpose of the Convention – to protect human rights – with the principle of legal certainty.⁷⁵ As the Merits Report was transmitted to the State on March 1, 1991, the expiration of the time to file with the Court would have been on June 1, 1991; however, the Commission had granted an extension requested by the State to June 5, 1991.⁷⁶

The Court found that the case was properly withdrawn, given that the State provided justified and non-arbitrary reasons for its request and

⁶⁸ Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "The Court" ¶ 3.

⁶⁹ *Id.* ¶ 45.

⁷⁰ *Id.* ¶ 46.

⁷¹ *Id.* ¶ 47.

⁷² *Id.* ¶ 35.

⁷³ *Id.*

⁷⁴ Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 39.

⁷⁵ *Id.* ¶¶ 37-38.

⁷⁶ *Id.* ¶ 40.

the Court had not yet conducted a preliminary review of the case.⁷⁷ The Court further decided it is irrelevant to determine whether the Commission actually understood the withdrawal to be a cancellation of the proceedings.⁷⁸ Finally, the Court found that, based on any of the dates herein, the Commission's filing on February 14, 1992, substantially exceeded the timely and reasonable limits to submit the case to the Court.⁷⁹

Thus, the Court ordered the dismissal of the case from the docket, but maintained that the Commission may enjoy other rights provided in Article 51, such as making its own conclusions on the case.⁸⁰ Based on the foregoing, the Court found no reason to analyze the remaining preliminary objections.⁸¹

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

[None]

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

⁷⁷ Cayara v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 51-52.

⁷⁸ *Id.* ¶ 55.

⁷⁹ *Id.* ¶ 60.

⁸⁰ *Id.* "The Court" ¶¶ 2-3.

⁸¹ *Id.* ¶ 62.

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

Cayara v. Peru, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 14 (Feb. 3, 1993).

2. Judgments on Merits, Reparations and Costs

[None]

3. Provisional Measures

Cayara v. Peru, Resolution of the President, Inter-Am. Ct. H.R. (ser. C) No. 14 (June 19, 1992).

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

Cayara v. Peru, Report on Merits, Report No. 29/91, Inter-Am. Comm'n H.R., Case Nos. 10.264, 10.206, 10.276, and 10.446, ¶ 1 (Oct. 27, 1991).

5. Application to the Courts

Cayara v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.206, ¶ 1 (Feb. 14, 1992).

VIII. BIBLIOGRAPHY

[None]