

The Truth Behind the Inter-American Court of Human Rights and Terrorism in Peru: An Analysis of Key Judgments

La verdad detrás de la Corte IDH y el terrorismo en el Perú: análisis de sentencias clave

OSCAR AUGUSTO SUMAR ALBUJAR¹

LORENA CARMEN VASQUEZ ALVARADO²

LUIS AANGEL ZAPATA BUSH³

THALIA LILY ZÚÑIGA MEDINA⁴

ABSTRACT

This article critically analyzes the claim, widely circulated in Peruvian public discourse, that the Inter-American Court of Human Rights acts as a body with a pro-terrorist bias. Based on an analysis of the 24 judgments issued by the Court in cases related to terrorism against the Peruvian State, and a qualitative analysis of five representative cases, the article evaluates the validity of the two most frequent criticisms: (i) the Court always rules against Peru, and (ii) the compensation ordered amounts to millions of dollars. The results show that, while both statements are inaccurate in their formulation, a detailed analysis of the judgments reveals three systematic patterns: the invalidation of counterterrorism instruments, the omission of the plaintiffs' operational role within terrorist organizations, and operational consequences for the domestic judicial system, which do compromise the State's institutional capacity to respond to terrorist threats. The article concludes that, rather than evidencing a bias, the Court's jurisprudence reflects a structural tension between the protection of human rights and state security strategies, proposing recommendations aimed at improving this coordination.

Keywords: Inter-American Court of Human Rights; terrorism; human rights; Peru; judgments; compensation; reparations.

¹ Academic Vice-Rector and Researcher at the Universidad Científica del Sur, Lima, Peru. Email: osumar@cientifica.edu.pe

² Researcher at the Universidad Científica del Sur, Lima, Peru. Email: lorenasquezalv16@gmail.com

³ Researcher at the Universidad Científica del Sur, Lima, Peru. Email: lzapatabush@gmail.com

⁴ Lawyer and Professor at the Universidad Científica del Sur, Lima, Peru. Email: tzuniga@cientifica.edu.pe



RESUMEN

El presente artículo analiza críticamente la afirmación, ampliamente difundida en el debate público peruano, según la cual la Corte Interamericana de Derechos Humanos actúa como un órgano con sesgo proterrorista. A partir del análisis de las 24 sentencias emitidas por la Corte en casos relacionados al terrorismo contra el Estado peruano, y del análisis cualitativo de cinco casos representativos, se evalúa la veracidad de las dos críticas más frecuentes: (i) la Corte falla siempre contra el Perú, y (ii) las indemnizaciones ordenadas son millonarias. Los resultados muestran que, si bien ambas afirmaciones carecen de exactitud en su formulación, el análisis detallado de las sentencias revela tres patrones sistemáticos: invalidación de instrumentos antiterroristas, omisión del rol operativo de los demandantes dentro de organizaciones terroristas, y consecuencias operativas sobre el sistema judicial interno, que sí comprometen la capacidad institucional del Estado para responder a amenazas terroristas. El artículo concluye que, más que evidenciar un sesgo, la jurisprudencia de la Corte refleja una tensión estructural entre la protección de derechos humanos y las estrategias estatales de seguridad, proponiendo recomendaciones orientadas a mejorar dicha articulación.

Palabras claves: Corte Interamericana de Derechos Humanos; terrorismo; derechos humanos; Perú; sentencias; indemnizaciones; reparaciones.

1. Introduction

In recent years in Peru, the debate has resumed regarding the advisability of withdrawing from the jurisdiction of the Inter-American Court of Human Rights (hereinafter “the Court”), which reflects not only a legal tension but also a profound political and ideological controversy surrounding the scope of international oversight in the field of human rights. This discussion is closely linked to the context of the internal armed conflict that took place between 1980 and 2000, and to subsequent allegations of human rights violations in the fight against terrorism.

This debate is not new, as it was already raised during the administration of Alberto Fujimori, who pushed for a temporary withdrawal backed by Legislative Resolution No. 27152 (July 8, 1999), which sought to withdraw, with immediate effect, the recognition of the Court’s contentious jurisdiction. This was the subject of a ruling by the Court, which “considers that Peru’s purported withdrawal of the declaration recognizing the Court’s contentious jurisdiction with immediate effect is inadmissible, as are any consequences sought to be derived from such withdrawal” (Case of Ivcher Bronstein v. Peru, 1999). In this context, on January 19, 2001, Legislative Resolution No. 27401 was published, repealing Legislative Resolution No. 27152 and fully restoring the Court’s contentious jurisdiction. However, recently, during the administration of Dina Boluarte, the controversy regained relevance in a context where “official discourse is grounded in the idea of ‘defending sovereignty’ against what the government characterizes as alleged ‘interference’ by the Court” (Cervilla, 2025).

To understand the origin of this controversy, it is necessary to refer to the context of the internal armed conflict that Peru experienced between 1980 and 2000, led primarily by Shining Path and the Túpac Amaru Revolutionary Movement (MRTA). This period constitutes one of the most violent episodes in Peru’s republican history, and according to the Final Report of the Truth and Reconciliation Commission, it left approximately 69,280 people dead or missing (Truth and Reconciliation Commission, 2003).

In response to this situation, the State deployed a strategy combining military and police operations with exceptional legislative measures aimed at neutralizing the terrorist threat. However, this response led to numerous allegations of human rights violations committed by state agents, which reportedly affected not only members or alleged members of terrorist organizations but also individuals uninvolved

in the conflict. This scenario unfolded alongside a process of institutional weakening, which intensified following the 1992 coup d'état led by Alberto Fujimori, resulting in the concentration of power, the undermining of the independence of public authorities, and the restriction of fundamental freedoms. The tension between security imperatives and rights guarantees in emergency settings of this kind has been analyzed comprehensively by Gross and Ní Aoláin (2006), who argue that emergency powers regimes require particular scrutiny precisely because they generate the conditions for systematic rights abuse, even when invoked in response to genuine threats.

Given the inadequacy of domestic remedies, various complaints regarding extrajudicial executions and violations of due process began to be brought before the Court in the late 1980s, creating a complex relationship between the Peruvian State and the inter-American human rights system, whose tensions persist to this day.

In this context, there is a clear polarization in public opinion. On the one hand, some argue that the Court undermines state sovereignty by intervening in internal affairs, particularly in cases related to the fight against terrorism, and even question whether its decisions hinder the state's ability to address such threats. On the other hand, left-wing sectors and moderate voices view it as an essential mechanism for protecting human rights, especially against potential abuses of state power in contexts of internal conflict. A clear example is the work of Contesse (2019), who documents precisely this dynamic of contestation and resistance against the inter-American system, noting that states increasingly question the Court's authority while remaining formally subject to it.

Criticism from conservative sectors—or, as they are commonly known, the right—tends to focus on two specific claims: (i) the Court has ruled against Peru in all cases related to terrorism; and (ii) terrorists and individuals linked to terrorist organizations have received “multi-million-dollar” compensation as a result of these decisions. These claims, widely circulated in public debate, are often presented in a simplified manner and without adequate empirical support.

In this regard, the central problem driving this research lies in the persistence of a public narrative according to which the Court acts with a supposed “pro-terrorist” bias—a claim that, despite its widespread dissemination, often lacks rigorous empirical analysis to support or refute it. Thus, there is a need to shift this discussion from the political-discursive plane to a legal-empirical analysis, in order to determine whether such claims are supported by evidence or whether they stem more from socially constructed perceptions.

The question of whether courts decide in a truly impartial manner constitutes one of the most relevant debates in contemporary law and has given rise to a well-established line of empirical research on biases in the administration of justice. In this context, Muñoz (2011) notes that judicial actors do not decide in a value-free vacuum, but rather that their decisions are conditioned by cognitive, ideological, and cultural factors that operate even unconsciously. This finding has been corroborated by previous experimental studies conducted with actual judges: Guthrie et al. (2001) demonstrated that federal judges systematically fall prey to common cognitive biases such as anchoring, framing effects, and hindsight bias, even when they are aware of these phenomena. Subsequent research by Rachlinski et al. (2009) expanded on this analysis, showing that judges harbor the same implicit racial biases as the general population, although they can partially overcome them with sufficient motivation. In turn, Posner (2008) synthesized this line of research by proposing that judicial decision-making in difficult cases is fundamentally pragmatic and influenced by personal experiences, emotions, and unconscious beliefs, rather than by purely legal reasoning. Similarly, Sunstein et al. (2006), through a large-scale empirical analysis of voting patterns in

federal courts of appeal, confirmed that the political affiliation of the president who appointed the judge significantly influences judicial decisions in ideologically contentious cases.

Along the same lines, De la Rosa and Sandoval (2016) extended the analysis to the Latin American context, noting that the judicial actor “is guided not only by law and legal principles, but also by preconceived ideas and values upon which their worldview is based,” so that it is legitimate to question what motivates their decision or to what extent their own projections, aversions, or public opinion influence it. These contributions constitute the theoretical framework from which the possible existence of biases in international courts is analyzed.

This discussion gained particular relevance in the context of international courts following the empirical study by Posner and Figueiredo (2005), who statistically analyzed the voting patterns of judges at the International Court of Justice (ICJ) and found strong evidence that judges tend to vote in favor of the states that appoint them, as well as those with levels of wealth and political systems similar to those of their own home state. Thus, they concluded that while the court’s defenders maintain that the ICJ decides cases impartially and lends legitimacy to the international legal system, its critics argue that ICJ members vote in accordance with the interests of the states that appoint them—a position that the study’s empirical findings largely supported (Posner and De Figueiredo, 2005). A related concern was addressed by Posner and Yoo (2005), who argue that formally independent international courts may paradoxically prove less effective than dependent ones, as independent judges are free to pursue their own ideological preferences without being accountable to the parties. This position prompted a significant response from Helfer and Slaughter (1997), who had previously developed a theory of effective supranational adjudication, arguing that the legitimacy and compliance of European human rights courts derive precisely from their independence and their ability to establish direct links with domestic legal actors. For his part, Voeten (2008), in a large-scale empirical study of the European Court of Human Rights, found a more nuanced picture: although there is no systematic geopolitical or cultural bias, judges show evidence of national favoritism when facing job insecurity and, generally speaking, behave more like public policy-oriented actors than as neutral arbiters. Similarly, Alter (2014), in his comparative study of international courts, demonstrated that their proliferation has significantly reshaped the domestic politics of states, creating opportunities for actors supportive of international legal standards.

In the specific context of the Inter-American Human Rights System (IAHRS), this issue has been the subject of relevant empirical studies. Fernández Paredes et al. (2021), in analyzing 183 IASHR decisions in torture cases, found that the system’s deliberations have tended to be relatively generic and that the perpetrators of violence are not always identified in the decisions, suggesting that the thematic orientation of its bodies may influence the scope of the analysis conducted in each specific case. For his part, Zschirnt (2017), through a quantitative analysis of the Commission’s decisions, assessed whether the system exhibits political or cultural biases in response to accusations by left-wing governments that characterized it as an instrument serving a neoliberal agenda; although he found no evidence of systematic political biases, he noted that the system’s responsiveness varies significantly depending on the type of violation analyzed. Sandholtz and Rangel Padilla (2020), in studying amnesty cases before the Commission and the Court, concluded that the system does take internal political contexts into account in ways that had not been fully recognized, with both institutions adjusting their approach according to the relative strength of democratic institutions in member states. At the doctrinal level, Malarino (2010) identified three structural trends in the Court’s jurisprudence: judicial activism, punitivization, and nationalization, which reveal an orientation that, without necessarily constituting a deliberate bias, can influence the State’s ability to design security policies. This background demonstrates that the discussion of biases is not merely rhetorical, but has been addressed through systematic methodologies in the specialized literature.

From a comparative perspective, Legg (2012) has documented how international human rights courts—including the Inter-American Court—apply varying levels of deference to domestic security decisions depending on the sensitivity of the matter and the existence of regional consensus, an analysis that is directly relevant to evaluating the patterns identified in this article.

In this regard, the present article aims to critically analyze the claim that the Court acts as a “pro-terrorist” body, evaluating, on the one hand, the validity of the main criticisms leveled against it and, on the other, identifying those aspects of its jurisprudence that may be legally questionable from the perspective of state security. Throughout, we use the term “pro-terrorist bias” only to characterize the claim under examination, not to assert it as a proven finding.

To this end, the article adopts a mixed descriptive-analytical design, combining quantitative analysis of case law with a qualitative study of representative cases. In the first phase, the 24 judgments issued by the Court in cases related to terrorism against the Peruvian state were identified and systematized, coding variables such as the ruling’s outcome, the amounts of compensation, and court costs. In a second phase, five cases were selected for an in-depth jurisprudential analysis, based on their legal relevance, their impact on counterterrorism policy, and their representativeness with respect to the identified patterns.

Based on this, the aim is to provide a rigorous analysis that goes beyond the simplified positions of the public debate and allows for an empirically grounded understanding of the true impact of the Court’s decisions on the Peruvian State’s ability to combat terrorism within the framework of respect for human rights.

2. The most controversial issue: is it well-founded?

2.1. “The court always rules against Peru”

The table below summarizes the 24 judgments issued by the Court in terrorism-related cases involving the Peruvian State, including the amounts paid for compensation, court costs, and reimbursement to the Legal Assistance Fund.

Table 1. Judgments of the Inter-American Court of Human Rights in terrorism cases against Peru

No.	Case	Decision	Compensation (USD)	Costs (USD)	Reimbursement to victims’ legal assistance fund (usd)
1	Neira Alegría and others	FOUNDED	154,040.74	0.00	0.00
2	Loayza Tamayo	FOUNDED	167,190.30	20,000.00	0.00
3	Páez Castle	FOUNDED	245,021.80	2,000.00	0.00
4	Castrillo Petruzzi	FOUNDED	0.00	10,000.00	0.00
5	Durand and Ugarte	FOUNDED	125,000.00	0.00	0.00
6	Benavides Singers	FOUNDED	168,000.00	8,000.00	0.00
7	Barrios Altos	FOUNDED	600,000.00	0.00	0.00
8	Gómez Paquiyauri Brothers	FOUNDED	740,500.00	30,000.00	0.00
9	De La Cruz Flores	FOUNDED	194,050.00	30,000.00	0.00
10	Pedro Huilca	FOUNDED	270,000.00	0.00	0.00
11	Lori Berenson	FOUNDED IN PART	0.00	30,000.00	0.00

No.	Case	Decision	Compensation (USD)	Costs (USD)	Reimbursement to victims' legal assistance fund (usd)
12	Gómez Palomino	FOUNDED	554,000.00	5,000.00	0.00
13	García Asto and Ramírez Rojas	FOUNDED	265,000.00	40,000.00	0.00
14	Baldeón García	FOUNDED	235,000.00	5,000.00	0.00
15	Castro Castro	FOUNDED	300,000.00	90,000.00	0.00
16	La Cantuta	FOUNDED	2,000,000.00	40,000.00	0.00
17	Azualdo Castro	FOUNDED	305,000.00	14,000.00	0.00
18	Osorio Rivera	FOUNDED	267,000.00	10,000.00	3,306.86
19	Jesús Mónica Feria Tinta ("J". "Comrade Matilde")	FOUNDED	47,000.00	40,000.00	3,683.52
20	Tarazona Arrieta and Others	FOUNDED IN PART	0.00	10,000.00	2,030.89
21	Espinoza Gonzáles	FOUNDED	105,000.00	35,000.00	1,972.59
22	Cruz Sánchez and Others (Chavín de Huántar)	FOUNDED IN PART	0.00	20,000.00	0.00
23	Santa Barbara	FOUNDED	350,000.00	0.00	3,457.40
24	Terrones Silva and Others	FOUNDED	715,000.00	90,000.00	5,095.99

Note: Prepared by the author based on an analysis of the Court's rulings available in its official repository.

As can be seen, the Court has ruled against the Peruvian State in all 24 cases analyzed: 21 of them were found to be well-founded and 3 were found to be partially well-founded.

However, this result does not, in and of itself, constitute evidence of a systematic orientation favorable to individuals linked to terrorist organizations. The most plausible explanation relates to the institutional dynamics between the Inter-American Commission on Human Rights (IACHR) and the Court: the Commission submits to the Court only approximately 1% of the cases it receives, selecting those with the strongest evidence and a high probability of success according to the system's criteria. Consequently, while all cases related to terrorism have resulted in rulings against the Peruvian state, it is also true that almost all cases—in general—brought before the Court are found to be well-founded, regardless of the subject matter and the country involved.

This dynamic has been analyzed by Huneeus (2011), who demonstrates that the structural characteristics of the inter-American system—particularly the broad scope of the reparations ordered by the Court—systematically generate resistance from national courts, which are precisely the actors most likely to fail to comply with such decisions.

However, as discussed in the following sections, the problem does not lie in the percentage of adverse rulings, but rather in the content of some of them and their implications for national security.

2.2. "The compensation payments are in the millions"

The second table summarizes the total amounts paid for compensation, costs, and reimbursement to the legal aid fund:

Table 2. Aggregate summary of decisions and amounts

Category	No.	%	Total amount (usd)
Founded	21	87.5	-
Founded in part	3	12.5	-
With compensation	20	83.33	7,806,802.84
Without compensation	4	16.67	-
With payment of costs	19	79.17	529,000.00
No payment of costs	5	20.83	-
With reimbursement to the fund	6	25	19,547.25
No refund to the fund	18	75	-
Total cases	24	100	8,355,350.09

Note: Prepared by the author based on an analysis of court rulings available in the court's official repository.

The data shows that the total amount paid amounts to USD 8,355,350.09, distributed across 24 cases over approximately three decades. While the figure is not insignificant in absolute terms, breaking it down reveals that the average per case with compensation is USD 390,340.14, which puts the label “million-dollar” into perspective. Shelton (2005) offers the most comprehensive comparative framework for evaluating this type of reparation according to international standards, noting that compensation in human rights proceedings serves different functions than purely compensatory damages under private law, and therefore must be assessed accordingly.

However, reparations raise issues that warrant serious analysis for three reasons. First, the amounts exceed those awarded domestically, whether through the Comprehensive Reparations Plan or via judicial rulings. Second, and as a consequence of the above, they create inequity with respect to other victims of the conflict who did not have access to the inter-American system. Third, the very existence of reparations for individuals with proven ties to terrorist organizations is legally controversial (Bregaglio, 2015); regarding this last point, there are even cases where the Court has denied monetary reparations to such individuals.⁵

The broader question of what societies in transition owe to different categories of victims—and how international institutions should manage competing claims for reparations—has been analyzed by Teitel (2000), who argues that justice in times of transition is inherently contextual and cannot be separated from the political circumstances of each regime change.

In summary, the main problem with the cases brought before the Court does not lie in the fact that they were found to be well-founded—which is to be expected given the system's screening process—nor in the amount of the compensation; rather, it lies in the content of the decisions, which in several cases has raised significant concerns about Peru's capacity to design and implement counterterrorism policy, and, above all, in the legal complexity generated when individuals linked to terrorist organizations are recognized as victims deserving of protection. This raises the deeper issue examined by Schwöbel-Patel (2018) in the context of international criminal law: the social construction of the “ideal victim” tends to privilege certain categories of victims over others, and, in the inter-American context, the way a case is procedurally framed can similarly determine who qualifies as a victim deserving of protection, regardless of their prior conduct.

⁵ While in cases such as Loayza Tamayo, Castillo Petruzzi, and Osorio Rivera, the Court awarded significant compensation or reparations, disassociating the victim from their alleged connection to terrorism, in subsequent cases—such as Feria Tinta and especially Cruz Sánchez—it modified or denied compensation, taking into account the victim's participation in or connection to terrorist organizations.

3. Beyond the controversy: a critical review of the key judgments

A case-by-case analysis reveals decisions that, beyond their formal correctness, have had practical consequences on the Peruvian State's ability to design and implement counterterrorism policies. The most representative cases are examined below:

3.1. Loayza Tamayo vs. Peru

On February 6, 1993, María Elena Loayza Tamayo was arrested and transferred to DINCOTE along with a relative, following a tip-off from a former student who had entered the repentance program for confessed terrorists. After being interrogated, she was presented to the press in the uniform then used for those charged with serious crimes and accused of treason before the faceless military court established within the framework of the counterinsurgency campaign. On September 24, 1993, the Supreme Council of Military Justice acquitted her of that crime, although it noted indications of terrorism and ordered her to be transferred to civilian jurisdiction.

The Court deemed the nearly two-week interval between the military acquittal and the start of the ordinary proceedings to be illegal. It held that Loayza Tamayo could have filed a habeas corpus petition, even though that remedy was legally suspended for crimes of terrorism and treason. The Court rejected the legality of this suspension, disregarding the exceptional circumstances prevailing in the country.

In October 1994, Loayza Tamayo was sentenced to twenty years in prison for terrorism. While her defense appealed to the Supreme Court, the IACHR heard the case, despite the fact that domestic remedies had not been exhausted. In Substantive Report No. 20/94, the Commission recommended her release and financial reparations, a decision that the State did not comply with. The case was referred to the Court, which in 1997 ruled that the rights to personal liberty and judicial protection had been violated.

The Court ruled that the post-acquittal detention by the military was illegal, without considering the operational risks associated with the Shining Path threat, such as a history of escapes, external logistical networks, and internal executions of alleged collaborators. These circumstances justified special custody measures to protect both the defendant and the authorities, in line with the State's duty as guarantor recognized by the American Convention itself. The academic literature on states of emergency in comparative human rights law underscores that courts must exercise particular caution when applying non-derogable standards to measures adopted in contexts of genuine armed conflict. As Gross and Ní Aoláin (2006) argue, failing to account for the emergency context when reviewing emergency measures risks imposing unrealizable standards that disregard the operational constraints facing states under acute security threats.

Likewise, the Court questioned the jurisdiction and impartiality of the military court, despite recognizing the validity of the acquittal, thereby creating a contradiction by failing to define whether the proceedings were valid or invalid. It also invalidated the conviction for terrorism, arguing that the legal framework of the state of emergency did not meet fair trial standards and that the evidence from the military proceedings prejudged the defendant.

Particular controversy arose over the alleged violation of the principle of non bis in idem. The Court considered that terrorism and treason were "closely linked" crimes, ignoring that Peruvian law defined them as distinct criminal offenses falling under different jurisdictions. Paradoxically, it validated both the military acquittal and the ordinary conviction, despite finding serious irregularities in both proceedings, which renders its reasoning inconsistent.

Finally, the Court went beyond what the IACHR had requested by ordering Loayza Tamayo's immediate release, expanded reparations, her reinstatement to her former position, and the annulment of all investigations against her. Furthermore, it ordered the amendment of Decree-Laws No. 25475 and 25659, which constituted a far-reaching incursion into the State's legislative sphere and security policy design. This precedent was replicated in subsequent cases, such as *Castillo Petruzzi v. Peru*, and led to Peru's temporary withdrawal from the Court's contentious jurisdiction in 1999.

3.2. Osorio Rivera and family vs. Peru

On April 28, 1991, Jeremías Osorio Rivera was detained by the Army in the community of Nunumia, in an area under a state of emergency, after being identified as a suspect in an attack. According to the State, he was found in possession of a weapon and transferred to the Cajatambo military base, where he was last seen alive. He has been missing ever since.

His relatives reported the incident to the prosecutor's office, initiating a military court proceeding that concluded in 1996 with a final dismissal of the case. Following the return to democracy, the CVR recommended reopening the case, which occurred in the ordinary courts in 2004. In 2013, the main defendant, Juan Carlos Tello Delgado, was acquitted due to lack of sufficient evidence, a decision upheld by the Supreme Court. Concurrently, the State granted administrative reparations to the family members.

Despite this, the IDH Commission referred the case to the Inter-American Court, which in 2013 found Peru responsible for enforced disappearance and for the lack of judicial guarantees, deeming the domestic investigations insufficient. The Court rejected both the military and the ordinary acquittals, even though the latter was conducted in accordance with international standards.

The Court did not give adequate weight to the emergency context or the reasonableness of the initial detention, nor did it consider the inherent complexity of cases of enforced disappearance, where the absence of remains makes it difficult to determine responsibility. The standard of investigative sufficiency applied effectively demanded near-impossible results in a context of armed conflict, disregarding the fact that criminal acquittal reflects respect for the principle of presumption of innocence.

Furthermore, it applied a presumption of "continuous custody" that imposed a particularly onerous burden of proof on the State and retroactively extended the application of the Convention on Enforced Disappearance, which has only been in force in Peru since 2002.

3.3. Cruz Sánchez and others case (Chavín de Huántar) vs. Peru

During the 1996 takeover of the Japanese ambassador's residence by the MRTA, the State carried out Operation Chavín de Huántar, which culminated in the release of the hostages and the deaths of the 14 terrorists. Years later, it was alleged that at least one of them had been extrajudicially executed after surrendering.

Despite multiple internal investigations and final acquittals upheld by the Supreme Court in 2013, the Court held the State liable in 2015 for the alleged execution of Eduardo Cruz Sánchez. It based its decision on weak evidence, contradictory testimony, and belated forensic reports, which were insufficient to establish an extrajudicial execution in accordance with criminal standards.

The Court did not adequately consider the operational context of a high-risk hostage rescue mission and demanded the identification of those responsible despite the lack of conclusive evidence. In doing so, it

effectively reviewed findings previously settled by domestic courts, raising legitimate concerns about the principle of non bis in idem and legal certainty.

3.4. Pedro Huilca vs. Peru

Pedro Huilca, a union leader with the CGTP, was murdered in 1992. Initially, the crime was attributed to Shining Path, a version rejected by his family. Following the return to democracy, the case was reopened, and the hypothesis of an execution attributable to the Colina Group was raised. However, in 2023, the judiciary acquitted the defendants, as state motivation could not be proven.

Despite the coexistence of plausible hypotheses—including Shining Path involvement, supported by prior records, the organization’s official publications, and testimonies from former leaders—the Court held the State responsible in 2005, in a context where the available evidence did not allow for an unambiguous attribution of responsibility to State agents.

The testimonies supporting the state’s case proved inconsistent and unsubstantiated, while the Truth Commission acknowledged that it had not reached a definitive conclusion. By holding the State responsible without adequately excluding competing causal hypotheses, the Court applied a standard of attribution that sits uneasily alongside the requirements of criminal due process, and did not give sufficient weight to the decisions of domestic courts that had evaluated the same evidence under standards consistent with inter-American norms.

3.5. Jesús Mónica Feria Tinta (“J” / “comrade Matilde”) vs. Perú

The case of Jesús Mónica Feria Tinta v. Peru constitutes a particularly controversial precedent because the Inter-American Court analyzed procedural violations without adequately weighing the defendant’s operational role within Shining Path.

Feria Tinta, known as “Comrade Matilde,” was prosecuted for terrorism and advocacy of terrorism due to her role as editor of *El Diario*, a Shining Path propaganda organ that was part of the strategy to legitimize armed violence. After leaving the country in 1993, she sought asylum in Europe, and Peru’s extradition request was rejected due to deficiencies in the judicial process, not because of a lack of terrorist ties.

The Court found violations related to the use of “faceless judges” and the lack of judicial safeguards, but did not give adequate weight to the fact that these courts emerged in direct response to Shining Path’s systematic targeting of judges, witnesses, and prosecutors, reducing the analysis to a formalistic approach. Malarino (2010) has identified this tendency in the Court’s jurisprudence: an emphasis on procedural formalism that can obscure the broader security context in which states were forced to operate, generating what he describes as a pattern of “nationalization” that encroaches on states’ margin of discretion in designing responses to organized violence.

Overall, the ruling conveys that functional membership in a terrorist organization is legally secondary to procedural irregularities, which raises legitimate concerns about the future coherence of counterterrorism policies and the legal framework available to the Peruvian state for confronting similar threats.

4. Analysis: systematic patterns and their consequences

A joint examination of the cases analyzed reveals three systematic patterns in the Inter-American Court's jurisprudence that, beyond individual cases, have structural consequences for the Peruvian State's ability to respond to terrorist threats.

First, the Court's jurisprudence has systematically invalidated central instruments of Peru's counterterrorism policy from the 1990s—namely, “faceless judges,” differentiated prison regimes, and special evidentiary rules—despite the fact that these instruments emerged as a direct response to concrete events: the murder and ongoing threats against judges, prosecutors, police officers, and witnesses by Shining Path and the MRTA. As a result, the Peruvian State cannot today reuse or adapt similar mechanisms, even in scenarios of comparable organized violence, without almost automatically exposing itself to international liability. Contesse (2016) has described this pattern as a reflection of a maximalist adjudication model, in which the Court leaves little room for States to design their own solutions, thereby generating pushback precisely in cases where domestic capacity is most strained. This dynamic is directly related to the scholarly debate on whether international human rights courts should apply a margin of appreciation when reviewing national security measures—a discussion extensively developed in the European context (Legg, 2012) and increasingly relevant to the inter-American system (Bertelsen, 2021). The absence of a formally articulated margin of appreciation doctrine in the Inter-American system means that the Court tends to apply uniform standards without the graduated deference that more contextually sensitive adjudication would permit (Bertelsen, 2021).

Second, in several cases the Court has separated the analysis of procedural violations from the actual role that the plaintiffs played within terrorist organizations, as occurred with individuals linked to propaganda, logistics, or support structures. This approach has had a practical effect: the annulment of final convictions, the reopening of complex cases decades later, and the payment of reparations to individuals with proven links to terrorist groups, without this depending on a substantive review of their participation. The legal and political controversy over the granting of reparations in such circumstances is linked to Sandoval's (2018) research on domestic reparation programs, which demonstrates how competing international and national reparation frameworks can produce inconsistent results and undermine the overall legitimacy of restorative justice.

Third, these precedents have had concrete operational consequences within the domestic system: they weaken the incentives for judges and prosecutors to take on terrorism cases, increase the personal and professional risk associated with firm decisions, and reinforce a defensive logic within the judicial system, especially in cases involving organized crime with the capacity for intimidation. This dynamic illustrates precisely what Huneeus (2011) termed the fundamental enforcement paradox of the Inter-American Court: national courts, rather than being natural partners in implementation, often become the most resistant actors, given that Inter-American rulings represent a direct incursion into their legal sphere.

These patterns coincide with what Malarino (2010) identifies as the three salient features of Inter-American jurisprudence: (i) judicial activism: the introduction of norms not agreed upon by the States, (ii) punitivization: the creation of new victim rights that undermine the defendant's guarantees, and (iii) nationalization: orders of reparation that encroach upon spheres of state sovereignty. In this regard, although Malarino does not limit his analysis to terrorism cases, the application of these categories to the body of jurisprudence analyzed in this article is particularly illustrative.

Taken together, the facts show that the line of jurisprudence followed reduces the Peruvian State's institutional leeway to respond swiftly and firmly to terrorist or analogous threats, not because it prohibits criminal prosecution, but because it discourages any exceptional response, even when future contexts reproduce conditions of violence, institutional capture, or coercion similar to those already faced during the era of terrorism.

From a comparative law perspective, the European Court of Human Rights has developed more nuanced tools for evaluating state responses to terrorism, including the doctrine of proportionality and, in some cases, a heightened margin of appreciation where states face genuine security emergencies (Gross & Ní Aoláin, 2006; Legg, 2012). The absence of equivalent mechanisms in the inter-American system may partly explain the structural tension this article identifies. Whether the Inter-American Court should develop analogous doctrines—and how to do so without undermining fundamental rights protections—constitutes one of the most pressing normative debates in contemporary inter-American human rights law (Bertelsen, 2021).

While the number of cases against Peru is not the main issue—rather, it is the content of certain rulings that has complicated the state's ability to design security responses—the consistent pattern of adverse outcomes is worth examining analytically. The Court's composition—consisting entirely of specialists with backgrounds in human rights law, and in some cases with prior professional experience in human rights advocacy—means that its institutional perspective tends to prioritize individual rights protection. This is not inherently illegitimate; it reflects the Court's mandate under the American Convention. However, it does underscore the importance of States developing proactive legal strategies before the inter-American system, including more robust argumentation of contextual justifications and proportionality assessments. Regarding compensation, while these amounts do not support the “millions” characterization in the aggregate, their existence in cases involving individuals with proven ties to terrorist organizations raises legitimate legal and ethical questions—which is precisely why the Court has denied monetary compensation in some such cases.

5. Conclusions

This article analyzed, based on an empirical study of the 24 judgments issued by the Inter-American Court of Human Rights in cases related to terrorism against the Peruvian State and an analysis of five representative cases, the validity of the main criticisms leveled against the Court by conservative sectors, as well as the real impact of its jurisprudence on the State's ability to confront terrorist threats.

Regarding frequent criticisms, the findings show that both claims widely circulated in public debate lack accuracy in their formulation. The Court has ruled 100% of cases related to terrorism against Peru to be well-founded or partially well-founded, but this is primarily due to the filtering function exercised by the IACHR and does not in itself constitute evidence of a systematic orientation favorable to individuals linked to terrorist organizations. Regarding compensation, the total amount paid over three decades and the average per case with compensation do not support the characterization of “millions.”

However, a deeper analysis reveals that the criticisms raised by conservative sectors, although lacking empirical rigor in their formulation, point to a real and significant structural tension. The Court's jurisprudence reveals three systematic patterns that compromise the State's institutional capacity: (i) the invalidation of counterterrorism instruments without adequate consideration of their contextual justification; (ii) the omission of the operational role of the petitioners within terrorist organizations; and

(iii) the operational consequences for the domestic judicial system. Taken together, these patterns reduce the State's margin to respond to future security threats without exposing itself to international liability.

Furthermore, the Court's own jurisprudence is inconsistent regarding reparations for individuals linked to terrorist organizations: in some cases it has granted them and in others it has denied them, which introduces legal uncertainty in this area.

The structural tension identified in this article between rights protection and state security is not unique to the inter-American system. It represents a fundamental challenge for all international human rights courts operating in post-conflict or security-sensitive contexts (Gross & Ní Aoláin, 2006). Future research could profitably examine whether the development of a margin of appreciation doctrine in the Inter-American system would mitigate these tensions, or whether alternative institutional reforms—such as more systematic consideration of contextual justifications submitted by States—would better serve the dual goals of rights protection and effective security governance (Bertelsen, 2021).

Bibliography cited

- Alter, K. (2014). *The New Frontier of International Law*. Princeton University Press.
- Bertelsen, S. (2021). A margin for the margin of appreciation: Deference in the Inter-American Court of Human Rights. *International Journal of Constitutional Law*, 19(3), 887–913. <https://doi.org/10.1093/icon/moab063>
- Bregaglio, R. (2015). When the Court Turns a Blind Eye: Reparations as a Differentiating Factor in a Post-Conflict Society in the Peruvian Case. Yale Law School / SELA. https://law.yale.edu/sites/default/files/documents/pdf/SELA15_Bregaglio_CV_Sp.pdf
- Cervilla, J. (2025). Sovereignty or Setback? The Debate on Peru's Continued Membership in the Inter-American Court of Human Rights. *Puntoedu*. <https://puntoedu.pucp.edu.pe/actualidad/sidh-soberania-permanencia-del-peru-en-corte-idh-interamericano-de-derechos-humanos/>
- Contesse, J. (2016). Challenge and Deference in the Inter-American Human Rights System. *Law and Contemporary Problems*, 79(2).
- Contesse, J. (2019). Resisting the Inter-American Human Rights System. *Yale Journal of International Law*, 44(2), 179–214.
- De la Rosa, P. and Sandoval, V. (2016). Cognitive biases and their influence on judicial decision-making. Contributions of Legal Psychology to adversarial criminal proceedings. *Criminal Law and Criminology*, 37(102), 141–164. <https://doi.org/10.18601/01210483.v37n102.08>
- Fernández, T., Stockhem, O., Martino, N., & Duarte, T. (2021). Gender biases in the Inter-American Human Rights System? Analysis of the Inter-American Court and Commission's reports on torture in men's and women's prisons. *Journal of Empirical Studies in Law*, 8. <https://doi.org/10.19092/reed.v8.609>
- Gross, O., & Ní Aoláin, F. (2006). *Law in Times of Crisis: Emergency Powers in Theory and Practice*. Cambridge University Press.
- Guthrie, C., Rachlinski, J., & Wistrich, A. J. (2001). Inside the judicial mind. *Cornell Law Review*, 86(4), 777–830.
- Helfer, L., and Slaughter, A. (1997). Toward a theory of effective supranational adjudication. *Yale Law Journal*, 107(2), 273–391.

- Huneus, A. (2011). Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights. *Cornell International Law Journal*, 44(3), 493–533.
- Legg, A. (2012). *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality*. Oxford University Press.
- Malarino, E. (2010). Judicial activism, punitivism, and nationalization: Anti-democratic and anti-liberal tendencies of the Inter-American Court of Human Rights. In Latin American Group for Studies on International Criminal Law (ed.), *Inter-American System for the Protection of Human Rights and International Criminal Law* (25–61). Konrad Adenauer Foundation. <https://archivos.juridicas.unam.mx/www/bjv/libros/8/3515/6.pdf>
- Muñoz, A. (2011). The influence of cognitive biases on judicial decisions: the human factor. An approach. *Indret. Journal for the Analysis of Law*, (2), 1–42. <https://dialnet.unirioja.es/servlet/articulo?codigo=3636909>
- Posner, E., & De Figueiredo, M. (2005). Is the International Court of Justice Biased? *The Journal of Legal Studies*, 34(2), 599–630.
- Posner, E., and Yoo, J. (2005). Judicial Independence in International Courts. *California Law Review*, 93(1), 1–74.
- Posner, R. (2008). *How Judges Think*. Harvard University Press.
- Rachlinski, J., Johnson, S., Wistrich, A., and Guthrie, C. (2009). Does Unconscious Racial Bias Affect Trial Judges? *Notre Dame Law Review*, 84(3), 1195–1246.
- Sandholtz, W., & Rangel, P. (2020). Law and politics in the inter-American human rights system: amnesty cases. *Journal of Law and Courts*, 8(2), 287–313.
- Sandoval, C. (2017). Reflections on the implementation of reparations in the inter-American system. *International Journal of Human Rights*, 21(6), 1–15.
- Schwöbel-Patel, C. (2018). The 'ideal' victim in international criminal law. *European Journal of International Law*, 29(3), 703–724.
- Shelton, D. (2005). *Remedies in International Human Rights Law* (2nd ed.). Oxford University Press.
- Teitel, R. G. (2000). *Transitional Justice*. Oxford University Press.
- Truth and Reconciliation Commission (2003). *General Conclusions of the CVR Final Report*. Volume I. Institute of Democracy and Human Rights of the Pontifical Catholic University of Peru. <https://repositorio.pucp.edu.pe/server/api/core/bitstreams/7a077cd7-43b7-4252-ace0-8659de00d149/content>
- Voeten, E. (2008). The impartiality of international judges: evidence from the European Court of Human Rights. *American Journal of International Law*, 102(4), 417–442.
- Zschrnt, S. (2017). Is the Inter-American Human Rights System biased? A quantitative analysis of regional human rights litigation in the Americas. *International and Comparative Law Review*, 17(1), 51–81. <https://doi.org/10.2478/iclr-2018-0002>

Cited case law

- Inter-American Court of Human Rights. (September 17, 1997). Case of Loayza Tamayo v. Peru. Merits.
- Inter-American Court of Human Rights. (September 24, 1999). Ivcher Bronstein v. Peru. Jurisdiction.
- Inter-American Court of Human Rights. (March 3, 2005). Case of Huilca Tecse v. Peru. Merits, reparations, and costs.

Inter-American Court of Human Rights. (November 26, 2013). Case of Osorio Rivera and Family Members v. Peru. Preliminary Objections, Merits, Reparations, and Costs.

Inter-American Court of Human Rights. (November 27, 2013). Case of J. v. Peru. Preliminary objection, merits, reparations, and costs.

Inter-American Court of Human Rights. (April 17, 2015). Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations, and costs.