

WorldCourts™

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	María Elena Loayza-Tamayo v. Peru
Doc. Type:	Order of the Court
Dated:	2 July 1996
Citation:	Loayza-Tamayo v. Peru, Order of the Court (IACtHR, 2 Jul. 1996)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

HAVING SEEN:

1. The petition of January 12, 1996, in which the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted to the Inter-American Court of Human Rights (hereinafter “the Court” or the “Inter-American Court”) the case of Loayza Tamayo against the Government of the Republic of Peru (hereinafter “the Government” or “Peru”).
2. The communication of April 19, 1996 from the Inter-American Commission in which it dispatched to the Secretariat a note it had sent to the Government of Peru concerning the conditions in which María Elena Loayza-Tamayo was being detained.
3. The note of May 15, 1996, received on May 28, 1996, from the Government of Peru in response to the Inter-American Commission concerning the conditions in which María Elena Loayza-Tamayo was being detained.
4. The Commission's request of May 30, 1996 for provisional measures pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 24(1) of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), requesting from the Inter-American Court “the ending of the solitary confinement and incommunicado detention imposed on María Elena Loayza-Tamayo on April 9, 1996 and that she be returned to Pavilion 'A' of the Chorrillos Women's Maximum Security Penitentiary in the same conditions in which she had been held prior to her transfer.” The Commission based its request on the fact that María Elena Loayza-Tamayo was “confined in a tiny cell for twenty-three and a half (23.5) hours a day for one year.”
5. In exercise of the powers conferred on him by Article 24(4) of the Rules of Procedure, the President of the Court (hereinafter “the President”) issued an Order on June 12, 1996 in which he decided:
 1. To request that the Government of the Republic of Peru adopt forthwith such measures as are necessary to effectively ensure the physical, psychological and moral integrity of Ms. María

Elena Loayza-Tamayo, so that any provisional measures that the Inter-American Court may take can have the requisite effect.

2. To request that the Government of the Republic of Peru submit to the President of the Court, not later than June 25, 1996, a report on the measures taken so that they may be brought to the attention of the Court at its next session scheduled for June 26 to July 3, 1996.

3. To submit this Order for the Court's consideration and pertinent effects during its next session.

That Order of the President was based on the following considerations:

5. That in the instant case, which has been submitted for the consideration of the Tribunal, the Inter-American Commission asks the Court to request Peru, as provisional measures, "to bring to an end the solitary confinement and incommunicado detention imposed on María Elena Loayza-Tamayo on April 9, 1996 and return her to Pavilion 'A'"

6. That the Government has maintained that on the basis of Decree Law 25745, María Elena Loayza-Tamayo, sentenced to 20 years' imprisonment "for the crime of terrorism against the State", must complete her sentence "at a maximum security prison in continuous solitary confinement during the first year of her detention, to be followed by compulsory labor for the remainder of her term until she is released".

7. That by the terms of Article 24(4) of the Rules of Procedure, the President is entitled to order urgent measures only; it is therefore for the Court at its next session to decide on the appropriateness of the provisional measures sought by the Commission, since it is proper that the government concerned be heard before such measures can be granted.

6. The above-mentioned report from the Government received on June 24, 1996, stating that "at no time have the conditions of [María Elena Loayza-Tamayo's] imprisonment deteriorated", since her living conditions are the same as those of other prisoners.

7. The Commission's comments of July 1, 1996 on the aforementioned written communication from the Government, declaring that Ms. Loayza-Tamayo "has been subjected to a regime of incommunicado detention and deprived of daylight in a tiny cell ... for twenty-three and a half hours a day", conditions that "in themselves constitute cruel and inhumane treatment."

CONSIDERING:

1. That Peru has been a State Party to the American Convention since July 28, 1978 and that it accepted the compulsory jurisdiction of the Court on January 21, 1981.

2. That Article 63(2) of the Convention provides that the Court shall take the provisional measures it deems pertinent in matters it has under consideration in cases "of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons."

3. That in this regard, Article 24(1) of the Rules of Procedure in force provides that: [a]t any stage of the proceedings involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention."

4. That in the instant case, which has been submitted for the consideration of the Tribunal, the Inter-American Commission asks the Court to request Peru, as provisional measures, to “revoke the solitary confinement and incommunicado detention imposed on María Elena Loayza-Tamayo on April 9, 1996 and return her to Pavilion 'A'”

5. That the Government maintained in its response that pursuant to Decree Law 25475, María Elena Loayza-Tamayo, sentenced to 20 years' imprisonment “for the crime of terrorism against the State”, must complete her sentence “at a maximum security prison in continuous solitary confinement during the first year of her detention, to be followed by compulsory labor for the remainder of her term until she is released.” The Government further declares that “[t]he Honorable Commission's allegations ... that the conditions in which María Elena Loayza-Tamayo is being detained have deteriorated are false.”

6. That the Government also points out in its report of June 24, 1996 that María Elena Loayza-Tamayo is regularly visited by her next of kin and attorneys as stipulated in the legislation in force in Peru, and that claims that she is being held in a different (smaller) cell from those inhabited by other prisoners are false ... [and] that there is no danger to her physical, psychological or moral integrity ...

7. That the Court has examined the circumstances and facts that informed the Order of the President of the Court of June 12, 1996, and finds it to be consistent with the law and with the merits of the proceedings.

8. That the Commission's declaration, contained in its May 30, 1996 petition for provisional measures, to the effect that María Elena Loayza-Tamayo has been “confined in a tiny cell for twenty-three and a half (23.5) hours a day for one year” has not been refuted by the Government.

9. That from the reports submitted by the parties, the Court finds it difficult to determine the precise circumstances of the prison regime applied to María Elena Loayza-Tamayo. It therefore considers it is necessary to uphold the measures taken by the President, the purpose of which is to preserve her physical, psychological and moral integrity.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 63(2) of the American Convention of Human Rights and in exercise of the authority conferred on it by Articles 24 and 45 of the Rules of Procedure,

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of June 12, 1996.
2. To call once more upon the Government of the Republic of Peru to take, on behalf of Ms. María Elena Loayza-Tamayo, all provisional measures necessary for the effective safeguard of her physical, psychological and moral integrity.
3. To call upon the Government of Peru to continue to report every two months on the provisional measures taken.
4. To call upon the Inter-American Commission on Human Rights to submit to the Court its comments on that information not later than one month from the date of its receipt.