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Title/Style of Cause:	María Elena Loayza-Tamayo v. Peru
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Decided by:	President: Antonio A. Cancado Trindade
Dated:	13 December 2000
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## HAVING SEEN:

1. The brief of November 30, 2000 and its annexes, received on December 5, 2000 at the General Secretariat of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), where Ms. Michelangela Scalabrino, filed at the Court, on behalf of Ms. María Elena Loayza-Tamayo (hereinafter “Ms. Loayza-Tamayo”), in keeping with Article 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 25 of the Rules of Procedure of the Court (hereinafter “the Rules”), a request for provisional measures related to the Loayza-Tamayo Case with regards to Perú (hereinafter “Perú” or “the State”). In said document, Ms. Scalabrino requested the Court

[to] urgently adopt every provisional measure for the teacher María Elena Loayza-Tamayo, to recover the sum of money decided by the Court as a fair indemnification, together with fair interests in arrears, and all other material and moral damages related to the violations resulting from the failure of Peru to comply with the decision on indemnifications, that will allow her to leave the condition of misery she is now living in, to cease being a cuasi beggar and to begin enjoying a ‘dignified life’; [for her] to be able to develop a new (though limited) life project, beginning a new professional formation abroad that would be within her reach, while her situation of insecurity in Peru persists; [for her] to be able to take adequate care of her health; [and for her] to support directly and personally the needs of her children, after suffering the humiliation of having them under the care of the grandparents and aunts.

Ms. Scalabrino stated, moreover, that the provisional measures could

include, if necessary: accounts and/or sums of money that the Peruvian State has abroad or is about to receive from abroad (by other State Parties or Non-Parties to the Convention, as well as by International Organizations) [and that same] be made available for the victim until reaching the sum that Court would declare that the victim is entitled to; [additionally] that, in this case, the Honorable Court [...] decide that the victim and/or her attorneys will receive all the assistance and aid necessary to recover said amount wherever it is; [and] that the expenses and attorney’s fees ad hoc that may result from the necessary actions be included in said sum.

Ms. Scalabrino based her request for provisional measures on the following considerations:

- a) the Court keeps the competence to decide on this request, since the case is in execution of the Judgement of Indemnification, as a procedural phase, and also because the victim has the legitimacy to act before the Court for these purposes;
- b) the State still has not complied with the order of the Court to comply promptly with the Judgement of Indemnification of November 27, 1998 issued by said Court, in conformance with the Decision of said Court of November 17, 1999;
- c) that the situation of Ms. Loayza-Tamayo, who suffered serious disorders in her physical and psychic health during the term of her imprisonment, and as a result of the cruel, inhuman and degrading treatments to which she was subject, has worsened. Moreover, she is currently residing in the City of Santiago, Chile; she is not working, and she is receiving medical care supported by the non-government organization Fundación Ayuda Social de Iglesias Cristianas (hereinafter "FASIC");
- d) more than one year ago, Ms. Loayza-Tamayo does not receive continuous, adequate medical care, just occasional therapies provided by Chilean doctors when she can afford them and pay for medicines; thus, continuous medical care is necessary for her condition not to get worse, without a real possibility of restitutio integrum. FASIC and the Office of the United Nations in Santiago lack the adequate means to keep taking care of this case;
- e) due to her physical and psychic or emotional conditions, Ms. Loayza-Tamayo often has not been able to find and is not able to find a permanent job. She only finds occasional and precarious jobs, not adequate for her level of education, and her human and social potential, which do not allow her a dignified living and which worsen her situation of stress and feeling of discrimination, humiliations and frustration for the exile which she was forced to by her fear of losing her freedom in Perú. Her relatives cannot offer her any economic assistance, since they are taking care of her children;
- f) Perú did not comply with the items of resolution of the Judgement of Indemnification with respect to the children of the victim, her other relatives, and her attorney;
- g) Perú has the obligation of complying with the juridical duties imposed on it by the Pacto de San José de Costa Rica;
- h) the fair indemnification decided by the Court, although not eliminating the consequences suffered by Ms. Loayza-Tamayo, is the only opportunity for her to improve her living conditions, to take care of her health and prevent it from worsening. The credit that Ms. Loayza-Tamayo has with respect to Perú is not a normal credit, but the pretium doloris, a price that she already "paid" and continues paying in exile; and
- i) with regards to the right to life, Ms. Loayza-Tamayo's life project has been damaged, and her freedom recuperated with the Judgement of the Inter-American Court on the matter is "worth little for her" because the conduct of the State, to date, prevents her from having the minimum of a dignified life. Likewise, her right to health is seriously violated and diminished.

2. The brief of November 29, 2000, received on December 11, 2000 at the General Secretariat of the Court, where Ms. Carolina Loayza-Tamayo stated she "share[s] the legal representation of María Elena Loayza-Tamayo with Professors Michelangela Scalabrino and Hector Faúndez Ledezma, at the request of Ms. Loayza-Tamayo" and stated that she confirmed

“all and each of [the] terms” of the request to the Court for provisional measures on December 5, 2000 (*supra* Having Seen clause 1).

3. The Judgements issued by the Court on September 17, 1997 and November 27, 1998 on the merits of the case and on the indemnification, respectively, and its Decisions of March 8, 1998 on the interpretation of the judgment and November 17, 1999 on the execution of the judgment.

4. The letter of November 12, 2000 of the Inter-American Court, signed by all of the Judges, addressed to the Secretary General of the Organization of American States, where it was stated, *inter alia*, that compliance by the State “has particular effects in the case of Ms. Loayza-Tamayo who, according to truthful information received by the Court, is going through serious economic and health difficulties that could be palliated, at least in part, by the compliance of the respective judgement”. In said letter, the Court requested the Secretary General to submit the [...] communication “as soon as possible to the Permanent Council, and later, to the General Assembly of the Organization”.

#### CONSIDERING:

1. Perú is a State Party to the American Convention since July 28, 1978 and that it recognized the competence of the Court in January 21, 1981.

2. Article 63(2) of the American Convention stipulates that in cases of “extreme seriousness and urgency,” and when it is necessary to prevent irreparable harm to people,” the Court will adopt the provisional measures it deems relevant.

3. Under the terms of Article 25(1) and 25(4) of the Rules of the Court,

[a]t any stage of the proceeding, provided they are cases of extreme seriousness and urgency and when irreparable damage to people need to be prevented, the Court, by the powers invested upon it or at the request of one of the parties, shall be able to order the provisional measures it deems relevant, under Article 63(2) of the Convention.

[...]

[i]f the Court is not in session, the president, in consultation with the permanent commission and, if possible, with the other judges, will require the respective government to issue the necessary urgent orders to insure the effectiveness of the provisional measures the Court might then take in its next session.

4. From these provisions it is clear that the Court or, in turn, its President, may act pursuant to the law in cases of extreme seriousness and urgency in order to prevent irreparable harm to people. The Court has done this before (*cf.* Velásquez Rodríguez, Fairén Garbi and Solís Corrales, and Godínez Cruz Cases. Provisional Measures. Decision of the Inter-American Court of Human Rights of January 15, 1988. Series E No.1, fourth and fifth considering clauses). When the Court is not in session, its President has the authority to adopt urgent measures, pursuant to the law, in such cases of extreme seriousness and urgency in order to prevent irreparable harm to people, as it has done before (*cf.* Case of the Constitutional Court. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of April 7, 2000. Series E No. 2, fourth considering clause).

5. Article 1(1) of the Convention provides for the duty of States Party to respect the rights and freedoms recognized in this treaty and to guarantee their free and full exercise to all persons subject to its jurisdiction.

6. The Court is empowered to adopt provisional measures related to cases of extreme seriousness and urgency in order to prevent irreparable harm to people (Article 63(2) of the Convention). This implies, in the present case, with regards to the request contained under Having Seen clause 1, to look after the personal integrity of Ms. Loayza-Tamayo.

7. The information submitted in this case shows *prima facie* a threat to the integrity of Ms. Loayza-Tamayo. The standard of *prima facie* of a case and the application of the assumptions before the needs of protection, have led this Court to order provisional measures on several occasions (cf. *inter alia*, Ivcher Bronstein Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of November 23, 2000, fifth considering clause; Case of the Community of Paz de San José de Apartadó. Provisional Measures. Decision of the President of the Court of Human Rights of October 9, 2000, fourth considering clause; Case of the Haitians and Haitian-Origin Dominicans in the Dominican Republic. Provisional Measures. Decision of the Inter-American Court of Human Rights of August 18, 2000, fifth and ninth considering clauses; Case of the Constitutional Court. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of April 7, 2000. Series E No.2, seventh considering clause; Digna Ochoa and Plácido et al. Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of November 17, 1999. Series E No.2, fifth considering clause; Cesti Hurtado Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of June 3, 1999, Series E No. 2, fourth considering clause; James et al. Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of May 27, 1999. Series E No.2, eighth considering clause; Clemente Teherán Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of June 19, 1998. Series E No.2, fifth considering clause; Alvarez at al. Case. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of July 22, 1997. Series E No.2, fifth considering clause; Blake Case. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of August 16, 1995. Series E No.1, fourth considering clause; Carpio Nicolle Case. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of July 26, 1995. Series E No.1, fourth considering clause; Carpio Nicolle Case. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of June 4, 1995. Series E No.1, fifth considering clause; Caballero Delgado y Santana Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of December 7, 1994. Series E No.1, third considering clause; and Colotenango Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of June 22, 1994. Series E No.1, fifth considering clause).

8. In its jurisprudence, this Court has protected, by adopting provisional measures, witnesses that have rendered their statements to the Court (cf. *inter alia*, Bámaca Velásquez Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of August 29, 1998. Series E No.2; Bámaca Velásquez Case. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of June 30, 1998. Series E No.2; Blake Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of April 18, 1997. Series E No.2; Blake Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of September 22, 1995. Series E No.1; Caballero Delgado y Santana Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of December 7,

1994. Series E No.1; Velásquez Rodríguez, Fairén Garbi and Solís Corrales and Godínez Cruz Cases. Provisional Measures. Decision of the Inter-American Court of Human Rights of January 15, 1988. Series E No.1), with more reason justifies the adoption of provisional measures in case of a petitioner in a litigious case pending before the Court who asserts being fearful for his personal integrity (cf. Case of the Constitutional Court. Provisional Measures. Decision of the Inter-American Court of Human Rights of August 14, 2000, seventh and eighth considering clauses; and Case of the Constitutional Court. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of April 7, 2000, Series E No.2, eighth considering clause).

9. That, in this particular case, as it has been asserted by this Court, “it is the responsibility of the State to adopt security measures to protect all of the people who are subject to its jurisdiction; this duty becomes more evident in relation to those who are linked to processes before the supervising organs of the American Convention” (cf. Case of the Community of Paz de San José de Apartadó. Provisional Measures. Decision of the Inter-American Court of Human Rights of November 24, 2000, tenth considering clause; Case of the Community of Paz de San José de Apartadó. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of October 9, 2000, eighth considering clause; Case of the Haitians and Dominicans of Haitian Origin in the Dominican Republic. Provisional Measures. Decision of the Inter-American Court of Human Rights of August 18, 2000, eleventh considering clause; Case of the Constitutional Court. Provisional Measures. Decision of the Inter-American Court of Human Rights of August 14, 2000, ninth considering clause; Case of the Constitutional Court. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of April 7, 2000. Series E No.2, ninth considering clause; and Digna Ochoa y Plácido et al. Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of November 17, 1999. Series E No.2, seventh considering clause).

10. The purpose of the provisional measures, in the national juridical systems (internal procedural law) in general, is to preserve the rights of the parties in dispute, guaranteeing that the future merit decision would not be harmed by their actions *pendente lite*.

11. The purpose of the provisional measures, in International Law of Human Rights, goes beyond this, since, besides their essentially preventive nature, they effectively protect fundamental rights, as long as they seek to prevent irreparable harm to people.

12. This Presidency deems necessary for the State to ensure Ms. Loayza-Tamayo the security conditions necessary for her to return to her country without fearing consequences on her physical, psychic, and emotional integrity (cf. *inter alia*, Case of the Community of Paz de San José de Apartadó. Provisional Measures. Decision of the Inter-American Court of Human Rights of November 24, 2000, eighth considering clause and fifth and sixth of resolution clauses; Case of the Haitians and Haitian-Origin Dominicans in the Dominican Republic. Provisional Measures. Decision of the Inter-American Court of Human Rights of August 18, 2000, fourth resolution paragraph; Alvarez et al. Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of January 21, 1998. Series E No.2, fourth resolution paragraph; Giraldo Cardona Case. Provisional Measures. Decision of the Inter-American Court of Human Rights of February 5, 1997. Series E No. 2, fifth considering clause; Giraldo Cardona Case. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of October 28, 1996. Series E No.2, second resolution paragraph; and Colotenango Case, Provisional Measures. Decision of the Inter-American Court of Human Rights of June 22, 1994, second resolution paragraph).

13. Pursuant to Article 25(4) of the Rules, the President of the Court is authorized only to order measures that are necessary and urgent in order to guarantee the effectiveness of the provisional measures that the Court may adopt in its next session (cf. *inter alia*, Case of the Constitutional Court. Provisional Measures. Decision of the Inter-American Court of Human Rights of April 7, 2000. Series E No.2, thirteenth considering clause; Paniagua Morales et al. and Vázquez et al. Case. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of February 10, 1998. Series E No. 2, seventh considering clause; and Cesti Hurtado Case. Provisional Measures. Decision of the President of the Inter-American Court of Human Rights of July 29, 1997, Series E No.2, ninth considering clause).

14. In the present case, the Court has issued the merit decision of September 17, 1997 and the indemnification decision of November 27, 1998, and the Decision of March 8, 1998 on the interpretation of the judgement, and it keeps its jurisdiction for the purpose of supervising the execution of the Judgement (cf. *Loayza-Tamayo Case*. Decision of November 17, 1999. Execution of the Judgment. Series C No. 60).

NOW THEREFORE:

#### THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

based on Article 63(2) of the American Convention on Human Rights and in use of the attributions conferred upon him by Article 25(4) of its Rules of Procedure, after consulting with all judges in the Court,

DECIDES:

1. To require the State “to adopt, forthwith, the necessary measures to effectively guarantee Ms. María Elena Loayza-Tamayo her return to her country, as well as her physical, psychic, and moral integrity, so that the provisional measures that the Inter-American Court of Human Rights may order in her case have relevant effects”.
2. To require the State and the Inter-American Commission of Human Rights to report in detail, by January 12, 2001, on the situation of Ms. María Elena Loayza-Tamayo, so that the Inter-American Court of Human Rights makes a timely decision.
3. To require the State to submit to the Court, by January 12, 2001, a report on the measures taken by virtue of the resolution paragraph 1 of this decision in order to hear it during the next session and to continue informing on them every six weeks.
4. To require the Inter-American Commission on Human Rights to submit remarks to the reports submitted by the State, a thirty-day period after being notified.

Antônio A. Cançado Trindade  
President

Manuel E. Ventura-Robles  
Secretary

So ordered,

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Antônio A. Cançado Trindade  
President

Manuel E. Ventura-Robles  
Secretary