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TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
Lori Berenson -against- the Republic of Peru  
Case No. 11.876

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RENEWED AND SUPPLEMENTED

Emergency Motion

by Lori Berenson

for

A Summary And Final Judgment On The Merits  
To Prevent Irreparable Injury

Holding Peru To Be In Violation Of  
The American Convention On Human Rights

On The Basis Of Uncontested Facts  
And  
Prior Decisions Of This Court

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1. Lori Berenson, the original claimant and alleged victim, pursuant to Article 23.1 of this Court's Rules of Procedure, again urgently requests this Court to enter summary and final judgment against Peru without unnecessary and harmful delay, or formality, supplements her motion on the basis of the new judicial developments hereinafter described, principally the Sentencia del Tribunal Constitucional, rendered on January 3, 2003, Marcelino Tineo Silva y Mas de 5000 Ciudadanos, Exp. No. 010-220-A1/TC, and respectfully states as follows in support of this emergency motion.

2. Undisputed facts in the record of this case establish Peru's responsibility for the multiple violations of the American



0000592

Convention on Human Rights presented in this proceeding. No fact essential to prove Peru's violation of the American Convention on Human Rights is in dispute.

3. The principles of law controlling this case have been clearly decided by the Court in cases in which Peru was a party and in international jurisprudence. The several violations of the American Convention on Human Rights presented in this proceeding can be decided on the basis of undisputed facts and settled law without delay.

4. The principal violations of the American Convention on Human Rights in the proceedings against Lori Berenson are:

4.1 The failure of Peru to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms as required by Article 1.1 of the Convention, and to undertake to adopt, in accordance with its constitutional processes and the provisions of the Convention, legislative or other measures which are necessary to give effect to those rights and freedoms as required by Article 2 of the Convention. Years have passed since Peru's obligations under the Convention were adjudicated by this Court during which it has failed to fulfill its commitment to conform its laws to the Convention. Loayza Tamayo Case, Judgment of September 17, 1997, Series C. No. 33; Loayza Tamayo Case, Judgment on Reparations, November 27, 1998, Series C. No. 42, Castillo Petruzzi et al Case, Judgment of May 30, 1999, Series C. No. 52.



0000593

4.2 Lori Berenson was tried for treason against the homeland and convicted before the military courts of Peru in 1995-96 of violating the unlawful 1992 Fujimori era Decree-Law 25,659. The conviction violates the right to a fair trial under Article 8 of the American Convention on Human Rights in that, among other things, as this Court held with respect to such a military trial in Castillo Petruzzi at al Case, supra, the right to a competent, independent and impartial Tribunal under Article 8(1), see paras. 132-140, see also para. 161; the right to prior notification of charges and adequate time and means to prepare a defense under Article 8(2)(b) and (c), paras. 141-142; the right to assistance of counsel and communication with counsel under Article 8(2)(d), paras. 146, 148-149; the right to examine witnesses under Article 8(2)(f), paras. 153-156; the right to appeal the judgment to a higher court under Article 8(2)(h), paras. 161-162; the right to public proceedings under Article 8(5), paras. 172-173; see also the violation of Article 8(1) in Cantoral Benavides Case, Judgment of August 18, 2000; Series C. No. 69, paras. 112-114.

4.3 In August 2000, Lori Berenson was acquitted of treason by the Supreme Council of Military Justice of Peru on her motion for special review which held the prosecution had failed to prove an essential element of the crime. An accusation was then filed against her on the same cause relying on the same evidence presented in the military proceedings in the regular criminal courts of Peru charging her with violation of the unlawful 1992



0000594

Decree-Law 25,475 a decree inextricably intertwined with Decree-Law 25,659, and she was convicted in a new unlawful trial in 2001. The same Public Prosecutor, Mario Cavagnaro, represented Peru throughout the military and regular court proceedings. The new trial and conviction of Lori Berenson in the regular courts of Peru began on August 28, 2000, nearly three years after the September 17, 1997 judgment of this Court in the Loayza Tamayo case, and months after the May 30, 1999 judgment in the Castillo Petruzzi case. Peru was a party in both of these cases which established the *per se* violation of Decree-Law 24,475 under which Peru proceeded against Lori Berenson. Peru continued until January 3, 2003 to prosecute civilians and others under Decree-Law 25,659 and Decree-Law 25,475. The new trial and conviction violates the right heretofore established by this Court to a fair trial under Article 8 of the American Convention on Human Rights in that, among other things, evidence gathered in the military jurisdiction in violation of the American Convention on Human Rights was the impermissible basis of the conviction and the entire proceeding in the regular court was inextricably intertwined with the unlawful proceedings in the military courts, the charges and trial took place under Decree-Law No. 25,475 which this Court has repeatedly held to be violative of the American Convention on Human Rights, see e.g. the Castillo Petruzzi Case, *supra*, para. 207, and Loayza Tamayo Case, *supra*, para. 61, and in disregard of this Court's repeated directions to the State to take measures to bring these laws into conformity



0000595

with the Convention, see the Castillo Petruzzi Case, supra, para. 222. In the Loayza Tamayo Case, Judgment on Reparations, November 27, 1998, Series C. No. 42, this Court ruled unanimously in operative paragraph 5, following para. 192:

"That the State of Peru shall adopt the internal legal measures necessary to adapt Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention of Human Rights."

Subsequently, as appears in this Court's Order of November 17, 1999, Loayzo Tamayo Case, Compliance with Judgment, Series C. No. 60, Peru charged this Court with "radical incompetence" in issuing the order in paragraph 5, quoted supra, see para. 12(a), which this Court rejected holding that Peru "has a duty to promptly comply with the November 27, 1998 Judgment on Reparations," see first decretal paragraph.

4.4 Lori Berenson has been subjected to a new trial following acquittal by a nonappealable judgment, in violation of the right not to be subjected to a new trial for the same cause under such circumstances recognized by Article 3(4) of the American Convention on Human Rights as this Court held in Loayza Tamayo Case, Judgment of September 17, 1997, Series C. No. 33, supra, paras. 67, 76-77.

4.5 Lori Berenson, while unlawfully incarcerated by Peru was subjected to inhumane punishment which has seriously and permanently injured her health in violation of the right to humane treatment under Article 5 of the American Convention on



0000596

Human Rights as this Court has held in cases of similar inhumane treatment, see Loayza Tamayo Case, Judgment of September 17, 1997 supra, paras. 57-58; Castillo Petruzzi case, supra, para. 198; Velasquez Rodriguez Case, Judgment of July 29, 1988, Series C. No. 4, para. 156; Godinez Cruz Case, Judgment of January 20, 1989, Series C. No. 5, para. 164; Fairen Garbi and Solis Corrales Case, Judgment of March 15, 1989, Series C. No. 6, para. 149; Suarez Rosero Case, Judgment of November 12, 1997, Series C. No. 35, para. 90-92.

5. As previously stated, on January 3, 2003, the Tribunal Constitutional of Peru published its Sentencia in the case of Marcelino Tineo Silva y Mas de 5000 Ciudadanos in which it reviewed, strictly on issues of law without trial or evidentiary hearing or the taking of evidence or any proceedings in a lower court, claims that Decretos Leyes Nos. 25475, 25659, 25708 and 25880 promulgated by the Fujimori Gobierno de Emergencia and Reconstrucion Nacional violated the Constitution of Peru and international treaties. The sentencia held Decreto Ley No. 25659 to be invalid and upheld with some criticism Decretos Leyes Nos. 25475, 25708 and 25880. Decretos Leyes Nos. 25708 and 25880 are not at issue in this proceeding and are therefore not addressed. The sentencia is in direct conflict with prior decisions of this Court addressing Decreto Ley 25475 under which Lori Berenson was convicted in her second trial. There is therefore a direct conflict between the decisions of this Court holding Decreto Ley 25,475 to violate the American Convention on Human Rights and the



0000597

Sentencia of the Tribunal Constitutional in the Tineo Silva case. The conflict between the decisions of this Court and the Tribunal Constitution of Peru presents questions of law which do not require evidentiary hearings, but do require immediate resolution. The Tribunal Constitutional decided the Tineo Silva case without a trial, or evidentiary hearing. We ask this Court to the same.

6. Peru plans to initiate new trials under Decreto Ley 25475 of persons convicted and currently imprisoned under Decreto Ley 25659 which was held unconstitutional by its Tribunal Constitutional. To permit it to re-litigate decided issues in this Court will result in lengthy and unnecessary delays in these and other cases and further violations of the rights of Lori Berenson and others facing unlawful prosecutions at this time, undermining the protection of human rights in Peru, continuing the illegality of its judicial proceedings and impairing the effectiveness of this Court. The sentencia of the Tribunal Constitutional establishes and controls the position of Peru and does not require elaboration by its advocates.

7. Only a prompt decision by the Court in this case can prevent irreparable injury to the many accused persons in Peru undergoing and facing trials for violations of Terrorism decrees unlawfully promulgated by the Fujimori government in 1992 which have been repeatedly held to violate the American Convention on Human Rights. One of the judges of the Tribunal Constitutional who decided the Tineo Silva case, Sra Delia Revoredo Marsano was



0000598

quoted in Correa, a major newspaper in Lima on January 5, 2003 to have said:

"...que la resolution del TC ayude al Estado peruana en el caso Lori Berenson y que a partir de esta, la CIDH manifieste su acuerdo con la legislation nacional."

8. The decision in this case should be scheduled as an urgent matter, or on a special docket reserved for cases that do not require evidentiary hearings and can be decided as a matter of law, or that directly affect the rights of many other prisoners and accused persons, or where delay may endanger the life or health of an alleged victim. While it is generally salutary for this Court to consider where possible cases in the order in which they are filed, the extraordinary situation here presented threatening legal injury to hundreds if not thousands of prisoners held in violation of this Court's prior judgments, the prolonged tensions between this Court and Peru, greater disruption to the judiciary of Peru, the violations of rights of accused persons to speedy trials which will result from delay fully justify a departure from such practice in the interests of justice that is surely within this Court's discretion. Nothing in the Statute governing this Court precludes this Court, in the exercise of the power over its procedures that Article 25 of the Statute confers upon it, from taking these steps.

9. For the foregoing reasons it is requested that the Court act now to enforce its prior decisions, protect the purposes of the American Convention on Human Rights, avoid the procedural chaos and injustice caused by delay for all parties,



0000599


and protect the lives and rights of persons presently facing  
proceedings in Peru from further violations of settled  
international law.

January 6<sup>th</sup>, 2003


Respectfully submitted,



Ramsey Clark



Lawrence W. Schilling  
Thomas H. Nooter  
Jose Luis Sandoval Quesada



Attorneys for Lori Berenson