

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 8, 1990**

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
IN THE MATTER OF PERÚ**

BUSTÍOS - ROJAS CASE

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

WHEREAS:

1. The petition filed May 10, 1990 with the Inter-American Commission on Human Rights by the Committee to Protect Journalists, a non-governmental organization, concerning the assault on journalists HUGO BUSTÍOS-SAAVEDRA and EDUARDO ROJAS-ARCE, at the entrance to the city of Erapata, Department of Ayacucho, Perú on November 24, 1988;

According to the petition, in the assault mentioned above, BUSTÍOS-SAAVEDRA was killed and ROJAS-ARCE was wounded. The journalists had received threats from military personnel, and eyewitnesses noticed the arrival of soldiers at a nearby house moments before the assault;

After the assault, death threats were made against the wife of the victim and one of the witnesses. Another witness, ALEJANDRO ORTIZ-SERNA, was killed along with two other people, even though he requested a guarantee of safety from the Attorney General. Until now, the Provincial District Attorney's office neither identified those responsible for the assault nor initiated criminal proceedings. Among the reasons for such inaction given in the claim was the lack of cooperation in the investigation on the part of military authorities;

2. On May 16, 1990, the Inter-American Commission on Human Rights issued Resolution N° 2/90 in which it requested from the Government of the Republic of Perú

the adoption of precautionary measures to protect the life and personal integrity of journalist EDUARDO ROJAS-ARCE, of MARGARITA PATIÑO, widow of the assassinated journalist HUGO BUSTÍOS-SAAVEDRA, and of the witnesses in the case, especially ARTEMIO PACHECO-AGUADO, TEODOSIO GÁLVEZ-PORRAS, AURELIA ONOFRE-ANAYA, FLORINDA MOROTE-CARTAGENA, and PAULINA ESCALANTE.

This resolution was received in the Secretariat of the Court on May 30 together with the respective documentation;

3. In the same resolution, the Commission also resolved to "*address itself to the Inter-American Court of Human Rights to request precautionary provisional measures regarding the above-mentioned individuals, for which purpose it will send the requisite background information about the instant situation;*"

4. The President of the Inter-American Court of Human Rights, basing himself on Article 63(2) of the American Convention on Human Rights and on the authority conferred on him by Article 23(4) of the Rules of Procedure, after consulting with the Permanent Commission, issued on June 5, 1990 an Order whose dispositive part states:

1. To enjoin the Government of Perú to adopt without delay whatever measures are deemed necessary to protect the right to life and the personal safety of EDUARDO ROJAS-ARCE, of MARGARITA PATIÑO, and of the witnesses to the murder of HUGO BUSTÍOS-SAAVEDRA, in particular ARTEMIO PACHECO-AGUADO, TEODOSIO GÁLVEZ-PORRAS, AURELIA ONOFRE-ANAYA, FLORINDA MOROTE-CARTAGENA, and PAULINA ESCALANTE, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention.

2. To convene a session of the Inter-American Court of Human Rights from August 6 to 10, 1990, at its seat in San José, Costa Rica, in order to consider the request for provisional measures submitted by the Commission and the instant order.

3. To request the Government of Perú and the Inter-American Commission on Human Rights to send representatives to appear at a public hearing to consider the instant matter, to be held at the seat of the Court on August 7, 1990, at 10:00 a.m.

5. This Order was delivered on June 5, 1990 to the Government of Perú in Asunción, Paraguay, in the person of His Excellency Mr. Alfonso Rivero Monsalve, Vice Minister of Foreign Relations, and to Doctor Leo Valladares, President of the Inter-American Commission on Human Rights;

6. On July 23, 1990 the *Charge d'Affaires ad interim* of Perú in San José, Costa Rica filed a note with the President of the Court requesting the postponement of the hearing because of the lack of time given the new Peruvian Government to prepare an adequate presentation for the Court. In that note, the Representative of Perú asserted that "*the necessary precautionary measures have already been adopted for the protection of the individuals who have been threatened because of their involvement with the Bustíos case.*"

The President of the Court, in consultation with its Permanent Commission, decided on July 26, 1990 to deny the request for an extension because of the urgent nature of the requested provisional measures;

7. On August 7, 1990 a public hearing was held at the seat of the Court at which Messrs. Leo Valladares and Juan Méndez, representing the Inter-American Commission on Human Rights, and Embassador Antonio Belaúnde-Moreyra, representing the Government of Perú, appeared;

8. In the hearing, the representatives of the Inter-American Commission on Human Rights reiterated the events described in their request for provisional measures and expounded the juridical principles under which the Court is competent to grant them. Thus, they requested that the Court ratify and confirm the Order of June 5, 1990 of their President and that furthermore it adopt other concrete measures.

The representatives of the Commission declared that the only notice they had that the Government of Perú had complied with the Order of June 5, 1990 was a summons, by radio, calling upon the threatened persons to appear at a military installation in order to coordinate the provisional measures. The Commission considers that this step was intimidatory in nature and hence did not constitute a

protective measure;

9. The Representative of the Government of Perú explained the actual situation existing in the Andean zone and the regular attacks by guerrilla groups that have resulted in a considerable number of victims and costly material damages. Furthermore, he pointed out the problems his Government faces in the Andean zone in identifying the individuals who, according to the Inter-American Commission, have been threatened. The problem is compounded by the fact that it involves a region in which not all inhabitants speak Spanish. Finally, he emphasized the decision of the new Government of his country to respect human rights and in support of that proposition quoted statements made by President Fujimori.

In response to questions by the judges of the Court, the Representative of Perú declared that his Government, in principle, did not have any objections to the statement of the facts and the law provided by the Inter-American Commission. He also indicated that he did not have any knowledge of the measures that Perú had adopted to comply with the Order of June 5, 1990 of the President of the Court and recognized that the previous government of his country had been "somewhat negligent" in this regard. Finally, he affirmed that his government was disposed to respect the provisional measures the Court might adopt;

CONSIDERING THAT:

1. Perú is a State Party to the American Convention on Human Rights whose Article 1(1) indicates the obligation that the States Parties have to respect the rights and freedoms recognized in this treaty and to guarantee their free and full exercise to all persons subject to their jurisdiction;

2. On January 21, 1981 Perú deposited in the Secretariat General of the OAS the instrument by which it recognized the jurisdiction of this Court, pursuant to Article 62 of the Convention;

3. Article 63(2) of the Convention provides that:

In cases of extreme gravity an urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

4. Perú is obligated in all cases to preserve the life and integrity of those people whose rights might be threatened;

5. After more than two months have elapsed since they were notified of the provisional measures adopted by the President of the Court in its Order of June 5, 1990, the Representative of Perú could not indicate in the hearing whether his Government had complied with said measures and if so, the manner in which this had been done;

6. The adoption of the provisional measures indicated in the above-mentioned Order continues to be necessary;

7. These measures should be adopted immediately and their effective application should be verifiable by the Court at any time.

THEREFORE:**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in reliance on the powers conferred on it by Article 63(2) of the American Convention on Human Rights,

RESOLVES:

1. To confirm and ratify the Order of the President of June 5, 1990.
2. To give the Government of Perú a period of 30 days from the date of this Order to comply with the requirements of number 1 of the Order of June 5, 1990 and to inform the President of the Court in writing of the measures adopted.
3. To require the Inter-American Commission on Human Rights to send to the Court all information at its disposal regarding Perú's compliance with this Order.
4. To authorize the President, in consultation with the Permanent Commission, to adopt any additional provisional measures it considers necessary to ensure the faithful fulfillment of this Order or any other measures it considers necessary to take in case of a failure to comply.
5. To entrust the Permanent Commission of the Court, as a special commission, to verify the execution of the instant Order and to inform the Court of any matter relating to this Order.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this 8th day of August, 1990.

Héctor Fix-Zamudio
President

Orlando Tovar-Tamayo

Thomas Buergenthal

Rafael Nieto-Navia

Policarpo Callejas-Bonilla

Sonia Picado-Sotela

Julio A. Barberis

Manuel E. Ventura-Robles
Secretary