

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 6, 2003***

**EXPANSION OF THE PROVISIONAL MEASURES
IN THE MATTER OF THE STATE OF GUATEMALA**

HELEN MACK CHANG *ET AL.*

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the President") of August 14, 2002, in which he decided:

1. To order the State to adopt without delay whatever measures are required to protect the life and safety of Helen Mack Chang and of the members of the Myrna Mack Foundation (FMM).

2. To order the State to allow the applicants to take part in planning and implementing the measures and, in general, to keep them informed of progress regarding the measures ordered by the Inter-American Court of Human Rights.

3. To order the State to investigate the facts stated in the complaint that gave rise to these measures with the aim of discovering and punishing those responsible.

4. To order the State to report to the Inter-American Court of Human Rights on the measures adopted to comply with this Order no later than August 22, 2002.

5. To order the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights any observations it deems appropriate, within one week of receiving the report submitted by the State.

2. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of August 26, 2002, in which it decided:

1. To ratify the Order of the President of the Inter-American Court of August 14, 2002, to its full extent.

2. To order the State to adopt forthwith, all necessary measures to protect the life and safety of Helen Mack Chang, Viviana Salvatierra, América Morales Ruiz, Luis Roberto Romero Rivera and of the other members of the Myrna Mack Foundation.

3. To order the State to allow the applicants to participate in planning and implementing the measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.

* Judge Roux Rengifo advised the Court that, owing to circumstances beyond his control, he would be unable to attend the fifty-ninth regular session of the Court and, therefore, would not take part in the deliberation, decision and signature of this Order.

4. To order the State to investigate the facts that were reported and which gave rise to these measures, with the aim of discovering and punishing those responsible.
 5. To order the State to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the representatives of the alleged victims to submit their observations on the respective reports within four weeks of receiving them, and to order the Inter-American Commission on Human Rights to submit its observations on the said reports within six weeks of receiving them.
3. The Order of the Court of February 21, 2003, in which it decided:
1. To ratify the Orders of the President of the Inter-American Court of Human Rights and of the Inter-American Court of Human Rights of August 14 and 26, 2002, respectively.
 2. To call upon the State to maintain the necessary measures to protect the life and safety of Helen Mack Chang, Viviana Salvatierra, América Morales Ruiz, Luis Roberto Romero Rivera, and the other members of the Myrna Mack Foundation.
 3. To call upon the State to expand forthwith all necessary measures to protect the life and safety of the next of kin of Myrna Mack Chang: Zoila Esperanza Chang Lau (mother), Marco Antonio Mack Chang (brother), Freddy Mack Chang (brother), Vivian Mack Chang (sister), Ronnie Mack Apuy (cousin), Lucrecia Hernández Mack (daughter), and the latter's children.
 4. To call upon the State to extend forthwith all necessary measures to protect the life and safety of Iduvina Hernández.
 5. To call upon the State to plan and implement the provisional measures together with the beneficiaries of these measures or their representatives and, in general, to keep them informed of progress in the measures ordered by the Inter-American Court of Human Rights.
 6. To call upon the State to report to the Inter-American Court of Human Rights regarding the provisional measures it has adopted in compliance with this order, within 15 days of receiving the corresponding notification.
 7. To call upon the representatives of the alleged victim's next of kin to submit their comments on the State's report within one week of receiving it, and on the Inter-American Commission on Human Rights to present its comments within two weeks of notification of the State's report.
 8. To call upon the State, following its first communication (*supra* sixth operative paragraph), to continue reporting every two months to the Inter-American Court of Human Rights about the provisional measures it has adopted, and to call upon the representatives of the alleged victim's next of kin to submit their comments on these reports by the State within four weeks of receiving them, and upon the Inter-American Commission on Human Rights to present its comments within six weeks of receiving notification of the respective State reports.
4. The communication of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of April 17, 2003, in which it submitted to the Inter-American Court, in accordance with Articles

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 of Procedure"), a request for expansion of the provisional measures ordered by the Court in favor of "Helen Mack Chang *et al.*", in order to protect Jorge Guillermo Lemus Alvarado, "a witness in the case, which is being heard before the domestic courts, concerning the assassination of Myrna Mack Chang," and his next of kin.

In this communication, the Commission indicated that Jorge Guillermo Lemus Alvarado "was being subjected to a series of grave acts of harassment and aggression by agents of the State of Guatemala" and based its request on the following facts:

a) In November 2002, Jorge Guillermo Lemus Alvarado was driving his vehicle, with his family, and was followed by four unknown persons, "of military aspect", who were riding in a white, dual-cabin pickup truck. During the course of his route, which started in seventeenth street between third and fourth avenues in Zone 1, Guatemala City, the vehicle following him tried to pass him and crash into him several times. Consequently, Mr. Lemus made his family abandon the car, telling them to take refuge in a commercial center, and then continued on towards sixth avenue, "while the hostile vehicle continued harassing him." Finally, when he reached nineteenth street, he stopped his car, got out rapidly, and used his cellular telephone to call the offices of the United Nations Verification Mission in Guatemala (MINUGUA), so that the vehicle that was following him withdrew. A similar persecution took place some days later from the area of Zone 13 of the city to the center and, on that occasion, Jorge Guillermo Lemus Alvarado and his family chose to seek protection in the offices of the "Prensa Libre" newspaper;

b) On April 4, 2003, a gray pickup truck ran into the vehicle driven by Jorge Guillermo Lemus Alvarado; this made him lose control of the vehicle, crash into a wall and lose consciousness. When he came round, two motorized policemen dragged him violently out of the car. Then, a pickup truck of the National Civil Police arrived and a tow-truck, which took his car. Subsequently, he was taken to the Santa Elena National Hospital, in Santa Cruz del Quiché, where he received medical care and was hospitalized. While he was in hospital, the police allocated a guard to him. On April 5, 2003, a lawyer, whose last name was Cifuentes, offered his services at the request of a man whose last names were Gildardo Lemus, who Jorge Guillermo Lemus Alvarado does not know. Mr. Lemus Alvarado was condemned by the Magistrate of Santa Cruz de El Quiché to pay a fine of 500.00 quetzales, for the accident he suffered; and

c) On April 11, 2003, when Jorge Guillermo Lemus Alvarado was walking on sixteenth street, after leaving his children's house in Zone 1, a police patrol stopped suddenly and two members of the National Civil Police got out, ran towards him, and detained him. The police ordered him to place himself against a wall; they searched him illegally; they threw his belongings in the street, and they hit him while he asked them to explain what was happening. The following day, he went to the Eleventh Police Station to lodge a complaint about these acts; there he realized that the persons who had attacked him recently were in one of the police cars which was on the premises, and that

this vehicle matched the characteristics of the one that was prowling suspiciously around his children's residence.

In the said communication, the Inter-American Commission requested the Court to order the State:

d) To provide forthwith effective safety measures to protect the life and safety of Jorge Guillermo Lemus Alvarado and his next of kin;

e) To coordinate the measures of protection described in subparagraph (a) *supra* with the persons to be protected, in order to ensure the effectiveness and pertinence of such measures; and

f) To adopt, as an essential element of the obligation to protect, effective measures to investigate the facts that gave rise to this expansion of the measures, in order to identify and punish those responsible for such acts in accordance with due process.

5. The documentation provided by the parties to the proceedings in *Myrna Mack Chang v. Guatemala*, being processed before this Court, which include the statement made by Jorge Guillermo Lemus Alvarado on November 16, 1995, before the Office of the Public Prosecutor of the Republic of Guatemala and the judgment delivered on October 3, 2002, by the Third Criminal Court for Drug-related Activities and Crimes against the Environment of the Republic of Guatemala.

6. The Order of the President of April 25, 2003, in which he decided:

1. To call upon the State to adopt forthwith all necessary measures to protect the life and safety of Jorge Guillermo Lemus Alvarado and his next of kin, so that the Court may examine the request for expansion of the provisional measures adopted in favor of Helen Mack Chang *et al.*

2. To call upon the State to carry out the planning and implementation of the required measures in collaboration with the beneficiaries of such measures or their representatives and, in general, to keep them informed about progress in the measures.

3. To call upon the State to investigate the facts reported that gave rise to these measures in order to identify and punish those responsible.

4. To call upon the State to inform the Inter-American Court of Human Rights of the measures adopted to comply with this Order, within 15 days of receiving the corresponding notification.

5. To call upon the beneficiaries of the measures or their representatives and upon the Inter-American Commission on Human Rights to present their comments on the State's report, within two weeks of receiving it.

6. To call upon the State, following its first communication (fourth operative paragraph), to continue informing the Inter-American Court of Human Rights about these measures in the respective report that it should present every two months on the measures ordered in favor of Helen Mack Chang *et al.*, and to call upon the beneficiaries or their representatives to continue submitting their comments on these reports of the State within four weeks of receiving them and upon the Inter-American Commission on Human Rights to present its comments within six weeks of receiving notification of the respective State reports.

7. The note of May 19, 2003, of the Secretariat of the Court in which it reiterated to the State that it must present the report, which should have been presented on May 10, 2003, in compliance with the fourth operative paragraph of the above-mentioned Order (*supra* sixth having seen paragraph).

8. The State's communication of May 26, 2003, in which it advised that "it is implementing the expansion of the safety measures requested to protect the life and safety of Jorge Guillermo Lemus Alvarado and his next of kin [and that] it will be reporting on the measures taken by the investigating body to identify the persons responsible for these facts."

CONSIDERING:

1. That the State ratified the American Convention on May 25, 1978, and, in accordance with Article 62 of the Convention, recognized the contentious jurisdiction of the Court on March 9, 1987.

2. That Article 63(2) of the American Convention establishes that, in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court shall adopt such provisional measures it deems pertinent in matters it has under consideration; and with respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That, in the terms of article 25(1) of the Rules of Procedure of the Court:

At any stage of the proceeding 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 Article 1(1) of the Convention stipulates the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction.

5. That the information submitted by the Inter-American Commission (*supra* fourth having seen paragraph) reveals *prima facie* the existence of a situation of extreme gravity and urgency for the life and safety of Jorge Guillermo Lemus Alvarado and his next of kin, which justifies the expansion of provisional measures to include them.

6. That it is the State's responsibility to adopt safety measures to protect all persons subject to its jurisdiction and, in particular, it must adopt such measures in favor of persons who are involved in internal proceedings that are part of the substance of a proceeding before the organs of protection of the American Convention.

7. That, in general, under domestic legal systems (internal procedural law), the purpose of provisional measure is to protect the rights of the parties in dispute,

ensuring that the judgment on merits is not prejudiced by their actions *pendente lite*.

8. That, under international human rights law, the purpose of urgent and provisional measures goes further, because, in addition to their essentially preventive nature, they protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.

9. That, moreover, the State has the obligation to investigate the facts that gave rise to this request for provisional measures in order to identify those responsible and impose the appropriate punishment.

10. That the Order of the President of the Court of April 25, 2003, accorded with the merits of the facts and circumstances and was decided subject to the law, all of which justified the adoption of urgent measures.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in exercise of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To ratify all the terms of the Order of the President of the Inter-American Court of Human Rights of April 25, 2003.

2. To call upon the State to expand forthwith the necessary measures to protect the life and safety of Jorge Guillermo Lemus Alvarado and his next of kin.

3. To call upon the State to maintain the necessary measures to protect the life and safety of Helen Mack Chang, Viviana Salvatierra, América Morales Ruiz, Luis Roberto Romero Rivera and the other members of the Myrna Mack Foundation; the next of kin of Myrna Mack Chang: Zoila Esperanza Chang Lau (mother), Marco Antonio Mack Chang (brother), Freddy Mack Chang (brother), Vivian Mack Chang (sister), Ronnie Mack Apuy (cousin), Lucrecia Hernández Mack (daughter) and the latter's children, and Iduvina Hernández.

4. To call upon the State to carry out the planning and implementation of the required measures in collaboration with the beneficiaries of such measures or their representatives and, in general, to keep them informed about progress in the measures ordered by the Inter-American Court of Human Rights.

5. To call upon the State to investigate the reported facts that gave rise to these measures in order to identify those responsible and punish them.

6. To call upon the State to report to the Inter-American Court of Human Rights regarding the provisional measures it has adopted in compliance with this Order, within fifteen days of receiving the corresponding notification.

7. To call upon the beneficiaries of the measures and on their representatives to present their comments on the State's report within one week of receiving it and on the Inter-American Commission on Human Rights to present its comments within two weeks of receiving notification of the State's report.

8. To call upon the State, following its first communication (sixth operative paragraph), to continue informing the Inter-American Court of Human Rights about these measures in the respective report which should be submitted every two months, and to call upon the beneficiaries or their representatives to continue presenting their comments on the said reports of the State within four weeks of receiving them and upon the Inter-American Commission on Human Rights to present its comments within six weeks of receiving notification of the respective State reports.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary