

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Myrna Mack Chang v. Guatemala
Doc. Type:	Order
Decided by:	President: Antonio A. Cancado Trindade; Judges: Alirio Abreu-Burelli; Maximo Pacheco-Gomez; Hernan Salgado-Pesantes; Oliver Jackman; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated:	26 August 2002
Citation:	Mack Chang v. Guatemala, Order (IACtHR, 26 Aug. 2002)
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HAVING SEEN:

1. The August 9, 2002 brief and its appendices, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) filed before the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and 74 of the Rules of Procedure of the Commission, a request for provisional measures in favor of Mrs. Helen Mack Chang and the members of the Myrna Mack Foundation (hereinafter “MMF” or “the Foundation”). In said brief, the Commission requests that the Court order the Republic of Guatemala (hereinafter “the Guatemalan State”, “the State” or “Guatemala”) to:
 - a. Immediately adopt effective security measures to ensure the life and personal safety of Helen Mack Chang and the members of the Myrna Mack Foundation.
 - b. Coordinate protection measures [...] with agreement by the persons to be protected, so as to ensure the effectiveness and relevance of said measures.
 - c. To adopt, as an essential component of the duty of protection, effective measures to investigate the facts that give rise to these measures, so as to identify and punish those responsible for said acts, in conformity with due process.
 - d. Report to the [...] Court within a brief term on concrete and effective measures adopted to protect Helen Mack Chang and [the] members of the Myrna Mack Foundation [...] and, subsequently, to report to the Honorable Court every two months on the status of the provisional measures.
2. The Commission based its request for provisional measures on the following facts:
 - a) that the Inter-American Commission “has verified with deep concern a sustained increase of threats and attacks against those who defend human rights in recent years [in Guatemala], that

have significantly intensified during [2002, and according to] information received by the Commission, to date none of those responsible for said attacks have been prosecuted;”

b) that during processing of the cases “for the extrajudicial execution of anthropologist Myrna Mack Chang, [...] there have been a number of threats and harassment[s] against witnesses, judges, prosecutors, police officers, attorneys, employees of the MMF, and next of kin and friends of [Myrna Mack Chang];”

c) that on June 7, 2002, Helen Mack Chang, president of the Myrna Mack Foundation, received a death threat from a group called “Guatemaltecos de verdad” [“True Guatemalans”], in which they sought to discredit those who defend human rights by stating that they are “enemies of the fatherland [...] who must pay for this with their blood [and] feel the taste of the steel of our bullets,” and the threat ended with the statement: “activist seen... activist dead;”

d) that given said threats, as well as information on an operation being planned to kill her, Helen Mack Chang accepted an invitation by the United States government to attend a course and left Guatemala on July 19, 2002;

e) that Helen Mack would return to Guatemala on August 10, 2002, to attend the oral debate of the trial against the accessories before the fact in the execution of her sister Myrna Mack Chang, for which she was summoned “unexpectedly by the judicial authorities for September 3;”

f) that on July 25, 2002, unknown persons, who refused to identify themselves with the guard of the condominium, attempted to enter Helen Mack’s home;

g) that the regular staff of the Myrna Mack Foundation have suffered a series of acts of harassment and threats in recent years, as well as recent acts of intimidation, given the impending aforementioned oral trial (supra 2.e);

h) that on July 19, 2002, Viviana Salvatierra was asked questions in an unusual manner by a taxi driver who was driving her from the Myrna Mack Foundation to her home, regarding aspects directly pertaining to Helen Mack and the MMF, among others, and

i) that on July 22, 2002, América Morales Ruiz, in charge of the Documentation Center of the MMF, was asked questions by Otto Chapeta, the taxi driver who was driving her from the Foundation to her home, regarding the cases being processed by that foundation and the Colonel Juan Valencia Osorio’s connection.

3. The additional statement by the Commission, in its request for provisional measures, that:

a) there is an obvious pattern of harassment and threats against persons who, due to their activities as judicial operators, expert witnesses, and next of kin of Myrna Mack, have participated in the legal proceedings to elucidate her death. This situation, that occurs shortly before the oral debate in the trial for the murder of Myrna Mack, demands that the protection mechanisms of the inter-American system be activated in a timely and effective manner;

b) the special vulnerability of those who defend human rights in Guatemala is especially grave in the case of Helen Mack Chang and the other members of the Myrna Mack Foundation;

c) the extreme gravity of the situation is evident because Helen Mack Chang’s life is in danger, she was insulted and intimidated by her aggressors, and she has obtained information on the existence of an operation planned against her; it is also obvious that this is an urgent situation in view of the imminent return of Helen Mack Chang to Guatemala, and

d) the dangerous situation also affects the other officials of the Myrna Mack Foundation, who “in their activities have not only denounced structural problems that affect the

administration of justice in Guatemala, but have specifically struggled to shred the cloak of impunity covering the extrajudicial execution of anthropologist Myrna Mack.”

4. The August 14, 2002 Order of the President of the Court, 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 (MMF).

2. To order the State to allow the applicants to participate in planning and implementation of the measures and that, in general, it 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 the instant 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 measures adopted to comply with the instant 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 whatever observations it deems appropriate, within one week of receiving the report submitted by the State,

5. The brief filed by the State of Guatemala on August 23, 2002, stating that on August 21, 2002 a meeting was held by government officials with Helen Mack Chang, among other persons, and an agreement was reached regarding implementation of the protection measures ordered by the Court, and also that:

1. The State shares the concern of the [...] Court, for which reason since the moment it received notice of the Order it began, without delay, to coordinate with the competent authorities the protection measures to safeguard the life and safety of Helen Beatriz Mack Chang and the members of the Foundation that she chairs.

2. The beneficiaries personally told the authorities how they wanted the protection measures to be implemented, and their effective application will be monitored together with them.

3. The request to investigate the facts that gave rise to the instant measures was forwarded to the Ministry of the Interior and to the National Civil Police.

[...]

6. The brief filed by the Inter-American Commission on August 26, 2002, in which it stated that on August 23 of that same year, Luis Roberto Romero Rivera, the attorney handling the Myrna Mack case, suffered a series of grave acts of harassment. Among them, the Commission mentioned two threatening phone calls, in one of which he was explicitly told to “stop telling or he would suffer the consequences,” as well as three gunshots against his home, five minutes after the second phone call mentioned above. The Inter-American Commission also stated that on August 21, 2002, it met with the officials of COPREDEH and the National Civil Police to put into effect the protection measures against Helen Mack Chang and other members of the Myrna Mack Foundation. The Commission stated that on that day it was clear that there is “mistrust of security forces, due to information being leaked and because groups operating out of them could be carrying out political acts of violence.”

CONSIDERING:

1. The State ratified the American Convention on May 25, 1978 and, pursuant to Article 62 of the Convention, it accepted contentious jurisdiction of the Court on March 9, 1987.
2. Article 63(2) of the American Convention provides that, in cases of “extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may, in matters it has under consideration, adopt the provisional measures it deems pertinent, and in cases not yet submitted to the Court, it may act at the request of the Commission.
3. Pursuant to the provisions of Article 25(1) of the Rules of Procedure of the Court, [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 such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.
[...]
4. Article 1(1) of the Convention states the duty of the States Party to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.
5. The background submitted by the Commission in its request (supra Having Seen 2 and 3) demonstrates prima facie the existence of a situation of extreme gravity and urgency regarding the lives and physical safety of Helen Mack Chang, Viviana Salvatierra and América Morales Ruiz, of Luis Roberto Romero Rivera and of the other members of the Myrna Mack Foundation.
6. The purpose of provisional measures, in International Human Rights Law, is to effectively protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons. Granting of provisional measures, due to their own juridical nature and object, does not prejudice on the merits of the case of anthropologist Myrna Mack, which is being processed in the Court against the Guatemalan State.
7. The State has the responsibility to adopt security measures to protect all persons under its jurisdiction, and this duty becomes even more evident regarding persons who are involved in proceedings before the protection bodies of the American Convention.
8. Guatemala also has an obligation to investigate the facts that gave rise to this request for provisional measures, with the aim of identifying those responsible and punishing them as appropriate.
9. The August 14, 2002 Order of the President of the Court was in accordance with the facts and circumstances and in accordance with the law, all of which justified adopting urgent measures.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

by virtue of the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To ratify the August 14, 2002 Order of the President of the Inter-American Court, to its full extent.
2. To order the State to adopt, forthwith, whatever measures are necessary to protect the life and safety of Helen Mack Chang, Viviana Salvatierra and América Morales Ruiz, of 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 implementation of measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.
4. To order the State to investigate the facts that were denounced and gave rise to the instant 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 file their observations and the respective reports within four weeks of the time they received them, and to order the Inter-American Commission on Human Rights to submit its observations to said reports within six weeks from the time they received them.

Antônio A. Cançado Trindade
President

Alirio Abreu-Burelli
Máximo Pacheco-Gómez
Hernán Salgado-Pesantes
Oliver Jackman
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary