

**Order of the
Inter-American Court of Human Rights
of January 26, 2009
Provisional Measures
regarding Guatemala
Case of Mack Chang *et al.***

HAVING SEEN:

1. The Order of the President of the Inter-American Human Rights Court (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") of August 14, 2002, whereby the Court adopted provisional measures in favor of Mrs. Helen Mack Chang, Viviana Salvatierra and América Morales Ruiz, Mr. Luis Roberto Romero Rivera and other members of the Myrna Mack Chang Foundation (hereinafter the "Myrna Mack Foundation" or "the Foundation").

2. The Order of the Court of August 26, 2002, whose provisions ratified the Order by the Court's President (hereinafter "the President") of August 14, 2002 and resolved to request the Republic of Guatemala (hereinafter "the State" or "Guatemala") to adopt, without further delay, any measures necessary to protect the life and integrity of Mrs. Helen Mack Chang, Viviana Salvatierra and América Morales Ruiz, Mr. Luis Roberto Romero Rivera and the other members of the Myrna Mack Chang Foundation and that it required the petitioners to participate in planning and implementing the measures and to keep them informed about any progress thereof.

3. The Order of the Court of February 21, 2003, whereby the Court ratified the Order of the President of August 14, 2002 and the Tribunal's Order of August 26, 2002, and required the State to maintain the measures regarding the beneficiaries and resolved, *inter alia*:

[...]

3. To require the State to amplify, without further delay, any necessary measures to protect the life and physical integrity of the relatives 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 her children.

4. To require the State to amplify, without further delay, any necessary measures to protect the life and physical integrity of Mrs. Iduvina Hernández.

5. To require the State to carry out the planning and implementation of the provisional measures in agreement with the beneficiaries of same or their representatives and that, in general terms, the State should keep them informed about the progress of the measures issued by the Inter-American Human Rights Court.

[...]

4. The Order of the President of April 25, 2003 whereby the measures to protect the life and physical integrity of Jorge Guillermo Lemus Alvarado and his relatives were amplified.

5. The Order of the Court of June 6, 2003 whereby the Order of the President of April 25, 2003 was ratified and the State was required to amplify, without further delay, the necessary measures to protect the life and physical integrity of Jorge Guillermo Lemus Alvarado and his relatives.

6. The State's reports of August 10 and 5, September 24 and November 18, 2003; January 27, February 19, March 12, June 4, September 22 and October 22, 2004; May 4, 2005, April 21 and September 7, 2006; February 21, October 12 and December 11, 2007; February 19 and February 21, May 6, July 3, August 14, 2008; and January 7, 2009.

7. The observations by the beneficiaries' representatives (hereinafter "the representatives") submitted on November 13, 2007; January 7, April 12, August 2, and November 17, 2004; September 29, 2006, March 20, and November 19, 2007; January 11, January 31, March 4, April 22, April 30, June 17, July 15 and September 12, 2008. The communication by the representatives on July 29, 2008 whereby the representatives informed that Mr. Ronald Chang Apuy, a beneficiary of the measures and a relative of Helen Mack Chang, had been allegedly a victim of an armed attack, and the observations of January 12, 2009.

8. The observations by the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") of November 14 and November 24, 2003; May 5, September 10 and November 11, 2004; July 22, 2005; October 23, 2006, April 5 and November 21, 2007; and February 15, April 22 and June 18, 2008.

9. The communications from the Secretariat of the Court (hereinafter "the Secretariat") of February 27, April 30, July 8, July 18 and November 17, 2008, whereby the Secretariat requested the representatives, on the basis of the President's instructions, to provide information about the present status and situation of the beneficiaries of the present provisional measures, to determine whether there are still cases of extreme gravity and urgency to avoid irreparable damage to the persons related to all the beneficiaries. Furthermore, the Commission was requested to submit the corresponding observations.

10. The Secretariat's communications, following the President's instructions, of April 29, May 8, June 11, June 19, July 8, July 18, August 1, August 14, September 18, October 16 and November 17, 2008, whereby the Secretariat requested the State to report on the present situation of each one of the beneficiaries of the measures, on the measures implemented and, particularly, on the alleged facts damaging Mr. Chang Apuy.

CONSIDERING:

1. That Guatemala ratified the American Convention on May 25, 1978 and, pursuant to Article 62 of such Convention, Guatemala recognized the contentious jurisdiction of the Inter-American Court on March 9, 1987.

2. That Article 63(2) of the American Convention sets forth that “in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons”, the Court shall adopt such provisional measures as it deems pertinent with respect to a case not yet submitted to the Court, acting at the request of the Commission.

3. That the provision set forth in Article 63(2) of the Convention establishes that it is compulsory for a State to adopt the provisional measures that this Tribunal orders since, following the basic law principle of the international responsibility of a State, supported by international jurisprudence, a State shall fulfill its obligations under an agreement in good faith (*pacta sunt servanda*).¹

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4. That in its various orders, the Court required the State to adopt, without further delay, any necessary measures to protect the life and integrity of the following persons: Helen Mack Chang (hereinafter “Helen Mack” or “Mrs. Mack Chang”), Viviana Salvatierra, América Ruiz, Luis Roberto Romero Rivera, as well as the other members of the Myrna Mack Foundation. Likewise, the Court amplified the measures in favor of the relatives of Myrna Mack Chang: Zoila Esperanza Chang Lau, Marco Antonio Mack Chang, Freddy Mack Chang, Vivian Mack Chang, Ronnie Mack Apuy (hereinafter “Ronald Chang Apuy”),² Lucrecia Hernández Mack and her children, Iduvina Hernández and Jorge Guillermo Lemus Alvarado and their relatives (*supra* Having Seen clauses 2, 3 and 5).

5. That in the Orders of the Court of August 26, 2002, and February 21 and June 6, 2003, the Tribunal required the State to carry out the planning and implementation of the measures ordered in agreement with the beneficiaries of same or with their representatives.

Regarding *Helen Mack, her relatives and other members of the Mack Foundation*.

6. That in relation to the adoption of measures in favor of Helen Mack and her relatives, as well as the other members of the Myrna Mack Foundation, in a brief of March 4, 2008, the representatives informed that the State had modified the protection measures “unilaterally”. The representatives specifically mentioned the physical protection security offered to Mrs. Mack Chang and her relatives; and the representatives also mentioned that the State withdrew the fixed and perimetral security post at the Mack Foundation headquarters.

7. That regarding the protection offered to Helen Mack and her relatives, the representatives indicated that until January 7, 2008 “the Secretariat of Administrative and Security Affairs” –SAAS- provided security to the Mack [Chang] family with two

¹ Cf. *Matter of James et al.* Provisional measures regarding Trinidad and Tobago. Order of the Court of June 14, 1998, Considering clause 6; *Matter of Lysias Fleury*. Provisional measures regarding Haiti. Order of the Court of November 25, 2008, Considering clause 5; and *Matter of “El Nacional” and “Así es la Noticia” Newspapers*. Provisional measures regarding Venezuela. Order of the Court of November 25, 2008, Considering clause 2.

² This Tribunal expresses that in several documents in this case Mr. Ronnie Mack Apuy appears under the name of Ronald Chang Apuy. This Order shall refer to Mr. Ronald Chang Apuy.

groups of three agents in 48 x 48 hour-shifts. Out of the three agents, two were assigned to the physical security of Helen Mack [Chang] and one agent protected the family residence". However, on April 21, 2008 the Secretariat of Administrative and Security Affairs informed Mrs. Mack Chang that it would stop providing that service, so the National Civil Police would offer that custody service. To that end, on April 23, 2008 Mrs. Mack Chang met with officials from the Coordinating Presidential Commission of the Executive's Policy on Human Rights (hereinafter "COPREDEH") and an official from the Provincial Government Ministry, who proposed the service of various security agents to protect Mrs. Mack Chang and her relatives. Nevertheless, the representatives indicated that such change was announced late, and the State had not provided them with enough information to determine the skill of the agents proposed. The representatives also pointed out that Helen Mack "is[was] being protected by security elements "provided" by people who had shown their concern for Mrs. Mack's life and physical integrity, while the residence of her family was fully unprotected".

8. That regarding the protection offered to the other members of the Myrna Mack Foundation, the representatives indicated that the Foundation was protected by the police in a fixed post in its facilities and by a perimetral protection in its surroundings but as from January 2008, the State unilaterally withdrew the security it was offering to the Foundation's headquarters. The representatives pointed out that at the meeting with COPREDEH and the Provincial Government Ministry on April 23, 2008, COPREDEH and the Ministry were engaged to start the process to select agents, but the representatives had not received any further information about such process.

9. That in the briefs of June 17 and July 15, 2008, the representatives informed the Court that on June 4, 2008 the representatives received a proposal by the State regarding a security team formed by six agents recently graduated from the National Civil Police Academy. The representatives added that the State established that the candidates would be subject to an interview and their files could be revised by the representatives, who agreed with the proposal and requested that such agents should be trained in protecting personalities and that a psychological profile was established. However, by the time of such communications the representatives had not received an answer about the implementation of the new protection measures. In spite of the above, the representatives informed that since a vehicle had been stolen from the Foundation's parking lot on May 27, 2008, the representatives requested the National Civil Police Station to set up a fixed security post at the Foundation as well as perimetral security in the residences of Mrs. Mayra Alarcón Alba, Executive Director of the Foundation, and Helen Mack.

10. That due to the above facts expressed by the representatives about the change in the implementation of the security measures in favor of Helen Mack and her relatives, as well as the members of the Foundation, in a brief of February 21, 2008 the State informed that COPREDEH had sent two briefs of an urgent nature to the Secretary for Administrative and Security Affairs in order to provide protection once again, according to the agreements reached between the beneficiaries and the State. Likewise, the Provincial Government Ministry requested that the fixed security post should be restored at the Myrna Mack Foundation headquarters. Later on, the State expressed that the Secretariat for Administrative and Security Affairs had informed the State that the protection provided had been modified "due to the restraints of personnel and above all due to the lack of legal basis"; therefore, in order to continue offering a security service to the beneficiary, the corresponding coordination would be made so that as from March 2008 the service was provided by the Provincial

Government Ministry, through the National Civil Police. Such Ministry pointed out that under the law the task of the Secretariat for Administrative and Security Affairs is to provide security to the President and Vice President of the Republic and their families and, exceptionally, to other officials under the law, but it was not the competent agency to implement the measures. Furthermore, the State informed that on February 11, 2008 the Provincial Government Ministry instructed the General Direction of the National Civil Police to re-establish the service offered to the Myrna Mack Foundation. Following the meeting between officials from the Foundation and the State on April 23, 2008, the State had provided the necessary information so that the representatives could choose four agents to provide security to Mrs. Mack Chang, her relatives and the Foundation facilities. Likewise, the State informed that on May 5, 2008 answering a claim filed by the Myrna Mack Foundation and the Inter-American Commission stating that security had been withdrawn on January 7, 2008, the COPREDEH had carried out some proceedings so that the national system in force to protect human rights advocates could ensure the protection of Mrs. Helen Mack.

11. That in its communication of August 14, 2008, the State indicated that at the meeting held on April 22, 2008 the Foundation expressed that "security should hereinafter involve: Helen Mack, her family, the Myrna Mack Foundation headquarters and its personnel, in order not to individualize the beneficiaries". Additionally, the State expressed that a team of 8 agents from the National Civil Police "had been set up according to the Foundation's specifications, and this had been agreed with the Provincial Government Ministry; following verbal information from the minister to the undersigned, and [that] COPREDEH [had] not received the information in briefing, [since] it was a direct agreement, and [that] the beneficiaries did not require it [should be] made public".

12. That the representatives affirmed in a brief of September 12, 2008 that the three police agents appointed to Mrs. Helen Mack and her family and the security offered to the Foundation and its personnel resulted from the direct negotiations made by the beneficiaries with the Provincial Government Ministry and the National Civil Police; therefore, the security offered to them "was not the result of any proceedings made by COPREDEH to implement provisional measures". Likewise, the representatives indicated that although the measures agreed on were never meant to replace the proceedings with COPREDEH, since they were urgent and strictly temporary measures, the beneficiaries requested the Court to maintain and formalize the security provided within the framework of provisional measures. Furthermore, the representatives indicated that at no time had they requested the State to individualize the beneficiaries of the measures and they did not know the origin of the State's affirmation about the fact that "the beneficiaries require that this is not made public". Lastly, the representatives informed that they were not protected by eight agents, as the State affirmed, but by five: three agents were appointed to Helen Mack and her family and two agents were for the Foundation.

13. That regarding the security of Helen Mack and her relatives, the Commission considered that it is essential that the State completes the adoption of the measures ordered by the Court (*supra* Having Seen clause 8). Likewise, as regards the security measures in favor of the members of the Myrna Mack Foundation, the Commission urged the State to inform the Court about the reasons for the lack of protection alleged by the representatives and requested the State to adopt the measures ordered.

14. That the Secretariat requested repeatedly that the representatives provide information about the present status and situation of the beneficiaries of the provisional measures in an individualized manner (*supra* Having Seen clause 9), if the extreme gravity and urgency persists in order to avoid irreparable damage to: *inter alia*: Helen Mack Chang and each one of her relatives, i.e.: Zolia Esperanza Chang Lau (mother), Marco Antonio Mack Chang (brother), Freddy Mack Chang (brother), Vivian Mack Chang (sister), Ronald Chang Apuy (cousin), Lucrecia Hernández Mack (daughter) and her children, as well as the other members of the Myrna Mack Foundation. On the basis of such requests the representatives have informed about the actions agreed on with the State in order to establish new ways to implement the measures (*supra* Considering clause 9). However, this Court notes that the representatives have not provided detailed and accurate information about the present situation of each one of said beneficiaries so far, as requested in the communications mentioned above (*supra* Having Seen clause 9).

15. That this Court considers that the State must use the most effective means in order to implement the protection measures ordered. In case the State considers it pertinent to make some changes in their application, the State shall explain the reasons for these changes and carry them out with the participation of the beneficiaries thereof.

16. That pursuant to the information provided by the parties, the Tribunal observes that, following the provisions set forth in the various Order of the Courts (*supra* Having Seen clauses 2, 3 and 5), the protection measures must be implemented in agreement with the beneficiaries and/or their representatives; therefore, any changes adopted by the State unilaterally, in principle, have raised concern in view of the risk situation that this may involve for the beneficiaries, and particularly for Mrs. Mack Chang and her relatives, as well as for the other members of the Mack Foundation. Due to the above, the Court reiterates that the State must inform about the implementation of same.

17. That it is essential that the representatives submit to the Court an updated evaluation on the situation of extreme gravity and urgency of each one of the beneficiaries of these measures, stating their arguments duly founded and including evidence, to establish why they consider that the measures ordered must be maintained in relation to Helen Mack Chang and each one of her relatives duly individualized (*supra* Considering clause 14), as well as the protection offered to the members of the Foundation. Likewise, the Inter-American Commission must make its observations to that end.

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Regarding Ronald Chang Apuy

18. That on July 29, 2008 the representatives informed that Mr. Ronald Chang Apuy, a relative of Mrs. Helen Mack Chang and a beneficiary of the provisional measures, "received three shots from a firearm while driving his vehicle in a sector of Zone 10 of Guatemala City", and that on the date of said communication Mr. Chang Apuy "was being operated on urgently in a hospital of this city". The representatives pointed out that they "did not know the motive of the fact, but they did not discard the possibility that the attack against the life of Mr. Ronald Chang Apuy was due to the work done by Mrs. Helen Mack and the Myrna Mack Foundation in favor of strengthening the rule of law".

19. That as regards the attack suffered by Mr. Chang Apuy, the State indicated in its report of August 14, 2008 that since the protection team was agreed on between the Myrna Chang Foundation and the Provincial Government Ministry, COPREDEH “could not answer why Mr. Ronald Chang Apuy did not have security at the time of the attack against his life on July 29, 2008.” Later on, in a brief of January 7, 2009, the State informed about the progress in the investigation regarding the attack to Mr. Chang Apuy. To that end, the State informed that “on the basis of the investigation (...) the homicide attack and theft suffered [by him] on July 29, 2008, possibly respond to petty crime not related to the *Myrna Mack Chang case*. However, the State continues paying attention to the security of Mrs. Helen Mack, her family and the staff of the [Myrna Mack Foundation]”. The State informed that the motive of the crime occurred after Mr. Chang Apuy withdrew cash from a bank; he was then approached by three armed individuals who, apart from shooting at him, took his belongings away. The investigation has identified two individuals who form part of a criminal gang operating in that area of the capital city; an action was brought against them for attempted homicide and first degree theft. Preventive detention was decided for one of them and capture of the second individual is still pending.

20. In a brief of September 12, 2008, the representatives expressed that the State had not indicated the present situation and the results of the investigation carried out about this attack in its report to the Court; this was evidence of the lack of knowledge about the progress of the investigation by COPREDEH. Later on, in a brief of January 12, 2009, the representatives pointed out that although the State informed that the Attorney General’s office had only identified two out of the three suspects in its report of January 7, 2009, the State did not express anything about the investigation lines or the actions taken by the Attorney General’s office to determine any alleged responsibility. The representatives considered it was necessary to know the results of the investigation since the Mack Chang family was afraid of retaliation, if this was a case of petty crime and there were suspects whose capture was pending. To that end, the representatives requested that the State provide information about the investigation as well as protection for Mr. Chang Apuy and the Mack Chang family.

21. That the Court considers that the representatives and the Commission must provide specific and updated information about the alleged facts against Ronald Chang Apuy on July 29, 2008, and about his present situation and the proceedings carried out about these facts; and that the State should provide a detailed report on the proceedings carried out about this matter and the observations it may deem pertinent about the observations made by the representatives and the Commission.

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Regarding Luis Roberto Romero Rivera, Jorge Guillermo Lemus Alvarado and his relatives

22. That regarding Mr. Luis Roberto Romero Rivera, the representatives initially informed that it had not been possible to locate him so the information about his situation was still pending. The Commission pointed out that it did not have any information to give an opinion about this matter. Later on, in a brief of July 15, 2008, the representatives informed that the beneficiary considered that the measures have been complied with satisfactorily and that at present the beneficiary is physically protected by security agents from the Personalities Protection Division (“DPP”), in “8 x

[7] shifts" (eight hours daily, [seven] days a week). They added that the beneficiary estimates that such provisional measures should be maintained in his favor "until the location of Mr. Juan Valencia Osorio, who is still at large for the assassination of Myrna Mack, is determined or until he is captured". In turn, in its communication of June 18, 2008, the Commission expressed that it did not have information allowing the Commission to give an opinion about Mr. Romero Rivera. The State indicated that, in relation to the security of Luis Roberto Romero Rivera, the Foundation had affirmed in a communication of July 15, 2008 sent to the Court that the security measures were being complied with satisfactorily.

23. That regarding beneficiary Luis Roberto Romero, the Court considers that the information provided by the parties shows that the implementation of the provisional measures has been carried out satisfactorily. Nevertheless, this Tribunal requires that the representatives and the Commission provide clear and accurate information evidencing a case of extreme gravity and urgency representing an imminent risk directly related to the facts giving rise to the measures, in order to assess the pertinence of maintaining the measures in favor of such beneficiary. In turn, the State is required to provide the information it may deem pertinent about this matter.

24. That regarding Mr. Jorge Guillermo Lemus Alvarado and each one of his relatives protected by the measures, the representatives have not given a specific and concrete opinion about the present situation of extreme gravity and urgency of such beneficiaries but the representatives have only reproduced the declarations by Mr. Lemus Alvarado. To that end, the representatives pointed out that in the briefs of November 25, 2005 and February 16, 2006, Mr. Lemus Alvarado expressed that he had been discriminated since PLAMAR (Action Plan to Modernize and Promote Agriculture at Risk), an agency of the Ministry of Agriculture and Livestock, had denied him a financing credit. On November 15, 2005, there was an attempt to kidnap his son, Jehú Israel Lemus Hernández; on that same day an order placed by Bansefor (Forestry Seed Bank) from INAB (National Woods Institute) for the seeds he produces had been cancelled. Likewise, Mr. Lemus Alvarado made reference to some alleged facts that occurred on February 1, 7, 12 and 13, 2006, among which are the following: a horse that belonged to his son was killed in his property; the back window of his car was hit by shots from a "small caliber rifle" (probably 22); and alleged members of a peasant group on board a pick-up truck attacked him and tried to kidnap him. He affirmed that when his 15-year-old son tried to help him he was also attacked and the alleged members of the Gua 11066 patrol passed by making threatening signs. The representatives warned that the beneficiary considers it necessary that "the measures are maintained due to the attacks suffered by him and his children". Lastly, in the observations of July 15, 2008, the representatives indicated that according to Mr. Lemus Alvarado, the latter made a peaceful protest opposite Banco Crédito Hipotecario Nacional for 6 months and that "[in May 2008] he abandoned such protest due to the high degree of vulnerability to his physical integrity that such protest represented".

25. That in turn, the Commission observed that the State had not provided updated information about the situation of this beneficiary and considered that in the meantime it was necessary for the State to maintain the measures ordered in his favor. It must be pointed out that the Commission has made no specific evaluation about the situation of extreme gravity and urgency of the beneficiary.

26. That in several briefs, the State expressed that the facts reported by Mr. Lemus [Alvarado] bear no relation whatsoever with the provisional measures or the facts giving rise to them (*supra* Having Seen clause 6), and indicated that such facts have

not been reported to the competent authority, and that there is only one report filed by the beneficiary with the Prosecutor's Office for Administrative Crime, against the members of Patrol PCN-11-066. Furthermore, the State affirmed that in compliance with its constitutional and conventional duties, the State requested that the National Civil Police provide perimetral protection during the peaceful protest of Mr. Lemus Alvarado at the Civic Center, 7a, Avenue 27, Zone 1 of Guatemala City. To that end, the State requested that the Court lift and file the measures in favor of Mr. Lemus Alvarado. In its brief of July 15, 2008 the State indicated that, in relation to the security of beneficiary Lemus Alvarado, the Foundation had expressed that the security measures were being complied with satisfactorily. It must be pointed out that the State has not given a specific opinion on the measures adopted for each one of the relatives of Mr. Lemus Alvarado, as required in the Secretariat's note of July 18, 2008 (*supra* Having Seen clause 10).

27. That as regards beneficiary Jorge Guillermo Lemus Alvarado and each one of his relatives protected by the measures, the Court observes that the representatives have only reproduced the allegations expressed by the beneficiary without making any type of evaluation about such matter. Due to the above, this Tribunal considers that, on the basis of the alleged facts described by Mr. Lemus Alvarado so far it does not result that they are in direct relation to the reasons why the provisional measures in favor of Mr. Lemus Alvarado and his relatives were granted. Due to the above, the Court estimates that on the basis of the information provided by the representatives, in view of the specific request by the Secretariat (*supra* Having Seen clause 9), there has been no case of extreme gravity or urgency representing an imminent risk at present; therefore, the representatives and the Commission are once again required to provide clear and accurate information evidencing the extreme gravity and urgency representing an imminent risk and that it is directly related to the facts giving rise to granting the measures, in order to evaluate the pertinence of maintaining the measures in favor of such beneficiary and each one of his relatives. Likewise, the State is required to provide detailed information about the facts supposedly alleged by the beneficiary and the observations deemed pertinent.

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28. That due to the lack of information regarding the present situation of extreme gravity and urgency, the Tribunal considers it pertinent to maintain the provisional measures for an additional period of at least six months, in favor of Helen Mack Chang; each one of the relatives of Mrs. Mack Chang, i.e.: Zolia Esperanza Chang Lau, Marco Antonio Mack Chang, Freddy Mack Chang, Vivian Mack Chang, Ronald Chang Apuy, Lucrecia Hernández Mack and her children, as well as the other members of the Foundation. Likewise, regarding beneficiaries Luis Roberto Romero Rivera, Jorge Guillermo Lemus Alvarado and his relatives.

29. That the State as well as the beneficiaries of such measures and/or their representatives and the Commission have the duty to submit reports and observations related to compliance with the provisional measures; therefore, such parties must present the information in a clear, complete and specific manner for the Tribunal to have the necessary elements to assess the present status of the provisional measures.

To that end, the Court requires that the parties provide the information specifically requested in Considering clauses 16, 21, 23 and 27 of this Order.

30. That the Court shall assess the pertinence of maintaining in force the provisional measures ordered in favor of such individuals upon reception of the information requested and the observations made about such matter.

31. That while the measures ordered by the Court are in force, the State must immediately carry out all the corresponding proceedings so that the protection measures are provided diligently and effectively in order to protect the life and physical integrity of the beneficiaries regarding which such measures are provided, i.e.: Helen Mack Chang and the other members of the Myrna Mack Foundation; as well as each one of the relatives of Mrs. Mack Chang, i.e., Zolia Esperanza Chang Lau (mother), Marco Antonio Mack Chang (brother), Freddy Mack Chang (brother), Vivian Mack Chang (sister), Ronald Chang Apuy (cousin), Lucrecia Hernández Mack (daughter) and her children, as well as Messrs. Luis Roberto Romero Rivera and Jorge Guillermo Lemus Alvarado and his relatives. This Tribunal particularly considers that the State must provide information about the alleged facts that occurred against Mr. Ronald Chang Apuy on July 29, 2008 as well as about his present situation and the proceedings carried out about such facts. Furthermore, the Court reiterates that the State must inform the beneficiaries about the planning and implementation of these measures (*supra* Having Seen clauses 2 and 3), in order to provide effective protection in agreement with the real needs of each beneficiary.

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Regarding Viviana Salvatierra, América Morales Ruiz and Iduvina Hernández,

32. That "the *prima facie* appreciation standard in a case and the application of assumptions in view of the protection needs have made this Court [...] order measures on various occasions."³ However, in order to maintain the measures, the situation of extreme gravity and urgency and the need to avoid irreparable damage must persist as well as a direct relation with the facts giving rise to granting provisional measures in this case;⁴ therefore, in view of the Court's requests to evaluate whether it would maintain same, such information must be duly accredited and well based.

33. That provisional measures are of an exceptional nature, they are decided according to protection requirements and, once they are ordered, they must be maintained provided the Court considers the basic requirements of extreme gravity and urgency persist as well as the prevention of irreparable damage to the rights of the individuals protected by them.⁵

³ Cf. *Case of Caballero Delgado and Santana*. Provisional measures regarding Colombia. Order of the Court of December 7, 1994, Considering clause 3; *Matter of Kawas Fernández*. Provisional measures regarding Honduras. Order of the Court of December 12, 2008, Considering clause 9; and *Case of Tyrone Dacosta Cadogan*. Provisional measures regarding Barbados. Order of the Court of December 2, 2008, Considering clause 10.

⁴ Cf. *Matter of Millacura Llaipén et al.* Provisional measures regarding Argentina. Order of the Court of February 6, 2008, Considering clause 21; *Matter of Carlos Nieto Palma et al.* Provisional measures regarding Venezuela. Order of the Court of August 5, 2008, Considering clause 16; and *Matter of Leonel Rivero et al.* Provisional measures regarding Mexico. Order of the Court of November 25, 2008, Considering clause 13.

⁵ Cf. *Case of the Constitutional Court*. Provisional measures regarding Perú. Order of the Court of March 14, 2001, Considering clause 3; *Matter of Carlos Nieto Palma et al.* Provisional measures regarding

34. That as indicated, following the instructions from the Presidency, this Secretariat requested the representatives, the Commission and the State in their corresponding communications (*supra* Having Seen clauses 9 and 10), that they indicate the present status of each beneficiary of the present measures in a detailed manner in order to determine whether the extreme gravity and urgency and the need to avoid irreparable damage to the beneficiaries' rights still persist. In view of this request, the representatives, the Commission and the State submitted the information described below.

35. That in relation to Viviana Salvatierra, the representatives indicated that the beneficiary expressed that the security measures in her favor were never implemented and that she stopped working at the Myrna Mack Foundation in 2002; as regards América Morales Ruiz, in charge of the Foundation's Documentation Center, the representatives indicated that the intimidation and threats giving rise to the provisional measures were not repeated. Consequently, they estimated that the security measures in relation to these two beneficiaries could be left without effect. In turn, the Commission considered that the reasons giving rise to the provisional measures in favor of Mrs. Salvatierra and Mrs. Morales no longer persist, and the State has not given an opinion specifically about these two beneficiaries.

36. That as expressed by the representatives and the Commission, this Tribunal deems it pertinent to lift the measures in favor of Viviana Salvatierra and América Morales Ruiz.

37. That as regards Iduvina Hernández, the representatives considered that it was necessary to reestablish the measures in her favor as perimetral security in her workplace at the organization Seguridad en Democracia (SEDEM) since Iduvina Hernández has been the victim of some intimidatory acts. As indicated by Mrs. Hernández, her residence was broken into on June 24, 2007 and the vehicle inside her property was forced open and some objects were stolen. The Commission observed that the State has not provided any updated information about the status of this beneficiary so it considered it necessary to maintain the measures ordered in her favor. It must be pointed out that the State has not given any specific opinion about this beneficiary.

38. That as regards Mrs. Iduvina Hernández this Court observes that, on the basis of the information provided by the representatives and by the Commission it does not result that the facts that occurred on June 24, 2007 are related to the object of these provisional measures. Therefore, this Tribunal deems it pertinent to lift the measures in her favor.

39. That in view of the previous clauses (*supra* Considering clauses 34 to 38) it results that since the enforcement of the present provisional measures no incidents directly related to the object of the present measures have been proven. Hence, the Court considers it reasonable to suppose that the situation regarding such beneficiaries is no longer within the framework of the assumptions pointed out in Article 63(2) of the Convention.

Venezuela. Order of the Court of August 5, 2008, Considering clause 3, and *Matter of Leonel Rivero et al.*, *supra* note 4, Considering clause 16.

40. That independent of the existence of provisional measures ordered by the Tribunal in this case, the State's constant and permanent duty is to abide by the general obligations under Article 1(1) of the Convention in order to respect the rights and freedoms recognized therein and ensure their free and full exercise to every individual under its jurisdiction.⁶

NOW, THEREFORE:

THE INTER-AMERICAN HUMAN RIGHTS COURT,

pursuant to Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To lift the provisional measures in favor of beneficiaries Viviana Salvatierra, América Morales Ruiz and Iduvina Hernández, as established in Considering clauses 32 to 40 in this Order.

2. To request the State to maintain the measures adopted and to adopt any necessary measures to protect the life and physical integrity of Helen Mack Chang and her relatives, Zoila Esperanza Chang Lau (mother), Marco Antonio Mack Chang (brother), Freddy Mack Chang (brother), Vivian Mack Chang (sister), Ronald Chang Apuy (cousin), Lucrecia Hernández Mack (daughter) and her children, the members of the Myrna Mack Chang Foundation, as well as Luis Roberto Romero Rivera, Jorge Guillermo Lemus Alvarado and his relatives, for an additional period of at least six months following notice of this Order, after which the Tribunal shall evaluate whether or not to maintain such measures (*supra* Considering clause 28).

3. To request the representatives to submit, within four weeks, an evaluation about the risk situations of each one of the beneficiaries protected by these measures, pursuant to Considering clauses 17, 21, 23 and 27 of this Order. Such evaluation shall include the arguments and evidence whereby the representatives consider that the measures ordered must be maintained in relation to Helen Mack Chang and each one of her relatives, indicated in item 2 hereinabove in an individualized manner, as well as the protection offered to the members of the Myrna Mack Foundation. The representatives must specifically submit information about the alleged facts occurred against Mr. Ronald Chang Apuy, his present situation and the proceedings carried out regarding these facts, as well as the information required about Luis Roberto Romero

⁶ Cf. *Case of Velásquez Rodríguez*. Provisional measures regarding Honduras. Order of the Court of January 15, 1988, Considering clause 3; *Matter of "El Nacional" and "Así es la Noticia" Newspapers*, *supra* note 1, Considering clause 39; and *Matter of Leonel Rivero et al.*, *supra* note 4, Considering clause 4.

Rivera and Jorge Guillermo Lemus Alvarado. Furthermore, the Inter-American Commission on Human Rights is required to present its observations in an individualized manner regarding each one of the beneficiaries within two weeks as from reception of the information by the representatives.

4. To request the State to submit, within one month as from reception of the observations submitted by the Inter-American Commission on Human Rights, a detailed report on the observations by the representatives and on the observations by the Inter-American Commission. Similarly, it is required that the State should submit information about the alleged facts occurred against Mr. Ronald Chang Apuy, his present situation and the proceedings carried out about such facts.

5. To request the State to implement the provisional measures in agreement with the beneficiaries of same or their representatives for the effective protection of their rights.

6. To require that the Secretariat of the Court serve notice of this Order to the Inter-American Commission on Human Rights, to the beneficiaries or to their representatives of these measures and to the State.

Cecilia Medina Quiroga

President

Diego García-Sayán

Sergio García Ramírez

Manuel Ventura Robles

Leonardo A. Franco

Margarette May-Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary