
Roundtable Discussion: Limits and Potentialities of the process of following-up on the recommendations of the IACHR

Objective of the Meeting

The purpose of the roundtable discussion is to promote dialogue on the limits and possibilities of the follow-up process of the recommendations published by the IACHR in order to make this process more efficient and effective.

Background

In its 2017-2021 Strategic Plan, the Commission assessed that the effectiveness and efficiency of its recommendations made to States through its various mechanisms were identified as a foundation on which the organization should redouble its efforts. In this sense, the Commission considers it important to rethink the reach of the recommendations that are formulated and concentrate efforts in the design of uniform, measurable and concrete methodologies for evaluating their full compliance.¹

In order for this search for effectiveness to have a viable instrument for its implementation, in the new 2017-2021 Strategic Plan, the IACHR is developing a special common program that cuts across all of the Strategic Objectives and Programs: the Special Program to Monitor IACHR Recommendations (Program 21). To this end, the IACHR intends to develop this cross-cutting program in which it expects to initiate coordinated actions to follow-up on recommendations using all available mechanisms (case reports, resolutions on precautionary measures, thematic and country reports, hearings, and monitoring of friendly settlement agreements).²

This program seeks to strengthen the capacities of the IACHR to promote an effective follow-up of the decisions and recommendations it produces, as well as to verify the degree of compliance and internalization of the commitments assumed by States in the area of human rights.

Recently, in accordance with its 2017-2021 Strategic Plan, the IACHR undertook an administrative restructuring, which was approved on July 26 by Executive Order No. 17-06 of the OAS Secretary General. In the new structure, the IACHR creates the “Follow-Up of Recommendations Section”, as part of the Deputy Executive Secretariat for Monitoring, Promotion and Technical Cooperation on Human Rights. The Follow-Up Section is responsible for “coordinating the follow-up of the recommendations issued by the IACHR based on its various instruments and tools” (Annex I, D, 7). With this new Section, the IACHR intends to develop capacities to promote the effective follow-up of its recommendations and to verify their degree of compliance.

In the implementation of its 2017-2021 Strategic Plan, the IACHR has been receiving a series of expressions of interest and will from experts and specialized organizations in the

¹ IACHR. 2017-2021 Strategic Plan, OEA/Ser.L/V/II.161, Doc. 27/17, 20 March 2017, p. 23.

² *Ibid*, p. 62.

Inter-American Human Rights System (IAHRS) to support the improvement of the follow-up process of its recommendations produced by its mechanisms.

In order to advance in promoting a dialogue about the current follow-up process of the recommendations of the IACHR, its limits and potentialities, with the aim of making this process more efficient and effective, the IACHR is organizing a “Roundtable Discussion: Limits and potentialities of the process of following-up on the recommendations of the IACHR” during its 168th Period of Sessions in Santo Domingo.

The IACHR hopes to maintain constructive channels of communication with members of the IAHRS for reflection and dialogue, to receive contributions regarding the improvement of its current follow-up mechanisms, and to produce a document which identifies the challenges and opportunities that may favor the articulation of these follow-up actions in its mechanisms, from a comprehensive perspective.

It is important to note that in this roundtable discussion the IACHR hopes to focus the discussion and analysis only on its institutional practices. The IACHR is aware of the importance of analyzing the progress and challenges related to compliance with its recommendations by OAS Member States. The information produced by the IACHR itself, in its Annual Reports, generates relevant inputs for the understanding of this issue. Further, specialized literature has made significant contributions in this regard. In the near future, within the framework of Program 21 of the Strategic Plan, an analysis is planned regarding the aspects of compliance with recommendations, as well as forming a collaborative network that can continue reflecting on the next steps of the new Follow-Up of Recommendations Section of the Executive Secretariat of the IACHR.

The process of following-up on the recommendations issued by the IACHR in its different mechanisms

1. Introduction

The Inter-American Commission on Human Rights (IACHR) is a principal and autonomous organ of the Organization of American States (OAS) whose mission is to promote and protect human rights in the Americas and to serve as a consultative organ of the OAS in human rights matters. The work of the IACHR rests on three main pillars: the individual petition system; the monitoring of the human rights situation in Member States; and the attention and technical cooperation with States. Operating within this framework, the Commission considers that inasmuch as the rights of all persons subject to the jurisdiction of the Member States are to be protected, special attention must be devoted to those populations, communities and groups that have historically been the targets of discrimination.³

In fulfillment of its mandate, the Commission recommends to OAS Member States the adoption of measures that contribute to the protection of human rights in the countries of the continent; in

³ IACHR. 2017-2021 Strategic Plan, OEA/Ser.L/V/II.161, Doc. 27/17, 20 March 2017, p. 6.

addition to submitting an Annual Report to the OAS General Assembly. Further, the IACHR requests information from States regarding compliance with the recommendations issued in published merits reports in individual cases, in friendly settlement agreements approved by the IACHR, in granted precautionary measures, as well as in reports on the situation of human rights in countries and in thematic reports. The recommendations of the IACHR are binding on States because they derive from the mandates of international treaties that have been signed by these States. The Commission also has the power to follow up on its own recommendations and decisions.

In its 2017-2021 Strategic Plan, the IACHR evaluated that “The effectiveness and efficiency of the recommendations made by the Commission to the States through its reports on cases and friendly settlements, precautionary measures, thematic and country reports and other monitoring mechanisms were identified as a foundation on which the organization should redouble its efforts. In this sense, the Commission considers it important to rethink the reach of the recommendations that are formulated and concentrate efforts in the design of uniform, measurable, and concrete methodologies for evaluating their full compliance.”⁴ Accordingly, the IACHR is developing a Special Program for Monitoring Recommendations in the framework of this Plan.

This program seeks to strengthen the capacities of the IACHR to promote an effective follow-up to the decisions and recommendations produced by it, as well as to verify the degree of compliance and internalization of the commitments assumed by States in the area of human rights. Through the program, the IACHR expects to contribute to the improvement of the current mechanisms for following up on recommendations made, in an articulated, integrated, cross-cutting and coordinated manner, and in response to the five objectives proposed in the Plan, to expand the effectiveness of the IASHR as a pillar and common commitment of the Americas.

Recently, the IACHR proposed an administrative restructuring, in which it created the “Follow-Up of Recommendations Section”, as part of the Deputy Executive Secretariat for Monitoring, Promotion and Technical Cooperation on Human Rights. The Follow-Up Section is responsible for “coordinating the follow-up of the recommendations issued by the IACHR based on its various instruments and tools” (Annex I, D, 7, Executive Order No. 17-06 SG/OEA).

2. Mandates and roles of the OAS General Assembly

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights carry out their follow-up mechanisms of the decisions and recommendations that they adopt within the framework of the IAHRs and present the information related to compliance in their Annual Reports to the General Assembly of the Organization of American States (OAS).

The OAS General Assembly has an important role in the implementation of the decisions of the Court and the recommendations of the Commission. The General Assembly has, as one of its principal powers, “to consider the reports of the Meeting of Consultation of Ministers of Foreign Affairs and the observations and recommendations presented by the Permanent Council with regard to the reports that should be presented by the other organs and entities, in accordance with

⁴ IACHR. 2017-2021 Strategic Plan, OEA/Ser.L/V/II.161, Doc. 27/17, 20 March 2017, p. 23.

the provisions of Article 91.f,⁵ as well as the reports of any organ which may be required by the General Assembly itself”.⁶

Further, the General Assembly defines the mechanisms, politics, actions and mandates of the Organization. On several occasions, the General Assembly has encouraged Member States to follow up on the recommendations of the IACHR, as it did by way of Resolution AG/RES/ 2672 (XLI-O/11) on Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights (3.b). Additionally, Resolution AG/RES. 2675 (XLI-O/11) on the Strengthening of the Inter-American Human Rights System pursuant to the Mandates Arising from the Summits of the Americas, entrusted the Permanent Council to continue to consider ways to promote the implementation of the recommendations of the IACHR by Member States (3.d).

The effective compliance with the decisions of the IAHRs requires an active role of the political organs of the OAS. The 2017-2021 Strategic Plan reinforces the need to strengthen dialogue and cooperation with States for the implementation of the recommendations and decisions of the IACHR with a view to guaranteeing the effectiveness of the IAHRs, as well as strengthening the mechanisms for political oversight of the IAHRs. In this sense, in the implementation of the Plan, it will be important to propose a strategy of dialogue and articulation with the political bodies of the OAS to strengthen the political supervision of the IAHRs and the follow-up agenda of its recommendations in the hemisphere.

3. Evolution of the institutional practice and Rules of Procedure related to the different mechanisms followed by the IACHR

A. Follow-up of reports on the human rights situation in countries and thematic reports

Throughout its history, the Commission has consolidated its practice of following up on its reports on human rights situations, through the production of specific reports that aim to assess compliance with previously issued recommendations, according to Article 59 of its Rules of Procedure.⁷

Since the decision to produce follow-up reports on the recommendations established in country reports in a separate Chapter of the Annual Report (Chapter V), the IACHR has produced numerous follow-up reports.

⁵ OAS Charter, Article 91.f: “Consider the reports of the Inter-American Council for Integral Development, of the Inter-American Juridical Committee, of the Inter-American Commission on Human Rights, of the General Secretariat, of specialized agencies and conferences, and of other bodies and agencies, and present to the General Assembly any observations and recommendations it deems necessary.”

⁶ OAS Charter, Article 54.f.

⁷ **Article 59.9:** “By means of Chapter V of its Annual Report, the Commission shall follow-up on measures adopted to comply with the recommendations issued in its country reports, thematic reports, or in reports previously published in Chapter IV.B.”

A1. Follow-up of recommendations on the human rights situation in countries

Until 1995, the Commission included reports that analyzed the situation in specific countries in a section or in a chapter of its Annual Report. All of these reports were intended to be “updates”, in the sense that they offered a general overview of the events that took place during the previous year. In some cases, the updated information was closely linked to a country report published the previous year and followed up on the key issues contained in that report. In other cases, the Commission reported year after year on certain countries that presented serious human rights violations, and for which a country report had been adopted several years earlier.⁸

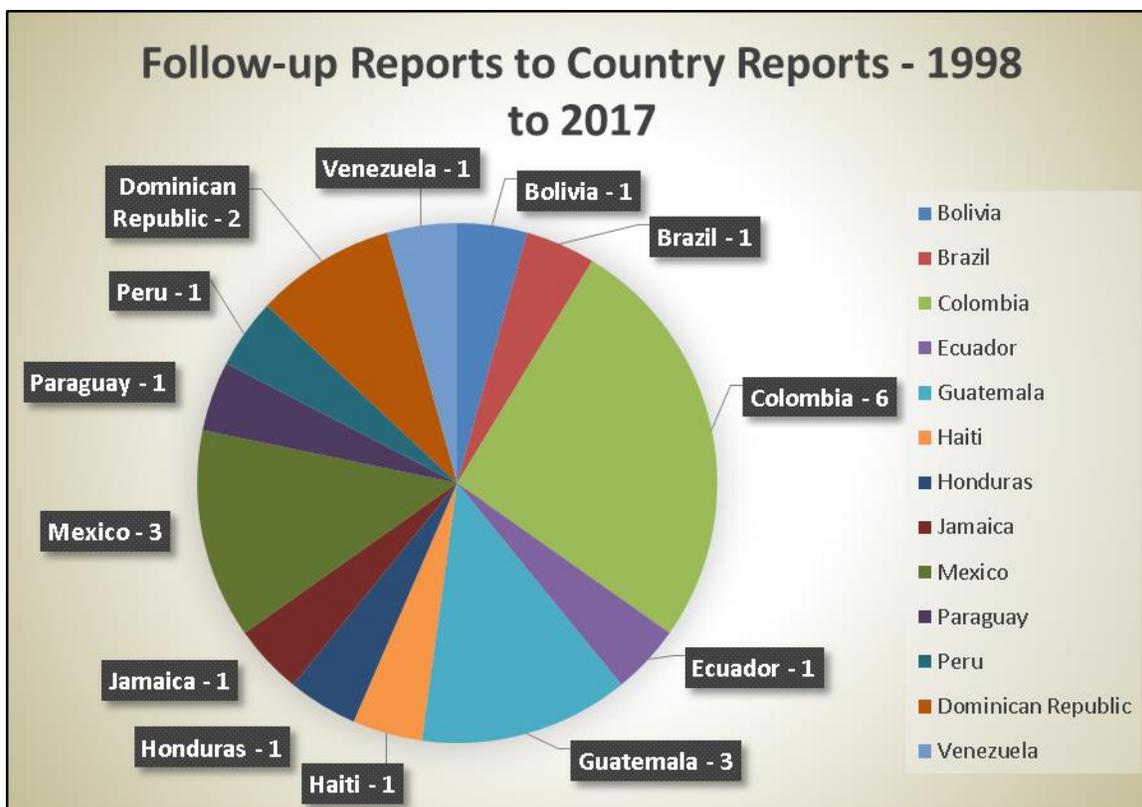
Since 1998, the Commission has decided to improve this practice by publishing these reports in a separate chapter of its Annual Report, Chapter V, with the objective of evaluating measures taken by Member States to comply with the recommendations that the IACHR has made in country reports, presenting updated information on the issues examined in the country report concerned, according to the prevailing circumstances. Following its established practice, the Commission prepares these follow-up reports on the basis of its analysis of information collected from a variety of sources, including, to the extent pertinent, that provided by the State itself, diverse actors within civil society and other sources.⁹

The IACHR’s practice of following up on its reports on the human rights situation in countries is founded in the functions of the IACHR, a principal organ of the OAS responsible for the protection and promotion of human rights, set out in Articles 41(c) and (d) of the American Convention, consistent with Articles 18(c) and (d) of its Statute and Article 59 of its Rules of Procedure.

The diagram below visualizes these 23 follow-up reports produced relative to published country reports, between 1998 and 2017:

⁸ IACHR. Memorandum on the background and criteria for Chapters IV and V of the Annual Report, 7 March 2016, Practice of the Commission with respect to Chapter V of the Annual Report, p. 7.

⁹ IACHR. Annual Report 1998, Chapter V, Introduction. See: <http://www.cidh.org/annualrep/98eng/Chapter%20V.htm>



A.2. Follow-up of thematic recommendations of the IACHR

Until the middle of 2005, the IACHR followed up on its thematic recommendations through *special studies*, in which it observed, in some specific aspects, compliance with its recommendations by States.

With regards to thematic reports, the IACHR has maintained the practice of convening public hearings and supporting channels for communication with members of the IAHRs so that they can express their views on progress made in the implementation of the recommendations indicated therein.¹⁰

Recently, in 2017, the IACHR published a follow-up report on one of its thematic reports, the “*Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*” (2017).¹¹ This report follows up on the “*Report on the Use of Pretrial Detention in the Americas*” published by the IACHR on December 30, 2013. The 2017 report was strongly promoted by the Rapporteurship on the Rights of Persons Deprived of Liberty of the IACHR, which led its production.

It is important to highlight that, in addition to following up on the recommendations of the “*Report on the Use of Pretrial Detention in the Americas*”, the “*Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*” develops and produces new standards on the topics and

¹⁰ IACHR. Annual Report 2013, Chapter IV.A, para. 89.

¹¹ IACHR. Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas (2017), OEA/Ser.L/V/II.163 Doc. 105.

conducts an analysis of the progress and good practices in the implementation of the recommendations. It also develops or produces new recommendations regarding the use of pretrial detention. In other words, this report makes use of the follow-up function in order to improve the recommendations and, at the same time, to identify the good practices implemented by countries¹² in the framework of compliance with the recommendations; to identify the challenges in the implementation of the recommendations and, with this, to record the lessons learned by States; to call attention to the failure to comply with the recommendations; and, in light of all of these aspects, it perfects and expands the recommendations at the end of the report.

This is a novel report in the follow-up of the thematic recommendations made by the Commission in the framework of its published thematic reports. This experience and/or its methodology can be used as a reference in other follow-up reports to thematic reports.

It will be important to think of a systematic strategy that allows the IACHR to monitor progress and challenges in the implementation of the recommendations that it makes on the various issues it works monitors. This would allow for the precise identification of opportunities and challenges that Member States work on.

B. Follow-up of published merits reports and friendly settlement agreements

In order to exercise a more effective follow-up of the compliance with its merits reports and friendly settlement agreements, Article 48 of the Rules of Procedure of the IACHR, states:

Article 48. Follow-Up

1. Once the Commission has published a report on a friendly settlement or on the merits in which it has made recommendations, it may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements and its recommendations.
2. The Commission shall report on progress in complying with those agreements and recommendations as it deems appropriate.

Based on the Rules of Procedure and mandates established in the Resolutions of the General Assembly, the IACHR requests information from States on their compliance with the recommendations made in published merits reports regarding individual cases which are included in its Annual Report (Chapter II). Once the merits report or the report on the friendly settlement agreement is published, the IACHR can take the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings or working meetings to verify

¹² IACHR. Practical Guide to Reduce Pretrial Detention (2017), OEA/Ser.L/V/II. See: <http://www.oas.org/en/iachr/reports/pdfs/GUIDE-PretrialDetention.pdf>

compliance with the recommendations and friendly settlement agreements signed by the parties and approved by the IACHR.

Based on the information received, the Commission prepares the Follow-up Report of Chapter II.D (currently II.F) of its Annual Report. This section sets out the follow-up given to both the recommendations made in merits reports, as well as reports of friendly settlement agreements, and presents a table that classifies the cases according to the level of State compliance, in total, partial and pending compliance. Subsequently, the Commission includes a narrative section in which it presents the information provided by the parties, an analysis of compliance and its conclusions on a case-by-case basis. In a complementary manner, using footnotes, the IACHR highlights and retrieves the link of the previous Annual Report which declared compliance with any specific recommendation of the case.

Beginning in 2001, the IACHR began to publish a table that reflected the levels of compliance with the recommendations of the IACHR. Initially, it used four categories.¹³ Since its Annual Report 2002, the Commission presents a table that includes the status of compliance with the recommendations of the IACHR formulated in the framework of resolved and published cases, applying one of the following three categories:

Total compliance (those cases in which the state has fully complied with all the recommendations made by the IACHR. Having regard to the principles of effectiveness and fully observed those recommendations where the state has begun and satisfactorily completed the procedures for compliance).

Partial compliance (those cases in which the state has partially observed the recommendations made by the IACHR either by having complied with only one or some of them or through incomplete compliance with all of them).

Compliance pending (those cases in which the IACHR considers that there has been no compliance with the recommendations because no steps have been taken in that direction; because the state has explicitly indicated that it will not comply with the recommendations made; or because the state has not reported to the IACHR and the Commission has no information from other sources that would suggest otherwise).¹⁴

The IACHR emphasizes that different recommendations issued are of successive and not immediate compliance and that some of them require a prudential time to be fully implemented. From this perspective, the Commission evaluates whether the

¹³ **Full compliance** (cases in which the state has implemented the IACHR's recommendations in their entirety); **Partial compliance** (cases in which the state has either implemented only one or some of the IACHR's recommendations or else has implemented all of them but not completely); **Noncompliance, but with information** (cases in which the state has replied to the request for information regarding implementation of the recommendations, but the IACHR considers that they were not in fact implemented); **Noncompliance and no information** (cases in which the state did not reply to the request for information and where, in the opinion of the IACHR, the recommendations were not implemented. IACHR. Annual Report 2001, Chapter III.D, Follow-up on compliance with recommendations of the IACHR, paras. 64-66.

¹⁴ IACHR. Annual Report 2016, Chapter III.D, Follow-up on compliance with recommendations, para. 82.

recommendations have been complied with or not, and not whether there has been some initial compliance with such recommendations.

C. Supervision of the implementation of precautionary measures which are in force

Given the importance recognized by the Commission to the precautionary measures mechanism, a specialized group has been dedicated to the functioning of this mechanism for more than ten years. This specialization was administratively recognized and strengthened in 2017 when the Precautionary Measures Section was created, forming part of the Deputy Executive Secretariat for Petitions, Cases and Precautionary Measures, being recognized within the formal administrative structures of the OAS.¹⁵

Through this Section, the specialized treatment of the precautionary measures mechanism has benefited both the supervision of the measures in force and the processing of new requests. Through the current measures, the Section contributes to identifying factors or particular contexts of risk that are similar to pending applications. Additionally, in many cases, through new requests risk situations are identified that can impact the risk situation of beneficiaries, enabling a better readiness and suitability in the response. The Section has developed a portfolio of all precautionary measures, which has favored a more organized and integrated management of the mechanism, and has also made it possible to have a specific point of contact for States, applicants, representatives and beneficiaries of precautionary measures.

Supervision is mainly carried out by requesting periodic reports from the parties regarding the implementation of the measure and, in some cases, through working meetings. In its communications to the parties, after analyzing each report presented, the IACHR usually asks specific questions that respond in a particular way to the evolution of the matter, new situations of risk that have presented themselves, the importance of encouraging agreement among the parties internally or, which are aimed at identifying and overcoming obstacles in implementation. The Commission has given special importance to the “principle of agreement” between the parties considering that the individuals at risk and their representatives are in the best position to contribute to identify, with the State, the most appropriate and effective measures to deal with the situation of risk. In accordance with the Rules of Procedure, the Commission may take appropriate measures, such as requiring from the parties, when appropriate, implementation schedules, hearings, working meetings, and follow-up and review visits.

During 2017, the IACHR held forty working meetings in the framework of its ordinary and extraordinary periods of sessions, as well as seven working meetings as part of visits undertaken by Country Rapporteur Commissioners. The disaggregated information regarding each meeting can be found in the IACHR’s Annual Report.¹⁶ In the last two periods of sessions where working meetings were held (165th and 167th), the IACHR granted 60% and 75% of the applications submitted,

¹⁵ Executive Order No. 17-06, 26 July 2017. <http://www.oas.org/legal/spanish/gensec/EXOR1706.pdf>

¹⁶ CIDH, *Informe Anual*, 2017, Capítulo II, para. 78 y siguientes. Disponible en: <http://www.oas.org/es/cidh/docs/anual/2017/docs/IA2017cap.2-es.pdf>.

respectively. In general, the applicants request working meetings to favor the implementation of precautionary measures, in light of the advantages offered by the confidentiality and the more informal nature of these meetings. In accordance with Article 25.10 of its Rules of Procedure, the Commission can also hold hearings on precautionary measures.¹⁷ Particularly, with respect to the precautionary measure regarding the 43 disappeared students of Ayotzinapa (MC-409-14), the hearings derive from the terms of the work plan of the Special Follow-up Mechanism, created for such purposes.

The Commission has identified several common challenges or obstacles in the implementation of precautionary measures. Generally, in both its country and thematic reports, the IACHR issues specific recommendations with the aim of overcoming these challenges. In particular, in its "[*Second Report on the Situation of Human Rights Defenders in the Americas*](#)", the Commission devoted a specific section to this aspect and recently in its report "[*Integral Protection Policies for Human Rights Defenders*](#)", it examined several of the existing challenges to provide adequate and effective protection.

Regarding a precautionary measure that is in force, requests for an extension of the measure, a modification of its purpose or its removal, can be presented. Such requests are analyzed taking into account the criteria established by Article 25 of the Rules of Procedure, as well as the applicable precedents. As happens with the processing of new requests for precautionary measures, the IACHR makes such decisions based on the information available in the file, assessing the risk in light of the procedural requirements and taking into account contextual information that already exists in pronouncements of the Commission itself, or other international and civil society organizations, and press releases, among other sources. The IACHR also takes into account a differentiated approach with regards to cases involving groups that are particularly vulnerable and a gender perspective, taking into account the risk that persons belonging to these groups may face in certain contexts.

Further, in the process of a precautionary measure, the representatives may submit requests for provisional measures to the Court, which are decided by the Commission in accordance with the provisions of Article 76 of its Rules of Procedure and Article 63.2 of the American Convention. In this sense, the jurisprudence of the Court in the interpretation of the conventional requirements is an aspect that the Commission takes into account. As established by Article 25.12 of the Rules of Procedure, if precautionary measures have been granted in the case, they shall remain in effect until the Court notifies the parties of its decision on the request for provisional measures. In addition, pursuant to Article 25.13 of the Rules of Procedure, before a decision rejecting a request for provisional measures by the Inter-American Court, the Commission will not consider a new request for precautionary measures, unless there are new facts that justify it.

¹⁷ The public hearings are available at the following webpage:
<http://www.oas.org/es/cidh/audiencias/default.aspx?Lang=es>

➤ **MESA: “Special Follow-Up Mechanism to Ayotzinapa, Mexico”**

The IACHR has adopted a successful initiative in relation to Mexico, with the creation of the Special Follow-up Mechanism of the Ayotzinapa -MESA- case concerning the precautionary measure granted in favor of the students of the rural school “Raúl Isidro Burgos” of Ayotzinapa and the recommendations of the Interdisciplinary Group of Independent Experts (GIEI) appointed by the IACHR, in relation to the 43 students who disappeared in September 2014 in Iguala, Mexico.

In response to the precautionary measure in force, on July 29, 2016, the IACHR issued Resolution 42/16 whereby it decided to implement a special follow-up mechanism to monitor the precautionary measures granted (MC/409-14), agreed to by the representatives and the State, and within this framework, to the recommendations of the GIEI formulated in its two reports that derive from the precautionary measure,¹⁸ to achieve compliance with the objectives and recommendations established both in the precautionary measure and in the reports of the GIEI.¹⁹ The mechanism has, as specific objectives: 1. Monitor the progress of the investigation; 2. Advise and support the process of searching for the disappeared; 3. Ensure comprehensive care for victims and their families; 4. Promote the structural measures that may be necessary to resolve this issue and prevent its recurrence.²⁰

Since the installation of the Special Mechanism, the IACHR has been following up through letters, working meetings with the parties, public hearings during its periods of sessions, questionnaires with information transfers between the parties, working visits and official visits. Following each official visit, which has the participation of the Country Rapporteur, responsible for the Coordination of the MESA, the Commission makes press conferences and publishes a statement detailing the work agenda developed, reiterating the recommendations, recognizing the concrete efforts, addressing the priority issues and reinforcing the points which are needed to achieve advances regarding the progress of the investigation, the search for the disappeared, the comprehensive attention to victims and family members, and the structural measures of non-repetition.

¹⁸ In accordance with Resolution 42/16, following the presentation of the two reports of the Interdisciplinary Group of Independent Experts (GIEI), the IACHR received a series of communications and statements from both parties regarding the need for a special mechanism to follow up on the case.

¹⁹ IACHR. Press Release No. 049/16, “IACHR concludes its 157 Period of Sessions, 15 April 2016.

²⁰ IACHR. Work Plan “Follow-Up Mechanism to the Ayotzinapa Case”. See: http://www.oas.org/en/iachr/media_center/PReleases/2016/165.asp