

DIALOGUES SERIES

01

FOLLOW-UP BOOKLET

# Effects of Total Compliance with Structural Recommendations

Cases with Published  
Merits Report

The Inter-American Commission on Human Rights (IACHR) analyzes the progress made by the different States in complying with and implementing the recommendations issued through its various mechanisms. These mechanisms include published merits reports, precautionary measures, friendly settlement agreements, country reports, and thematic reports.

To contribute to the improvement of its follow-up methodologies, during 2019 the IACHR approved and published the General Guidelines for Follow-up on IACHR Recommendations and Decisions (hereinafter "Guidelines"). This document aims to make transparent and share the mandates, methodologies, criteria, and procedures applied in the follow-up of the recommendations that the Commission formulates.

The Guidelines also establish a classification to evaluate the levels of compliance of cases, as well as of the recommendations that comprise them. Regarding cases, the Guidelines contemplate three levels of compliance; while, in the case of recommendations, the document considers five different levels of compliance.

**Table 1.** Compliance levels applicable to recommendations and cases.

Compliance levels	Recommendations	Cases
<b>Total Compliance</b>	That recommendation in which the State has initiated and satisfactorily concluded the measures for its compliance.	Those cases or reports in which the State has fully complied with all the recommendations made by the IACHR. The IACHR considers as fully complied with those recommendations in which the State has initiated and satisfactorily concluded the measures for compliance.
<b>Compliance Partial Substantial</b>	That recommendation in which the State has adopted relevant measures for its compliance and has provided evidence of such measures, but for which the IACHR considers that the measures for its compliance have not yet been completed.	Not Applicable.
<b>Partial Compliance</b>	A recommendation in which the State has taken some steps towards compliance, but additional measures are still needed.	Those cases or reports in which the State has partially complied with the recommendations formulated by the IACHR, either because it has only complied with some of the recommendations or because it has incompletely complied with all the recommendations; or, those cases or reports in which the State has fully complied with all the recommendations formulated by the IACHR except for some that have proved impossible to comply with.
<b>Pending Compliance</b>	That recommendation in which the State has not adopted any measures to comply with the recommendation; or those adopted are incipient or have not yet produced concrete results, or the measure(s) adopted do not correspond to the situation under review.	Those cases or reports in which the IACHR considers that there has been no compliance with the recommendations because no steps have been taken to that end; because the steps taken have not yet produced concrete results; because the State has explicitly indicated that it will not comply with the recommendations made; or because the State has not informed the IACHR and the latter does not have information from other sources that would indicate a contrary conclusion.
<b>Noncompliance</b>	A recommendation in which, as a consequence of the State's conduct, it was impossible to comply with; or where the State has explicitly indicated that it will not comply with the recommendation.	Not Applicable.

According to the Guidelines, and the reiterated practice of the IACHR, a case can only be closed - and therefore exit the follow-up stage - when all the recommendations included have been declared by the IACHR to have been fully complied with, or when, given the existence of pending recommendations, their compliance is materially and manifestly impossible. When none of the aforementioned cases occurs, the IACHR continues to examine the progress of the measures whose total compliance has not yet been ensured and publishes the results obtained in the Annual Report it submits to the OAS General Assembly to inform on the development of its actions during each year.

In this regard, the IACHR notes that achieving total compliance with recommendations is a complex task that involves the organized and active participation of different actors. Furthermore, the achievement of this objective usually requires the mobilization of economic and political resources that, on many occasions, are limited. Therefore, the Commission welcomes the progress made by States in terms of total compliance with recommendations and urges the various actors involved in the mechanisms of action of the IACHR to continue joining efforts to progressively move towards total compliance with the recommendations it issues.

The objective of this report is to show the effects that full compliance with structural recommendations in cases with published merits reports issued by the IACHR as part of the System of Petitions and Cases has generated throughout the region. Thus, to present the most far-reaching effects possible, this document focuses its analysis on the measures considered structural and that function as guarantees of non-repetition, insofar as they transcend the individuality of the victims and have a transformative vocation. According to the Guidelines, these measures aim to prevent the commission of future human rights violations and to modify the structural situation that served as context for the violations in the specific case. These measures have a public scope or impact and often resolve structural problems, benefiting not only the victims of the case but also other members and social groups.

Although the System of Petitions and Cases focuses on analyzing the individual or particular situation of the victims, the Commission has sought on numerous occasions that, through its recommendations, the State makes the corresponding corrections or modifications to guarantee the non-repetition of the facts in favor of the affected persons but also in favor of other persons who may find themselves in similar situations. In other words, within the framework of the System of Petitions and Cases, the IACHR issues recommendations of a structural nature even in cases or situations in which there has been an individual violation of human rights<sup>1</sup>. The aim of this document is, precisely, to analyze the scope of the consequences derived from those structural measures that, although issued in the framework of individual cases, may have general implications for the benefit of other groups and individuals within the States of the region.

1. IACHR, *Public Policies with a Human Rights Approach*, September 15, 2018, para. 195.

Regarding the temporal scope of the information analyzed, it corresponds to the period between 2001 and 2020. For this reason, this document only offers an examination of

the cases and recommendations derived from published merits reports between 2001 and 2020, and whose specific follow-up can be analyzed in the IACHR's Annual Reports. Finally, in the first section of this study, the IACHR provides information on cases declared as fully complied with. On the other hand, the second section provides information on the measures of recommendation that have been fully complied with, but in cases that present a level of partial compliance.

## Total Compliance with Recommendations in Closed Cases

As of 2020, the IACHR reported a total of 115 cases within the portfolio of follow-up of recommendations derived from Published Merits Reports. Of this total, **105 cases** are active in the follow-up process, and **10 cases** are closed and, therefore, out of such process.

# 105

active cases  
under follow-up

# 10

closed cases and, therefore,  
with concluded follow-up

**Table 2.** Cases for which the follow-up process has been declared closed, by country.

Country	Number	Cases
Argentina	1	Report 83/09 - Case 11.732. Horacio Anibal Schilizzi
Chile	1	Report 90/05 - Case 12.142. Alejandra Marcela Matus Acuña et al.
Colombia	2	Report 43/08 - Case 12.009. Leydi Dayan Sánchez Report 44/08 - Case 12.448. Sergio Emilio Cadena Antolinez
Ecuador	1	Report 44/17 - Case 12.393. James Judge
United States	1	Report 62/02 - Case 12,285 Michael Domingues
Mexico	1	Report 80/15 - Case 12.689. J.S.C.H and M.G.S.
Paraguay	1	Report 121/10 - Case 12.431. Carlos Alberto Mojoli
Peru	1	Report 110/00 - Case 11.800. César Cabrejos Bernuy
Uruguay	1	Report 124/06 - Case 11,500. Tomás Eduardo Cirio

2. Case 12,142, Report No. 90/05, Alejandra Marcela Matus Acuña et al (Chile); Case 12,393, Report No. 44/17, James Judge (Ecuador); Case 11,800, Report No. 110/00, César Cabrejos Bernuy (Peru).

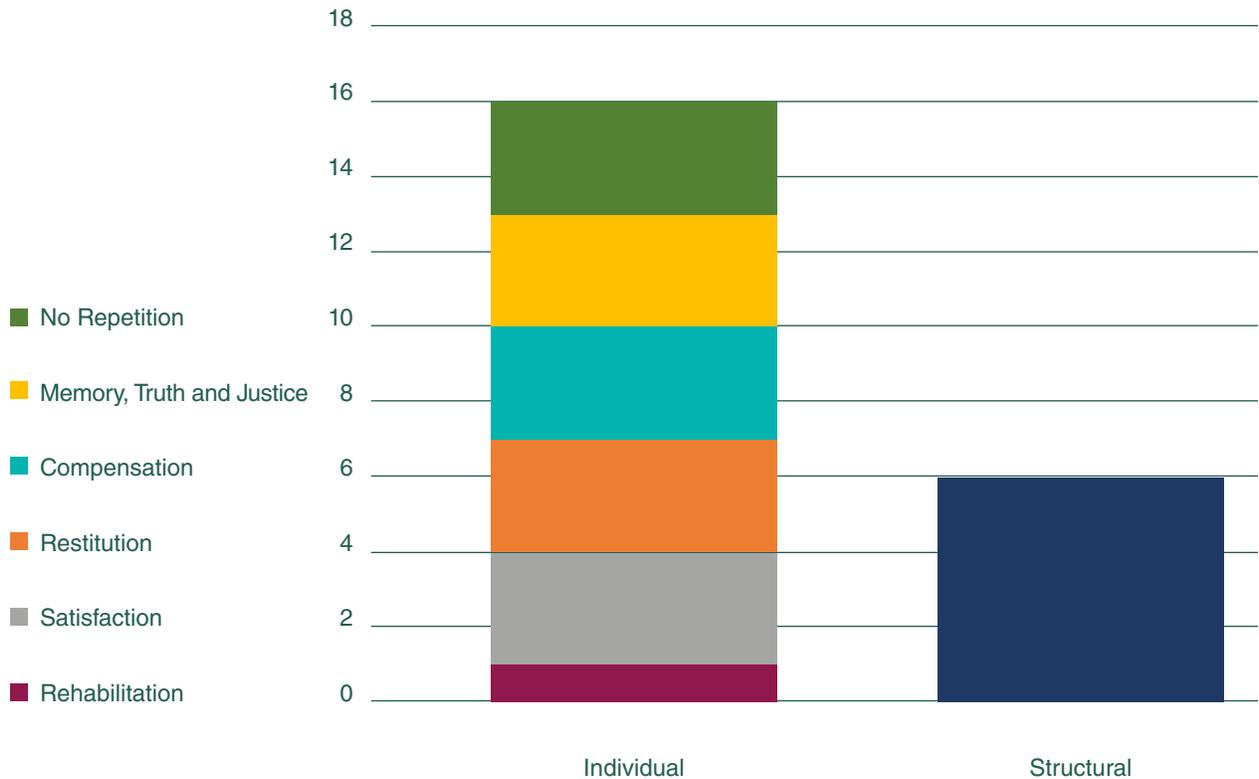
Overall, the 10 closed cases reported between 2001 and 2020 bring together a total of 24 recommendations, 16 of which are individual and the remaining 8 are structural in scope.

The total of structural measures identified derives from 7 of the 10 closed cases, which means that in 3 of these cases the IACHR did not recommend the adoption of any structural measure as part of the reparation process<sup>2</sup>. Due to the aforementioned criteria, these 3 cases will not be analyzed in this document.

All structural measures derived from the closed cases reported fall under the category of "legislation or regulation", and are part of the group of structural measures or non-repetition guarantees contained in the Guidelines.

Based on the above, the cases that serve as the basis for the analysis in this section are those in which the States ensured full compliance with the recommendations through the adoption of a regulation or legislation that addresses, in part, some of the reasons or causes that promoted or made possible the violation of human rights in the specific case.

**Graphic 1.** Distribution of recommendations by type, cases with concluded follow-up.



## Main Effects of Full Compliance with Structural Recommendations in Closed Cases

The IACHR considers that the implementation of structural and non-repetition measures has important consequences not only for the victims identified in the cases but also for other groups and individuals who may find themselves in a similar situation. Likewise, the Commission highlights the need to understand the implementation of recommendations in a broader scheme that integrates different strategies developed within the States, and usually promoted by local actors strengthened by the work developed by the IACHR. The analysis of the cases presented below illustrates this approach.

Some relevant consequences derived from total compliance with structural recommendations in cases with concluded follow-up are found in cases related to Argentina, Colombia, Mexico, Paraguay, Uruguay, and the United States.

### Case 11.732 | Horacio Anibal Schilizzi | Argentina

Argentina  
Case 11.732  
Report 83/09

**1. FACTS:** The case refers to the arbitrariness of the decision adopted by the National Civil Court of Appeals of the Federal Capital of August 17, 1995, which sanctioned attorney Horacio Anibal Schilizzi with three days of arrest for maneuvers aimed at obstructing the course of justice.

**2. THE IACHR RECOMMENDED:** To adopt as non-repetition measures the necessary actions to ensure that disciplinary sanctions are applied through processes carried out with due process of law.

**3. THE CONSEQUENCE WAS:** All Federal and Provincial Chambers in Argentina adopted regulatory measures to exercise the disciplinary powers conferred by law, with respect for due process of law, especially so that disciplinary sanctions are applied in accordance with judicial guarantees and the right to judicial protection.

In Merits Report No. 83/09, the Commission concluded that the Argentine State violated the rights to protection and judicial guarantees of Horacio Aníbal Schillizzi Moreno, a practicing attorney at the time of the facts. The petitioners pointed out that, on August 17, 1995, on the occasion of a recusal motion that Mr. Schillizzi represented, Chamber "F" of the National Civil Appeals Chamber of the Federal Capital sentenced Mr. Schillizzi to three days of arrest for "maneuvers aimed at obstructing the course of justice. In this respect, they specified that the arrest sanction was imposed without respecting judicial guarantees because in their opinion the court was not impartial, did not justify the decision, did not allow the right to defense and there was no judicial control of the decision.

As part of the merits, the IACHR ordered the State to adopt, as a measure of non-repetition, the necessary actions to ensure that disciplinary sanctions were applied through processes carried out with due process of law. In the follow-up process initiated after the publication of Report No. 83/09, the State reported on various actions taken by national judicial authorities to modify the conditions that led to the arbitrary imposition of the disciplinary measure against Mr. Schilizzi.

In this regard, in 2011, the State informed the IACHR that the Supreme Court of Justice of Argentina had requested all the National and Federal Chambers of the capital as well as local courts and chambers to adopt regulatory measures to exercise the disciplinary powers conferred by law, in harmony with respect for due process. Thus, by Agreement No. 26/08, the Supreme Court of Argentina stated that the imposition of disciplinary measures constitutes an act capable of compromising the rights of individuals, so they must be ordered on the harmonious observance of the guarantees contained in the American Convention on Human Rights.

As a consequence of this resolution, during the following years, all the National and Federal Chambers of the country adopted specific regulations to delimit judicial powers to establish disciplinary measures. Although the Supreme Court of Argentina did not dictate a series of specific measures to be adopted by the courts, it did allow these courts - within the scope of their competencies - to decide on the regulation of such measures, but always under the specific observance of the American Convention. This resulted in that, despite the power delegated by the Court, all the Federal and National Chambers of the country incorporated specific guarantees of due process such as the notification before the imposition of the sanction; the possibility of being heard as part of the right of defense; the guarantee to produce and offer evidence in defense, among others.

From the foregoing, it is possible to argue that the IHRS, and specifically the work carried out by the IACHR, had a considerable scope in ensuring the results described above. This is so because the homogeneity of the regulations adopted by the different National and Federal Chambers of Argentina was based on the normative parameter derived from the ACHR, and the interpretation of it made by the IACHR in Mr. Schilizzi's case. The adoption of these amendments meant a positive structural alteration in ensuring access to justice in Argentina based on due process of law and in the framework of the imposition of disciplinary sanctions.

## Case 12.431 | Carlos Alberto Mojoli | Paraguay

### Paraguay Case 12.431 Report 121/10

**1. FACTS:** This case refers to Carlos Alberto Mojoli Vargas who, as a member of the High Court of Electoral Justice of the Republic of Paraguay, was sanctioned by means of an administrative action, without being guaranteed his right to be heard.

**2. THE IACHR RECOMMENDED:** To adopt the necessary measures to guarantee the right to be heard in disciplinary proceedings followed against judges.

**3. THE CONSEQUENCE WAS:** The judicial authorities modified the rules for carrying out disciplinary proceedings to guarantee due process in the administrative summary and the guarantee of an effective right of defense for the defendant. Likewise, the Supreme Court of Justice created the Office of Complaints and Denunciations, under the Superintendence Council.

In its Merits Report No. 121/10, the Commission concluded that Paraguay violated the right to judicial guarantees of Mr. Carlos Alberto Mojoli Vargas, a member of the High Court of Electoral Justice of Paraguay, by issuing a disciplinary sanction against him, without having guaranteed his right to be heard.

In his petition, the victim stated a series of facts attributable to the State -which he described as persecution- through which he was arbitrarily suspended from his position as a member of the Court. He also denounced threats, harassment, and various intimidating acts allegedly carried out against him and his family. As part of the merits analysis, the IACHR recommended the State to adopt the necessary measures to guarantee the right to be heard in disciplinary proceedings against judges.

In the framework of the follow-up process, the State reported that since 2007 it began to adopt reform processes to guarantee due process in the administrative summary and, with it, the guarantee of an effective right of defense for the accused. In particular, the State reported that the Supreme Court of Justice adopted Resolution No. 470 of 2007, by which it ordered the incorporation within the disciplinary summary of various guarantees of due process, such as the summons and summons of the person affected; the provision of administrative remedies to challenge the determinations adopted, as well as the need to observe the principle of proportionality in the establishment of sanctions. All this to guarantee the rights of defense of the person subject to such summary proceeding.

Likewise, Paraguay stated that, as part of compliance with the recommendation ordered by the IACHR, the General Superintendence of Justice approved Resolution No. 2158 of 2007, which regulates the disciplinary procedure followed before said authority, while establishing an appeal for reconsideration with interruption of the effects of the resolution that results from said procedure.

It follows that, as in the previous case in Argentina, on this occasion, the Commission's action prompted the modification of structural conditions that violated the right to due process of the intervening persons and disciplinary proceedings. This not only ensured the possibility of repairing the harm caused to Mr. Majoli's rights but also brought with it the possibility for the State to adjust its institutional structure so that it would be in line with the American Convention. Likewise, the structural scope of the recommendations ordered by the Commission, and their consequent compliance by the State, extended the benefits to other persons who were not part of the process and ensured that these modifications acquired a more permanent character by translating into the adoption of new normative frameworks.

## Case 12.448 | Sergio Emilio Cadena Antúnez | Colombia

### Colombia Case 12.448 Report 44/08

**1. FACTS:** The case refers to the dismissal of Mr. Sergio Emilio Cadena Antolínez, who had worked as an employee of Banco de la Republica, and the deprivation of access to an effective judicial remedy for the determination of his rights due to the disregard of a Constitutional Court decision ordering his reinstatement.

**2. THE IACHR RECOMMENDED:** To adopt the necessary measures to avoid future violations of the right to judicial protection, in accordance with the duty to prevent and guarantee the fundamental rights recognized in the American Convention.

**3. THE CONSEQUENCE WAS:** In Colombia, access to justice in cases involving conflicts of competences between higher courts were clarified. Currently, the affected people can go before any judge to have the case processed and decided or, with the fulfillment of the indicated requirements, request the Constitutional Court to file the tutela action and proceed with the eventual review process.

In Merits Report No. 44/08, the Commission determined the international responsibility of Colombia for the violation of the right to judicial protection of Mr. Sergio Emilio Cadena Antolinez. Such violation derived as a consequence of the disregard by the Labor Casation Chamber of the Supreme Court of Justice of judgment No. SU-1185/2001 issued by the Constitutional Court, in the context of the phenomenon known as "train wreck". In analyzing the merits of the case, the IACHR ordered the State to adopt the necessary measures to avoid future violations of the right to judicial protection.

In its Report on the Merits, the Commission emphasized that the phenomenon known as "train wreck" is attributable to the conflict of competence between the decisions adopted by the high courts of that country. It pointed out that the effect of this phenomenon is to generate and perpetuate a situation of lack of definition of the rights either

recognized or denied by the higher courts: the Supreme Court of Justice, the Council of State, and the Constitutional Court. In the opinion of the IACHR, the conflict between these higher judicial instances leaves the users of the judicial system uncertain as to the course of action to follow in cases in which judicial rulings violate rights protected by the American Convention. Likewise, and in cases in which individuals successfully resort to the *tutela action*, the protection of their rights is subject to non-compliance and additional procedures.

As part of the merits, the Commission considered that under the provisions of the American Convention, States are under the obligation to organize the governmental apparatus and, in general, all the structures through which public power is exercised and manifested, in such a way that they are capable of legally ensuring the free and full exercise of human rights. It emphasized that, in the case under analysis, the facts demonstrated that the invocation of a quick and simple judicial remedy such as *tutela* under Colombian law did not result in the protection of fundamental rights recognized in domestic law and in the Convention itself. Thus, as a consequence, the IACHR recommended the State to adopt the necessary measures to avoid future violations of the right to judicial protection enshrined in the American Convention.

As part of the process of compliance with recommendations, the State reported that in 2009, the Full Chamber of the Constitutional Court adopted Order 100 of 2008 in which it established that in regarding the phenomenon known as "train wreck", the affected persons can request any judge to have the controversy processed and decided; or to request the General Secretariat of the Constitutional Court to file the *tutela* action and to carry out the eventual review process. Likewise, the Labor and Criminal Cassation Chambers of the Supreme Court of Justice decided autonomously to process and resolve the *tutela* actions filed against judicial decisions issued by the said institution, as well as to send the file to the Constitutional Court for the eventual review of the decisions issued.

Also, during 2008, the Full Chamber of the Constitutional Court approved an addition to its Internal Rules of Procedure and included a second paragraph to Article 54 A, by which, once *tutela* actions are selected against judicial decisions adopted by the Supreme Court and the Council of State, they must be brought to the attention of the Full Chamber of the Constitutional Court, so that it may determine whether to assume the review based on the monthly report submitted to it as of March 2009. Finally, through Order No. 124 of 2009, the Constitutional Court of Colombia adopted measures to solve the conflicts of competence that arose between the different judicial corporations.

On this basis, it is possible to point out that the intervention of the IACHR had a particular effect on the resolution of a relevant conflict in the processes of seeking justice in Colombia. The analysis carried out by the IACHR, and the recommendations it issued, paved the way for two of the most important instances of justice in the State to resolve jurisdictional disputes that broadened the schemes of access to justice and due process for people in Colombia.

## Case 11.500 | Tomás Eduardo Cirio | Uruguay

### Uruguay Case 11.500 Report 124/06

**1. FACTS:** The case addresses the violations of due process and freedom of expression of Mr. Tomás Eduardo Cirio, a retired military officer who decided to leave the Uruguayan Army through of a letter in which he questioned some of the actions that violated human rights during the dictatorship.

**2. THE IACHR RECOMMENDED:** To adapt domestic legislation to the norms of the American Convention on freedom of expression and due process in military jurisdiction.

**3. THE CONSEQUENCE WAS:** In 2008, Uruguay approved the National Defense Framework Law No. 18.650. Although published two years later, this legislation incorporates important modifications related to the scope of military jurisdiction.

In Merits Report No. 124/06, the Inter-American Commission concluded the international responsibility of the State of Uruguay for the violation of the rights to judicial guarantees, judicial protection, and freedom of expression, among others, to the detriment of Mr. Tomás Eduardo Cirio.

In his petition, the victim denounced that since 1972, after the Assembly of the Military Center was held, and as a retired Army major, he resigned from the Center through a letter in which he made general accusations about the violation of human rights in the framework of the anti-subversive struggle by the Armed Forces in Uruguay. Since then, according to the petitioner, he has not ceased to receive sanctions from the State in retaliation for having expressed his opinion freely on such violations. As part of the reparation scheme, the Commission asked the State to promote the necessary measures to bring domestic legislation into line with the standards of the American Convention on freedom of expression and due process in military jurisdiction.

In compliance with the recommendations issued, in 2008 the State adopted the National Defense Framework Law (Law 18,650), which was approved two years after the lifting of a presidential veto on various provisions. This law expressly establishes that it is the Judicial Power of Uruguay that exercises the ordinary jurisdiction and the military jurisdiction referred to in the Constitution of the State. With this, the law determined that the Ministry of Defense should carry out the effective transfer of all military jurisdictional functions to the Judicial Branch, through a coordinated process based on the amendments made to the organic laws of the State courts.

Similarly, the amendments to the National Defense Law provided that common crimes committed by military agents in peacetime, regardless of the place where they are committed, shall be subject to ordinary justice. It follows that, in cases such as those of Mr. Cirio, whose offenses do not infringe on the military function or strictly military discipline,

they must be heard by civilian courts. The foregoing broadens the conditions of judicial independence and judicial impartiality under the contemporary development of the standards outlined by the jurisprudence of the Inter-American System.

## Case 12.689 | J.S.C.H and M.G.S | Mexico

### Mexico Case 12.689 Report 80/15

**1. FACTS:** The case deals with two members of the Mexican Army who were dismissed as a consequence of living with HIV. The State's actions towards the two victims constituted an act of discrimination that affected their private life and personal integrity.

**2. THE IACHR RECOMMENDED:** To ensure the compatibility of its legislation with the obligations enshrined in Articles 1.1, 11, and 24 of the American Convention. In particular, clarify that HIV seropositivity does not automatically limit military functional activity.

**3. THE CONSEQUENCE WAS:** In Mexico, the Law of the Social Security Institute for the Mexican Armed Forces was modified with to determine that HIV seropositivity can only be a cause for retirement if it implies the loss of functionality for the performance of the acts of the service, excluding any interpretation that would presume such loss by the mere fact of living with HIV.

In Merits Report No. 80/15, the IACHR determined that Mexico was responsible for violating the rights to due process, honor and dignity, and the right to equal protection before the law of J.S.C.H. and M.G.S. Such conclusion was based on the fact that the victims were dismissed from the Mexican Army given their condition as HIV+. As part of the measures of reparation, the Commission ordered Mexico to modify the Law of the Social Security Institute of the Mexican Armed Forces to make it compatible with the American Convention and, specifically, to indicate that HIV does not *per se* limit the functional activity of military personnel living with this condition.

As part of the follow-up process, the IACHR held a working meeting with the parties in March 2012. As a result of this meeting, the State and the petitioners agreed to sign an "Agreement for the attention of Merits Report No. 139/11" which included, among other measures, the assessment and modification of the ISSFAM law as a guarantee of non-repetition, as ordered by the IACHR. In this regard, the State reported that on January 27, 2015, and by executive order, the "Decree by which various provisions of the Law of the Social Security Institute for the Mexican Armed Forces are reformed, added and repealed" was published.

Based on the amendments made, the ISSFAM Law now provides for Acquired Immune Deficiency Syndrome (AIDS) as a category giving rise to disability retirement, provided that it implies the loss of functionality for the performance of the acts of the service, that

is, when the health condition is accompanied by infections by opportunistic germs and/or malignant neoplasms, which imply the loss of functionality for the performance of the acts of the service. Likewise, the amended law now includes a provision stating that HIV infection, with supplementary tests, whose medical control and treatment limit the performance of the acts of the service by less than 20% will only give rise to a procedure of change of weapon or service, at the request of a Medical Board.

The scope derived from compliance with the recommendation ordered by the IACHR, in this case, is of great importance. On the one hand, the legislative amendment generated for the victims the possibility of continuing to perform their duties based on a clear legal framework compatible with the right to non-discrimination. Likewise, it expanded the protection schemes for all those military personnel who are in the same condition, so that the knowledge of their serological status does not represent an obstacle for their performance within the Mexican Armed Forces.

However, of particular relevance are the symbolic effects derived from compliance with this recommendation and, therefore, from the modification of Mexican legislation. Through this amendment, Mexican legislation now expresses a message that contributes to the demystification and elimination of the stigma against people living with this condition. This is because it demonstrates that living with HIV -especially when appropriate medical treatment is followed- does not represent a limitation to people's abilities, capacities, and functions.

## Case 12.285 | Michael Domingues | United States

### United States Case 12.285 Report 62/02

**1. FACTS:** The case deals with the situation of Michael Domingues who was sentenced to death for the commission of two crimes that he committed when he was a minor.

**2. THE IACHR RECOMMENDED:** To review its laws, procedures and practices to ensure that the death penalty is not imposed on persons who, at the time of committing a crime, were under 18 years of age.

**3. THE CONSEQUENCE WAS:** In 2005, the U.S. Supreme Court issued its decision in *Roper v. Simmons* in which ruled that the imposition of the death penalty on a person under the age of 18 at the time of the commission of the crime is prohibited by the Eighth Amendment as cruel and unusual punishment.

In Merits Report No. 62/02, the Inter-American Commission considered the United States responsible for the death sentence imposition to Mr. Domingues in connection with two homicides that occurred in Nevada in 1993. Mr. Domingues was 16 years old when these crimes were committed. In its Merits Report, the Commission determined that the persistence in the

United States to execute alleged offenders under the age of 18 is a violation of jus cogens norms. The Commission also stated that the US would be responsible for a grave and irreparable violation of Michael Domingues' right to life, enshrined in Article I of the American Declaration if it were to execute him for crimes he committed when he was 16 years old.

As part of its recommendations, the Commission urged the United States to review its laws, procedures, and practices to ensure that the death penalty is not imposed on persons who, at the time of committing a crime, were under the age of 18. In December 2005, Mr. Domingues' representatives informed the Commission that the findings contained in Report 62/02 were presented to the Nevada authorities, who refused to take any action to enforce them, but that the U.S. Supreme Court subsequently ruled in *Roper v. Simmons*, 543 U.S. 551 (2005) that a sentence of death imposed on a person under the age of 18 at the time of the commission of the crime is prohibited by the Eighth Amendment as cruel and unusual punishment. Similarly, the State indicated that in the United States Supreme Court's decision in *Roper v. Simmons*, 125 S. Ct. 1183, the Court held that the application of the death sentence to minors under 18 years of age at the time of the commission of a capital offense is unconstitutional under the Eighth and Fourteenth Amendments to the U.S. Constitution.

## Case 12.009 | Leidy Dayán Sánchez | Colombia

### Colombia Case 12.009 Report 23/08

**1. FACTS:** The case refers to the extrajudicial killing of 14-year-old Leidy Dayán Sánchez by an agent of the National Police. Within the framework of the proceedings, the prosecution encountered significant obstacles due to its processing before the military jurisdiction.

**2. THE IACHR RECOMMENDED:** Among other measures, to adopt training measures for the public service and non-repetition measures based on the duty to prevent and guarantee human rights.

**3. THE CONSEQUENCE WAS:** The State reported the design and implementation of various training courses aimed at the public service that included as training material the Merits Report No. 43/08. It also mentioned constitutional amendments and processes related to military jurisdiction in cases involving human rights violations.

In Merits Report No. 43/08, the IACHR declared Colombia's responsibility as a consequence of the extrajudicial killing of Leidy Dayán Sánchez, which occurred in March 1998 in Bogotá. The domestic proceedings related to prosecutions were conducted in the military jurisdiction, where the competent authorities determined the acquittal of the police officer responsible for Leidy's death. Based on its analysis, the IACHR determined that Colombia violated the rights to life, the rights of children, judicial guarantees, and judicial protection to the detriment of Leidy Dayán.

As part of the reparation process, the IACHR recommended the State to conduct an effective investigation of the facts; compensate the victim's next of kin; make a public acknowledgment of responsibility; adopt training measures for the public service; adopt measures of non-repetition based on the duty to prevent and guarantee human rights. In the processing of the case, the State expressed its willingness to comply with these recommendations. In 2007, Colombia informed the Commission of the payment of the compensation agreed upon by the parties, as well as of the celebration of acts related to the recovery of the historical memory in the case of Leidy, which were accompanied by the offer of a public apology by the Director of the National Police.

Regarding structural recommendations, the State reported the design and implementation of various training courses aimed at the public service that included as training material the Merits Report No. 43/08. Having advanced the follow-up process before the IACHR, and despite having complied with a significant part of them, the State considered it appropriate to inform the IACHR in 2010 on various processes arising from a constitutional reform in the area of military jurisdiction.

In particular, Colombia mentioned the amendment adopted in 2015 to Article 221 of the Colombian Constitution on military criminal justice. The State reported that this reform was challenged before the Constitutional Court of Colombia, which, in judgment C-084/16, ruled that the application of international humanitarian law does not exclude the application of international human rights law when it comes to the investigation and prosecution of conduct committed in the context of situations that qualify as armed conflicts. Likewise, Colombia made mention of Law 1765 of 2015 that restructured the Criminal and Military Justice to create the figure of the Military and Police Criminal Prosecutor General. Again, the reformed regulation was challenged before the Constitutional Court, which in its resolution C-326/16 determined that such authority does not have the power to offer procedural benefits derived from the principle of opportunity to military elements subject to investigation, but that such power corresponds exclusively to civilian authorities.

Based on the foregoing, the Commission's analysis represented an important piece within a broader framework of institutional actions that ensured the possibility of adopting non-repetition measures. As in the cases mentioned above, the actions of the IACHR contributed to the adoption of renewed normative frameworks that broadened the conditions of access to justice in cases in which military and police authorities are responsible for human rights violations.

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From the cases mentioned above, it is possible to identify that in all those in which the IACHR ordered the adoption of legal amendments as a reparation measure, the States complied by regulating the issue addressed. In this sense, the central consequence of compliance with these measures was the adoption of specific norms and legislation that modified the conditions that propitiated the human rights violations. The structural scope of these measures lies in the fact that the consequences derived from their adoption are not limited only to the victim of the case, but are extended to the rest of the population that may find themselves in a similar situation or condition.

The IACHR notes that the analysis of the consequences of full compliance with the recommendations is a central aspect for subsequent analysis of the impact of such measures. Likewise, the Commission is aware that a clear understanding of the nature and scope of the processes of compliance and implementation of international recommendations requires the development of interdisciplinary analyses, and hopes that this analysis can serve to guide the development of future research.

Regardless of the above, a noteworthy aspect of the cases analyzed is that the structural measures that were fully complied with by the States are related to ensuring greater conditions for access to justice. In other words, compliance with the recommendations ordered by the Commission in the aforementioned cases had a significant impact on the configuration of the state apparatus for the administration of justice, so that the States adjusted their institutional structure to expand the guarantees of the right to defense in the domestic sphere.

The cases of Argentina, Colombia, Uruguay, and Paraguay mentioned above are clear examples of this situation. In all of them, the Commission identified important challenges in the processes of achieving justice that affected the rights enshrined in Articles 8 and 25 of the American Convention. Based on the recommendations made and their compliance by the States, the Commission's work allowed a greater number of people in those States to benefit from the changes resulting from the victims' claims in each of the cases.

Similarly, the results of full compliance with the structural recommendations on access to justice are not limited exclusively to improving the conditions of victims and other groups. On the contrary, they also represent an important benefit for the States insofar as their attention allows them to expand the democratic conditions that should characterize any rule of law, and to integrate themselves into the regional and international dynamics of protection and guarantee of human rights.

On the other hand, the Commission recognizes and values the measures adopted by the States to comply with its recommendations. The Commission considers that the will of the State, accompanied by an institutional practice congruent with that will, are essential aspects to reduce the gap between commitment and compliance with human rights, as well as to strengthen the effectiveness of the Inter-American System. However, it also recognizes that, on many occasions, compliance with recommendations is part of a much broader context made up of other actions promoted by different actors in the domestic sphere.

To this extent, the Commission considers it necessary to recognize the role of what in the international arena is known as "norm entrepreneurs". That is, all those social actors, such as non-governmental organizations, social movements, groups, foundations, among others, that through the deployment of socio-legal and political actions and strategies in the domestic sphere, encourage and promote compliance with the recommendations ordered by the IACHR.

These norm entrepreneurs take up the recommendations issued by the IACHR and bring them into the domestic arena to promote different processes aimed at modifying situations

considered contrary to the enjoyment and exercise of human rights. When this happens, compliance with recommendations is strengthened by pressure and mobilization mechanisms and strategies that come from both the international and national spheres.

An example of this can be seen in case 12.689 regarding Mexico. Compliance with recommendations ordered by the IACHR was part of a broader chain of efforts whose promotion had begun years earlier. In 2007, Mexico's Supreme Court of Justice of the Nation had resolved several appeals filed by military personnel dismissed because of their HIV status<sup>3</sup>. In its resolutions, the Mexican Supreme Court determined that the Law of the Institute for the Social Security of the Mexican Armed Forces was discriminatory in that it provided for the possibility of military personnel being dismissed because of their health condition.

Although such judicial decisions guaranteed the rights of the affected persons, the fact is that their scope was limited to an individual level that did not result in legislative modification. However, the decision issued by the IACHR in Report No. 80/15, dated October 28, 2015, which deals with the same issue and through which it ordered the modification of said regulation, ended up consolidating a structural scheme of greater protection for military personnel living with HIV in said country. Thus, through the enforcement of such measures, a decisive impulse was generated in the modification of a structural situation that affected a significant number of people living with HIV in the country.

3. See resolutions 510/2004; 1185/2004; 196/2005; 1015/2005; 1666/2005; 2146/2005; 810/2006; 1200/2006; 1285/2006 y 1695/2006 issued by the Mexican Supreme Court of Justice.

## Consequences of Compliance with Structural Recommendations in Cases with at Least One Recommendation Fully Complied

**45%**

of the active cases under follow-up have at least one recommendation that has been fully implemented.

**30**

structural recommendations in cases under follow-up

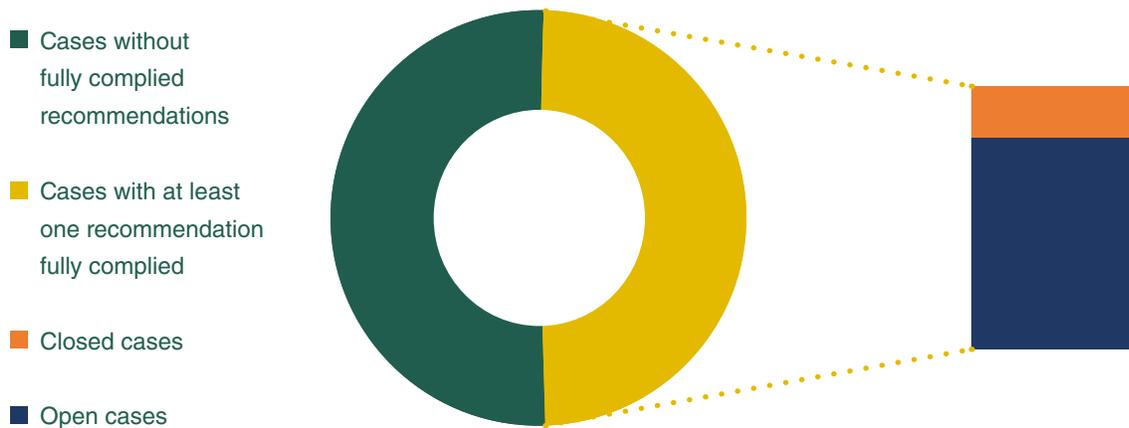
The closed cases reflect one of the main objectives of international justice: to guarantee victims reparation for the harm caused and to ensure mechanisms for the non-repetition of such conduct. However, when dealing with complex phenomena, the cases usually include recommendations dealing with the adoption of different measures whose progress in compliance may vary depending on the nature of the action or measure to be adopted.

Thus, considering the nature of certain recommendations, as well as the socio-political or economic conditions existing in a given State, compliance with certain measures requires greater effort and coordination of actions. This does not mean that such cases have not advanced in their compliance. To this extent, to broaden the scope of the analysis presented, the IACHR decided to include in this section cases that, although they are still in the follow-up stage, present some structural recommendations that have been fully complied with.

The IACHR has identified that, of the total number of cases published between 2001 and 2020 that are in the follow-up stage, 50 of them present at least one recommendation with a level of total compliance. This number represents 43% of the total number of cases subject to follow-up by the Commission.

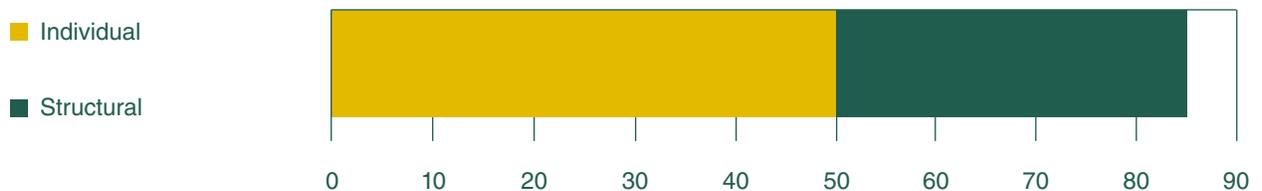
Of the total number of cases with at least one recommendation fully complied with, 10 are closed and 40 are under active follow-up. The 10 closed cases coincide with those reported in the previous section.

**Graphic 2.** Distribution of cases with at least one fully complied recommendation.



The total number of cases with at least one fully complied recommendation is 89, of which 52 have an individual scope and 37 are structural.

**Graphic 3.** Distribution of recommendations according to their scope. Cases with at least one recommendation fully complied with.



On the other hand, the active cases in the follow-up stage with at least one recommendation that has been fully complied with (40) group a total of 65 recommendations. Based on their scope, these recommendations are distributed into 35 individual and 30 structural.

**Table 3.** Active cases under follow-up in the framework of the IACHR Annual Report with at least one recommendation fully complied with, by country.

Country	N° of cases	Cases
Argentina	1	Report N° 66/12 – Case 12.324, Rubén Luis Godoy
Bahamas	1	Report N° 12/14 – Case 12.231, Peter Cash
Brazil	4	Report N° 33/04 – Case 11.634, Jailton Neri Da Fonseca Report N° 66/06 – Case 12.001, Simone André Diniz Report N° 54/01 – Case 12.051, Maria da Penha Report N° 37/10 – Case 12.308, Manoel Leal de Oliveira
Chile	3	Report N° 133/99 – Case 11.725, Carmelo Soria Espinoza Report N° 61/01 – Case 11.771, Samuel Alfonso Catalán Lincoleo Report N° 56/10 – Case 12.469, Margarita Cecilia Barbería
Colombia	6	Report N° 79/11 – Case 10.916, James Zapata Valencia and José Heriberto Ramírez Llanos Report N° 62/01 – Case 11.654, Ríofrío Massacre Report N° 122/18 – Case 11.656, Marta Lucía Álvarez Giraldo Report N° 64/01 – Case 11.712, Leonel de Jesús Isaza Echeverry Report N° 101/17 – Case 12.414, Alcides Torres Arias, Ángel David Quintero et al. Report N° 35/17 – Case 12.713, José Rusbel Lara et al.
Ecuador	4	Report N° 66/01 – Caso 11.992, Dayra María Levoyer Jiménez Report N° 36/08 – Caso 12.487, Rafael Ignacio Cuesta Caputi Report N° 84/09 – Case 12.525, Nelson Iván Serrano Sáenz Report 92/19 – Case 11.624, Jorge Darwin García and Family
El Salvador	1	Report N° 27/09 – Case 12.249, Jorge Odir Miranda Cortez et al.
United States	5	Report N° 97/03 – Case 11.193, Gary Graham Report N° 52/02 – Case 11.753, Ramón Martínez Villareal Report N° 100/03 – Case 12.240, Douglas Christopher Thomas Report N° 101/03 – Case 12.412, Napoleón Beazley Report N° 25/05 – Case 12.439, Toronto Markkey Patterson
Guatemala	3	Report N° 59/01 – Case 10.626, Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A), José María Ixcaya Pixtay y otros; Case 10.799 Catalino Chochoy et al; Caso 10.751 Juan Galicia Hernández et al; and Case 10.901, Antulio Delgado Report N° 69/06 – Case 11.171, Tomás Lares Cipriano Report N° 80/07 – Case 11.658, Martín Pelicó Coxic

Country	N° of cases	Cases
<b>Jamaica</b>	5	Report N° 49/01 – Cases 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) 11.847 (Dalton Daley) Report N° 127/01 – Case 12.183, Joseph Thomas Report N° 58/02 – Case 12.275, Denton Aiken Report N° 76/02 – Case 12.347, Dave Sewell Report N° 61/06 – Case 12.447, Derrick Tracey
<b>Mexico</b>	2	Report N° 51/13 – Case 12.551, Paloma Angélica Escobar Ledezma et al. Report N° 117/09 – Case 12.228, Alfonso Martín Del Campo Dodd
<b>Nicaragua</b>	1	Report N° 100/01 – Case 11.381, Milton García Fajardo et al.
<b>Paraguay</b>	1	Report N° 85/09 – Case 11.607, Víctor Hugo Maciel
<b>Peru</b>	3	Report N° 112/00 – Case 11.099, Yone Cruz Ocalio Report N° 111/00 – Case 11.031, Pedro Pablo López González et al. Report N° 101/01 – Case 10.247 and others, Extrajudicial Executions and Enforced Disappearances of Persons
<b>Uruguay</b>	1	Report N° 86/09 – Case 12.553, Jorge, José and Dante Peirano Basso

4. It is important to note that recommendations can be classified under different categories. In other words, the same structural measure can have an impact on both legislation and public policy at the same time.

Of the total number of structural recommendations issued in published background reports with at least one recommendation fully implemented, most of them fall into the categories of legislative modification (28) and the rest are evenly distributed among recommendations for institutional strengthening and public policy (8), respectively<sup>4</sup>.

**Table 4.** Active cases under follow-up in the IACHR Annual Report with at least one structural recommendation fully complied with, by country.

Country	N° of cases	Country	N° of cases
<b>Brazil</b>	2	<b>Guatemala</b>	3
<b>Chile</b>	1	<b>Jamaica</b>	5
<b>Colombia</b>	1	<b>Mexico</b>	1
<b>Ecuador</b>	1	<b>Peru</b>	3
<b>United States</b>	4		

As in the previous cases, compliance with structural measures related to the adoption or modification of legislation has derived, in several cases, from legislative reform processes and, in some others, from processes of adoption and ratification of international instruments. The latter occurred in case 10.247 in which the State of **Peru**, in compliance with the provisions of IACHR Report No. 101/01, ratified the Inter-American Convention on Forced Disappearance of Persons.

Compliance with structural measures linked to legislative conditions has had important consequences in addressing structural problems in several countries in the region. The cases of the United States, Guatemala, and Jamaica presented below are examples of this phenomenon. The IACHR emphasizes that, as in the analysis of those cases that were fully complied with, the total compliance of these types of measures was reinforced by other types of processes promoted within the States. Judicial proceedings and the issuance of constitutional decisions constitute a common denominator in the cases noted above.

In this sense, the IACHR's experience in following up on its recommendations allows us to identify domestic courts as important allies in the compliance process. In addition to the norms entrepreneurs identified in previous paragraphs, national courts are positioned as institutional spaces capable of influencing national dynamics and promoting compliance and the materialization of international obligations in the domestic sphere of the States. This situation is particularly relevant given the operating conditions of international human rights institutions such as the IACHR. Such institutions are characterized by the great challenges they face in *enforcing* their decisions since they do not have coercive mechanisms to require States to comply with the recommendations and orders they issue. Nevertheless, the characteristics of international human rights supervisory bodies, such as the IACHR, can be indirectly strengthened thanks to the committed action of national bodies that, within the framework of their competencies and powers, deploy measures to promote the effective implementation of the international commitments to which the States have consented to be bound and to comply with.

5. See Merits Report No. 97/03, Case 11.193 Shaja Sankofa; Merits Report No. 100/03, Case 12.240 Douglas Christopher Thomas; Merits Report No. 101/03, Case 12.412 Napoleon Beazley; I Merits Report No. 25/05, Case 12.439 Toronto Markkey Patterson.

6. The the IACHR has been emphatic in recommending the United States to adopt measures that guarantee the observance of due process in all judicial proceedings and, especially, in those that may result in the imposition of the death penalty.

In several cases, the IACHR ordered the **United States** to modify its domestic legislation to ensure that the death penalty would not be automatically imposed in cases in which the alleged offender was a minor at the time of the crime<sup>5</sup>. As a result of several domestic judicial proceedings, in 2005 the Supreme Court of the United States issued its decision in *Roper v. Simmons* in which it established that the automatic imposition of the death penalty in cases in which the defendant was a minor at the time of the crime was contrary to the Eighth and Fourteenth Amendments to the United States Constitution. On this basis, the recommendation issued by the IACHR was inserted in a domestic process and contributed to the securing of an outcome that led to the modification of practices and precedents in that country<sup>6</sup>.

A similar phenomenon occurred in **Jamaica**. In several cases, the IACHR ordered the State to adopt legislative measures to guarantee the non-application of the death penalty; the development of due process in cases related to the death penalty; and the adequacy of the conditions of detention to which persons sentenced to death were subjected.

As part of a broader process of normative reconfiguration, in 2001 the Judicial Committee of the Privy Council, in its decision in the case of *Neville Lewis v Attorney General of Jamaica*, shared the criteria developed by this Commission and declared that clemency and pardon procedures should be fair and based on due process, as well as on the legal guarantees existing in the local legal system. While this decision is binding on all Jamaican authorities, it is possible to state that with it the State adopted an approach compatible with Jamaica's obligations under the American Convention on Human Rights.

The *Lambert Watson* case decided in 2004 by the Privy Council is a further consequence of this process<sup>7</sup>. The decision led to all persons awaiting execution on death row in Jamaica being relocated to the general prison population. This decision led to all persons awaiting execution on death row in Jamaica being relocated to the general prison population. This, in turn, laid the groundwork for the State to begin to monitor more carefully the conditions of detention in State prisons and even for the government to announce a plan to build new detention centers and begin a reclassification process to alleviate overcrowding in maximum security prisons.

**Guatemala** is in the same situation. In several cases before it, the IACHR ordered the State of Guatemala to adopt all necessary measures to prevent the resurgence and reorganization of the Civil Self-Defense Patrols<sup>8</sup>.

In the analysis of compliance, the IACHR considered that the issuance of Decree 143-96 issued by Congress, which repeals Decree 19-86 recognizing the legal existence of the civilian self-defense groups, was a favorable measure to fully comply with the recommendation issued.

However, it must be considered that it was not only the issuance of the said norm that exhausted compliance with the measure ordered by the IACHR but the accumulation of actions adopted by the State to resolve a structural problem that generated countless human rights violations.

7. See Judicial Committee of the Privy Council, *Watson v R* (Jamaica) [2004] UKPC 34 (July 7, 2004) (United Kingdom).

8. See Merits Report No. 59/01, Cases 10.626, 10.627, 11.198, 10.799, 10.751, 10.901 Remigio Domingo Morales y otros; Merits Report No. 69/06 Case 11.171 Tomás Lares Cipriano.

## Conclusions

The analysis offered in this document allows us to understand that compliance with the structural measures ordered by the IACHR in cases with published merits reports has important repercussions for the enforcement of human rights in the region. The fact that nearly half of the cases under follow-up have at least one recommendation that has been fully complied with, and that more than 40% of these recommendations are structural, offers an encouraging outlook for the Inter-American human rights system, as well as for the enjoyment and exercise of such rights in the Americas.

Understanding the consequences derived from compliance with the recommendations issued by the IACHR represents a first step in the formulation of more sophisticated analyses, such as those that seek to measure the impact of these recommendations and the work of specialized organizations such as the IACHR. In short, they make it possible to understand that these processes do not occur in a vacuum, but are part of dynamics in which national and international efforts promoted by different actors intersect.

In this sense, identifying the impact necessarily requires knowing and assessing these efforts and understanding how the IACHR's actions can collaborate in a differentiated manner in the achievement of variable goals and results. Having this information makes it possible to identify areas of opportunity that can be jointly strengthened to ensure greater protection and exercise of human rights in the hemisphere. The IACHR will continue to provide information that contributes to this objective.