CHAPTER IV.A
ACCESS TO WATER IN THE AMERICAS
AN INTRODUCTION TO THE HUMAN RIGHT TO WATER IN THE INTER-AMERICAN SYSTEM

INTRODUCTION

1. The inter-American system and in particular the Inter-American Commission on Human Rights (hereinafter the IACHR or the Commission) has been progressively tackling in the exercise of its mandate regarding the protection and defense of human rights across the hemisphere, a series of problems that hamper or prevent access to water fit for human consumption in the Americas, on the basis of the system of petitions and individual cases; precautionary measures; conducting monitoring activities such as visits to the region's countries and in the framework of public hearings convened during its sessions. On the basis of its initial work regarding this, the Commission has examined how access to water is necessary to enforce basic rights such as the right to live and personal integrity and how it is essential to ensure access to water without discrimination.

2. In this context, in 2015, the IACHR received information that it deemed alarming with respect to access to, and the quality and availability of, water in the Americas. Indeed, on October 23, 2015, the IACHR held a hearing on "Human Rights and Water in the Americas" which had been requested by a large number of civil society organizations, academic bodies, legal offices, and communities and persons directly affected in the Hemisphere.[1] In the hearing and in view of the information submitted regarding problems related to access to water in the Americas, the petitioners asked the IACHR to reaffirm access to water as a human right and to use its working tools (promotion, monitoring and protection) to protect that right in the Americas.

3. According to information provided at the above-mentioned hearing, out of the 580 million inhabitants in Latin America and the Caribbean, 20% do not have access to safe drinking water supplied by a pipeline and less than 30% of sewage water is treated, albeit oftentimes deficiently, leading to the death of 34 out of every 1,000 children every year in Latin America and the Caribbean because of water-related diseases.[2] The petitioners of the regional hearing on human rights and water in the Americas reported that the situation of water supply shortage had become more severe because of growing pressure for natural resources to carry

[1] The following petitioners requested the above-mentioned hearing: Acción Solidaria para el Desarrollo (CooperAcción); Inter-American Association for Environmental Defense (AIDA); Regional Association for Human Rights in Peru (Asociación Pro Derechos Humanos—APRODEH); Bienaventurados los Pobres (BePe) & Colectivo Sumaj Kawsay; Centro de Acción Legal Ambiental y Social (CALAS); Centro de Derechos Humanos "Bartolomé Carrasco Briseño A.C." (BARCA-HD); Centro de Estudios para la Justicia Social "Tierra Digna"; Centro Hondureño de Promoción para el Desarrollo Comunitario (CEHPRODEC); Centro de Incidencia Ambiental (CIAM); Centro de Investigación sobre Desarrollo y Comercio (CEICOM); Comité de Unidad Campesina (CUC); Comitê Nacional em Defesa dos Territórios frente Mineração; Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús (ERIC-RP); Due Process of Law Foundation (DPLF); International Working Group on Indigenous Affairs (IWGIA); Justiça Global; Observatorio Ciudadano; Pensamiento y Acción Social (PAS); Alabama Center for Rural Enterprise Co. Inc.; Albuquerque Center for Peace and Justice; Detroit/Michigan Chapter of the National Lawyers Guild; Environment Justice Coalition for Safe Water (EJCW); Food & Water Watch; Global Initiative for Economic, Social and Cultural Rights; Human Rights Advocates; Massachusetts Global Action/Color of Water Project; Metro Atlanta Task Force for the Homeless; Michigan Welfare Rights Organization; People's Water Board; National Economic & Social Rights Initiative; National Lawyers Guild; New Mexico Environmental Law Center; Program on Human Rights and the Global Economy (PHRGE) of Northeastern University; Santa Clara University's International Human Rights Clinic School of Law; Unitarian Universalist Service Committee; Curtis Cooper; Cynthia Soohoo; Edwards and Jennings PC; Sugar Law Center; and Lyda et al. v. City of Detroit Department of Water and Sewage Pro Bono Legal Committee.

[2] Sixth Water Forum, Americas' Water Agenda: Targets, Solutions and the Paths to Improving Water Resources Management, pg. 23.

out extraction activities, among which the most noteworthy are dam building and mining production.[3] In this context, the petitioners at the hearing indicated that there is a regional pattern for the implementation of massive development projects, which had led to alleged human rights violations, including for example the forced displacement of persons and communities, systematic violations of the right to prior to consultation of indigenous and tribal peoples and to the effective participation of peasant communities in environmental decisions.

4. As indicated below in greater detail, one of the most severe violations that has been documented is how access to water by persons who are in the area of influence of projects, as well as by remote communities that depend on safe drinking water sources affected by extraction activities, is being undermined. The petitioners indicated that such circumstances would be rendered even more severe by the absence of effective measures to counter this problem and by the enactment of national standards that would favor the appropriation of, and priority access to, water by sectors that carry out the extraction of resources.[4]

5. It is estimated that one fourth of the population of Latin America and the Caribbean, that is, more than 100 million persons, live in areas that suffer from water shortages.[5] To this circumstance must be added that the Americas would be facing severe water supply problems because of the alleged progressive pollution of water sources and the intense process of urbanization over the past few decades,[6] in addition to the impact of the activities of extractive industries and the use of agrochemicals. In addition, the Commission received information regarding situations of discrimination and lack of equality with respect to access to water in the Americas. In this respect, the IACHR became aware of the implementation of measures of water supply outages that numerous communities have experienced, with a disproportionate impact on people living in conditions of poverty, communities of African descent, rural and urban communities, campesinos, and other groups that have historically faced discrimination.[7]

6. In view of the above-mentioned information, the Commission decided to proceed with the drafting of the present section of Chapter IV A for the purpose of tackling impacts on the access to water in the Americas in line with the information received from its various working mechanisms in 2015. In addition, to draft the present section, in July 2015, the IACHR distributed the questionnaire "Access to Water in the Americas," on the basis of which it gathered information submitted by the states of the region and civil society. Said questionnaire was answered by a total of 12 member states of the OAS[8], as well as 15 civil society organizations, academia and individuals[9]. The Commission also notes that the initiatives, practices

[3] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2015.

[4] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2015.

[5] Inter-American Network of Academies of Science, Scientific and Technological Consultative Forum, AC. Diagnosis of Water in the Americas, p. 22. In: http://www.ianas.org/water/book/diagnostico_del_agua_en_las_americas.pdf

[6] Inter-American Network of Academies of Science, Scientific and Technological Consultative Forum, AC. Diagnosis of Water in the Americas, p. 22. In: http://www.ianas.org/water/book/diagnostico_del_agua_en_las_americas.pdf

[7] Per example, the Commission received detailed information from representatives of civil society, including communities, academic institutions, law firms, and people directly affected by the alleged lack of access to water in the United States at the regional thematic hearing on human rights and water in the Americas, held during the IACHR's 156th regular session on October 23, 2015. The petitioners indicated that, for decades, the United States "had systematically denied various communities their right to water because of pollution and massive water outages for persons living in poverty".

[8] The Commission wishes to express its gratitude for the information received from the following States: Argentina, Bolivia, Chile, Colombia, El Salvador, United States, Guyana, Honduras, Nicaragua, Panama, Uruguay, Mexico.

[9] The Commission also welcomes the information received from civil society organizations, networks of civil society organizations, as well as other individuals, namely: Brasil: Força Sindical, Universida de Federal da Paraíba (UFPB) - Centro de Ciências Jurídicas (CCJ), Facultade Damas-Clínica de Direitos Humanos; Colombia: Grupo de Acciones Públicas de la Universidad Icesi de Cali y la Facultad de Derecho de la Universidad de San Buenaventura sede Medellín, Instituto de Victimología Bartolomé de las Casas; Costa Rica: International Human Rights Clinic at Santa Clara University School of Law, 22 estudiantes del curso sobre Principios de Derecho Internacional Público de la Universidad de Costa Rica con sede Guanacaste, el Centro de Derecho Ambiental y de los Recursos Naturales (CEDARENA); Cuba: Directorio Cubano Democrático; Estados Unidos: International Human Rights Clinic at Santa Clara University School of Law, Philip D. Althouse-Abogado, Red Water Pond Road Community Association (RWPRCA); Honduras: Asociación para la Ciudadanía

and issues presented in this report are non-exhaustive. The present section represents the IACHR first discussion on the issue of access to water in the Americas and constitutes an opportunity to move forward toward a preliminary introduction to the dimensions of the right to water in the inter-American system in order to progressively establish standards to support state and international community efforts to guarantee access to water fit for human use and consumption in the Americas. By means of its different working tools, the IACHR will in the future continue developing states' obligations, to ensure the human right of access to water in the inter-American system.

7. The IACHR considers that access to water is closely linked to respecting and guaranteeing various human rights, such as the right to life, to humane treatment, to the principle to equality and nondiscrimination, among others. In this context, the Commission observes that the absence of access to water affects historically discriminated groups, persons, and communities, such as women, children, and adolescents, indigenous peoples and communities, people of African descent, rural populations and urban shantytowns, persons deprived of their liberty, persons with disabilities, the elderly, among others. Another situation of special concern for the IACHR has to do with the consequences of poverty and extreme poverty in the Americas; it has been recognized worldwide that persons living in poverty suffer disproportionately from obstacles to access to water and adequate sanitation, which severely undermines their enjoyment of economic, social, and cultural rights, thus limiting their possibility of finding a way out of poverty and breaking away from the circle of exclusion and inequality.[10]

8. The IACHR observes with concern that available information indicates that the absence of safe drinking water and sanitation services is deemed to be the second major cause of morbidity and mortality among children under five years of age in the Hemisphere.[11] Because of that, access to quality water, that is, water that is safe and fit for human use and consumption, is necessary to prevent death by dehydration, to reduce the risk of water-related diseases, and to meet consumption, cooking, personal, and domestic hygiene needs.[12]

9. The present section of Chapter IV A is divided into four chapters. In the first chapter, the Commission makes reference to the regulatory framework linked to the access to water, in consideration of the developments in the Universal System of human rights and the Inter-American System of human rights. Likewise, it includes a brief reference on how access to water is addressed in the jurisprudence of the European System and the African System of human rights. The second chapter provides a contextualization of the principal obstacles to access to water in the Americas, as reported to the IACHR on the basis of its various working tools. Afterwards, in the third chapter, the Commission presents measures adopted by the states to guarantee access to water, especially on the basis of information provided in response to the questionnaire "Access to Water in the Americas" distributed by the IACHR for the drafting of the present section. Finally, in the fourth chapter, the Commission presents its conclusions and recommendations.

I. LEGAL FRAMEWORK FOR ACCESS TO WATER

A. Global efforts to protect access to water

10. The Commission observes that, at the universal level, the first steps toward international recognition of the fundamental importance of guaranteeing access to water were taken beginning in 1977 as a result of the consensus achieved in a series of conferences, summits, and world forums over the past four decades.[13] At these high-level meetings, the adoption of multisector measures to sustainably guarantee access

Participativa (ACI-PARTICIPATIVA); Venezuela: Escritorio de Abogados aliado a la Fundación Pro Bono Venezuela; Nicaragua: Centro Nicaragüense de Derechos Humanos (CENIDH).

[10] United Nations, Guiding Principles on Extreme Poverty and Human Rights, para. 77.

[11] PAHO, Preparing the Region of the Americas to Achieve the Sustainable Development Goal on Health, p. 23.

[12] United Nations, Committee on Economic, Social and Cultural Rights, General Comment 15, the right to water, para. 2.

[13] The first international United Nations Conference on Water was held in 1977 in Mar del Plata, Argentina, where it was agreed by consensus that "every person has the same right to clean water, in sufficient amounts and quality, to meet their needs."

to safe drinking water so as to guarantee and protect other human rights was deemed a priority need by the states.

11. In that context, since the beginning of this century, global efforts have focused on guaranteeing access to water as one of the international community's essential priorities, aimed at laying the indispensable groundwork for realizing other rights and reducing poverty and extreme poverty in their many dimensions.[14] That is how, in the framework of the seventh goal of the Millennium Development Goals (referring to guaranteeing environmental sustainability), the tenth target (7C) proposed halving, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.[15] The Americas region attained the world target for access to safe drinking water thanks to its 92% coverage recorded in the year 2012.[16] Nevertheless, available information indicates that there are still 37 million persons in the Americas who do not have access to an improved source of water[17] and it is estimated that, of this figure, 60% (23 million) live in rural areas.[18] Likewise, the available information indicates that many of the challenges connected with access to water in the Americas are associated with the situation of inequality that characterizes the hemisphere, and therefore materialize in situations of discrimination in access to water to the detriment of historically discriminated persons, groups and communities.

12. On September 25, 2015, world leaders met at the United Nations headquarters in New York to adopt the new Agenda for Sustainable Development. In that context, it is important to point out that universal access to water and sanitation was one of the 17 Global Development Goals. The goal referring to access to water indicates that states must join forces and adopt the measures that are needed to guarantee universal access to safe and affordable drinking water, provide sanitary facilities, and foster practices of hygiene at all levels for everybody by the year 2030.[19]

B. Universal System

13. Efforts to move forward in drawing up the right to water in the universal system comes first of all from the standards set forth in the Universal Declaration of the Rights of Man of 1948, especially taking into consideration the standards provided in Article 25, which indicates the following: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing [...]."[20]

Subsequently, the big conference of the nineties took up again the subject and drew up plans of action. The 1992 Rio Earth Summit identified five long-term global problems: 1) climate change; 2) decline in biodiversity; 3) loss of fertile land; 4) pollution and decline in freshwater reserves; and 5) deforestation. A series of subsequent meetings at thematic summits upheld this vision (Cairo, Copenhagen, Beijing, Rome). In particular, at these summits, water was viewed as a basic resource to tackle hunger and poverty, and the lack of water was considered to be one of the largest obstacles to human development.

[14] United Nations, The Millennium Development Goals Report 2015, p. 4.

[15] WHO and UNICEF monitor, on behalf of the United Nations System, the progress achieved in attaining target 10 of the MDG. The Joint Monitoring Programme (JMP) defines safe drinking water as follows: (a) drinking water is water used for household purposes and personal hygiene, as well as to drink and cook; (b) safe drinking water is water whose microbial, chemical and physical characteristics meet the guidelines of the WHO or national standards for quality of drinking water. See WHO Water, Sanitation and Health. See also United Nations, The Millennium Development Goals Report 2015, p. 4.

[16] WHO/UNICEF, A Snapshot of Sanitation and Drinking Water Situation in the Americas Region A regional perspective based on new data from the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, p. 5, November 2014.

[17] An improved source of drinking water is a source that, because of the type of construction, appropriately protects the water from outside pollution, especially fecal matter. See the United Nations Children's Fund and the World Health Organization, Progress on Drinking Water and Sanitation: Special Focus on Sanitation (2008). Nevertheless, the fact that the sources are "improved" does not necessarily means that the water is safe. Improved sanitation services are those where excreta are hygienically isolated from human contact.

[18] WHO/UNICEF, A Snapshot of Sanitation and Drinking Water Situation in the Americas Region A regional perspective based on new data from the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, p. 5, November 2014.

[19] UNDP, Goal 6: Clean water and sanitation.

[20] Universal Declaration of Human Rights, adopted by the United Nations on December 10, 1948; Article 25, paragraph 1 http://www.un.org/spanish/aboutun/hrights.htm

14. As explained by the Committee on Economic, Social, and Cultural Rights in November 2002, in its General Comment No. 15 called "The Right to Water," the human right to water is the right that "entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for person and domestic use."[21] The ESCR Committee established the legal basis for the right to water at the international level on the basis of the provisions of Article 11 (right to an adequate standard of living)[22] and Article 12 (right to the enjoyment of the highest attainable standard of physical and mental health),[23] both from the International Covenant on Economic, Social, and Cultural Rights (hereinafter the Covenant).[24]

15. Regarding this, paragraph 1 of the above-mentioned Article 11, specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living "including adequate food, clothing and housing." In this context, use of the word "including" indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.[25] It must also be underscored that the ESCR Committee specified a series of obligations for the States Parties to the Covenant, indicating that while said instrument envisaged progressive realization, it also imposed on States Parties various obligations which are of immediate effect. In that respect it provided that States Parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind.[26]

16. Taking into consideration the contents of the above-mentioned General Observation No. 15 of the ESCR Committee, the IACHR believes it is time, in the present review, to mention the basic conditions established by said Committee with reference to access to water:

> a) Availability. The water supply for each person must be sufficient and continuous for personal and domestic uses.(…) Some individuals and groups may also require additional water due to health, climate, and work conditions.[27]
>
> b) Quality. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Furthermore, water should be an acceptable colour, odour and taste for each personal or domestic use.[28]

[21] United Nations, ESCR Committee, General Comment No. 15, Implementation of the International Covenant on Economic, Social, and Cultural Rights, The Right to Water (Articles 11 and 12 of the Covenant) (29th session, 2002), para. 3. See also Fact Sheet No 35. "The Right to Water," p. 5.

[22] Article 11: "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

[23] Article 12: "1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

[24] United Nations, International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

[25] United Nations, ESCR Committee, General Comment No. 15, Implementation of the International Covenant on Economic, Social and Cultural Rights, The Right to Water (Articles 11 and 12 of the Covenant) (29th session, 2002), para. 3. See also Fact Sheet No 35, "The Right to Water," page 5.

[26] United Nations, ESCR Committee, General Comment No. 15, Implementation of the International Covenant on Economic, Social and Cultural Rights, The Right to Water (Articles 11 and 12 of the Covenant) (29th session, 2002), para. 3. See also Fact Sheet No 35, "The Right to Water," page 5.

[27] United Nations, United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, para. 12 (a).

[28] United Nations, United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, para. 12 (b).

c) Accessibility. Water and water facilities have to be accessible to everyone without discrimination, within the jurisdiction of the State party.[29]

17. Moreover, other legally binding human rights treaties in the universal system make express reference to state's obligation with respect to access to water on the basis of the "right to an adequate standard of living." For example, paragraph 2 of Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides that States Parties shall ensure the right of women to "enjoy adequate living conditions, particularly in relation to [...] water supply."[30]

18. Likewise, the Convention on the Rights of Persons with Disabilities indicates, in Article 28, that states recognize the right of persons with disabilities to an "adequate standard of living" [...] and that they must ensure access on an equality footing for persons with disabilities to drinking water services [...][31] In addition, on the basis of the right to health, paragraph 2 of Article 24 of the Convention on the Rights of the Child requires States to fight disease and malnutrition by "supplying adequate nutritional food and safe drinking water."[32]

19. It must also be indicated that there are international instruments that have recognized the right to water in the universal system. In that regard, resolution No. 64/292,[33] adopted by the General Assembly of the United Nations on July 2010, should be mentioned, as it explicitly recognized the human right to water and sanitation, reaffirming that clean drinking water and sanitation are essential for the realization of all human rights.[34] The above-mentioned resolution urges states and international organizations to provide financial resources, to promote training and the transfer of technology to help countries, in particular developing countries, to provide for drinking water supply and sanitation that is healthy, clean, accessible, and affordable to all.[35]

20. That same year, the Human Rights Council adopted resolution A/HRC/15/L.14, which recognizes that the access to drinking water and sanitation comes from "the right to an adequate standard of living and that it is indissolubly associated with the right to the highest attainable physical and mental health,

[29] United Nations, United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, para. 12 (c). The ESCR Committee specifies that the condition of accessibility has four overlapping dimensions, namely:

> (i) Physical accessibility: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;
>
> (ii) Economic accessibility: water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must no compromise or threaten the realisation of other Covenant rights
>
> (iii) Non-discrimination: water and water facilities and services must be accessible to all, including the most vulnerable or marginalised sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and
>
> (iv) Information access: access includes the right to seek, receive and impart information concerning water issues.

[30] United Nations, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), New York, December 18, 1979.

[31] United Nations, Convention on the Rights of Persons with Disabilities, Article 28.

[32] United Nations, Convention on the Rights of the Child, resolution 44/25, November 20, 1989.

[33] United Nations, Resolution 64/292. The Human Right to Water and Sanitation, adopted by the General Assembly on July 28, 2010.

[34] When the vote was taken, 122 states voted for and 41 abstained. The resolution was submitted by Bolivia, a country which over the past few years has been at the forefront of defending this right and which has also include the right to water in its Constitution. See, The Human Right to Water y Sanitation: Rights closely linked to the right to life, p. 223.

[35] United Nations, UN Department of Economic and Social Affairs (UN-DESA), International Decade for Action "Water for Life" 2005-2015.

as well as the right to life and human right."[36] In addition, among others, it declares that states are responsible for guaranteeing the full realization of all human rights and that the fact of having delegated to third parties the supply of safe drinking water and/or sanitation services does not exempt the state from fulfilling its human rights obligations.[37]

21. It is ultimately important to highlight that, in 2008, the Human Rights Council established the mandate of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation," which was established for the purpose of helping states to clarify the scope and contents of the obligations related to the right to water, as well as to make recommendations to governments, the United Nations, and other stakeholders.[38]

C. Efforts made by the Organization of American States (OAS) to guarantee access to water

22. Article 3 of the OAS Charter identifies the elimination of critical poverty as an essential part of promoting and consolidating democracy. Likewise, in Article 34, the Charter stated that the member states agreed that, in search of integral development they would focus their best efforts on achieving a series of basic goals, among which the following can be mentioned: adequate nutrition and conditions making it possible to have a healthy, productive, and dignified life. The achievement of these goals depends uncompromisingly on the access to water fit for human consumption on a real equal footing for the satisfaction of human rights as a point of departure for integral development.

23. Since 1994, the Heads of State of the Hemisphere have been meeting periodically at the Summit of the Americas to discuss common concerns, look for solutions, and develop a shared vision for the region's development. Among the mandates established, there have been considerations relative to the adoption of measures to guarantee access to drinking water in the region. For example, in the Plan of Action of Santiago of 1998, the Heads of State recognized that: "Extreme poverty and discrimination continue to afflict the lives of many of our families and impede their potential contribution to our nations' progress." Among other measures, they agreed to eliminate all forms of discrimination against historically discriminated groups and strive to improve the standard of living of all the peoples of the Americas by efforts aimed at ensuring access to adequate health services, improved technologies in the area of health, safe drinking water, and appropriate nutrition.[39]

24. In addition, it is important to highlight the Social Charter of the Americas, which points out, in Article 20, that member states recognize that water is fundamental for life and central to socioeconomic development and environmental sustainability and that non-discriminatory access by the population to safe drinking water and sanitation services, in the framework of national laws and policies, contributes to the objective of combating poverty. It also provides that: "Member states, in keeping with their national realities, undertake to continue working to ensure access to safe drinking water and sanitation services for present and future generations."[40]

25. This commitment by the states is reflected in the two resolutions adopted by the OAS General Assembly that underscores the consensus in the Americas with respect to access to water as human right. First, resolution AG/RES.2349 (XXXVII-O/07) "Water, Health, and Human Rights" kept in mind the

[36] United Nations, resolution A/HRC/15/L.14, Human Rights Council, Human rights and access to clean water and sanitation, September 24, 2010, para. 3.

[37] United Nations, Human Rights Council, Human Rights and Access to Safe Drinking Water and Sanitation, A/HRC/15/L.14, September 24, 2010, para. 5.

[38] United Nations, Office of the High Commissioner for Human Rights, Special Rapporteur on the human right to safe drinking water and sanitation.

[39] OAS, Santiago Plan of Action, 1998.

[40] OAS, Social Charter of the Americas, adopted at the second plenary session of the OAS General Assembly held in Cochabamba on June 4, 2012.

relationship between the fulfillment of obligations contained in international human rights treaties and access to water.[41] In particular, this resolution stressed that "water is essential to the life and health of all human beings and that access to safe drinking water and basic sanitation is indispensable for a life with human dignity."[42] In addition, it recognized respect for "the ancestral use of water by urban, rural, and indigenous communities, in the framework of their habits and customs on water use."[43] Afterwards, the OAS General Assembly in resolution AG/RES. 2760 (XLII-O/12) "The Human Right to Safe Drinking Water and Sanitation" adopted on June 5, 2012,[44] expressly recognized the human right to water in the inter-American system and reaffirmed the importance for "each state to continue its efforts to ensure that individuals subject to its jurisdiction have (…) non-discriminatory access to safe drinking water and sanitation as integral components to the realization of all human rights."[45]

D. Inter-American regulatory framework and standards

26. Although the right to water is not expressly recognized in the inter-American system, its various instruments establish a series of rights that are linked to access to water and its various dimensions, such as those referring to the conditions of water availability, quality, and accessibility without any discrimination. This section examines how that series of instruments and the evolution of the system's precedents have been progressively tackling the subject and, as a result, moving forward with respect to the obligations of States about this issue. Accordingly, it is important to note that although jurisprudence on access to water is still under development within the inter-American system, there are at the present major decisions that have shed light on the obligations that States must fulfill to guarantee access to water without discrimination.

27. In fact, over the past decade, jurisprudence of both the IACHR and the Inter-American Court has addressed a series of matters referring to access to water on the basis of the interpretation of the contents of a series of human rights set forth in inter-American instruments, for which purpose it has taken into consideration contributions from the universal system and technical information from a series of specialized bodies. Both the IACHR and the Inter-American Court have pointed out that human rights treaties are living instruments, interpretation of which must evolve with the times and current conditions. This evolving interpretation is in line with the general rules of interpretation enshrined in Article 29 of the American Convention,[46] as well as those set forth in the Vienna Convention on the Law of Treaties.

28. In this regard, in view of the connection between access to water and the realization of other human rights, and thus with the obligations of different nature that derive from them; it follows an analysis that, though it is not exhaustive, makes reference to the states' obligations deriving from these rights regarding access to water.

29. As a point of departure in the inter-American system, it is important to mention the American Declaration of the Rights and Duties of Man (hereinafter the American Declaration), which

[41] OAS, General Assembly, Resolution AG/RES.2349 (XXXVII-O/07) "Water, Health and Human Rights", adopted at the fourth plenary session on June 5, 2007, at the thirty-seven regular session, in Panama, documents and minutes, pp. 357-360.

[42] OAS, General Assembly, Resolution AG/RES.2349 (XXXVII-O/07) "Water, Health and Human Rights, adopted at the fourth plenary session on June 5, 2007, at the thirty-seven regular session, in Panama, documents and minutes, pp. 357-360.

[43] OAS, General Assembly, Resolution AG/RES.2349 (XXXVII-O/07) "Water, Health and Human Rights, adopted at the fourth plenary session on June 5, 2007, at the thirty-seven regular session, in Panama, documents and minutes, pp. 357-360.

[44] OAS, General Assembly, Resolution AG/RES. 2760 (XLII-O/12), "The Human Right to Safe Drinking Water and Sanitation", adopted at the plenary session on June 5, 2012, at the forty-second regular session, in Bolivia, documents and minutes, pp. 265-267. In addition, this resolution took into consideration United Nations General Assembly resolution A/RES/64/292, of July 28, 2010, in which the General Assembly recognizes the right to clean water and sanitation as a basic human right for the full enjoyment of life and all human rights.

[46] On the basis of Article 29.b) of the Convention, no provision of this Convention shall be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party."

according to the jurisprudence of the Inter-American Human Rights System constitutes a source of obligations for OAS Member States.[47] Although the American Declaration does not explicitly recognize the right to water, it does establish the right to life and to the security of the person, and the right of every person "to the preservation of his health through sanitary and social measures relating to food, clothing, housing (…)."[48] Thus, the IACHR understands that access to water is an indispensable element in ensuring the right to life and to personal integrity, and that it is an essential aspect of the right to health, as it constitutes an inherent aspect of health measures, food, housing, and medical care with reference to the above-mentioned legal norm. As explained below, the right to access to water has special aspects regarding indigenous and tribal peoples and their rights over their lands and the natural resources.

30. The American Convention on Human Rights (hereinafter the American Convention) enshrines a series of human rights closely linked to access to water and sanitation as inherent conditions for the achievement of these rights. It is noteworthy that the American Convention recognizes in Article 1.1 the obligation of states to respect the rights recognized in said instrument and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination;[49] and its Article 2 contains the duty to adopt provisions under domestic law—whether legislative or of another kind—as may be necessary to give effect to those rights and freedoms contained in the American Convention.

31. As to the relation between the right to life and access to water, both the Commission and the Inter-American Court have deemed, along with other considerations, that access to clean drinking water is an essential requirement for the full enjoyment of the right to life enshrined in Article 4 of the American Convention.[50] In that regard, this right includes a two-fold perspective: not only the right of every human being not to be deprived of life arbitrarily, but also the right to be guaranteed the conditions necessary for a dignified existence.[51] In view of this two-fold perspective, the States must adopt measures to guarantee satisfaction of an essential level of access to water under conditions of quantity and quality suitable for human consumption without discrimination of any kind. They must refrain from engaging in practices and activities that impede or restrict access to drinking water under conditions of equality,[52] particularly with respect to persons, groups, and communities historically subject to discrimination. They must also prevent third parties from undermining access to water, by adopting domestic measures, for example, to keep third parties from denying access to water or contaminating water resources, wells, and other water distribution systems.[53]

32. Indeed, the Inter-American Court has referred to the concept of a dignified life, as part of the obligations that must be fulfilled with reference to Article 4 of the Convention. Thus, in the case of *Villagran Morales et al. v. Guatemala*, the Inter-American Court established that "the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right to not be prevented from having access to the conditions that guarantee a dignified existence."[54] This interpretation

[47] IACHR, Third Report on the Human Rights Situation in Paraguay, OEA/Ser./L./VII.110 doc. 52, March 9, 2001, para. 17, quoting I/A Court H.R. Interpretation of the American Declaration of the Rights and Duties of Man in the framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10-89 of June 14, 1989, Series A, No. 10.

[48] Articles I and XI of the American Declaration on the Rights and Duties of Man.

[49] Similarly, Article 24 of the American Convention sets forth the principle of equal protection of the law and the prohibition to discriminate. This provision is applicable to the entire legal framework of the States Parties including those norms that establish or regulate economic, social and cultural rights.

[50] La parte pertinente del artículo 4 de la Convención Americana establece el derecho a la vida, indicando que:

> Toda persona tiene derecho a que se respete su vida. Este derecho estará protegido por la ley y, en general, a partir del momento de la concepción. Nadie puede ser privado de la vida arbitrariamente. (…).

[51] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment of June 17, 2005. Series C No. 125, para. 162.

[52] United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15, para. 21.

[53] United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15, para. 23.

[54] I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala.* Merits. Judgment of November 19, 1999. Series C No. 63, paras. 144 and 191.

was taken up again in the cases of the *Yakye Axa, Sawhoyamaxa and Xákmok Kásek Indigenous Communities v. Paraguay*, regarding which the Inter-American Court considered that the state had not taken the measures needed to provide them with the basic conditions for a dignified life, because it had not guaranteed the provision of water, food, health, and education, among others.[55]

33. In that respect, in the inter-American system it is important to emphasize that one of the obligations that the State must unavoidably fulfill for the purpose of protecting and ensuring the right to life, is creating minimum living conditions that are compatible with the dignity of the human being and that do not produce conditions that hamper or prevent this dignity,[56] as would be the case in a situation that makes it impossible to have access to water that is safe for human consumption. In the same jurisprudence as well, the Court made a special reference to state obligations with respective to historically discriminated persons, communities, and groups, indicating that the above-mentioned obligation of adopting concrete measures to ensure the right to a dignified life is all the more consolidated when dealing with persons living situations of historical discrimination and risk, for whom attention becomes a priority.[57] In connection with the special consideration that elderly persons deserve, it is important to point out that the Court has indicated that the State must adopt measures aimed at upholding its functionality and autonomy, ensuring the right to adequate food, access to clean water, and health care.[58]

34. Secondly, in the case of the *Sawhoyamaxa Indigenous Community v. Paraguay*, it is worth mentioning, that the Court observed that, along with the scarcity of land, the lives of the members of the Sawhoyamaxa Community were characterized by unemployment, illiteracy, morbidity rates for preventable diseases, malnutrition, precarious housing and environmental conditions, constraints to access to and use of health services and safe drinking water, as well as marginalization for economic, geographical, and cultural reasons.[59]

35. Concretely, the Court considered, *inter alia,* that the members of the community lacked access to safe drinking water, because the water used for both human consumption and personal hygiene came from wells (*tajamares*) located on claimed lands, which were also used by animals, and that when there was a drought, the absence of clean water in the community was alarming.[60] Because of this, the Court observed that the members of the Community located in Santa Elisa at the time of the incidents lacked access to sufficient amounts of water fit for human consumption. In the ruling about this aspect of the case, the Court declared that the state had violated Article 4.1 of the American Convention, in connection with Article 1.1 of the Convention, because it had not adopted the positive measures needed in the framework of its duties,

[55] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay.* Interpretation of the Judgment on the Merits, Reparations and Costs. Judgment of February 6, 2006. Series C No. 142, para. 161; I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146; I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of August 24, 2010 Series C No. 214, paras. 194 to 217.

[56] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of June 17, 2005, para. 162. Additionally, in this case, the Court made concrete references to the impact on a dignified life as a result of hampering access to water:

> Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a dignified existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity(para. 167).

[57] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of June 17, 2005, para. 162.

[58] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of June 17, 2005, para. 175.

[59] I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Merits, Reparations and Costs, Judgment of March 29, 2006, para. 73.

[60] I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of March 29, 2006, para. 73.

which could reasonably have been expected to prevent or avoid risk to the right to life of the members of the Sawhoyamaxa Community.[61]

36. As for the case of the *Xákmok Kásek Indigenous* Community, the Inter-American Court found in its judgment that the lack of access to water fit for human consumption, together with the lack of access to food, health, and education — which, taken as a whole, are considered basic elements in ensuring the right to a dignified life — gave rise to a violation of the right to life in the referred sentence.[62] Regarding this, and under the light of the severe consequences suffered by the community, it reiterated that the right to life is a fundamental human right, whose full enjoyment is a prerequisite for the enjoyment of all the other human rights. Concretely, it indicated the following:

> The observance of Article 4, in relation to Article 1(1) of the Convention, not only presumes that no one be deprived of their life arbitrarily (negative obligation), but also requires the State to take all appropriate measures to protect and preserve the right to life (positive obligation), in keeping with the obligation to ensure the full and free exercise, without discrimination, of the rights of all persons under their jurisdiction.[63]

37. The above-mentioned jurisprudence also turns out to be of the utmost importance for the matter being examined here, because the Inter-American Court, when reviewing the alleged violations of the right to a dignified life, drew up a series of standards for guaranteeing access to water in terms of quantity and quality. For example, the Court believed it had been proven that the water supplied by the state in the months of May to August in 2009 did not amount to more than 2.17 liters per person per day.[64] Regarding this, it was established that "most people need a minimum of 7.5 liters per day per person to meet all their basic needs, including food and hygiene."[65] In regards to the analysis to access and quality of water of the Xákmok Kásek community, the Court deemed that the steps taken by the state were insufficient to provide members of the Community with enough water of an adequate quality, which exposed them to risks and disease.[66] As a result, it declared that the state had not provided the basic services to protect the right to a dignified life of a specific group of individuals in these conditions of special, real and immediate risk, and this constituted a violation of Article 4.1 of the Convention.[67]

38. Furthermore, the IACHR has ruled on the danger to life that is involved when water that does not meet the minimum conditions of health is consumed,[68] that is, water that is not fit for human consumption. In its report on the human rights situation in Ecuador in 1997, the IACHR referred to the situation of about 500,000 persons who lived, at that time, in an inland area of the country called the "Oriente" [the Amazon river basin] (comprised of various age-old indigenous ethnic groups: Quichuas, Shuar, Huaoranis, Secoyas, Sionas, Shiwiar, Cofanes, and Achuar). The IACHR indicated that these persons lived in oil development sectors and that they had unanimously indicated that operations in general and the inadequate

[61] I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of March 29, 2006, para. 178.

[62] I/A Court H. R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of August 24, 2010, paras. 194-217.

[63] I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of August 24, 2010, para. 187.

[64] I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of August 24, 2010, para. 195.

[65] I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of August 24, 2010, para. 195.

[66] I/A Court H. R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of August 24, 2010, para. 196.

[67] I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of August 24, 2010, para. 217.

[68] IACHR, Report on the Situation of Human Rights in Ecuador, Chapter VIII, Situation of human rights of the inhabitants of inland Ecuador affected by development activities.

handling and elimination of toxic waste in particular had jeopardized their life and health, because production activities in their communities or nearby areas had polluted the water they were using to drink, cook, and wash, the soil they farmed to produce their food, and the air they breathed.[69] The IACHR considered that exposure to oil and chemical compounds associated with the oil itself through the skin, as a result of the intake of food or water, or else in the emissions absorbed by the respiratory tract had exerted harmful impacts on the health and life of human beings and entailed considerable risk for human life and health. In its report, the IACHR recommended that the State of Ecuador implement the measures needed to remedy the situation and prevent all further pollution that might threaten the life and health of that population.[70]

39. Also in the Report on Access to Justice and Social Inclusion in Bolivia for the year 2007, it must be indicated that the IACHR referred to the pollution of the waters of the Pilcomayo River in the departments of Potosí and Tarija in the south of Bolivia, pointing out that it affected both the indigenous peoples and the peasant farmers whose agricultural and/or subsistence activities such as fishing had declined steeply because of the amount of toxic wastes such as metals and other elements. The Commission paid special attention to the complaints filed with regard to health impacts on persons, who out of necessity continued to eat polluted food, a situation deemed to be of special vulnerability for children and women of child-bearing age.[71] In that regard, the Commission reminded the state that the right to dignified life included in the American Convention and that, if the State was aware of the severe situation being sustained by persons living in areas close to polluted rivers and gullies as a result of resource production projects, it was its duty to adopt all the measures within its reach to mitigate the damages being produced in the framework of the concessions it granted, as well as to impose the corresponding penalties on those failing to meet the respective environmental and/or criminal standards.[72]

40. At this point, special mention must be made of the right to property[73] and access to water with respect to indigenous peoples. In the words of the Court, the close relationship of indigenous peoples to their traditional territories and natural resources that are linked to their culture and are located there, as well as the intangible elements stemming from them, must be safeguarded by Article 21 of the American Convention.[74]

41. As a result, access of indigenous peoples to their ancestral land and the use and enjoyment of the natural resources are directly linked to securing food and access to clean water.[75] In fact, according to the

[69] IACHR, Report on the Situation of Human Rights in Ecuador. OEA/Ser.L/V/II.-24 April 1997. Chapter VIII, Situation of human rights of the inhabitants of inland Ecuador affected by development activities.

[70] IACHR, Report on the Situation of Human Rights in Ecuador, Chapter VIII, Situation of human rights of the inhabitants of inland Ecuador affected by development activities.

[71] IACHR, Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia, Chapter IV, Rights of Indigenous Peoples and Peasant Communities. OEA/Ser.L/V/II. Doc. 34. June 28, 2007, para. 251. Quoting the Report on the situation of the economic, social and cultural human rights of the indigenous peoples of the lowlands of Bolivia. Centro de Estudios Jurídicos e Investigación Social (CEJIS). Included in the Report of Civil Society to the United Nations Committee of the International Covenant on Economic, Social and Cultural Rights (CESCR): Status of the situation of economic, social and cultural rights in Bolivia at 2005. Bolivian Chapter of Human Rights, Democracy, and Development, pp. 314 and 315.

[72] IACHR, Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia, Chapter IV, Rights of Indigenous Peoples and Peasant Communities. OEA/Ser.L/V/II. Doc. 34. June 28, 2007, para. 253.

[73] Article 21 of the American Convention provides that:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. Non one shall be deprived of his property except upon payment of just compensation for reasons of public utility or social interest, and in the cases and according to the forms established by law.

3. Usury and any other form of exploitation of man by man shall be prohibited by law.

[74] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, para. 137.

[75] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of June 17, 2005, para. 167.

Court's jurisprudence, members of indigenous and tribal peoples have the right to hold titles to the natural resources that they have traditionally used inside their territory for the same reasons they have the right to hold deeds to the land they have traditionally used and occupied for centuries. Without them, the economic, social, and cultural survival of these peoples is at risk.[76] That is why the land and resources that have traditionally been used to maintain their ways of life.[77]

42. In a related way, the IACHR has indicated that the cultural rights of an indigenous or tribal people can encompass activities related to natural resources, such as fishing or hunting.[78] The IACHR has also noted that, among the indigenous communities, the life of their members "fundamentally depends" on subsistence activities—farming, hunting, fishing, food gathering—which they carry out in their territories,[79] and therefore, "the Community's relations to its land and resources are protected by other rights set forth in the American Convention, such as the right to life, honor, and dignity, freedom of conscience and religion, freedom of association, rights of the family, and freedom of movement and residence."[80] The preservation of the distinctive connection between indigenous and tribal peoples and the natural resources they have traditionally used and are linked to their culture "is fundamental to the effective realization of the human rights of indigenous peoples more generally and therefore warrants special measures of protection."[81]

43. It must also be stressed that, in the framework of the system of petitions and individual cases, the Commission recently ruled in favor of the admissibility in the *Yaqui People v. Mexico* case. It is important to note that said resolution does not prejudge the merits of the case. In the proceedings filed with the IACHR, the petitioners alleged the violation of series of human rights that allegedly took place as a result of the lack of access to clean water, the situation of poverty, and the alleged widespread use of pesticides or chemicals as a result of the progress in the agroindustry carryout in the surrounding areas, in areas adjacent

[76] IACHR, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. Provisions and Jurisprudence of the Inter-American Human Rights System, para. 182.

[77] I/A Court H.R., *Case of the Saramaka People v. Suriname.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 120. See also *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 118; and *Case of the Yakye Axa Indigenous Community v. Paraguay.* Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 137.

[78] IACHR, Indigenous and Tribal Peoples Rights over their Ancestral Land and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc.56/09. December 30, 2009, para. 184.

[79] IACHR, Allegations before the Inter-American Court of Human Rights in the *Case of Awas Tingni v. Nicaragua.* Referred to in: I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 140(f).

[80] IACHR, Allegations before the Inter-American Court of Human Rights in the *Case of Awas Tingni v. Nicaragua.* Referred to in: I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 140(f).

[81] IACHR, Indigenous and Tribal Peoples Rights over their Ancestral Land and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc.56/09. December 30, 2009, para. 184, quoting IACHR, Report No. 75/02, Case 11.140, *Mary and Carrie Dann (United States)*, December 27, 2002, para. 128. Because of its crucial important, "the close ties of indigenous peoples with their traditional territories and the natural resources therein associated with their culture, as well as components derived from them, must be safeguarded by Article 21 of the American Convention" [I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 137. I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, paras. 118, 121. I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010, Series C No. 214, para. 85]. The Inter-American Court considers that the rights of indigenous and tribal peoples to natural resources require attention "regarding the inextricable relationship between both land and the natural resources that lie therein, as well as between the territory (understood as encompassing both land and natural resources) and the economic, social, and cultural survival of indigenous and tribal peoples, and thus, of their members" [I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 120]. Indeed, the right of indigenous and tribal peoples to property protected by inter-American human rights instruments includes the close ties they have with the natural resources linked to their culture and are located in their territories, as well as the intangible elements that are derived from these resources [IACHR, *Follow-up Report – Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, para. 156. I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 148. I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 137. I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 118].

to their crops and the use of water for irrigation.[82] The above, as it was alleged, had polluted their environment and the natural resources for their livelihood, with impacts especially on children and adolescents, women, the elderly, and persons with disabilities.[83] Also, it is important to mention the admissibility report No. 62/14 *People of Quishque-Tapayrihua Community/Peru.* In that report, the Commission determined that in the merits stage, it will analyze the possible violation of a series of human rights.[84]

44. The admissibility in the case of the *Diaguita Agricultural Communities of the Huasco-Altinos and the members thereof* is also noteworthy. In the relevant part of the above-mentioned report, the IACHR considers that the allegations about the granting of favorable environmental licenses for the modifications to the Pascua Lama project require an analysis in the merit stage under the Article 21 of the American Convention.[85] The petitioner alleged that the project is planned to be installed in the ancestral territory of the Diaguita Community of the Huasco-Altinos, although allegedly no assessments had been made of its environmental impact on the community and its members, as well as the alleged absence of any prior consultation before approval of the Pascua Lama project and the absence of a ruling in the civil proceedings requesting nullification of the purchase of the Chollay farm by the Nevada Mining Company (Compañía Minera Nevada).

45. As to the right to personal integrity (Article 5 of the American Convention)[86] and its connection with access to water, it is important to highlight that the Commission has referred in particular to the obligations of States to provide the minimum detention conditions compatible with human dignity. Regarding this, the Commission has pointed out that the right to personal integrity entails the obligation of States to provide the minimum conditions needed for access to water and sanitation for persons deprived of their liberty. In the "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas," the IACHR has indicated that: "Every person deprived of liberty shall have access at all times to sufficient drinking water suitable for consumption."[87] In the framework of the system of petitions and individual cases, it has proceeded in the same fashion. For example, in the case of *Víctor Rosario Congo v. Ecuador,* it was considered that the victim died as a consequence of dehydration and malnutrition while in incarceration.[88] The IACHR found that the evidence indicated that for approximately forty days he was kept in isolation, consuming neither food nor water.[89] In its merits report, the IACHR found that the State failed to take the measures available to it to ensure the right to life of a person who, partly because of his health conditions and partly because of the injuries he had suffered, was in a state of defenselessness and isolation.[90]

46. It is important to emphasize that the IACHR has established that the lack of a drinking water supply constitutes a serious failure on the part of the State to honor its duties to guarantee the rights of those in its custody.[91] In this respect, the "Report on the Human Rights of Persons Deprived of Liberty in the

[82] IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015.

[83] IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015.

[84] IACHR, Report No. 62/14, Petition 1216-03. Admissibility. People of Quishque-Tapayrihua Community, Peru. July 24, 2015. The IACHR indicated that among others issues will analyze "the probable affectation that the community had in accessing to water as a consequence of the execution of the mining project", under Article 26 the American Convention, which refers to economic, social and cultural rights. The Commission shall make this analysis in the resolution of the merits.

[85] IACHR, Report No 141/09, *Diaguita Agricultural Communities of the Huasco-Altinos and the Members thereof*, December 30, 2009, para. 57.

[86] El artículo 5 de la Convención Americana referido al derecho a la integridad personal, dispone que toda persona tiene derecho a que se respete su integridad física, psíquica y moral.

[87] IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, (Principle XI.2).

[88] IACHR. Report No. 63/99. Case 11.427. Víctor Rosario Congo v. Ecuador. April 13, 1999. para. 73.

[89] IACHR. Report No. 63/99. Case 11.427. Víctor Rosario Congo v. Ecuador. April 13, 1999. paras. 73 and 75.

[90] IACHR. Report No. 63/99. Case 11.427. Víctor Rosario Congo v. Ecuador. April 13, 1999. para. 84.

[91] CIDH, Vaso 12.820, Manfred Amrhein vs. otros*, Costa Rica*, Informe de Fondo no. 33/14, 4 de abril de 2014. párr. 256.

Americas" took into account the technical criteria of the International Red Cross.[92] In the referred Report, the IACHR has indicated that the minimum quantity may increase depending on certain conditions, such as climate and the amount of exercise among inmates. For its part, the Commission deemed that the required minimum per person to cover all needs is from 10 to 15 liters of water per day, provided that sanitary facilities are operating adequately.[93]

47. Likewise, the Commission took into consideration the United Nations Standard Minimum Rules for the Treatment of Prisoners, which in Article 12 establishes that "sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner"[94] for the review of the merits in the case of *Paul Lallion v. Grenada.* In the above-mentioned case, the petitioner indicated that he had been given a bucket for his needs and that he was allowed to empty the contents of the bucket only once a day. When used, he was required to put up with the smell and the anti-hygienic conditions until he was allowed to empty it. The Commission concluded that the detention conditions, including the absence of adequate sanitation facilities, to which Mr. Lallion was subjected did not respect his physical, mental, and moral integrity, as required by Article 5.1 of the Convention.[95]

48. Likewise, the Inter-American Court has indicated that "the lack of drinking water is a particularly important aspect of prison conditions"[96] and that every person deprived of liberty must have access to safe drinking water and water for personal hygiene.[97] The Court has indicated that, in conformity with Articles 5.1 and 5.2 of the American Convention, every person deprived of liberty has the right to live in detention conditions that are compatible with his/her personal dignity.[98] As a result, the state is in a special position to guarantee the rights of all persons in its custody. In particular, the Court has observed that:

> [T]he absence of minimum conditions to guarantee the supply of drinking water within a prison constitutes a serious failure by the State in its duty to guarantee the rights of those held in its custody, given that the circumstances of incarceration prevent detainees from satisfying their own personal basic needs by themselves, even though these needs, such as access to sufficient and safe water, are essential for a dignified life.[99]

49. Furthermore, it is important to stress that the Court referred to General Observation No. 15 of the ESCR Committee referring to the right to water, which points out that states Parties should take steps to ensure that prisoners and detainees are provided with sufficient and safe water for their daily individual requirements.[100]

50. Moreover, the jurisprudence of the inter-American system has considered, among other elements, that satisfying the right to humane treatment, in conjunction with the right to health is directly and immediately linked to access to healthy drinking water that is fit for human consumption. The IACHR has

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[92] International Committee of the Red Cross (CICR), Water, Sanitation, Hygiene and Habitat in Prisons (2005) pp. 34-36.

[93] IACHR, Report on Persons Deprived of Liberty in the Americas, para. 483.

[94] United Nations, Standard Minimum Rules for the Treatment of Prisoners, Article 12.

[95] IACHR, *Case of Paul Lallion v. Grenada,* Merits, Report No. 55/02, Case 11.765, para. 90.

[96] I/A Court H.R., *Case of Vélez Loor v. Panama.* Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 215.

[97] I/A Court H.R., *Case of Pacheco Teruel et al. v. Honduras*. Judgment of Merits, Reparations and Costs. April 27, 2012. Series C No. 241, para. 67 c); and *Case of Vélez Loor v. Panama.* Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 216.

[98] I/A Court H.R., *Case of Vélez Loor v. Panama.* Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C. No. 218, para. 198.

[99] I/A Court H.R., *Case of Vélez Loor v. Panama.* Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C. No. 218, paras. 215 and 216.

[100] United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, para. 16 (g).

stated that the right to personal integrity is a concept of the broadest scope.[101] In its jurisprudence, the Inter-American Court has examined the relationship that exists between the right to humane treatment and the right to health.[102] Thus, the Court has on repeated occasions ruled that Article 5.1 of the Convention is "directly and immediately linked to human health."[103] That intrinsic relationship is a manifestation of the interdependent and indivisible ties that exist between civil and political rights and economic, social, and cultural rights. As the Court has said, both groups of rights must be "fully understood as human rights, without any rank and enforceable in all the cases before competent authorities."[104] On this point, it is relevant to note again that the IACHR holds that to ensure the full effectiveness of the right to humane treatment, "States have the legal obligation to adopt deliberate, concrete measures intended to realize the right to health for all"[105], which imply among other, adopt measures to guarantee access to water fit for human consumption.

51. As for the Inter-American Court, it established three principal obligations stemming from the duty to guarantee the right to personal integrity with respect to the right to health in connection with, among other conditions, the duties to provide and ensure access to safe drinking water for the satisfaction of said rights. These obligations are to regulate, supervise, and inspect.[106] These obligations are applicable to both the direct provision of services by the state and the provision of services by private entities.

52. Specifically about the content of the obligation for regulation, in the cases of Ximenes-Lopes v. Brazil and Suárez Peralta v. Ecuador, the Court pointed out the following:

> [T]he States are responsible for regulating [...] at all times the rendering of services and the implementation of the national programs regarding the performance of public quality health care services, so that they may deter any threat to the right to life and physical integrity of the individuals undergoing treatment.[107]

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[101] IACHR, Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.77.rev.1 Doc. 18, OEA/Ser.L/V/II.77.rev.1 Doc. 18, May 8, 1985, Chap. IV, Right to Personal Integrity, para. 6.

[102] I/A Court H. R., *Case of Albán Cornejo v. Ecuador*. Merits, Reparations, and Costs. Judgment of November 22, 2007, Series C No. 171, para. 117.

[103] I/A Court H. R., *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013, Series C No. 261, para. 130; and *Case of Vera Vera et al. v. Ecuador*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 19, 2011, Series C No. 226, para. 43.

Regarding the regulation of the components of the right to health and developments with them that could be of relevance in analyzing similar cases, the Court stated: "Article XI of the American Declaration on the Rights and Duties of Man establishes that every person has the right 'to the preservation of his health through sanitary and social measures relating to [...] medical care, to the extent permitted by public and community resources.' Meanwhile, Article 45 of the OAS Charter requires all Member States 'to dedicate every effort [... to] [d]evelop [...] an efficient social security policy.' In this regard, Article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, ratified by Ecuador on March 25, 1993, stipulates that everyone has the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being, and indicates that health is a public good. In addition, in July 2012, the General Assembly of the Organization of American States emphasized the need for high quality health facilities, goods and services, which required the presence of trained medical personnel, as well as satisfactory conditions of hygiene."

[104] *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller General's Office") v. Peru.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 1, 2009, Series C No. 198, para. 101. In this connection, see: United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights. General Comment No. 9, *supra,* para. 10. See also: *Case of Airey v. Ireland*, No. 6289/73. Judgment October 9, 1979, para. 26; and *Case of Sidabras and Dziautas v. Lithuania*, Nos. 55480/00 and 59330/00. Second Section. Judgment of July 27, 2004, para. 47. In the case of *Airey v. Ireland,* the European Court ruled: "Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention."

[105] IACHR, Access to Maternal Health Services from a Human Rights Perspective, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 104 (citing: United Nations, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, Implementation of General Assembly Resolution 60/251, March 15, 2006, Titled *Human Rights Council*, January 17, 2007).

[106] I/A Court H.R., *Case of Ximenes Lopes v. Brazil*. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, paras. 89 and 99.

[107] I/A Court H.R., *Case of Ximenes-Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 139, para. 99.

53. Regarding the contents of the obligations of supervision and inspection, the Court has been clear when indicating that the state's supervisory obligations encompass both the services provided by the state directly or indirectly, and also those offered by private individuals.[108] In the case of *Peralta v. Ecuador,* the Inter-American Court linked these obligations with the principles of availability, accessibility, acceptability, and quality of medical services, indicating that those obligations must be "oriented" toward complying said principles,[109] which were conceptualized by the Committee on Economic, Social and Cultural Rights (ESCR Committee) in its General Observation No. 14 as "essential and inter-related."[110]

54. As regards the right to health, in addition to its coverage by the scope of Article 5 of the American Convention, reference should also be made to Article 26 of the Convention, which deals with economic, social, and cultural rights and provides that:

> The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislative or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

55. It is important to stress that the rights referred to in Article 26 of the American Convention are those stemming from economic and social standards and those on education, science, and culture appearing in the OAS Charter and that, in addition, the jurisprudence of the Inter-American Court and the IACHR has already identified the rights to social security and health and labor rights as economic, social, and cultural rights stemming from the OAS Charter.[111] Nevertheless, it must be specified that the doctrine indicates that the other rights that can be drawn from the OAS Charter are the right to education, the right to food, the right to housing, and cultural rights, among others.[112]

56. Regarding this matter, the Court has explained that Article 26 is subject to the general obligations set out in Articles 1.1 and 2 ("General Obligations") of the American Convention.[113] The Commission also considers it relevant to recall what was indicated by the Inter-American Court in the case of the *Five Pensioners* regarding the two dimensions involving economic, social, and cultural rights:

> Economic, social and cultural rights have both an individual and a collective dimension. This Court considers that their progressive development, about which the United Nations

[108] I/A Court H.R., *Case of Suárez Peralta v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 149.

[109] I/A Court H.R., *Case of Suárez Peralta v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261.

[110] United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights. General Comment 14.

[111] I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, Series C No. 198, para. 106; IACHR, Report No. 38/09, Case 12.670, Admissibility and Merits, *National Association of ex-Employees of the Peruvian Social Security Institute et al.* (Peru), March 27, 2009, para. 130; IACHR, Report No. 25/04, Petition 12.361, Admissibility, *Ana Victoria Sánchez Villalobos et al.* (Costa Rica), March 11, 2004, paras. 52-70; IACHR, Report No. 27/09, Merits, Case 12.249*, Jorge Odir Miranda Cortez et al.* (El Salvador), March 20, 2009, paras. 77 and 79; IACHR, Report No. 100/01, Case 11.381, *Milton García Fajardo et al.* (Nicaragua), October 11, 2001, para. 95; IACHR, Report No. 121/09, Petition 1186-04, Admissibility, *Oparo Lemoth Morris et al. (Miskito Divers)* (Honduras), November 12, 2009, para. 50.

[112] Cf. Christian Courtis, "La protección de los derechos económicos, sociales y culturales a través del artículo 26 de la Convención Americana sobre Derechos Humanos" [Protecting economic, social, and cultural rights on the basis of Article 26 of the American Convention on Human Rights], in Christian Courtis, Denise Hauser, and Gabriela Rodriguez Huerta (comps.), *Protección internacional de los derechos humanos: nuevos desafíos [International Protection of Human Rights: New Challenges]*, Ed. Porrua-ITAM, Mexico, 2005, pp. 8-29. Similarly, the Inter-American Human Rights Institute, *Protección internacional de los derechos económicos, sociales y culturales. Sistema Universal y Sistema Interamericano [International Protection of Economic, Social, and Cultural Rights: Universal System and Inter-American System]*, IIDH, San José, 2008.

[113] I/A Court H. R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller General's Office") v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2009, Series C No. 198, para. 100.

> Committee on Economic, Social and Cultural Rights has already ruled, should be measured in function of the growing coverage of economic, social and cultural rights in general, and of the right to social security and to a pension in particular, of the entire population, bearing in mind the imperatives of social equity.[114]

57. Regarding this, it is important to highlight that, in its jurisprudence, the IACHR pointed out that the nature of the obligations stemming from Article 26 of the American Convention assumes that the full effectiveness of the rights enshrined in said standard must be achieved progressively and on the basis of available resources. This entails a correlative duty to not backtrack in the achievements reached in said matter. This is the obligation of non-regression developed by other international bodies and understood by IACHR as a justiciable duty of the state on the basis of the mechanism of individual petitions enshrined in the Convention.[115]

58. Regarding the obligation of progressively realization of economic, social and cultural rights, in its ruling in the case of *Acevedo Buendía,* the Inter-American Court examines the contents of the obligations appearing in the above-mentioned Article 26 recalling the interdependence between civil and political rights and economic, social, and cultural rights, considering that they must be understood comprehensively as human rights, without rank between each other and enforceable in all cases before competent authorities.[116] This implies that the progressive implementation of the measures of the state to enforce economic, social, and cultural rights may be the target of accountability.[117] In that regard, fulfillment of the respective commitment taken by the state may be called to accountability in the bodies eventually assigned to rule on human rights violations.[118] In said case, the Court also addressed on the correlative duty of non-regression and its justiciable character.[119]

59. It is important to highlight that the IACHR has recognized the importance of economic development for the prosperity of the peoples of this Hemisphere, in the sense stated by the Inter-American Democratic Charter: "[t]he promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth and to the consolidation of democracy of the states of the Hemisphere."[120] Nevertheless, at the same time, it has indicated that development activities must be accompanied by appropriate and effective measures to ensure that they are not carried out at the expense of the fundamental rights of persons who may be particularly and negatively affected, including indigenous communities and the environment upon which they depend for their physical, cultural, and spiritual well-being.[121]

60. In fact, the IACHR has emphatically pointed out that there is no true development without full respect for human rights. This entails constraints and duties that must be obligatorily fulfilled by state

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[114] I/A Court H.R., *Case of the "Five Pensioners" v. Peru.* Judgment of February 28, 2003. Series C No. 98, para. 147. Quoting United Nations Doc. E/1991/23, United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations (Article 2, para. 1, of the Covenant), adopted at the Fifth Session, 1990, item 9.

[115] IACHR, Report de Admissibility and Merits No 38/09, *National Association of ex-Employees of the Peruvian Social Security Institute et al.* (Peru), March 27, 2009, para. 139.

[116] I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, Series C No. 198, para. 101.

[117] I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, Series C No. 198, para. 101.

[118] I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, Series C No. 198, para. 103.

[119] I/A Court H.R., *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009, Series C No. 198, para. 101.

[120] IACHR, Merits Report No 40/04, Maya Indigenous Communities of The Toledo District, Belize (case 12.053), October 12, 2004, para. 150.

[121] IACHR, Merits Report No 40/04, Maya Indigenous Communities of The Toledo District, Belize (case 12.053), October 12, 2004, para. 150.

authorities. In particular, development must be managed in a sustainable fashion, which requires states to ensure protection of the environment. As explained by the IACHR, "the norms of the Inter-American human rights system neither prevent nor discourage development; rather they require that development take place under conditions that respect and ensure the human rights of the individuals affected."[122]

61. Moreover, in follow-up on the obligations *erga omnes* contained in Articles 1.1 and 2 of the American Convention, it is relevant to repeat that the system's bodies have repeatedly recognized that, under certain circumstances, the state's international responsibility can be established because the state has been held liable for actions violating human rights perpetrated by individuals, which clearly includes private enterprises. Thus, since the first adversarial cases ruled on, the Inter-American Court has outlined the application of the effects of the American Convention on third parties and, concretely, has indicated that:

> Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[123]

62. This position has also been adopted in the sphere of the United Nations by the Human Rights Committee, the body in charge of evaluating implementation of the International Covenant on Civil and Political Rights, and by the ESCR Committee. In effect, the ESCR Committee, in its General Comment No. 15 on the right to water, indicated that states have the obligation to prevent third parties from undermining in any way whatsoever the enjoyment of the right to water. By third parties it means individuals, groups, companies, and other entities, as well as those who work on their behalf. The obligation includes, among other things, the adoption of legislative measures or other kinds of measures that are needed and effective to prevent, for example, third parties from denying access to safe drinking water on an equal footing and polluting or exploiting water resources in a non-equitable manner, including natural sources, wells, and other water distribution systems.[124]

63. The inter-American system also has a specialized instrument on economic, social, and cultural rights, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, the Protocol of San Salvador (hereinafter the Protocol). The above-mentioned Protocol contains an extensive catalogue of these economic, social, and cultural rights, among which the following are noteworthy because of their linkage to guaranteeing access to water: the right of all persons to health[125] and the right to live in a healthy environment and to benefit from basic services.[126]

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[122] IACHR, Indigenous and Tribal Peoples Rights over their Ancestral Land and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc.56/09. December 30, 2009, para. 204.

[123] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 172; and *Case of Godínez Cruz v. Honduras.* Merits. Judgment of January 20, 1989. Series C No. 5, paras. 181, 182, and 187.

[124] United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15.

[125] Article 10 of the Protocol of San Salvador, referring to health, provides the following:

> 1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
>
> 2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
>
> a. Primary health care, that is, essential health care made available to all individuals and families in the community;
>
> b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;

64. Article 1 of the Protocol of San Salvador establishes the obligation of states to undertake to adopt "the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol." Article 2 contains the commitment of states to adopt such legislative and other measures as may be necessary for making these rights enshrined in the Protocol a reality. Article 3 establishes that the states Parties to the Protocol pledge to guarantee the exercise of the rights without discrimination of any kind "for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social situation."

65. In this context, the system's jurisprudence has considered that the satisfaction of the right of personal integrity and the right to health are directly and immediately linked to access to safe drinking water. For example, in the 2009 Report on the Human Rights Situation in Venezuela, the Commission stressed that "a right closely linked to the right to health is the right to water."[127] Also in its report "Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights,"[128] the IACHR established the percentage of the population with access to safe drinking water as one of the results indicators to measure satisfaction of the right to health. It is equally relevant to cite that, in its report on the human rights situation in Guatemala in 2001, the IACHR indicated that health and disease are intersectoral determination processes where the factors with the highest causal importance are the social, economic, environmental, and lifestyle factors, in addition to biological factors; and because of that safe drinking water, drainage, garbage disposal, and access to electricity are essential to prevent disease and improve the population's health.[129] On that occasion, the Commission recommended that the State provide additional resources for the creation of basic infrastructure, so that all communities would at a minimum have access to drinking water and sanitation facilities sufficient to protect their health […][130].

66. Similarly, the Commission has also considered the relationship that exists between human subsistence and the preservation of a healthy environment.[131] Thus, the IACHR notes that environmental degradation can have a negative impact on access to water and the enjoyment of several human rights, including the rights to life, to health, and to food. Specifically, as regards to the link between access to water that is fit for human consumption and the environment, the Committee on Economic, Social, and Cultural Rights has emphasized "the requirement to ensure an adequate supply of safe and potable water and basic

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c. Universal immunization against the principal infectious diseases;

d. Prevention and treatment of endemic, occupational and other diseases;

e. Education of the population on the prevention and treatment of health problems; and

f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

[126] Article 11 of the Protocol of San Salvador, referring to the right to a healthy environment, provides the following:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.

2. The States Parties shall promote the protection, preservation, and improvement of the environment.

[127] IACHR, Democracy and Human Rights in Venezuela, EA/Ser.L/V/II.54, December 30, 2009, para. 1030.

[128] This document contains guidelines developed by the Commission for the evaluation and monitoring of economic, social, and cultural rights provided in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights — Protocol of San Salvador to provide States Parties, other agencies of the inter-American system, and civil society organizations with a tool that serves not only as a basis for the presentation of reports under the Protocol, but also for the design of a permanent internal evaluation mechanism for each State Party.

[129] IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111.Doc. 21 rev.6, April 2001. Chapter III, para. 32.

[130] IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111.Doc. 21 rev.6 April 2001. Chapter III, para. 42, 8.

[131] IACHR, Report on the Situation of Human Rights in Ecuador, OEA.Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997.

sanitation; [and] the need to prevent and reduce the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health."[132] To that end, States must adopt measures to combat health risks related to the environment by, *inter alia*, formulating and enforcing policies "aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals…"[133]

67. In view of the considerations above, the regulatory framework, and the jurisprudence of the Inter-American system for the protection of human rights, it is possible to assert, as a general principle, that there is an obligation of the States to guarantee access to safe water, in sufficient amounts, as an unavoidable condition to satisfy various human rights, such as the right to life, personal integrity, health, among others.

68. With respect to the duty to protect human rights by ensuring access to water, it must be indicated that, in conformity with the jurisprudence of the inter-American system, the state has the duty to adopt prevention measures on the basis of the knowledge it has or should have about a real and immediate situation of risk for an individual or a given group of individuals and the reasonable possibilities of preventing or avoiding that risk. The failure to adopt protection measures in that respect, in spite of the state's full knowledge about the severity of the situation, has been construed as grounds for international responsibility for the adverse impacts on life and personal integrity arising from said conditions.[134]

1. Duty to not discriminate and to guarantee equality in access to water

69. The IACHR has repeatedly established that the principle of nondiscrimination is one of the pillars of any democratic system and that it is one of the cornerstones of the human rights protection system established by the OAS.[135] Both the American Declaration and the American Convention were inspired by the ideal that "all men are born free and equal in dignity and rights."[136] Likewise, in the sphere of economic, social, and cultural rights, the IACHR has stressed that the first obligation "of immediate effect stemming from economic, social, and cultural rights consists of guaranteeing that they shall be exercised in conditions of equality and without discrimination."[137] The IACHR has also specified a dual conception of the right to equality and nondiscrimination: one related to the prohibition of arbitrarily different treatment, and the other related to the obligation of ensuring conditions of true equality for groups that have historically been excluded and are at greater risk of being discriminated against.[138]

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[132] UN, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, Mapping Report (A/HRC/25/53), para. 23. Also, see Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 15.

[133] UN, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, para. 49. Also, see Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 36

[134] IACHR, Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, Chapter IV, Rights of Indigenous Peoples and Peasant Communities. OEA/Ser.L/V/II. Doc. 34. June 28, 2007, para. 253. Quoting I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, para. 178.

[135] See, *inter alia*, IACHR, *Annual Report of the Inter-American Commission on Human Rights, 1999*, Chapter VI. The same can be said, in general, in the sphere of the United Nations, in accordance with what has been established by the Committee on Human Rights: "Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights" (United Nations, Human Rights Committee, General Recommendation No. 18. *Non-discrimination*. CCPR/C/37, November 10, 1989, para. 1).

[136] American Declaration of the Rights and Duties of Man, Preamble.

[137] IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, OEA/Ser.L/V/II.132, July 19, 2008, para. 48. This principle has also been recently promoted by the Working Group of the Protocol of San Salvador, see Organization of American States, Progress Indicators for Measuring Rights under the Protocol of San Salvador, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 43.

[138] IACHR, *The Situation of People of African Descent in the Americas*. OEA/Ser.L/V/II.Doc.62, December 5, 2011, para. 89, quoting, *inter alia*, IACHR, Complaint filed with the Inter-American Court of Human Rights, *Case of Karen Atala and daughters v. Chile*, September 17, 2010, para. 80. Regarding the two quoted notions of the right to equality and nondiscrimination, see a more detailed explanation in IACHR. *The Situation of People of African Descent in the Americas*, paras. 90-95.

70. In line with the above-mentioned Article 1.1 of the American Convention, the principle of equality and nondiscrimination is a protection underlying the guarantee of all the other rights and liberties, because everyone is the holder of the human rights enshrined in such instruments and is entitled to having the state respect and guarantee their free and full exercise, without any type of discrimination. The same is applicable to the second part of Article II of the American Declaration.[139] In the words of the Inter-American Court, "Article 1(1) of the Convention is a general norm the content of which extends to all the provisions of the treaty, because it establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein 'without any discrimination.' In other words, whatever the origin or the form it takes, any conduct that could be considered discriminatory with regard to the exercise of any of the rights guaranteed in the Convention is *per se* incompatible with it."[140]

71. As for Article 24 of the Convention, it enshrines the right to equality before the law and to receive equal legal protection, without discrimination. The same is applicable to the first part of Article II of the American Declaration.[141]

72. It must be indicated that the Working Group that follows up on compliance with the Protocol of San Salvador has stressed that the immediate nature of the obligation to not discriminate and to guarantee equality prevents differences in treatment based on factors expressly forbidden in the Protocol and requires states to:

> …recognize and guarantee the rights of the PSS [Protocol of San Salvador] equally for the entire population, using objective and reasonable criteria of distinction and avoiding arbitrary differences in treatment. Especially differences in treatment based on factors expressly forbidden such as race, religion, and social origin. But it also requires States to recognize that there are sectors that are at a disadvantage when exercising their social rights and to adopt positive policies and actions to guarantee their rights.[142]

73. Similarly, in its report on Guidelines for the Drafting of Progress Indicators relative to Economic, Social, and Cultural Rights, the IACHR indicated that, in adopting social policies and measures to guarantee this framework of rights, states must identify traditionally discriminated sectors in terms of access to certain rights, such as women, indigenous peoples, and people of African descent, among others, and "to establish special or guaranteed measures to assert and ensure their rights in the implementation of their social policies and services."[143]

74. Along this order of ideas, the IACHR observes that, in the framework of the United Nations human rights system, the ESCR Committee pointed out, in its General Comment No. 15, the minimum scope of state obligations in terms of equality and nondiscrimination with respect to access to water, indicating with respect to this that states should "take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water."[144] Concretely, the ESCR Committee indicated that:

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[139] American Declaration of the Rights and Duties of Man, Article II, regarding this: All persons "have the rights and duties established in this Declaration without distinction as to race, sex, language, creed or any other factor."

[140] I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 224; I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 78; and I/A Court H.R., *Proposed Amendment to the Political Constitution of Costa Rica with respect to Naturalization.* Advisory Opinion OC-4/84, January 19, 1984. Series A No. 4, para. 53.

[141] American Declaration, Article II, regarding this: "All persons are equal before the law."

[142] Organization of American States, *Progress Indicators for Measuring Rights under the Protocol of San Salvador*, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 44. See also review on this subject in IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.132, July 19, 2008, para. 48.

[143] IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.132, July 19, 2008, paras. 53, 55; see also discussion of this subject in Organization of American States, *Progress Indicators for Measuring Rights under the Protocol of San Salvador*, OEA/Ser.L/XXV.2.1/GT/PSSI/doc.2/11, March 11, 2011, para. 63.

[144] United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15.

> States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.
>
> With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.
>
> Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees.[145]

75. In short, the Inter-American Commission stresses that international obligations regarding the principle of nondiscrimination and equality before the law in terms of access to water constitute obligations to be fulfilled immediately which must be considered by the states when adopting relevant measures to guarantee access to water fit for human consumption, in particular with respect to historically discriminated persons and groups.

2. Duty to guarantee access to justice

76. According to the inter-American system's consolidated jurisprudence, on the basis of the obligations appearing in Articles 8 and 25 of the American Convention, "[…] everyone has the right to a simple and prompt recourse, or any other effective recourse, to a competent court or judge for protection against acts that violate his fundamental rights, 'which constitutes one of the basic pillars not only of the American Convention, but also of the very rule of law in a democratic society in the sense of the Convention'."[146] It is noted that, with regard to the right to access to justice, particularly for violations related to access to water, States have obligations of immediate effect, which implies both negative duties – not to obstruct access to judicial and other remedies that serve as suitable and effective grievance mechanism against violations of human rights - and a positive duties, to organize their institutional apparatus so that all individuals can access those remedies. To that end, States are required to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice[147].

77. The Inter-American Court has also stated that Article 25.1 of the Convention establishes, in general terms, the obligation of states to guarantee an effective remedy, primarily of a judicial nature, against the violation of fundamental rights set forth in the Convention, in the Constitution, or in the law. In effect, "the State has the obligation to design and embody in legislation an effective recourse, and also to ensure the due application of the said recourse by its judicial authorities."[148] The system for the administration of justice thus constitutes the front line of defense and protection of rights at the national level and its work is crucially related to human rights protection.

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[145] United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15.

[146] See, *inter alia,* I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 234; *Case of Cesti Hurtado.* Judgment of September 29, 1999. Series C No. 56, para. 121; *Case of Castillo Petruzzi et al.* Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 184.

[147] IACHR, Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A Review of Standards Adopted by the Inter-American System of Human Rights, para. 1.

[148] I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 237.

78. It is also important to highlight that the jurisprudence of the system has established that states have not only the obligation to secure and devote, in regulatory terms, effective resources for the full protection of human rights but also the obligation to ensure the due application of these resources by judicial authorities in proceedings with adequate guarantees, in view of the scope of the rights enshrined in Articles 8 and 25 of the American Convention.[149] In particular, the IACHR has indicated that there is a direct relationship between the suitability of available judicial remedies and the real possibility of enforcing economic, social, and cultural rights.[150]

79. About this matter, both the Inter-American Court and the IACHR have begun to specify those elements that comprise the right to due process of law enshrined in Article 8.1 of the American Convention with respect to proceedings on social issues, which have characteristics that are different from criminal or civil proceedings, in addition to sharing certain common features. The Inter-American Commission has identified certain essential characteristics that the procedural measures for safeguarding social rights must have to be considered suitable in the light of the American Convention. Thus, it has proposed that simple, urgent, informal, accessible remedies processed by independent bodies must be involved; that they must be capable of being processed as individual remedies and as collective precautionary actions in order to safeguard the rights of a given or determinable group; that broad active legitimacy must be given to them; that they must highlight the possibility of gaining access to national judiciary bodies if faced with the fear of bias in the actions of local justice; and that ultimately the application of these protection measures must be planned in consultation with those affected.[151]

80. The IACHR has referred to the importance of these fundamental guarantees for the protection of human rights commonly undermined in the context of extraction and development activities. In particular, the Commission has asserted that "it is imperative for the population [...] to have judicial remedies," "[t]o achieve effective protection against ecological conditions that constitute a threat to human health."[152] The Commission has pointed out, in addition, that "[t]his means that individuals must have access to judiciary proceedings to claim the right to life, to physical integrity, and to live in a safe environment, all of which is expressly protection in the Constitution."[153]

81. In the framework of the United Nations, it is important to mention the Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights, where the ESCR Committee asserted that: "States Parties effectively safeguard rights holders against infringements of their economic, social and cultural rights involving corporate actors, by establishing appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations."[154]

82. It is also important to highlight in the present sector that: "The execution of an effective investigation is a fundamental and conditioning element for the protection of certain rights that are effected or annulled by these situations. (...) This assessment is valid whatsoever the agent to which the violation may eventually be attributed, even individuals, because, if their acts are not investigated genuinely, they would be,

[149] IACHR, Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights., OAS/Ser.L/V/II.129, Doc. 4, September 7, 2007, para. 17.

[150] IACHR, Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights, OAS/Ser.L/V/II.129, Doc. 4, September 7, 2007, paras. 18 and 29.

[151] IACHR, Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights, OAS/Ser.L/V/II.129, Doc. 4, September 7, 2007, paras. 17, 18, and 29.

[152] IACHR, *Report on the Situation of Human Rights in Ecuador*. Chapter VIII. OEA/Series L/V/II.96, doc. 10 rev. 1, April 24, 1997.

[153] IACHR, *Report on the Situation of Human Rights in Ecuador*. Chapter VIII. OEA/Series L/V/II.96, doc. 10 rev. 1, April 24, 1997.

[154] United Nations. ESCR Committee. *Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights.* E/C.12/2011/1. July 12, 2011. para. 5.

to some extent, assisted by the public authorities, which would entail the State's international responsibility."[155]

83. In the words of the Inter-American Court, "[i]f the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention."[156] As the bodies of the inter-American system have repeatedly underscored, the administration of effective justice—that is, undertaking processes to investigate, punish, and provide reparations against state agents or individuals or those companies who violated human rights—constitutes an essential deterrent factor to prevent the repetition of human rights violations in the future.

84. Finally, the IACHR wishes to emphasize that an essential component of the right to an effective remedy is reparations for the damage caused. Stemming from this general duty to guarantee human rights, the state has the obligation to provide reparations directly for the damage caused or when the damage has been made by third parties, and to guarantee mechanisms to secure reparations for the human rights violations that were committed.

85. In that respect, it should be quoted that, in the sphere of the United Nations, the ESCR Committee, in its General Comment No. 15, indicated that: "Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels." It also indicated that: "All victims of violations of the right to water should be entitled to adequate reparations, including restitution, compensation, satisfaction or guarantees of non-repetition."[157]

86. On the basis of the above-mentioned considerations, according to international standards, those minimum obligations of the state that must be fulfilled immediately include those involving the duty to provide adequate and effective mechanisms in the case of human rights violations, with respect to the guarantees of due process of law; and the obligation to investigate and punish those responsible for human rights violations and to provide adequate reparations to the victims.

3. Otros instrumentos interamericanos

87. In addition to the aforementioned jurisprudence and regulatory framework, this section mentions other Inter-American instruments that do make express or implicit reference to access to water. Article 4 of the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance makes express reference to access to water and provides as follows:

> The States undertake to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of racism, racial discrimination, and related forms of intolerance, including: (…)
>
> xiv. The restriction or limitation, based on any of the criteria set forth in Article 1.1 of this Convention, of the right of every person, to access and sustainably use water, natural resources, ecosystems, biodiversity and ecological services that are part of each state's natural heritage, protected by the relevant international instruments and their own national laws.[158]

[155] I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006, para. 145.

[156] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 176.

[157] United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 15. Parr. 55.

[158] The above-mentioned Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance had not entered into force when the present report was being drafted. The Convention was adopted on June 15, 2013 in the framework

88. Similarly, the recently adopted Inter-American Convention on Protecting the Human Rights of Older Persons needs to be mentioned,[159] as it expressly refers to access to water in its Article 12, when indicating that: "Older persons have the right to a comprehensive system of care that protects and promotes their health, provides social services coverage, food and nutrition security, water, clothing, and housing (..)." In turn, Article 25 provides for the right of older persons to a healthy environment with access to basic public services, indicating that: "States Parties shall adopt appropriate measures to safeguard and promote the exercise of this right, inter alia: (…)(b) To ensure access for older persons, on an equal basis with others, to basic public drinking water and sanitation services, among others."[160]

89. It is also relevant to mention that the Article III of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities,[161] implicitly refers to access to water. The text of this regulatory framework indicates that:

> To achieve the objectives of this Convention, the State's parties undertake: (…)
> 2. To work on a priority basis in the following areas:
>
> Early detection and intervention, treatment, rehabilitation, education, job training, and the provision of comprehensive services to ensure the optimal level of interdependence and quality of life for persons with disabilities; (…).

90. In this context, it is relevant to highlight that, although the IACHR, with its various mechanisms, has been working on the subject of economic, social, and cultural rights as a cross-cutting issue during the capacity-building process of the inter-American system, both the OAS Member States and the other stakeholders of the System voiced their interest in having greater attention focused on the matter. As a result of this process, the IACHR establish specialized institutional forums, and during the 146th regular session held on October 29 to November 16, 2012, the Commission, as a result of its commitment to build up its activities in the area of economic, social, and cultural rights and in response to suggestions made the states and civil society, decided to establish a Unit on Economic, Social, and Cultural Rights (ESCR Unit).[162] Among the objectives of the above-mentioned ESCR Unit's Work Plan, mention must be made of the development of international standards for interpreting inter-American human rights instruments with respect to economic, social, and cultural rights, as well as broadening of jurisprudence in the inter-American system on the subject. To achieve this objective, the ESCR Unit believes it is relevant to move forward in considering access to water in the Americas.

E. Brief reference of the Jurisprudence of the European System and the African System of Human Rights

91. In this analysis, it is also important to note that the jurisprudence of the European Court of Human Rights (the "European Court") has considered the interdependence of civil and political rights and economic, social and cultural rights in the area of access to water. It should be noted that the European Court,

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of the forty-third regular session of the OAS General Assembly and shall enter into force the thirtieth day after the date of deposit of the second instrument of ratification of, or accession to, the Convention.

[159] OAS, Inter-American Convention on Protecting the Human Rights of Older Persons, June 15, 2015.

[160] The Inter-American Convention on Protecting the Human Rights of Older Persons had not entered into force when the present report was being drafted. The Convention was adopted on June 5, 2015 in the framework of the forty-fifth regular session of the OAS General Assembly and shall enter into force the thirtieth day after the date of deposit of the second instrument of ratification of, or accession to, the Convention.

[161] Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities. Adopted in Guatemala City, Guatemala, on July 6, 1999.

[162] Afterwards, on April 3, 2014, the IACHR decided to start up a process to establish a Special Rapporteurship on Economic, Social, and Cultural Rights (Special ESCR Rapporteurship). For this purpose, it opened a special fund to raise financial resources that would make it possible to establish said Special Rapporteurship, inviting OAS Member States to make their contributions.

in the context of detention, has linked the prohibition on torture and inhuman and degrading treatment or punishment contained in Article 3 of the European Convention on Human Rights (the "European Convention") with the lack of access to water suitable for human consumption. For example, in the case of *Marian Stoicescu v. Romania*,[163] the European Court ruled that the material conditions of detention, which included, *inter alia,* the lack of access to water suitable for human consumption, constituted inhuman and degrading treatment in accordance with the above-cited norm. In addition, the European Court recalled that States must ensure that the conditions of persons deprived of liberty are compatible with respect for human dignity and they must also ensure that such persons are not subjected to treatment exceeding the level of suffering that is inevitable and inherent to imprisonment, and their health and well-being must thus be adequately protected.[164]

92. Also to be noted is the jurisprudence of the European Court analyzing the violation of the right to private and family life protected under Article 8 of the European Convention. In the case of *López Ostras v. Spain*, the Court established that water pollution, foul odors, and noxious fumes from a toxic waste treatment plant near the residence of the victim in the case produced a violation of said right to private and family life.[165] The European Court indicated that severe environmental contamination may adversely affect people's well-being and prevent them from enjoying their homes, to such an extent that it affects their enjoyment of the right to private and family life, in addition to endangering their health.[166] Along the same lines, in the case of *Dubetska et al. v Ukraine*, the European Court established the State's international responsibility for violating the right to private and family life in accordance with Article 8 of the European Convention. Specifically, the Court established the State's failure to provide protection against environmental contamination and effects on water quality in the context of extractive activities, which harmed the victims in the case.[167]

93. For its part, under the African System of Human and People's Rights, the case of the *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria* should be cited. In that case, the petitioners alleged, *inter alia*, that toxic wastewater produced by petroleum activities had led to the contamination of water, soil, and air, with serious effects on the health of the Ogoni People.[168] In its analysis, the African Commission on Human and People's Rights ("African Commission") established the violation, *inter alia*, of the right to health (Article 16) and the right to a general satisfactory environment favorable to development (Article 24), contained in the African Charter on Human and People's Rights (the "African Charter"). The African Commission established that said violations resulted from the State's failure to prevent pollution and ecological degradation.[169] In addition, in its analysis, the African Commission deemed that the rights explicitly enshrined in the African Charter are not the only rights protected therein, since the right to food was considered as being intimately related to human dignity and constituting a necessary component for the satisfaction of other rights such as the right to health, education, employment, among others.[170] Specifically, that Commission deemed that the destruction and contamination of crops by the State

[163] TEDH, Marian Stoicescu vs. Romania (App. No. 12934/02) ECHR 16 July 2009.

[164] TEDH, Marian Stoicescu v. Romania (App. No. 12934/02) ECHR 16 July 2009, paras. 9, 24, 26 y 28. See also, "*Human Rights to Water and Sanitation in Courts World Wide, a selection of national, regional and international case law*" , pág. 242. Other cases in which the European Court considered, among other issues, access to water suitable for human consumption in view of Article 3 of the European Convention on Human Rights (prohibition on torture and inhuman and degrading treatment or punishment): Fedotov v. Russia in 2006, Raid and Adib v. Belgium in 2008, Shchebet v. Russia in 2008 and Tadevosyan v. Armenia in 2009.

[165] ECHR, López Ostra v. Spain, (App. No. 16798/90) ECHR December 9, 1994, para. 58.

[166] ECHR, López Ostra v. Spain, (App. No. 16798/90) ECHR December 9, 1994, para. 51.

[167] ECHR, Dubetska et al. v. Ukraine, (App no. 30499/03) February 10, 2011, paras. 154-156.

[168] ACHPR. Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights (CESR) v. Nigeria. Communication No. 155/96 (2002), para. 2.

[169] ACHPR. Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights (CESR) v. Nigeria. Communication No. 155/96 (2002), paras. 51-54, 69.

[170] ACHPR. Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights (CESR) v. Nigeria. Communication No. 155/96 (2002), paras. 64-66.

and non-state actors violated the obligation to respect and protect the implicit right to food contained in the African Charter.[171]

94. Moreover, in the case of the *Centre on Housing Rights and Evictions* (COHRE) v. Sudan, the African Commission analyzed violations of the right to life, the right not to be subjected to torture, and violations of economic, social and cultural rights in the context of forced displacements prejudicial to tribes in the region of Darfur.[172] With respect to the right to health, the African Commission indicated that access to clean drinking water is included in this right and that the failure of States to formulate and apply national policies intended to reduce and eliminate water pollution violates the right to health.[173] In effect, the African Commission determined that "the destruction of homes, livestock and farms as well as the poisoning of water sources, such as wells" constitutes a violation of Article 16 of the African Charter (right to the highest attainable standard of health).[174]

F. Mechanism of Precautionary Measures

95. In follow-up on the above, it is important to point out that, in the framework of complementary and exceptional competencies of the precautionary measures mechanism, the Inter-American Commission has also received a series of petitions for precautionary measures aimed at protecting the rights to life, personal integrity, and health in cases alleging violations of various kinds involving the access to water in the Americas.

96. As a rule, these cases have been associated with: i) alleged environmental pollution of aquifers which allegedly had an adverse impact on the quality of water for human consumption, irrigation of crops, and access to sources of food in situations with alleged impacts on the health of indigenous peoples and communities of people of African descent; ii) alleged challenges in terms of accessibility to water and the supposed irreparable impact on the rights of groups in a situation of vulnerability, among which those deprived of liberty, displaced persons, indigenous communities, among others; and iii) leaders and human rights defenders, among others, who when defending their rights with respect to access to water had been the target of threats, harassment, and violence.[175]

97. In that respect, after receiving said petitions and reviewing them in the light of the requirements of gravity, urgency, and need to avoid irreparable damages to persons, the IACHR has continued to confirm that access to water is an indispensable element for the realization of other human rights. Some of the principal situations that the IACHR has examined in the context of the precautionary measures mechanism and access to water are specified below:

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[171] ACHPR. Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights (CESR) v. Nigeria. Communication No. 155/96 (2002), paras. 64-66.

[172] The African Commission determined that Sudan violated the right to property, health, to not be subjected to torture, to liberty, and personal safety, among other rights contained in the African Charter. ACHPR, Centre on Housing Rights and Evictions v. Sudan, Communications Nos. 279/03 & 296/05(2009), paras. 110 and 228.

[173] ACHPR, Centre on Housing Rights and Evictions v. Sudan, Communication Nos. 279/03 & 296/05 (2009), para. 210. In its analysis, the African Commission made reference to General Observation No. 14 of the Committee on Economic, Social and Cultural Rights.

[174] ACHPR, Centre on Housing Rights and Evictions v. Sudan, Communication Nos. 279/03 & 296/05 (2009), paras. 211 and 212. In addition, the African Commission mentioned the case of *Free Legal Assistance Group et al. v. Zaire*, in which it was determined that the State's failure to ensure basic services such as drinking water and electricity, and the lack of medications constitute a violation of the right to health under Article 16 of the African Charter (ACHPR, Free Legal Assistance Group et al. v. Zaire, (Communications 25/89, 47/90, 56/91, 100/93, para. 47.)

[175] In addition, it must be emphasized that, although the Commission is not called upon to make any judgments about the alleged violations of human rights when reviewing a petition for precautionary measures, it did receive information about the alleged failure to conduct prior consultation of the indigenous communities and ancestral territories where aquifers are located, the alleged absence of guarantees for access to water, the alleged lack of measures to prevent and take care of illnesses associated with the supposedly polluted water, among other aspects. Many of these petitioners and precautionary measures granted are associated with cases or petitioners that are currently being reviewed by the Inter-American Commission.

- ***Alleged pollution of aquifers and supposed impacts on the life, personal integrity, and health of indigenous communities***

98. The IACHR has addressed this subject by issuing a precautionary measure on May 20, 2010 for the members of the 18 communities of Guatemala's Maya indigenous communities of Sicapakense and Mam.[176] In the petition for precautionary measures, it was alleged that, because of the production of a mining company, there has been an environmental impact on the area affecting the river's main tributaries, which are used by the indigenous communities for their livelihood. This situation is allegedly affecting the health of various members of the communities, who are supposedly suffering from specific consequences for their health. In view of the controversy over various issues that were presented in follow-up on the precautionary measure, on December 7, 2011, the IACHR notified its decision to change the precautionary measures and requested the State of Guatemala to adopt the measures needed to ensure that members of the 18 beneficiary Maya communities had access to safe drinking water fit for human consumption and household use and safe for irrigation. In particular, the IACHR requested the state to adopt the necessary measures so that the water sources of the 18 beneficiary communities would not be polluted by actions taken by mining companies. The Commission has continued to monitor the case, examining the various positions that the parties have taken in the proceedings for the precautionary measures and in one case which is currently in the merits stage.

99. As for the communities of African descent, the IACHR has requested information from the states, especially with respect to cases involving the alleged consequences of environmental pollution in rivers and their alleged impacts on the health of the communities. In some of these cases, it was taken into consideration that the river had been a specific food source for the communities of African descent in the light of their traditions and culture.

100. Regarding the challenges in terms of accessibility to water and the alleged irreparable impacts on historically discriminated persons and groups, the IACHR has various precedents where, among other elements, it has taken note of alleged constraints on access to water, which could irremediably impact the rights of certain persons. Among these situations, the following are noteworthy:

> i) In the case of *Persons Deprived of Liberty at the Porto Alegre Central Prison in Brazil,*[177] the IACHR considered a series of allegations and information about the alleged severe detention conditions that could affect the life and personal integrity of detainees. In the framework of the information received, the IACHR took note of alleged extreme overcrowding in the penitentiary, the breakdown of sewage and sanitary waste management systems, absence of access to medical treatment, among other types of information highlighting the precarious health conditions inside the premises. An important element that the Commission considered was associated with the alleged lack of water supply in the cell blocks where the detainees were located. On January 11, 2013, the Commission granted precautionary measures to safeguard the life and personal integrity of the inmates of the penitentiary.
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> ii) In the situation of the *Displaced Persons Located in the Grace Village Camp in Haiti,*[178] the Commission received information about the alleged critical situation encountered by persons who were displaced after the 2010 earthquake in Haiti, and who were located in certain camps. In this case in particular, the Commission considered information about the precarious conditions encountered by said persons in the camp, among which the absence of the most basic needs, access to adequate medical treatment, food, and access to safe drinking water. In the follow-up on this case, the petitioners alleged that, because of the alleged intentions of individuals to have the displaced persons evicted from the camp, the only water supply sources located in the camp had been poisoned. In view of the critical and exceptional

[176] IACHR, Communities of the Maya People (Sipakepense and Mam) of the Sipacapa and San Miguel Ixtahuacán Municipalities in the Department of San Marcos, Guatemala (PM 260-07), May 20, 2010.

[177] IACHR, Persons Deprived of Liberty at the Porto Alegre Central Prison, Brazil (PM 8-13), December 30, 2013.

[178] IACHR, *Case of the Displaced Persons Located in the "Grace Village" Camp in Haiti* (PM 52-13), March 26, 2013.

situation being faced by the displaced persons in said camp, on March 26, 2013, the IACHR requested that the life and personal integrity of the residents of the camp be protected. It also requested the state to ensure that the residents had access to water fit for human consumption.

iii) Recently, the IACHR decided to grant precautionary measures on behalf of children and adolescents from the communities of Uribía, Manaure, Riohacha and Maicao, belonging to the Wayúu people, in La Guajira department, Colombia. The request for precautionary measures claimed that the beneficiaries were in a serious and urgent situation, with their lives and physical integrity at risk due to the alleged lack of access to drinking water and the state of malnutrition prevailing among the communities' children. The IACHR's resolution includes, among other measures, the adoption of immediate steps to ensure that the beneficiary communities receive, as promptly as possible, access to healthy drinking water, in a sustainable fashion and in amounts sufficient for the children and adolescents.[179]

- ***Reprisals associated with defending the environment, indigenous territory, and access to water***

101. The Commission has granted precautionary measures aimed at protecting the life and personal integrity of leaders and human rights defenders who had allegedly been targeted for reprisals because of these activities. In the case of *Lauro Baumeo Mora et al. in Mexico,*[180] the Commission received information about an alleged context related to the alleged failure to engage in any prior consultation when implementing a project that would affect the Yaqui River in the state of Sonora, Mexico. According to the petitioners, the river served "as the sustenance for farming, livestock, and fishing activities" of the indigenous communities, as well as a central element of the culture and world vision of the Yaqui people as a whole. In addition, the petitioners have alleged that members of the indigenous communities were also facing the consequences of alleged environmental pollution in the river for their rights to life and personal integrity. In the framework of the follow-up conducted in this case, the IACHR received information about a series of alleged threats, harassments, and intimidation against certain leaders for their work defending their natural resources, mainly access to their aquifers. Therefore, the Inter-American Commission requested protection of the life and personal integrity of the leaders identified. To date, the IACHR continues to monitor this case and to review the various allegations and information provided by the parties regarding the other issues that were identified.

102. In the case of the *Leaders of the Campesino Communities and Campesino Patrols of Cajamarca in Peru,* on May 5, 2014, the IACHR requested the adoption of precautionary measures for the benefit of 46 leaders of the campesino communities and patrols, the members of the Chaupe family, the patrolman Luis Mayuta, and the media person César Estrada, in Cajamarca, Peru.[181] In the petition for precautionary measures, it was alleged that the campesino communities and patrols of the provinces of Cajamarca, Celendín, and Hualgayoc-Bambamarca were opposed to the "Conga" project, which supposedly threatened to destroy certain lakes that were supposedly located in indigenous territory and which were used by the communities for their livelihood. In the follow-up on the case, the IACHR became aware of a series of alleged incidents of violence taking place in the protests against the project, and as a result issued a press release voicing its concern about the alleged aggression taking place in said context.[182] In view of a series of an alleged cycle of threats and harassment taking place throughout the proceedings, the IACHR decided to protect the life and personal integrity of the leaders identified. Furthermore, the Commission was reviewing the petition with respect to the present case, which is currently in the admissibility stage.

[179] IACHR, Matter of the Children and adolescents of the communities of Uribía, Manaure, Riohacha and Maicao of the Wayúu people, in the department of La Guajira, Colombia (MC 51-15), December 11, 2015.

[180] IACHR, Asunto Lauro Baumeo Mora y otros respecto de México (MC 452-13), December 20, 2013.

[181] IACHR, Leaders of Campesino Communities and Campesino Patrols in Cajamarca, Peru (PM 452/11), May 5, 2014.

[182] IACHR, "Press Release, IACHR Expresses its Concern over the Aggressions in the Department of Cajamarca, Peru", July 6, 2012.

103. The Commission also received information indicating that a series of incidents of violence, threat, and harassment had taken place to the detriment of defenders of the environment and water in Honduras.[183] In that context, various cases of harassment in various areas of the country were reported in general, and special reference was made to the kidnapping of the defender Miriam Miranda in Vallecito, in the municipality of Limón, Atlántida, to whom the IACHR granted precautionary measures.[184]

II. MAIN IMPACTS ON ACCESS TO WATER IN THE AMERICAS REPORTED TO THE IACHR IN 2015

104. According to information received in 2015, the IACHR observes that, in general, the principal impacts on access to water in the Americas stem from the adverse effects of the implementation of extraction projects and the use of agrochemicals in the region, the pollution of water sources, lack of access to water for people and communities living in poverty and extreme poverty, especially in rural areas, and drinking water supply outages, all of which has exerted disproportionate impacts on the human rights of historically discriminated persons, groups, and communities.[185]

105. As indicated previously, the Commission received information at the hearing "Human Rights and Water in the America" held on October 23, 2015 at the 156th regular session of the IACHR, where it was indicated that, in the region, there is a development model based on the production of raw materials, which would be leading the region to severely overusing its sources of water.[186] The above-mentioned situation was being aggravated by the growing pressure on using natural resources for the implementation of extraction activities, among which dam building and mining production are the most noteworthy,[187] adversely impacting persons, groups, and communities historically discriminated against, in particular with respect to persons who are located in the area of influence of these projects.[188]

106. Afterwards a brief summary will be presented on the principal impacts reported at the above-mentioned hearing, as well as information submitted in response to the questionnaire issued by the IACHR to draw up the present section. The information received by the IACHR shall then be addressed in the context of the mechanism of precautionary measures.

A. Hearing: "Human Rights and Water in the Americas" and responses to the questionnaire on "Access to Water in the Americas"

107. The petitioners of the hearing reported to the IACHR that the appropriation of water resources for extraction activities is being carried out on the basis of legal mechanisms that have ultimately favored this use over human use and consumption. It was reported that the Commission that, in general, states had relaxed their regulatory frameworks for environmental issues in order to foster the implementation of megaprojects. In addition, it was indicated that various countries of the region experienced the phenomenon they called "corporatization" whereby the national legal system views water as

[183] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Asociación para una Ciudadanía Participativa (ACI-PARTICIPA), 2015, p. 7.

[184] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Asociación para una Ciudadanía Participativa (ACI-PARTICIPA), 2015, p. 7.

[185] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[186] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105. See also, [Water Diagnostic of the Americas] Diagnóstico del Agua en las Américas, pg. 22.

[187] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[188] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105."

a natural right liable to appropriation by the private sector for commercial and industrial development in general.[189]

108. As an example of the above, it was indicated to the Commission that, although the states of Colombia, Peru, Mexico, and Honduras have standards to guarantee access to water, compliance with these standards was not being verified in practice.[190] In Peru, for example, amendments to the law had been adopted (July 12, 2014) entailing severe consequences for the environment and guaranteeing access to water.[191] As for Mexico, it was reported that to date it had not enacted the General Law on Water, as instructed by the constitutional reform of 2012, and that amendments to the regulatory framework for electric power had been made.[192] As for Chile's regulatory framework, it was indicated that it does not have effective mechanisms to safeguard the "public use" of water.[193] With respect to Honduras, the petitioners of the hearing alleged that the concession of territories for the development of hydropower projects had affected the legal framework established for biodiversity and the protection of water sources.[194] The petitioners of the hearing also referred to analogous situations in Paraguay and Brazil.[195]

109. Moreover, they indicated that, in Latin America, it has been determined that the use of water for extraction activities prevails over its use for human consumption. An example of this would be the openness of states to implementing mining extraction projects in ecosystems that had been earmarked for conservation and supplying water to millions of persons.[196] They contend that upper Andean plateaus (*páramos*), glaciers, wetlands, headwaters, lakes, among others, are being exposed to nonrenewable natural resources exploration and are at risk of disappearing in various countries of Latin America.[197] They indicated in addition that one of the consequences observed in the appropriation of water for extraction purposes in the region had been the substantial alteration of other forms of traditional use and development, as well as cultural practices of the communities associated with the water sources.[198] As an example of the above they alleged that, if in Brazil the Minas-Rio Project of the company Anglo-American in the state of Minas Gerais becomes fully operational, the volume of water drawn for the project would be enough to supply water to 3 million persons.[199]

110. The diversion and reduction of the rivers' volume and flow to build dams and the drying up of water sources because of mining extraction were also reported, which would have prevented the use and

[189] IACHR, Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[190] IACHR, Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[191] IACHR, Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[192] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2015.

[193] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[194]Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[195] Document: Impacts on the Right to Water as a consequence of Implementation of Extractive Projects in the Region, October 15, 2015. Submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[196] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[197] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[198] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[199] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

enjoyment of water resources by part of the population affected. As an example of the above, it was mentioned that, in Colombia, although domestic law forbids extraction activities in upper Andean plateaus—which are ecosystems that provide 85% of the population's drinking water—over the past few years the state had progressively "relaxed" environmental regulations.[200] The organizations of the civil society indicated that, in Guatemala, there is the flagship case of the diversion of the Pacayá River, where corporations producing single cash crops of African palm, bananas, or rubber in the affected area had promoted dam building[201] and they alleged that it would lead to shortages and to floods.[202] Also at the hearing, it was reported that, in the region, it is customary for extraction projects to be implemented without any processes of consultation and prior, free, and informed consent for the indigenous populations affected[203]

111. The petitioners indicated that, as a result of extraction activities, today many cases of pollution by heavy metals and toxic substances are being reported in ground and surface water sources in the region of the Americas.[204] In addition, use of polluted water had led to the loss of crops and impacted farming and livestock activities. In some cases as well, extraction activities had altered the natural cycle of water and changed ecosystems, leading to droughts and desertification processes in various regions. The above had triggered a decline in, and in some cases the extinction of, hydro-biological species, affecting thousands of rural communities.

112. Regarding this, the organizations of the civil society referred, as example about the situation of pollution of various river basins in Brazil by heavy metals.[205] Reference was also made about a similar situation in Argentina, allegedly because of the exploitation of the Alumbrera Mine in the province of Catamarca.[206] As for the petitioners, they reported that, concerning the State of El Salvador, although since 2006 mining production activities have stopped, the population still would be affected from the consequences of environmental pollution from projects that are currently shut down.[207]

113. With respect to the impacts on access to water in indigenous communities in the United States, at the audience it was indicated that the state of New Mexico had been suffering throughout its history from a public health problem and environmental impacts as a result of the development of uranium.[208] The petitioners of the hearing pointed out that the situation of Navajo community, which is part of the Red Water Pond Road Community (RWPRC), is a reflection of the impacts of uranium pollution in the area.[209] The

[200]Despite this, according to information provided, in the Páramo of Santurbán in Colombia, the state had allowed the company Greystar Resources Ltd. (now the company Eco Oro Minerals) to carry out gold mining exploration activities in the framework of its Angostura project, which would entail risks for the ecosystem's conservation.

[201] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[202] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[203] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[204] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[205] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105."

[206] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

[207]This is the case of the San Sebastián mine, located in the Municipality of Santa Rosa de Lima, department of La Unión. The inhabitants of the area have reported that, since the seventies, they are been affected by the acid in the rivers polluted by the mine, a situation that has never been remedied by Commerce Group, the company that has been operating the mine for many years.

[208] IACHR, Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105. Testimony provided by Edith Hood, Red Water Pond Road Community, New Mexico.

[209] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105.

Commission also received information indicating that the said contamination is jeopardizing present and future water sources and that the communities are facing challenges in cleaning up the uranium waste[210].

114. Likewise, the IACHR was also informed about the alleged water pollution in the rural communities in Central Valley and Salinas Valley (in the counties of Fresno, Tulare, Kings, and Kern) in California, where the majority of persons belong to ethnic minorities, which presumably had disproportionately impacted persons living in poverty, especially with respect to the right to health.[211]

115. Based on public information, the IACHR took note of the retaining wall that burst in the dam belonging to a joint project of Vale and BHP Billiton (Minería Samarco SA), releasing 50 million tons of iron waste, toxic heavy metals, and other chemicals into the Doce river in the States of Minas Gerais and Espirito Santo in Brazil.[212] John Knox, the U.N. Special Rapporteur on human rights and the environment, stated that "the scale of the environmental damage is the equivalent of 20,000 Olympic pools of toxic mud waste contaminating the soil, rivers and water system of an area covering over 850 kilometers."[213] He also stated that the Doce river, one of Brazil's great watersheds, would be considered "dead" according to experts on the subject[214] and that the toxic sludge was working its way downstream towards the Abrolhos National Marine Park, threatening protected forests and the ecosystem.[215]

116. The Commission has also taken note of the possible harmful effects on health due to the contamination of water sources as a result of the improper use of agrochemicals, particularly glyphosphate, used in large soybean plantations.[216] The use of agrochemicals is considered one of the greatest environmental threats related to soybean production and contaminates the soil, in addition to having negative impacts on water quality and biodiversity.[217] The available public information notes increased soybean production in various countries in the region, particularly Argentina, Brazil, Bolivia, Uruguay, and Paraguay[218] and that the wetlands in intensively cultivated areas have been directly affected by the use of agrochemicals, as rainwater runoff is one of the principal sources of contamination of water resources.[219] In addition, some studies on the subject report that agrochemicals could affect human health. For example, a

[210] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States (New Mexico) submitted by Red Water Pond Road Community Association (RWPRCA), p. 5.

[211] Information submitted by civil society representatives at the regional thematic hearing on human rights and water in the Americas, held at the 156th Session of the IACHR, October 23, 2105. In particular, it was indicated that more than 2.6 million persons living in these communities are being supplied drinking water with levels of nitrate exceeding federal standards and exposure to nitrate can have severe consequences for health, especially gastrointestinal diseases, chronic diseases, such as cancer, disease of the thyroid and the nervous system. Likewise, pollution by nitrate is linked to miscarriages, premature births, and disabilities.

[212] ONU, América del Sur/Oficina Regional. Desastre minero en Brasil: "Este no es el momento para tomar posturas defensivas" – Expertos en derechos de la ONU, 26 de noviembre de 2015.

[213] ONU, América del Sur/Oficina Regional. Desastre minero en Brasil: "Este no es el momento para tomar posturas defensivas" – Expertos en derechos de la ONU.26 de noviembre de 2015.

[214] United Nations, South America/Regional Office. Brazilian Mining Disaster: "This is not the time for defensive posturing" – UN rights experts. 26 November 2015.

[215] The IACHR also notes public information indicating that human activity is causing serious damage to the oceans and seas in general. Vulnerable marine systems such as coral reefs and important fishing areas are being damaged by over-exploitation and marine pollution, particularly from land-based sources. Increasing sea temperatures, rising sea levels, and ocean acidification as a result of climate change also pose a threat to marine life, to communities in coastal areas and islands, and to national economies (Secretary-General Ban Ki-moon's message on the first observance of World Oceans Day, 8 June 2009). It is important to emphasize that protecting the oceans is one of the 17 Global Goals of the New Sustainable Developent Agenda.

[216] Greenpeace, Glifosato, Informe de Greenpeace advierte efectos nocivos para la salud y el ambiente [Glyphosphate: Greenpeace report warns of harmful effects on health and the environment] . See also, RAP-AL, Los agrotóxicos de la soja y sus impactos [Soybean agrochemicals and their impacts].

[217] WWF Global, Controversias de la Soja [Soy Controversies]. See also, WWF-Paraguay, la expansión de la soja en Paraguay [Expansion of Soy in Paraguay].

[218] Observatorio Socio-ambiental de la Soja (OSAS) [Social-Environmental Observatory for Soy], El cultivo de la Soja en América del Sur [Growing Soy in South America], p. 4.

study done in Mato Grosso examining 62 samples of breast milk found traces of one or more toxic agrochemicals in all of them.[220] The Brazilian Institute of Geography and Statistics (IBGE) estimates that 35% of all the pesticides used in Brazil are for soybean cultivation[221] and in Argentina the presence of highly-toxic pesticides has been confirmed in sediment and in the water.[222]

117. In the present section, it should be mentioned that, in 2015, in the framework of the hearing on the "Right to access to water of rural communities in Costa Rica,"[223] it was reported to the IACHR that presumably access to water had become a major problem for rural communities in that country.[224] The petitioners of the hearing indicated that 30% of the population of said communities was being supplied from community pipelines, which had been polluted because of agrochemicals from the pineapple-growing industry. It was alleged, at the IACHR, that pineapple production, had not been monitored or regulated as needed by the state and had led to severe damages to the natural resources in the rural areas, especially ground water pollution. The participants in the hearing stressed the situation of the some of the communities of the province of Limón.[225]

118. During the hearing, the civil society organizations provided information on a number of outages of drinking water in the United States, because of the alleged lack of affordability to pay the service. For instance, the Commission received information about the situation of the right to water in Detroit, Michigan. It was referred that the situation would had led to the visit by the United Nations Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, and the Special Rapporteur on adequate housing, Leilani Farha, in October 2014[226]. The petitioners reported to the IACHR that allegedly on certain occasions, the absence of water supply in homes had led to the loss of custody of children and that criminal proceedings had been filed against those persons who had informally reconnected the sources of water.[227] Likewise, with respect to the city of Baltimore in the state of Maryland, it was reported that about 25% of residents lived in extreme poverty and that 60% were Afro-Americans, who for the most part were affected by water supply outages.[228] With respect to the city of Boston, it was reported that safe drinking water service outages had been confirmed by the Boston Water and Sewer Commission for users who could not pay their water bills. In this city, the affected communities were people of African descent, Latinos, and immigrants.[229]

- ***Other impacts on access to water***

119. In response to the questionnaire "Access to Water in the Americas" issued by the IACHR to draft the present section, a series of responses from civil society was presented referring to other impacts on

[220] WWF Global, Controversias de la Soja.

[221] WWF Global, Controversias de la Soja

[222] Observatorio Socio-ambiental de la Soja (OSAS), El cultivo de la Soja en América del Sur, pág. 4.

[223] Held at the 154th regular session of the IACHR, March 2015.

[224] IACHR, Thematic Hearing on "Access to Water in Rural Communities," 154th session of the IACHR, March 20, 2015.

[225] IACHR, Thematic Hearing on "Access to Water in Rural Communities," 154th session of the IACHR, March 20, 2015.

[226] United Nations, Joint, Press Release, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, and the Special Rapporteur on the human right to safe drinking water and sanitation, Catalina de Albuquerque. Visit to the city of Detroit (United States of America) on October 18 to 20, 2014. These Rapporteurs indicated that a series of drinking water supply outages had disproportionately affected persons living in poverty, who were for the most part of African descent, and that the costs of services was disproportionately high.

[227] US Human Rights Network, Barriers to Access to Safe and Affordable Water in the United States, Petition for a Hearing at the 156th Session.

[228] U.S. Human Rights Network, Barriers to Access to Safe and Affordable Water in the United States, Petition for a Hearing at the 156th Session of the IACHR. The utility company distributing water is disconnecting water service for all those who have arrears of more than US$250 (currency of the United States of America) on their water bills.

[229] U.S. Human Rights Network, Barriers to Access to Safe and Affordable Water in the United States, Petition for a Hearing at the 156th Session.

access to water in the Americas. Indeed, in general the following was reported: the pollution of sources of safe drinking water, the absence of supervision over water quality[230], the high percentage of the population living in rural area who have no access to drinking water,[231] that undermining access to water exerts a disproportionate impact on persons and communities living in poverty,[232] among others[233]. For example, with respect to the situation of access to water in the United States, on the basis of information received at the IACHR, it can be concluded that persons and communities living in poverty and extreme poverty, as well as indigenous communities, lack access to basic levels of safe drinking water supply. It was alleged that the State had not adopted adequate measures to guarantee accessibility of these communities to basic levels of safe drinking water supply nor had it adopted measures to prevent pollution of safe drinking water sources or to provide adequate alternative sources, of all of which has disproportionate repercussions for historically discriminated peoples.[234] Further, with respect to the State of Venezuela it has made mention of an alleged lack of transparency of information on the quality of water and about the water basins that feed water treatment plants.[235]

120. For example, with respect to the State of Costa Rica, it has been reported that about 6,000 to 7,100 members of rural communities lacked sustainable access to safe drinking water and that, although measures had been implemented by the state to supply safe drinking water to the communities, there was concern about the quality of the water being provided on the basis of the above-mentioned provisional supply measures.[236] In addition, with respect to the State of Costa Rica, it was reported that there were persistent inequalities in certain provinces and districts of Cost Rica in terms of access to safe drinking water. It was indicated that about 18% of the country's population does not enjoy access to safe drinking water because of the failure to ensure maintenance of existing infrastructure, inefficient management and operation of pipelines, and the absence of water quality monitoring programs.[237] It was also reported that certain sources of ground water used to supply water to the population had been polluted by pesticide waste, in various communities, mostly low-income rural communities, which means that those living in these areas do not enjoy the right to access to adequate quality water.[238]

[230] For example, with respect Cuba, it was reported to this Commission that contamination of fresh and coastal waters have progressively worsened. It was informed that the said contamination is caused by: 1) lack of maintenance of sewerage network, 2) lack of treatment plants for sewage; and 3) inadequate chlorination and deterioration of facilities for the treatment of drinking water. Response to the Commission questionnaire on "access to water" by the Cuban Democratic Directorate, p. 5

[231] The IACHR has been informed that, in Colombia, there is a higher percentage of the population without any access to water, especially high in rural areas and indigenous communities. Response to the questionnaire on "Access to Water in the Americas" submitted by Fray Bartolomé de las Casas Victimology Institute.

[232] Response to the questionnaire on "Access to Water in the Americas" submitted by Grupo de Acciones Públicas de la Universidad Icesi de Cali and Law Faculty of the San Buenaventura University in Medellín.

[233] As a matter of fact, with respect to persons deprived of liberty in the Province of Buenos Aires, the Commission received information indicating that from 2012 there are serious situations hindering the access to quality and sufficient water. The alleged situation is consequence of the use of old wells, dirty tanks and pipes in poor conditions. Response to the Commission questionnaire on "access to water" submitted by [Memory Commission of the Province of Buenos Aires] *Memoria de la Provincia de Buenos Aires*, pg. 7. Also, it was informed that in Brazil, the regulations for water management grant ample discretionary powers, which would be projected as an impediment to ensure access to water in general. Response to the Commission questionnaire on "access to water" in the Americas presented by Universidade Federal da Paraíba (UFPB), p. 11.

[234] Response to the questionnaire on "Access to Water in the Americas" submitted by Santa Clara Law, International Human Rights Clinic.

[235] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Escritorio de Abogados aliado a la Fundación Pro Bono Venezuela.

[236] Response to the questionnaire on "Access to Water in the Americas" submitted by Santa Clara Law, International Human Rights Clinic.

[237] Response to the questionnaire on "Access to Water in the Americas" submitted by Centro de Derecho Ambiental y de los Recursos Naturales (CEDARENA) (Environmental Law and Natural Resources Center).

[238] Response to the questionnaire on "Access to Water in the Americas" submitted by Centro de Derecho Ambiental y de los Recursos Naturales (CEDARENA) (Environmental Law and Natural Resources Center).

121. As for the State of Nicaragua, it has reported that the lack of water and sanitation services in the communities has allegedly led to a decline in the standard of living, which, coupled with other indicators of quality of life such as access to education or health, has adverse impacts on the situation of poverty, especially in rural areas.[239]

122. Also, the IACHR was informed that, in the United States, there is a situation of fragmentation in terms of water supply and distribution.[240] In fact, on the basis of the information received, 85% of the population receives water from public sources whereas 15% are supplied by private water systems.[241] Furthermore, there are more than 53,000 sources of water in rural areas, of which 90% supply communities comprised of 10,000 persons or fewer. The United Nations Special Rapporteur on the human right to safe drinking water and sanitation has indicated that these figures highlighted the sector's fragmentation, which she believes means major challenges in terms of trying to regulate, supervise, and guarantee universal access to water.[242]

123. With respect to the state of Puerto Rico, it is important to indicate in the present section that the Commission received information indicating that, allegedly as a consequence of the management of public policies that had been adopted to counter the drought affecting 25% of the population in said country, the authorities had declared a "state of emergency."[243] It was reported that, by August 5, 2015, 20 municipalities had been declared "natural disaster areas because of the drought."[244] In this context, more than 2.5 million persons had suffered from temporary water supply outages. It has been indicated that these measures are disproportionately affecting low-income persons, since some of the communities had received water supply only two days a week.[245] Concretely, it was reported that this situation impacts the right to education, because schools had reduced their weekly hours of classroom attendance and had changed their academic program.[246] The above has an even greater impact on children living in poverty, which accounts for about half of Puerto Rico's child population.[247]

124. Furthermore, the IACHR received information on the basis of which it is understood that, in the state of Pernambuco, Brazil, 126 out of its 185 municipalities [accounting for 70% of the population] was going through an emergency situation because of the absence of water.[248] The above was more severe in the inland areas of the state, where the population was not being supplied water by pipes.[249]

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[239] Response to the questionnaire on "Access to Water in the Americas" submitted by CENIDH.

[240] Acción Solidaria para el Desarrollo (CooperAcción), Inter-American Association for Environmental Defense (AIDA), Regional Association for Human Rights in Peru (APRODEH), Bienaventurados los Pobres (BePe) & Colectivo Sumaj Kawsay, and other civil society organizations. Petition for a Hearing at the 156th Session, Petition for a Regional Hearing on Impacts of Extraction Projects in the Region on the Right to Water.

[241] Human Rights Network, Barriers to Access to Safe and Affordable Water in the United States, Petition for a Hearing at the 156th Session.

[242] United Nations, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, visit to the United States, August 2, 2011, para. 14.

[243] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, p. 12.

[244] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, p. 12.

[245] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, p. 12.

[246] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, p. 12.

[247] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, 2015, p. 12.

[248] Response to the questionnaire on "Access to Water in the Americas" submitted by Clínica de Direitos Humanos, Facultade Damas, p. 2.

[249] Response to the questionnaire on "Access to Water in the Americas" submitted by Clínica de Direitos Humanos, Facultade Damas, and received by the IACHR Executive Secretariat on September 30, 2015, p. 2.

125. In addition, the IACHR has received information about the impacts that hydraulic fracturing (fracking) can have on access to water in the Americas.[250] Regarding this, the U.S. Environmental Protection Agency (EPA), in its assessment of the potential impacts of fracking on safe drinking water resources, found that it could affect safe drinking water in various ways, including from spills of fluids, ground migration of fluids and gases used in this technique, and the inadequate treatment and dumping of wastewater stemming from fracking.[251]

III. MEASURES ADOPTED BY THE STATES TO GUARANTEE ACCESS TO WATER

126. The present section presents a series of measures that had been adopted by the states of the region in the regulatory framework, which include, in some cases, the constitutional recognition of access to water as a human right, secondary legislation, judicial decisions, and public policymaking to protect and guarantee the access to water on the basis of information received in response to the questionnaire on "Access to Water in the Americas"[252] and on the basis of information that is a matter of public record.

127. The Commission received information on the basis of which it is understood that the State of Uruguay was the first country in the world to recognize the right to water and sanitation as a human right in its Constitution.[253] It was reported that the Uruguayan regulatory system gives priority to the use of water for human consumption, as a fundamental point of departure for the coordination of public policies and the adoption of measures to ensure this right.[254] The human right to water was incorporated into the National Constitution on the basis of the amendment made in 2004:[255]

128. The state specified that, in order to fulfill this constitutional mandate, Budget Law No. 17.930 of December 19, 2005 led to the establishment of the National Water and Sanitation Department (now the National Water Department), attached to the Ministry of Housing, Territorial Planning, and the Environment. Its primary goal is to draft national policies in this matter.[256] It is important to mention that, according to information that is a matter of public record; by 2013 Uruguay had one of the highest rates of access to safe drinking water in Latin America and the Caribbean and also had considerable access to sanitation services.[257]

129. As for the State of Ecuador, it also recognizes the right to water in its Constitution, which stipulates that "the right to water is fundamental and cannot be waived[258]." According to legislation, water is

[250]The technique involves extracting natural gas by injecting millions of gallons of chemically treated water into shale deposits to gain access to methane gas.

[251] United States Environmental Protection Agency (EPA), EPA's Study of Hydraulic Fracturing for Oil and Gas and Its Potential Impact on Drinking Water Resources.

[252] On July 31, 2015, the IACHR published the consultative questionnaire inviting states and civil society to provide information to the Commission to draft Section A of Chapter IV of its 2015 Annual Report. The subjects of the questionnaire were access to water and the use of force.

[253] Response to the questionnaire on "Access to Water in the Americas" submitted by Uruguay, p. 1. See also United Nations, Declaración de la Relatora Especial sobre el Derecho Humano al agua potable y al saneamiento, Official Mission to Uruguay, February 13-17, 2012.

[254] Response to the questionnaire on "Access to Water in the Americas" submitted by Uruguay, p. 1.

[255] Response to the questionnaire on "Access to Water in the Americas" submitted by Uruguay and received by the IACHR Executive Secretariat on September 16, 2015, p. 1. See also the Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to Uruguay (February 13 to 17, 2012), which concludes that civil society had played a key role in promoting the referendum of the year 2004 which led to the recognition of the right to water, with 64.61% of the population voting for recognition of water and sanitation as human rights and for their exclusive supply by the state.

[256] Response to the questionnaire on "Access to Water in the Americas" submitted by Uruguay and received by the IACHR Executive Secretariat on September 16, 2015, p. 2.

[257] Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to Uruguay (February 13 to 17, 2012), para. 7.

[258] Article 12 of the Constitution of the Republic of Ecuador.

a strategic national asset for public use, and it is non-transferable, not subject to a statute of limitations, exempt from seizure, and essential for life."[259]

130. The State of Bolivia introduced the right to water into the statutory framework of its Constitution. Article 16 of the Constitution provides that "everyone has the right to water and food […]"[260]. Article 20 of the Constitution also establishes that: "every person has the right to universal and equitable access to basic safe drinking water services […],"[261] among others. In its second subparagraph, the article establishes that it is the responsibility of the State, at all levels of government, to provide basic services through public, mixed, cooperative, or community bodies and that provision of services must meet the criteria of universality, responsibility, accessibility, continuity, quality, efficiency, effectiveness, equitable rates, and necessary coverage, with participation and social monitoring.[262] As for the State, it indicated that Article 373 of the Fifth Chapter on Water Resources establishes that the right to water is a "very fundamental" right for life.[263] Also, regarding public policies adopted to ensure access to water, the State indicated that the Sectorial Basic Sanitation Development Plan (Plan Sectorial de Desarrollo de Saneamiento Básico) 2016-2020 "aims to improve and expand potable water and basic sanitation to ensure access to water[264].

131. As for Honduras, it provided information to the IACHR indicating that the right to water as a human right was recognized by Legislative Decree No. 270-2012, which amended Article 145 of the National Constitution and declared that water and sanitation as a human right.[265] On the basis of the information provided to the IACHR, it is understood that, with respect to the equitable distribution and supply of safe drinking water to urban and rural areas and especially to facilitate access to water for persons living in poverty, campaigns are being conducted in Honduras to discourage the excessive use of water and a system of differential rates is being implemented depending on consumption levels, in addition to a system of subsidies so that higher-income population groups would pay higher rates,[266] as would industrial and commercial consumers.[267] In turn, the State indicated that, in order to guarantee continuity of supply service, the Honduran Government had allocated a direct subsidy that was to be administered on the basis of various programs for families living in extreme poverty, such as the Better Life Program (Programa Vida Mejor).[268] Likewise, the Framework Law for the Social Protection System that entered into force on September 4, 2015, includes direct subsidies to guarantee the access of very low-income persons to water.[269]

132. According to information provided to the IACHR by the State of Nicaragua, Article 105 of its Political Constitution recognizes the right to water, indicating that it is the State's obligation to promote, facilitates, and regulate the delivery of water services, which as a result is deemed to be an inalienable right.[270] Likewise, Law No. 620 [General Law on National Water] provides the legal institutional framework

[259] Article 12 of the Constitution of the Republic of Ecuador.

[260] Response to the questionnaire on "Access to Water in the Americas" submitted by the Plurinational State of Bolivia, 2015, p. 1. See also Constitution of the Plurinational State of Bolivia, Article 16.

[261] Response to the questionnaire on "Access to Water in the Americas" submitted by the Plurinational State of Bolivia, p. 1. See also Constitution of the Plurinational State of Bolivia, Article 20.

[262] Response to the questionnaire on "Access to Water in the Americas" submitted by the Plurinational State of Bolivia, p. 1. See also Constitution of the Plurinational State of Bolivia, Article 20.

[263]Response to the questionnaire on "Access to Water in the Americas" submitted by the Plurinational State of Bolivia, 2015, p. 1. See also Constitution of the Plurinational State of Bolivia, Article 373.

[264] Response to the questionnaire on "Access to Water in the Americas" submitted by the Plurinational State of Bolivia, 2015, p. 5.

[265] Response to the questionnaire on "Access to Water in the Americas" submitted by Honduras, p. 1.

[266] Response to the questionnaire on "Access to Water in the Americas" submitted by Honduras, p. 6.

[267] Response to the questionnaire on "Access to Water in the Americas" submitted by Honduras, p. 6.

[268] Response to the questionnaire on "Access to Water in the Americas" submitted by Honduras, p. 5.

[269] Response to the questionnaire on "Access to Water in the Americas" submitted by Honduras, p. 5.

[270] Response to the questionnaire on "Access to Water in the Americas" submitted by Nicaragua, p. 2.

for the administration, conservation, development, use, production, and preservation of the amount and quality of all water resources existing in the country. On the basis of information provided, it is understood that the National Human Development Plan sets the public policies and programs aimed at increasing the coverage, improving the quality, and promoting the rational use of water, giving priority to water for human consumption[271], among which the Comprehensive Water and Human Sanitation Program, which as indicated is aimed at ensuring access to water in rural and urban areas,[272] is noteworthy. In addition, Nicaragua had adopted measures to discourage the excessive consumption of water, implementing differential rates based on water consumption. In this same context, the Ministries of Health and Agriculture, as well as municipalities and other state players, are promoting educational campaigns aimed taking care of and reducing excessive water consumption, taking as a reference the strategy of "Living Clean, Living Healthy, Living Happy, Living Well."[273]

133. The State of Mexico reported to the IACHR that the human right to water had been enshrined in the Constitution on February 2012, providing that access to water for personal and household use, as well as its disposal and sanitation, must be sufficient, acceptable, and affordable. It specified that the sixth paragraph of Article 4 in the Political Constitution provides that "everyone has the right to access to, disposal, and sanitation of water for personal and household use in a sufficient, healthy, acceptable, and affordable way. The state shall guarantee this right and the law shall set the bases, supports, and modalities for equitable and sustainable access to and use of water resources, establishing the participation of the federation, federal bodies, and municipalities, as well as the participation of the citizenry, for the achievement of these goals." In addition, it indicated that municipalities are in charge of supplying safe drinking water and providing drainage, sewage, treatment, and wastewater disposal services and those local legislative bodies are in charge of adopting rates and quotas for users for the provision of the above-mentioned services, on the basis of Municipal Revenue Laws. It also referred to the fact that the National Development Plan for 2013-2018 (PND 2013-2018) included among its National Targets, in the section pertaining to Goal 4.4: "Implementing sustainable water management, making it possible for all Mexicans to have access to that resource."[274]

134. According to information that the State of Argentina provided to the IACHR, amendments to the Constitution that took place in the country in 1994 had introduced major changes in the constitutional approach to enshrining international law, especially with respect to the protection of human rights.[275] In that respect, it is indicated that Article 75, subparagraph 22, of the National Constitution enshrined 11 international instruments into its Constitution, including, among others, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the International Covenant on Economic, Social and Cultural Rights.[276] In this framework, it was indicated that, although the National Constitution does not include the right to water as a human right, the national and provincial regulatory framework gives priority to this right and recognizes it as a "natural right that pertains to everyone, inherent to their status as a person, to have access to sufficient, healthy, acceptable, accessible, and affordable water."[277] Likewise, with respect to the justiciability of the right to water in Argentina, the state presented

[271] Response to the questionnaire on "Access to Water in the Americas" submitted by Nicaragua, p. 2.

[272] Response to the questionnaire on "Access to Water in the Americas" submitted by Nicaragua, p. 2. Among the principal components of the program there are the following: a) increasing access and guaranteeing sustainability; b) ensuring protection and conservation of watersheds giving priority to use for human consumption; c) guaranteeing sustainability of water services and quality. The program is in its first phase of implementation [2015-2019]. With the Program, the government expects to ensure access to drinking water for 90,840 families.

[273] Response to the questionnaire on "Access to Water in the Americas" submitted by Nicaragua, p. 12.

[274] Response to the questionnaire on "Access to Water in the Americas" submitted by the State of Mexico, p. 3.

[275] Response to the questionnaire on "Access to Water in the Americas" submitted by Argentina [Instituto Nacional del Agua], p. 5.

[276] Response to the questionnaire on "Access to Water in the Americas" submitted by Argentina [Instituto Nacional del Agua], p. 5. See also Adriana N. Martínez and Óscar E. Defelippe, Human right to water and conventionality control, p. 113. See also Constitution of Argentina, Article 75, subparagraph 22.

[277] Response to the questionnaire on "Access to Water in the Americas" submitted by Argentina [Instituto Nacional del Agua] and received by the IACHR Executive Secretariat on September 3, 2015, p. 3.

information about a case that had been heard by the Civil and Trade Justice Court of Córdoba in 2004 to give an example of best judiciary practices in this matter.[278]

135. With respect to public policies adopted to guarantee the access to water, the state pointed out to the IACHR that the "Water+Work Plan" (Plan Agua+Trabajo) had emerged in 2004, as a measure to create jobs and guarantee universal and sustainable access to safe drinking water.[279]

136. The Commission received information from the State of Colombia indicating that Article 365 of the 1991 Political Constitution provides that public services are inherent to the state's social objectives and that it is its duty to ensure the efficient delivery of these services to all inhabitants of the national territory.[280] Likewise, Article 366 specifies that the general well-being and improvement of the standard of living of the population are social objectives of the state and that meeting unmet health, environmental sanitation, and drinking water needs shall be the basic goal of its activities.[281] It was pointed out to the IACHR that, although the Colombian Constitution does not expressly mention the right to water, the development of the Constitutional Court's jurisprudence enshrines this right as a human right as it considers that the impossibility of having access to water would entail the violation of the right to life and the right to health.[282] Moreover, the State indicates that the development of jurisprudence has also made it possible for companies providing pipeline services to guarantee minimum vital water supply to vulnerable population groups who, for various circumstances, such as their difficult economic situation or their forced displacement, status as elderly persons, etc., are unable to pay for this service.[283] In addition, the State mentioned the National Development Plan for 2014- 2018, which has set as its target ensuring access to safe drinking water to 2.5 million persons who do not have direct access to this service.[284]

137. Also, in 2007 the State of Paraguay enacted Law No. 3239/2007 ("On Water Resources"), in order to regulate the sustainable management of all its water resources; the law's governing principles recognize that "access to water for the satisfaction of basic needs is a human right and must be guaranteed by the State, in appropriate amounts and with adequate quality."[285] Similarly, Article 4 states that the objectives of the National Policy for Resources include "guaranteeing drinking water to all the inhabitants, given that it is a human right."[286]

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[278] Response to the questionnaire on "Access to Water in the Americas" submitted by Argentina [Instituto Nacional del Agua] and received by the IACHR Executive Secretariat on September 3, 2015, p. 27. The residents of Chacras de la Merced, with support from the Human Rights and Environment Center (Centro de Derechos Humanos y Ambiente—CEDHA) requested reparations from the provincial government after it allowed a wastewater treatment plant, managed by the government itself, to dump untreated sewage into the source for supplying drinking water to the community. The state ruled that the above-mentioned court, with reference to General Comment No. 15 of the ESCR Committee, decided that the provincial state had not adopted the measures needed to avoid the threat of polluted water to the detriment of the health of the population. As a result, the Court rules that steps be taken to refurbish, remodel and upgrade the wastewater treatment plant and ordered the provincial government to provide the community with an alternative source of drinking water supply while the upgrading work was being finalized.

[279] Response to the questionnaire on "Access to Water in the Americas" submitted by Argentina [Instituto Nacional del Agua], p. 26.

[280] Response to the questionnaire on "Access to Water in the Americas" submitted by Colombia and received by the IACHR Executive Secretariat on September 16, 2015, p.1.

[281] Response to the questionnaire on "Access to Water in the Americas" submitted by Colombia and received by the IACHR Executive Secretariat on September XX, 2015, p.1. In addition, on the basis of information provided by the state, it is understood that the access to water as a public service was developed principally in Law 142 of 1994 which provides that "[…] all persons must be able to have access to pipeline service in terms of sufficient amount and quality and the state is responsible for organizing, steering, regulating, and guaranteeing provision of this service in accordance with the principles of efficiency, universality, and solidarity."

[282] Response to the questionnaire on "Access to Water in the Americas" submitted by Colombia and received by the IACHR Executive Secretariat on September XX, 2015, p. 1.

[283] Response to the questionnaire on "Access to Water in the Americas" submitted by Colombia and received by the IACHR Executive Secretariat on September XX, 2015.

[284] Response to the questionnaire on "Access to Water in the Americas" submitted by Colombia and received by the IACHR Executive Secretariat on September XX, 2015.

[285] Republic of Paraguay, Legislative Branch, Law No. 3239/2007, Article 3(b).

[286] Republic of Paraguay, Legislative Branch, Law No. 3239/2007, Article 4(b).

138. Regarding the State of Costa Rica, it was reported to the IACHR that it recognizes the right to water as a human right on the basis of various legislative decrees and administrative statutes, as well as in its jurisprudence and public policies.[287] For example, it was indicated that, in 2002, the Ministry of the Environment and Energy issued Executive Decree No. 30480 whereby it recognizes that "the access to safe drinking water constitutes an inalienable human right and that it must be safeguarded by the Constitution."[288] As for the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, it has issued a series of judgments recognizing the human right to water as a constitutional right.[289] In 2003, the Chamber pointed out that the right to water stems from various constitutional rights, as well as from international treaties, as a result of which it contended that the right to water stems from the right to life, health, a healthy environment, food, and adequate housing.[290]

139. It was also reported to the Commission that an important public policy that had been adopted by the state was the "Water Agenda of Costa Rica for 2013-2030" (Agenda del Agua de Costa Rica 2013-2030).[291] Among the principles regarding water governing its implementation, the following are noteworthy: (a) it is a public good; (b) it is a human right; and (c) it has multiple uses.[292] It indicated that, on the basis of the above, plans and strategies have been drawn up and coordinated among the State's various institutions jointly with the government.[293]

140. As for the State of Panama, it reported that it recognizes the access to safe drinking water as a right of all citizens without any discrimination and that its use has been enshrined in the Constitution under the principle of social equity and that its sustained supply shall constitute a priority for the "government plan."[294] Furthermore, the IACHR was informed that Panama had adopted measures to guarantee continuity in safe drinking water supply, especially for low-income persons. In this context, those persons whose family earnings are less than the basic food basket would receive a subsidy from the state, which as indicated could amount to a maximum of 85% and a minimum of 20% of the family's consumption.[295]

141. The State of Chile reported that it had adopted measures to tackle the structural, social, and cultural challenges that were preventing women from having access to water.[296] Likewise, for the purpose of

[287] Response to the questionnaire on "Access to Water in the Americas" submitted by Santa Clara Law, International Human Rights Clinic, p. 2.

[288] Response to the questionnaire on "Access to Water in the Americas" submitted by Santa Clara Law, International Human Rights Clinic, p. 2.

[289] Response to the questionnaire on "Access to Water in the Americas" submitted by Santa Clara Law, International Human Rights Clinic, p. 2. On the basis of the information provided, it is understood that, among the rulings issued by the Constitutional Chamber of the Supreme Court of Justice of Costa Rica with respect to the right to water, there are the following judgments: No. 2728 of December 24, 1991; No. 3891 of August 12, 1993; No. 634-96 of February 2, 1996; No. 1108-96 of March 5, 1996; No. 2002-10776 of November 14, 2002; No. 2004-1923 of February 25, 2004; No. 2012-10712 of August 10, 2012; and No. 2013-0077598 of June 5, 2013.

[290] Response to the questionnaire on "Access to Water in the Americas" submitted by Santa Clara Law, International Human Rights Clinic, p. 2. See also Constitutional Chamber of the Supreme Court of Justice of Costa Rica, judgment No. 2003-04654 of May 27, 2003. See also United Nations, Catarina de Albuquerque, United Nations Special Rapporteur on the human right to safe drinking water and sanitation, On the Right Track, Good Practices in Realising the Rights to Water and Sanitation, p. 223.

[291] Response to the questionnaire on "Access to Water in the Americas" submitted by the University of Costa Rica, Guanacaste headquarters, p. 3.

[292] Response to the questionnaire on "Access to Water in the Americas" submitted by the University of Costa Rica, Guanacaste headquarters, p. 3.

[293] Response to the questionnaire on "Access to Water in the Americas" submitted by the University of Costa Rica, Guanacaste headquarters, p. 3.

[294] Response to the questionnaire on "Access to Water in the Americas" submitted by Panama, p. 3.

[295] Response to the questionnaire on "Access to Water in the Americas" submitted by Panama, p. 5.

[296] Response to the questionnaire on "Access to Water in the Americas" submitted by Chile, p. 9. On the basis of information provided by the state, it is understood that, nationwide, the Rural Safe Drinking Water Cooperatives are comprised of a total of 365.074 partners, and of these 124,595 are women and 162,528 are men. In addition, 2,665 women hold leadership positions compared to the 4,010 leadership positions held by men.

improving affordability, the state is applying discounts and subsidies for persons living in poverty to guarantee their access to safe drinking water.[297] The state had established a subsidy to payment for consumption of safe drinking water and sewage service, which is provided and administered by the municipalities, which are responsible for identifying those persons who would benefit from the subsidy on the basis of certain pre-established criteria. As for those persons living in extreme poverty, Chile had set a subsidy called "Solidarity Chile" (Chile Solidario), which would be providing an additional subsidy.[298]

142. The legal framework governing the access to water in the United States is comprised of a system of federal and state laws and common law principles.[299] There are two main federal laws—the Safe Drinking Water Act and the Clean Water Act—which focus mainly on ensuring water quality, but on the basis of information received, they do not include provisions to guarantee access to water for the country's citizens.[300] In addition, on the basis of information provided by the state, it is understood that the Environmental Protection Agency (EPA) regulates and monitors enforcement of minimum water quality standards at the federal level.[301] Furthermore, the EPA coordinates with its regional, state, and tribal offices and with other social stakeholders to ensure protection of public health by implementation of federal water quality regulations.[302] It must also be underscored that, although the right to water is not recognized at the federal level,[303] there are states that have taken the initiative to enshrine this right in their constitutions and state laws.[304] This is the case of the states of Massachusetts and Pennsylvania, which have recognized the right to water in their constitutions, and as for California, it has enacted a law that recognizes the human right to water at the state level.[305] The Commission became aware that fracking has been banned in the state of New York since 2014, following the results of a study carried out by the New York State Department of Environmental Conservation[306] that showcased the significant risks that the practice posed to health, soils, water, and natural resources.[307]

143. The State of El Salvador does not recognize the right to water in its Political Constitution. Nevertheless, it has been indicated that, over the past few years, progress has been made in terms of recognizing this right at the level of public policies and strategies such as: (a) National Policy for the Environment (2012), which stipulates the Comprehensive Management of Water Resources (Gestión Integral de Recurso Hídrico—GIRH) as a priority area; (b) the National Water Resources Strategy (2013), which

[297] Response to the questionnaire on "Access to Water in the Americas" submitted by Chile, p. 9.

[298] Response to the questionnaire on "Access to Water in the Americas" submitted by Chile on September XX, 2015, p. 9. See also United Nations, Catarina de Albuquerque, United Nations Special Rapporteur on the human right to safe drinking water and sanitation, On the Right Track. Good Practices in Realising the Rights to Water and Sanitation, p.96.

[299] United Nations, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, visit to the United States, August 2, 2011, para. 7.

[300] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, p. 3. The IACHR also received the response to the IACHR questionnaire on "Access to Water in the Americas" from attorney Philip D. Althouse providing analogous information.

[301] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by the U.S. Government on October 2, 2015, p. 1.

[302] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by the U.S. Government on October 2, 2015, p. 1.

[303] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, p. 3. Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by New Mexico, Environmental Law Center, p. 1.

[304] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, 2015, p. 3.

[305] Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic, p. 3. Response to the IACHR questionnaire on "Access to Water in the Americas" in the United States submitted by Santa Clara Law, International Human Rights Clinic and received by the IACHR Executive Secretariat on September 28, 2015, p. 3. AB 685, 2011-2012 Leg. Reg. Sess. (Cal. 2012) (codified at Cal. Water Code § 106.3 (West 2012)). 1.

[306] EcoWatch, "It's Official: New York Bans Fracking."

[307] New York Department of Health, A Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development.

explicitly recognizes the human right to water. The above-mentioned strategy also has a design for the drafting of the National Plan for the Integrated Management of Water Resources (2013), aimed at guaranteeing the sustainability of water resources.[308]

144. It was also indicated that, as of June 2009, the Salvadoran state had been drawing up the Universal Social Protection System, which would have a social policy approach.[309] Various institutions directly involved in the water and sanitation sector participated in the drafting of this system.[310]

145. As for the State of Venezuela, it was indicated that, by means of programs called "missions," it had incorporated measures to broaden water services as an accessory to the program's goal.[311] As an example of the above, it is important to mention the Habitat Mission Foundation program (Fundación Misión Hábitat), whose priority is to build new housing projects and to undertake urban infrastructure, which would include, among others, measures to broaden access to safe drinking water services.[312] Likewise, the program Great New Tricolor Neighborhood Mission (Gran Misión Barrio Nuevo Barrio Tricolor) is aimed at transforming the neighborhoods throughout the country, by the creation of opportunities to ensure a dignified life and to eliminate extreme poverty from the country's neighborhoods, which would include measures to consolidate public services, such as safe drinking water.[313]

146. According to available information, provisions to guarantee the affordability of safe drinking water were incorporated into Venezuela's legal framework.[314] Indeed, the Basic Law for the Provision of Safe Drinking Water and Sanitation Services of Venezuela sets various types of subsidies for low-income users.[315] Said subsidies had been designed to encourage suppliers of public and private services to broaden access for communities in situations of vulnerability.[316]

147. According to information provided by the State of Guyana, the country's water utility Guyana Water Incorporated (GWI), which operates in the framework of the 2002 Water and Sewerage Act, is in charge of supplying and improving water services.[317] In the framework of its strategic plan (2012-2016), GWI is implementing a program in collaboration with the Basic Needs Trust Fund of the Caribbean Development Bank (CDB) and the Inter-American Development Bank (IDB) aimed at supplying water in the areas that are having difficulties in terms of access to safe drinking water.[318] In the most remote communities, the service would be provided free of charge.[319] With respect to the adoption of measures to discourage excessive consumption of water, the GWI had incorporated a program that would include providing information to educate consumers about the impact of water leaks and the benefits of conserving water.[320]

[308] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by El Salvador, p. 1.

[309] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by El Salvador, 2015, p. 7.

[310] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by El Salvador, 2015, p. 7.

[311] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Escritorio de Abogados aliado a la Fundación Pro Bono Venezuela, p. 2.

[312] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Provene, p. 2.

[313] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Escritorio de Abogados aliado a la Fundación Pro Bono Venezuela, p. 2.

[314]United Nations, On the Right Track, Good Practices in Realising the Rights to Water and Sanitation, Catarina de Albuquerque, United Nations Special Rapporteur on the human right to safe drinking water and sanitation, p. 61.

[315] See also United Nations, Catarina de Albuquerque, United Nations Special Rapporteur on the human right to safe drinking water and sanitation, On the Right Track, Good Practices in Realising the Rights to Water and Sanitation, p. 61.

[316] See also United Nations, Catarina de Albuquerque, United Nations Special Rapporteur on the human right to safe drinking water and sanitation, On the Right Track, Good Practices in Realising the Rights to Water and Sanitation, p. 61.

[317] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Guyana, p. 1.

[318] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Guyana, p. 1.

[319] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Guyana, p. 4.

[320] Response to the IACHR questionnaire on "Access to Water in the Americas" submitted by Guyana, p. 4.

148. Furthermore, in accordance to available information, with respect to the State of Brazil, it is important to indicate that the 2009 Environmental Sanitation Law had been viewed as a legislative best practice because of the importance given to participatory procedures to guarantee universal access of water, in particular focusing special attention on persons living in poverty and historically discriminated against.[321]

IV. CONCLUSIONS AND RECOMMENDATIONS

149. On the basis of the regulatory framework and the standards of the inter-American system for the protection of human rights, it is possible to assert, in general terms, that there is an obligation of the states to guarantee access to safe drinking water in sufficient amounts as an indispensable condition to achieve other human rights such as the right to life, the right to personal integrity, the right to health, and, with respect to indigenous peoples, the right to property Respect and guarantee for these rights intrinsically depend on access to quality water in sufficient amounts, and this dependency is hereby reasserted in the inter-American system.

150. In that regard, although it is possible to assert that, even when the right to water is not recognized as an autonomous right, the inter-American system has moved forward decisively in protecting access to water as a vital guarantee for the realization of other rights. The IACHR has also taken note of the development and recognition of the human right to access to water in the universal system and that the states of the region have made progress in important regulatory recognitions and in the adoption of measures to guarantee the access to water in the Hemisphere.

151. The Commission has also compiled a summary of the principal problems and obstacles that hamper or prevent access to water in the Americas that have appeared on the basis of its various working tools. In particular, it has referred to the information about the adverse impacts on the access to water exerted by the activities of extraction industries and other development projects, as well as information about the pollution of water sources, harassment of defenders of human and environmental rights, and safe drinking water supply outages especially affecting persons living in poverty and extreme poverty.

152. Regarding this, the IACHR reasserts its commitment to collaborate with states to look for solutions to the problems that have been identified and that would make it possible to guarantee the access to water in the Americas. In view of the above, the IACHR makes the following recommendations:

- Designing, implementing, and effectively enforcing an adequate regulatory framework to guarantee access to water fit for human consumption in sufficient amounts and without discrimination on the territory under the state's jurisdiction, especially for historically discriminated persons and groups and with particular consideration given to children, adolescents, women, persons with disabilities, and elderly persons.

- Regarding persons living in poverty and extreme poverty who cannot afford safe drinking water supply, implementing mechanisms to guarantee supply of minimum amounts of safe drinking water in keeping with international standards.

- Preventing, mitigating, and suspending the adverse impacts on human rights and in particular the obstacles to access to water for persons, groups, and communities who are impacted by extraction, development, and investment activities.

- Conducting prior, adequate, effective consultations with the peoples and communities in keeping with international standards applicable to the matter, whenever there are intentions to undertake any natural resource extraction activity or project on indigenous

[321] United Nations, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, June 29, 2011, para. 14.

lands and territories or to draw up an investment or development plan of any other kind that would entail potential impacts on their territory, especially with respect to possible impacts on the access to quality water in adequate amounts for a dignified life.