



# A Glass Half Empty of Promises: Water as a Human Right in the Americas

An Issue Paper by the Tulane Institute on Water Resources Law & Policy<sup>1</sup>

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#### GLOSSARY ON INTERNATIONAL ORGANIZATIONS AND TERMS

CESCR	United Nations Committee on Economic, Social and Cultural Rights
IACHR	Inter-American Commission on Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OHCHR	United Nations Office of the High Commissioner for Human Rights
SDG	Sustainable Development Goals
WHO	World Health Organization
Resolution 64/292	UN Resolution on the human right to water

## I. OVERVIEW

On July 28, 2010, the United Nations General Assembly published Resolution No. 64/292, which recognized the human right of access to safe and clean drinking water, and sanitation.<sup>2</sup> Among the obligations in this instrument, the Assembly called upon States and international organizations to provide financial and technical assistance to advance these efforts.<sup>3</sup>

Five years later, on October 23, 2015, the Inter-American Commission of Human Rights (“IACHR”) hosted a conference about human rights and water in the Americas. During the conference, and in publications thereafter, it found the following: Of the 580 million people living in Latin America and the Caribbean, twenty percent of the population did not receive drinking water from a trusted source, and over seventy percent of waters serving those populations were not properly treated.<sup>4</sup>

This paper will discuss the legal framework of human rights in the South, Central, and North Americas. Specifically, it will analyze the existence of the human right to water in specific States, whether it is constitutionally or statutorily guaranteed (or recognized at all), and State progress on improving access to these rights. It will exclusively analyze the countries in the Americas (with the exception of Belize, Suriname, Guyana, and the Caribbean), the right to access to drinking water, and

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<sup>2</sup> G.A. Res. 64/292 (July 28, 2010), available at <https://documents.un.org/doc/undoc/gen/no9/479/35/pdf/no947935.pdf> [hereinafter Resolution 64/292].

<sup>3</sup> *Id.*

<sup>4</sup> Organization of American States, Capitulo IV.A: Acceso al Agua en las Américas, Una Aproximación al Derecho Humano Al Agua en el Sistema Interamericano, Informe Anual 2015, [Chapter IV.A: Access to Water in the Americas, An Approach to the Human Right to Water in the Inter-American System, Annual Report 2015] available at <https://www.oas.org/es/cidh/docs/anual/2015/doc-es/informeanual2015-cap4a-agua-es.pdf> [hereinafter “OAS Water Report 2015”].

how it is implemented in their legal systems.<sup>5</sup> This will help clarify the impact of recognizing the human right to access safe drinking water, and whether the promise of protection of this right goes beyond the law and is being implemented by the respective governments.

Currently, seven out of nineteen countries analyzed in this paper do not recognize water as a human right at a national level; the other twelve recognize it either in their constitutions, statutes, or courts. Among the countries that do not recognize water as a human right in their national framework are Argentina, Brazil, Guatemala, Nicaragua, Panama, Canada, and the United States. The countries that protect water as a human right in their constitutions are Mexico, Costa Rica, Colombia, Honduras, Bolivia, Ecuador, Peru, and Uruguay. The States that recognize water as a human right by statute, but not within their constitutions are El Salvador, Chile, Paraguay, and Venezuela. Finally, Colombia does not recognize access to water as a human right in its constitution or statutes, but it has been recognized in its constitutional court.

This paper begins by exploring the general legal framework of water, identifying the international and national law that most of the countries analyzed have implemented in their domestic law. Next, it examines the legal liability that States are subjected to, depending on the ratification of international instruments and existence of other legal alternatives. Part III discusses the national framework each country has regarding its recognition of access to water as a human right or lack thereof. Finally, Part IV concludes. An additional page is included with a list of international and academic papers on this subject.

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<sup>5</sup> The decision to not include Belize, Suriname, Guyana, and the Caribbean, although a hard one, was based on the limitations of the scope and the finite resources for the paper. It must be said that for a comprehensive analysis on the Americas, including these countries is imperative. The authors would like to recognize that these Nations compose an important role in the continent, often threatened by their geological position, and that an analysis on their progress to universal access to water and sanitation must be researched.



## II. LEGAL FRAMEWORK OF THE RIGHT TO WATER

The legal framework of the right to access to water is divided into international law and national law. This Part analyzes the international and national instruments that most of the countries analyzed have implemented in their domestic law. There has been progress in the legal framework surrounding the right to water over the years, beginning with general comments, to general assembly resolutions, and finally making it into the State's legislatures. Not all countries have followed the same path; some have had it in constitutional provisions or statutes for years, while others still do not recognize it. Regardless of a country's national stance, international pressure and liability allow for alternative routes to be taken outside of the nation's courts and jurisdiction.

### A. International Law

There are three different types of international instruments presented in this paper: international conventions, United Nations ("UN") resolutions, and general comments. An international convention is an international treaty or agreement between States, by which a consenting State legally binds itself to the duties and obligations set forth in them. The State must express its consent to be bound by the document.<sup>6</sup> A State may express its consent to be bound by a treaty ratification, accession, and other means agreed upon.<sup>7</sup> As of November 2024, every country analyzed in this paper is a State party for the International Covenant on Economic, Social and Cultural Right, except for the United States of America, which is only a signatory.<sup>8</sup> In this context, a State party is a State that has expressed its consent to be bound by any of the described methods.<sup>9</sup>

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<sup>6</sup> Vienna Convention on the Law of Treaties, opened for signature on May 23, 1969, 1155 U.N.T.S. 331.

<sup>7</sup> *Id.* at art. 11. The Vienna Convention on the Law of Treaties defines ratification, acceptance, approval, and accession as international acts to consent to be bound by a treaty. *Id.* at art. 2(1)(b).

<sup>8</sup> U.N. Off. High Comm'r for Hum. Rts., *Status of Ratification Interactive Dashboard*, <https://indicators.ohchr.org/> (accessed Nov. 19, 2024) [hereinafter U.N. Status of Ratification Interactive Dashboard].

<sup>9</sup> *Id.*

A Signatory is a State that has given some endorsement to the international instrument but needs to consider its ratification domestically.<sup>10</sup> In other words, a State party is bound to legally act or participate in the conditions set by the instrument, while a signatory is not bound until it ratifies the treaty.

Resolutions have a more complex application; unlike international treaties, there is no simple answer as to their legal effect. Whether a UN resolution is legally binding on States is contingent on the nature of the document.<sup>11</sup> The UN has different types of resolutions, including those from the Human Rights Council, the General Assembly, the Economic and Social Council, and more.<sup>12</sup> Regardless of whether a resolution is legally binding or not, it affects the care and urgency of the States when considering implementation. Despite their legal status, resolutions continue to exert international pressure due to the backing of the States that supported them during the voting process. These supporting countries often leverage their influence to encourage compliance, highlighting the importance of resolutions in diplomatic discussions.<sup>13</sup>

General Comments are commonly understood not to be legally binding to the States that sign onto its original treaty.<sup>14</sup> They are issued by UN human right committees.<sup>15</sup> However, States treat these documents differently, as some interpret them to have authoritative force, and others

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<sup>10</sup> *Id.*

<sup>11</sup> See Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16(5) EUROPEAN J. INT'L L. 879, 880, available at <http://www.ejil.org/pdfs/16/5/329.pdf>.

<sup>12</sup> UN Dag Hammarskjöld Library, *About UN Documents*, <https://research.un.org/en/docs/resolutions#:~:text=UN%20resolutions&text=Security%20Council%2C%20General%20Assembly%2C%20Economic,in%20annual%20or%20sessional%20compilations> (last visited Oct. 29, 2024).

<sup>13</sup> Marcus Benzing, *International Organizations or Institutions, Secondary Law*, MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. (Mar. 2007).

<sup>14</sup> UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY 129 (HELEN KELLER & GEIR ULFSTEIN EDS., 2012).

<sup>15</sup> Phillip Alston, *The Historical Origins of the Concept of 'General Comments' in Human Rights Law*, in THE INTERNATIONAL LEGAL SYSTEM IN QUEST OF EQUITY AND UNIVERSALITY, 763, 776 (L. Boisson de Chazournes & V. Gowland Debbas, eds. 2001).

consider them to be “a de facto equivalent of advisory opinions.”<sup>16</sup> There are many expressions of the legal significance of the General Comments, however, none of these have been confirmed.<sup>17</sup> Even without being binding, General Comments may be used as background for judges when analyzing principles, for legislators when creating laws, or even to inform the development of international customs.<sup>18</sup>

On December 16, 1966, the General Assembly of the United Nations adopted the International Covenant on Economic, Social and Cultural Rights (“ICESCR”, or the “International Covenant”).<sup>19</sup> The ICESCR establishes the parameters for all persons to enjoy self-determination for their economic, social, and cultural development, and enumerates the different rights (“ESC rights”) that State Parties must safeguard. For instance, some of the rights protected by the ICESCR are the right to work, the right to social security, the right to an adequate standard of living, and the right to enjoyment of the highest attainable standard of physical and mental health.<sup>20</sup>

Article 2 of the same international instrument instructs State Parties to “take steps... to the maximum extent of its available resources, toward achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including... legislative measures.”<sup>21</sup> To compliment the former, Article 4 of the International Covenant specifies that, in order to enjoy the rights depicted, State Parties “may subject such rights only to such limitations as are determined by law only in so far as may be compatible with the nature of these rights and solely

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<sup>16</sup> *Id.*

<sup>17</sup> UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY, *supra* note 14, at 128.

<sup>18</sup> *Id.*

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at art. 2.

for the purpose of promoting the general welfare in a democratic society.”<sup>22</sup> This Article is not meant to be taken as a loophole or a way for a State Party to avoid the implementation of any of the ESC rights, but rather as a safe harbor from liabilities for a temporary amount of time, or until a specific event passes. Article 2 aims to integrate ESC rights in communities by holding State Parties accountable to reasonably allocate tools and resources, such as economic and technical assistance, to make these rights accessible, while Article 4 highlights the reality that rights, specifically ESC and human rights, should not be assumed to be absolute, and at times may be recognized as contradictory to each other.<sup>23</sup>

One of the obligations State Parties owe to the ICESCR is to submit periodic reports describing the measures taken by the State to comply with the rights set forth by the treaty.<sup>24</sup> If a country is having difficulties in fulfilling a right for specific reasons, it must be mentioned in their report.<sup>25</sup> After the report is given to the appropriate agency, the Economic and Social Council may submit recommendations to the State Parties and set forth the measures that should be taken to alleviate the violation and lack of protection for a right.<sup>26</sup>

The International Convention introduces the right to an adequate standard of living and to be free from hunger in Article 11 and the right to the enjoyment of the highest attainable standard of physical and mental health in Article 12.<sup>27</sup> The right to an adequate standard of living includes

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<sup>22</sup> *Id.*

<sup>23</sup> Amrei Müller, *Limitation to and Derogations from Economic, Social, and Cultural Rights*, HUM. RTS. L. REV. 557, 584-91 (2009), available at <https://academic.oup.com/hrlr/article-pdf/9/4/557/6753903/ngpo27.pdf>. For instance, during the COVID-19 pandemic, the right to health overlapped with the right to freedom of movement.

<sup>24</sup> ICESCR, *supra* note 19, at art. 16.

<sup>25</sup> *Id.* at art. 17(2).

<sup>26</sup> *Id.* at art. 21.

<sup>27</sup> *Id.* at arts. 11-12.

“adequate food, clothing and housing” and “the continuous improvement of living conditions.”<sup>28</sup> Similarly, Article 12 establishes “the improvement of all aspects of environmental and industrial hygiene” as one of the means that shall be used by State Parties to guarantee physical and mental health.<sup>29</sup>

In light of Articles 11 and 12 of the International Convention, the United Nations Committee on Economic, Social and Cultural Rights (“CESCR”) adopted the General Comment No. 15 of 2002 (“General Comment No.15”), which introduces the right to water because the ICESCR had not stipulated the right to this limited resource.<sup>30</sup> General Comment No. 15 recognizes the argument that the right to water “is a prerequisite for the realization of other human rights.”<sup>31</sup> Furthermore, it alleges that a number of countries, developing and developed, denied the need for water as a standalone right, and calls for the State Parties to adopt measures that grant and guarantee this right without discrimination.<sup>32</sup> With this international document, a resource that has long been taken for granted is elevated to greater importance as a right for humankind.

Because the right to water is not explicitly written in the International Convention, it has been assumed to be a part of other human rights, such as life, health, or property.<sup>33</sup> In 2000, with the adoption of General Comment No. 14 on the right to the highest attainable standard of health, introduced by Article 12 of the ICESCR, the right to health is tied to important factors, including

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<sup>28</sup> *Id.* at art. 11.

<sup>29</sup> *Id.* at art 12.

<sup>30</sup> U.N. ESCOR. *General Comment No. 15: The Right to Water (Arts. 11 and 1 of the Covenant)*, U.N. Doc. E/C.1/2002/11 (Jan. 20, 2003), available at <https://www.refworld.org/legal/general/cescr/2003/en/39347> [hereinafter General Comment No. 15].

<sup>31</sup> *Id.* at ¶ 1.

<sup>32</sup> *Id.*

<sup>33</sup> John Scanlon, Angela Cassar, & Noémi Nemes, *Water as a Human Right?*, IUCN ENV'T POL'Y & L. PAPER NO. 51 at 10-12 (2004), available at <https://portals.iucn.org/library/sites/library/files/documents/EPLP-051.pdf>.

“access to safe and potable water and adequate sanitation.”<sup>34</sup> General Comment 15 offers a new definition, establishing that this right “entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses.”<sup>35</sup> With the new formal definition, the CESCR introduces new factors that States should consider when implementing the right to safe drinking water and sanitation, allowing for it to be a standalone right, not requiring other rights to be harmed in order for individuals to claim and defend it. Additionally, it warns that water should be seen as a social and cultural good instead of being treated only as an economic good.<sup>36</sup> Further, to fulfill Articles 11 and 12 of ICESCR, the water being accessed must be adequate for humans.<sup>37</sup>

General Comment No. 15 integrates the traditional three-factor test for the States to assess in designating water as adequate: availability, quality, and accessibility.<sup>38</sup> In the analysis of application of adequate water supply, General Comment No. 15 draws attention specifically to meeting personal and domestic consumption needs.<sup>39</sup> Personal and domestic activities may include drinking, personal sanitation, hygiene, washing clothes, and preparing food.<sup>40</sup> Here, the CESCR keeps the definition of domestic and personal uses as those essential for a human to live a dignified life, without adding those that might be considered luxuries for communities in water-scarce areas. Limiting the

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<sup>34</sup> U.N. ESCOR. *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, E/C.12/2000/4, (Aug. 11, 2000), available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf>. This interpretation has been used in other international instruments such as the Convention on the Rights of the Child, among others.

<sup>35</sup> General Comment No. 15, *supra* note 30, at ¶ 2.

<sup>36</sup> *Id.* at ¶ 11.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at ¶ 12.

<sup>39</sup> *Id.* at ¶ 6.

<sup>40</sup> *Id.* at ¶ 12(a). The list provided by the CESCR gives a modest view of personal and domestic uses, differing from other sources, such as the United States Geological Survey, which lists every activity in a household, including watering gardens or bathing pets. U.S. Geological Survey, *Domestic Water Use*, (Mar. 1, 2019), <https://www.usgs.gov/mission-areas/water-resources/science/domestic-water-use>.

definition of those activities that directly affect the health of humans effectively permits States to be held to a lower standard, which can be easier to accomplish than one where every single household activity requires water to be considered personal or domestic use. General Comment No. 15 directs States must satisfy a three-factor test for water to be considered adequate:

1. Availability: Access to water should, at a minimum, be sufficient for a single person to use in personal and domestic activities.<sup>41</sup> General Comment No. 15 directs countries to use the World Health Organization's ("WHO") publications on domestic water quantity standards, which form general guidelines for countries to consult.<sup>42</sup> In the second edition of the *Domestic Water Quantity, Service Level and Health*, WHO points out the minimum quantity of water depends on different factors, from age groups to health conditions, temperatures, and even pregnancies, but directing the readers to studied numbers and conclusions.<sup>43</sup>
2. Quality: For water to be adequate, it must be safe for consumption, personal use, and domestic use. According to WHO, safe drinking water is used for all usual domestic purposes.<sup>44</sup> WHO created these guidelines to ensure safety while controlling the hazardous constituents of water.<sup>45</sup> Hazardous materials can be chemical, organic, and radiological substances which can pose a threat to a human's health.<sup>46</sup> As mentioned throughout the paper, health is the main priority when setting the guidelines for water supply and use. The

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<sup>41</sup> General Comment No. 15, *supra* note 30, at ¶ 12(a).

<sup>42</sup> *Id.*

<sup>43</sup> World Health Org., *Domestic Water Quantity, Service Level and Health* (2d ed. Dec. 23, 2020), available at <https://iris.who.int/bitstream/handle/10665/338044/9789240015241-eng.pdf?sequence=1>.

<sup>44</sup> World Health Org., *Guidelines for Drinking-Water Quality – Fourth Edition Incorporating the First Addendum*, 2 (Apr. 24, 2017), available at <https://iris.who.int/bitstream/handle/10665/254637/9789241549950-eng.pdf?sequence=1>.

<sup>45</sup> *Id.* at 2.

<sup>46</sup> General Comment No. 15, *supra* note 30, at ¶ 12(b).

agency allots different targets to be considered for the minimum required quality of water that States must provide, yet its language focuses on health-based goals, keeping in mind that the standards may vary among countries.<sup>47</sup> Additionally, WHO establishes a framework for States to interpret the guidelines, including surveillance, identification of issues, regulations, and verification.<sup>48</sup> The WHO also explains that domestic use of water is affected by a number of factors, including cost, reliability, and accessibility.<sup>49</sup> Finally, the quality of water must overcome a final threshold to be acceptable. It must be of an appropriate taste, odor, and appearance to the consumer.<sup>50</sup> This is different depending on the consumer; however, it is generally assumed that water should be transparent, odorless, and tasteless. Yet, this broadly defined standard must be taken with caution, since States should not take this as an invitation for excessive use of disinfectants and chemicals to reach an aesthetic standard while raising other health concerns for the consumers.

3. Accessibility: State parties must allow people within their jurisdiction to access water and water facilities.<sup>51</sup> To satisfy this factor, the following elements must be met: (i) Physical accessibility: every person should be able to reach water or water facilities safely, and within a fair distance of educational institutions, households, and workplaces; (ii) Economic accessibility: water should be cheap enough for everyone to afford it, and even where water is free, water supply services must still meet this threshold; (iii) Nondiscrimination: all

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<sup>47</sup> *Guidelines for Drinking-Water Quality – Fourth Edition Incorporating the First Addendum*, *supra* note 44, at 2, 20, 35-44, 88, 124-26, 134, and 158-158a.

<sup>48</sup> *Id.* at 19-92.

<sup>49</sup> *Domestic Water Quantity, Service Level and Health*, *supra* note 43, at 41.

<sup>50</sup> General Comment No. 15, *supra* note 30, at ¶ 12(b); *Guidelines for Drinking-Water Quality*, *supra* note 45, at 7-8.

<sup>51</sup> *Id.* at ¶ 12(c).



communities, including marginalized ones, must be able to access water or water facilities without any discrimination; and (iv) Information accessibility: everyone has a right to receive information regarding water, water facilities, and its issues.<sup>52</sup> The last factor, information accessibility, continues to be a challenge, specifically for groups like minors, older generations, women, poor social classes, and Indigenous communities.<sup>53</sup>

Moreover, the General Comment No. 15 directs States to three different obligations which are aligned with the right to water: a) to respect, b) to protect, and c) to fulfill.<sup>54</sup> The obligation to respect indicates that no State may interfere with the enjoyment of the right to water, whether it be directly or indirectly.<sup>55</sup> This means that the State may not intervene in any person receiving water by any unlawful means, limit equal access to water, or take away water services as a punishment.<sup>56</sup> The obligation to protect requires that the State defend the right to water from third-party interference.<sup>57</sup> In cases where third parties administer water services, the State has to prevent them from violating this right; this means the State must make sure that third parties continue to provide safe, affordable, and equal access to water.<sup>58</sup> Finally, the obligation to fulfill is the most central one, since it opens the door to the most liability against States. The obligation to fulfill means that States must facilitate, promote, and provide the right to water for all persons.<sup>59</sup> This obligation requires States to assist individuals in enjoying the right to water, educate people on their rights, and “fulfill

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<sup>52</sup> *Id.*

<sup>53</sup> OAS Water Report 2015, *supra* note 4, at 483.

<sup>54</sup> General Comment No. 15, *supra* note 30, at ¶ 20.

<sup>55</sup> *Id.* at ¶ 21.

<sup>56</sup> *Id.* Unlawful may convey different actions, which are not explicitly defined in the General Comment No. 15. This definition may include arbitrarily interfering with water allocation, or unlawfully polluting water.

<sup>57</sup> General Comment No. 15, *supra* note 30, at ¶ 23.

<sup>58</sup> *Id.* at ¶ 24.

<sup>59</sup> *Id.* at ¶ 25.

the right when individuals or a group are unable to realize the right themselves.”<sup>60</sup> In addition, this obligation requires States to keep water services affordable, which in turn affects accessibility.<sup>61</sup> Similarly, States should incorporate strategies and programs to ensure sufficient water for present and future generations alike.<sup>62</sup>

To summarize, General Comment No. 15 insists the following core obligations be implemented immediately: a) access to the minimum essential amount of water, b) access to water on a non-discriminatory basis, c) physical access to services, d) access to water without threat to personal security, e) equitable distribution, f) a national water strategy, g) monitoring the fulfillment of water rights, h) programs to protect vulnerable groups, and i) take measures to prevent and treat diseases linked to water.<sup>63</sup>

After the CESRC introduced General Comment No. 15 in 2002, the General Assembly on July 28, 2010 adopted the A/RES/64/292 (“Resolution 64/292”) on the human right to water and sanitation.<sup>64</sup> This Resolution “recognizes the right to safe and clean drinking water and to sanitation as a human right that is essential for the full enjoyment of life and all human rights.”<sup>65</sup> On their part, the States have to adopt the resolution in their domestic law; this can be done by passing legislation that recognizes water as a human right, an amendment or reform of the constitution, or by another mechanism, depending on the country. Additionally, Resolution 64/292 calls States and international organizations to supply “financial resources, capacity-building and technology...” to other

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at ¶ 26.

<sup>62</sup> *Id.* at ¶ 28.

<sup>63</sup> *Id.* at ¶ 37.

<sup>64</sup> Resolution 64/292, *supra* note 2.

<sup>65</sup> *Id.* at ¶ 1.

countries.<sup>66</sup> In general custom, this usually means more advanced countries supporting developing countries that could lack the resources to make this right a reality. However, this result may be seen as threatened by the overwhelming number of abstentions to the resolution.

Resolution 64/292 passed with 122 parties of the UN and members of the General Assembly voting in favor; notably, no State voted against it.<sup>67</sup> Yet, forty-one members abstained from voting.<sup>68</sup> The number of abstentions was surprising, considering the numbers and statistics illustrated by the UN and other participants of the General Assembly in order to appeal to government representatives to vote in favor. During the arguments in favor of the Resolution, the Assembly expressed that 884 million people did not have access to safe drinking water, and more than approximately 2.6 billion people did not have access to any kind of sanitation.<sup>69</sup> Among the American countries that abstained from voting on the resolution were Canada, Guyana, Trinidad and Tobago, and the United States.<sup>70</sup> The following American countries were absent: Belize, Saint Kitts and Nevis, and Suriname. The remaining countries in Latin America and the Caribbean voted in favor of the resolution.<sup>71</sup> Beyond the numbers presented, a resolution where more than forty countries abstained from voting can be presumed to be due to a lack basic international consensus, which

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<sup>66</sup> *Id.* at ¶ 2.

<sup>67</sup> U.N. G.A. 64th session, 108<sup>th</sup> plen. mtg. at 9, U.N. Doc. A/64/PV.108 (July 28, 2010), available at [https://digitallibrary.un.org/record/687095/files/A\\_64\\_PV.108-EN.pdf?ln=en](https://digitallibrary.un.org/record/687095/files/A_64_PV.108-EN.pdf?ln=en) [hereinafter Voting Records Summary of Resolution 64/292].

<sup>68</sup> *Id.*

<sup>69</sup> Press Release, General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation as Human Right, by Recorded Vote of 122 in Favour, None against, 41 Abstentions, U.N. Press Release GA/10967 (July 28, 2010), <https://press.un.org/en/2010/ga10967.doc.htm#:~:text=By%20a%20vote%20of%20122,in%20scaling%20up%20efforts%20to.>

<sup>70</sup> Voting Summary of Resolution 64/292, *supra* note 67, at 9.

<sup>71</sup> *Id.*

could bring about larger disagreements and issues throughout the years, and even more when water becomes more and more scarce.

That same year, on September 24, 2010, the Human Rights Council of the Assembly passed the resolution A/HRC/RES/15/9 (the “Reaffirmation”) on human rights and access to safe drinking water and sanitation.<sup>72</sup> This resolution is often referred to as the Reaffirmation because most of the background of the document reaffirms well-known international treaties, including the Universal Declaration of Human Rights, and the ICESCR.<sup>73</sup>

But perhaps more important to this discussion, the resolution reaffirms the international human rights law instruments that assert obligations for members of the agreements with respect to safe access to drinking water and sanitation. It also affirms the arguments that the human right to drinking water and sanitation comes from Article 11 of the ICESCR, the right to an adequate standard of living from Article 12 of the ICESCR, and the right to the enjoyment of the highest attainable standard of physical and mental health, from General Comment No. 15.<sup>74</sup> Furthermore, the instrument reaffirms the duty and responsibilities of States to ensure the fulfillment of human rights, even if said State granted such management to a third party; meaning that even if a private entity provides water and sanitation services in a given country, the State is still subject to scrutiny over the stewardship of this human right.<sup>75</sup> Finally, the Reaffirmation provides a list for States to follow when taking care of this complicated task, including developing mechanisms and legislation to protect and implement the new obligations for the State, transparency in the implementation

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<sup>72</sup> Human Rights Council Res. 15/9, U.N. Doc A/HRC/RES/15/9 (Oct. 6, 2010), available at <https://documents.un.org/doc/undoc/gen/g10/166/33/pdf/g1016633.pdf>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at ¶ 3.

<sup>75</sup> *Id.* at ¶¶ 6, 9.

process, vigilance over vulnerable and marginalized groups, and ensuring redress for violations, along with creating accountability procedures.<sup>76</sup>

With the Reaffirmation and the Resolution 64/292, the UN generates a stronger argument to push back on governments that were not yet convinced by the arguments from General Comment No. 15 or considered them to be groundless. For further assistance, the Commission on Human Rights of the UN Economic and Social Council released draft guidelines for States to use when writing and creating their domestic laws in the matter.<sup>77</sup>

In 2015, every Member State of the UN adopted the 2030 Agenda for Sustainable Development, thereby creating the Sustainable Development Goals (“SDG”). The aim of the SDG is to achieve certain established parameters and goals by 2030.<sup>78</sup> The agenda includes seventeen different targets, including gender equality, elimination of poverty, affordable and clean energy, and climate action, among others.<sup>79</sup> Most notably for this discussion, SDG 6 focuses on the availability of water and sanitation for everyone.<sup>80</sup> Specifically, by 2030, the following targets of SDG 6 should have been met, and their success is calculated by specific indicators:<sup>81</sup>

Target		Indicator(s)	
6.1	Universal access to safe and affordable drinking water	6.1.1	Portion of the population using safe services for drinking water.

<sup>76</sup> *Id.* at ¶ 8.

<sup>77</sup> El Hadji Guissé (Special Rapporteur), *Realization of the Right to Drinking Water and Sanitation*, U.N. Doc. E/CN.4/SUB.2/2005/25 (July 11, 2015), available at <https://documents.un.org/doc/undoc/gen/g05/149/09/pdf/g0514909.pdf>.

<sup>78</sup> G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, U.N. Doc A/Res/70/1 (2015), available at <https://documents.un.org/doc/undoc/gen/n15/291/89/pdf/n1529189.pdf>.

<sup>79</sup> *See id.*

<sup>80</sup> *Id.* at 14.

<sup>81</sup> U.N. Dep’t Econ. & Soc. Affs, *Goal 6: Ensure Availability and Sustainable Management of Water and Sanitation for All*, [https://sdgs.un.org/goals/goal6#targets\\_and\\_indicators](https://sdgs.un.org/goals/goal6#targets_and_indicators).

6.2	Access to adequate and equitable sanitation and hygiene, with emphasis to women and girls' needs.	6.2.1(a)	Portion of the population using safely managed sanitation services.
		6.2.1(b)	Portion of the population using basic hygiene services.
6.3	Improve water quality by reducing pollution, dumping chemicals, and untreated wastewater, and increasing recycling and reuse.	6.3.1	Domestic and industrial wastewater safely treated.
		6.3.2	Bodies of water with good water quality.
6.4	Increase water-use efficiency, ensure sustainable withdrawals, supply freshwater used to address water scarcity, and reduce the amount of people who suffer from water scarcity.	6.4.1	Change in water-use efficiency.
		6.4.2	Level of water stress.
6.5	Implement integrated water resources management, including transboundary cooperation.	6.5.1	Degree of managed water.
		6.5.2	Proportion of transboundary basin area arranged for cooperation.
6.6	Protect and restore ecosystem related to water.	6.6.1	Change in the ecosystem.
6.a	Expand international cooperation to developing countries.	6.a.1	Amount of water and sanitation-related assistance as part of a government-coordinated spending plan.
6.b <sup>82</sup>	Support local communities in water and sanitation management improvement.	6.b.1	Proportion of local units with policies and procedures for local cooperation.

SDG 6 Chart<sup>83</sup>

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

On a global scale, as of 2024, the UN believes that none of the SDG 6 targets will be met by 2030.<sup>84</sup> This can be attributed to many factors, including lack of cooperation between States for transboundary agreements and climate change.<sup>85</sup> When reporting SDG 6 data, UN Water uses different classifications for target 6.1.:

- a) **Surface service:** access to water directly from water bodies such as rivers or lakes;
- b) **Unimproved:** access to water from unprotected wells or springs;
- c) **Limited Service:** access to water from improved source which takes over thirty minutes including roundtrip and waiting in line;
- d) **Basic Service:** access to water from improved source which takes less than 30 minutes including roundtrip and lines;
- e) **At Least Basic Service:** a statistic of populations with either basic or safely managed services; and
- f) **Safely managed services:** access to drinking water which is directly in the premises ready for use when needed and free from contamination.<sup>86</sup>

To meet target 6.1's goal, the UN Water aims for a specific percentage of the population to reach and enjoy safely managed services levels. For that reason, even if countries have reached basic services or at least basic services, governments should continue to improve their drinking water access until the highest level of access is achieved for its citizens.

The international instruments previously discussed have been aimed at a global audience; now, the paper will analyze international commitments that are more focused on regional governments in America. In November of 1969, the Inter-American Specialized Conference on Human Rights of the Organization of American States adopted the American Convention on Human Rights.<sup>87</sup> The American Convention on Human Rights was aimed at the nations in the Americas that are part of

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<sup>84</sup> Rep. of the S.C., Progress Towards Sustainable Development Goals, ¶ 23, U.N. Doc. A/79/79 – E/2022/55 (May 2, 2024), available at <https://unstats.un.org/sdgs/files/report/2024/SG-SDG-Progress-Report-2024-advanced-unedited-version.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> U.N. Water, *Sustainable Development Goal 6 Data Portal*, <https://www.sdg6data.org/en>.

<sup>87</sup> Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter, American Convention on Human Rights].

the Organization of American States (“OAS”).<sup>88</sup> The American Convention on Human Rights protects rights like the right to life, freedom from slavery, and right of assemble.<sup>89</sup> Nineteen years later, in 1988, the same entity adopted the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”) and states that “everyone shall have the right to... access to basic public services.”<sup>90</sup> Among the countries analyzed, those who did not ratify or accede to the Protocol of San Salvador were Canada and the United States.<sup>91</sup>

“Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources.”<sup>92</sup>

In the American Convention on Human Right binds consenting States to adopt measures to achieve the “full realization of the rights in the economic, social, educational, scientific, and cultural standards...”<sup>93</sup> Access to water as a human right is included in this definition, according to an

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<sup>88</sup> The OAS has 34 members which are independent states of the Americas including Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, The Bahamas, Trinidad and Tobago, United States of America, Uruguay, and Venezuela. For more information on the members, see Org. American States, *Member States*, [https://www.oas.org/en/member\\_states/default.asp](https://www.oas.org/en/member_states/default.asp).

<sup>89</sup> American Convention on Human Rights, *supra* note 87.

<sup>90</sup> Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, Nov. 17, 1988, at art. 11.1 [hereinafter, Protocol of San Salvador].

<sup>91</sup> Org. American States, *Multilateral Treaties: Signatories and Ratifications*, <https://www.oas.org/juridico/english/sigs/a-52.html> (showing general voting information on the Protocol of San Salvador).

<sup>92</sup> Protocol of San Salvador, *supra* note 90 (quote taken from Preamble).

<sup>93</sup> American Convention on Human Rights, *supra* note 87, at art. 26.



international case decided in 2024.<sup>94</sup> In its decision, the Inter-American Court of Human Rights established that “access to water is protected by article 26 of the American Convention”.<sup>95</sup>

In addition to establishing human rights, the American Convention on Human Rights creates the Inter-American Commission of Human Rights (“IACHR”), as well as the Inter-American Court of Human Rights.<sup>96</sup> The IACHR is an autonomous organ of the OAS.<sup>97</sup> In October of 1979, the statute of the Inter-American Commission on Human Rights was approved through the Resolution No. 447 and adopted by the OAS General Assembly.<sup>98</sup> The main purpose of the IACHR is to promote the defense and observance of human rights, as set forth in the American Convention on Human Rights, and the American Declaration of the Rights and Duties of Man.<sup>99</sup> The IACHR is composed of seven members with different nationalities.<sup>100</sup> Amongst the powers of the IACHR are to recommend that States adopt progressive measures that protect human rights in legislation, constitutional provisions, and international commitments; prepare studies and reports; request information from governments of member states; and “respond to inquiries made by any member state ...and, within its possibilities, to provide those states with the advisory services they request.”<sup>101</sup> Additionally, the IACHR may appear before the Inter-American Court of Human Rights, request that the Inter-American Court take such provisional measures it considers appropriate in serious and urgent

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<sup>94</sup> Case Of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Inter-Am. Ct. H.R. (ser. C) No. 400, available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf).

<sup>95</sup> *Id.* at ¶ 222.

<sup>96</sup> American Convention on Human Rights, *supra* note 87, at art. 33.

<sup>97</sup> STATUTE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, art. 1 (1979), available at <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/mandate/Basics/statuteiachr.asp>.

<sup>98</sup> *See id.*

<sup>99</sup> *Id.* at art. 1.

<sup>100</sup> *Id.* at arts. 2, 7.

<sup>101</sup> American Convention on Human Rights, *supra* note 87, at art. 41.

cases, act on communications and petitions, and “consult the Court on the interpretation of the American Convention on Human Rights or of other treaties concerning the protection of human rights in the American states.”<sup>102</sup> Among the countries analyzed for the paper, Canada has not signed or ratified the treaty, and does not recognize the authority of the Inter-American Court of Human Rights. Similarly, the United States of America has signed the treaty, but did not ratify the treaty, nor does it recognize the authority of the Inter-American Court of Human Rights.<sup>103</sup>

The recognition of water as a human right has undergone significant changes in its interpretation before it became the international custom the world sees today. For water to be a stand-alone, independent right, it first needed to be tied to a largely undisputed human right, in most cases health or life. After that, it had to be recognized by a highly regarded international office, in this case the United Nations, by interpreting the appropriate vessel in an internationally recognized treaty, particularly the right to a dignified life in the International Covenant on Economic, Social, and Cultural Rights, and General Comment No.15. Even then, the right to access water had to have a document of its own where nations gave their formal approval to gather more support and security to its recognition, here the Resolution 64/292. For this goal to be met, there needed to be a change in the way countries managed water and distributed it to their population, and in order for that development to be accounted for, specific values needed to be met, like Sustainable Development Goal No. 6. Finally, regional courts needed authority to hear complaints on human rights violations since they are more likely to understand the unique characteristics of nations in their continents,

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<sup>102</sup> STATUTE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *supra* note 97, at art. 19.

<sup>103</sup> For a list of countries that ratified the treaty, see Inter-American Comm’n on Hum. Rts., *B-32: American Convention on Human Rights “Pact of San Jose, Costa Rica”*, <https://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm>.

whether cultural or geographical. This makes a judicial process against a State more accessible for individuals who live in these areas, like the American Convention on Human Rights. Though it has taken a considerable amount of time, this has become a reality in most countries analyzed in this paper. A larger study analyzing countries not discussed in this paper would be useful to understand how the Americas have progressed, compared to the rest of the world, in both recognizing water as a human right and protecting access to water.

### **B. Domestic Law**

As expected, every State or country has its own domestic laws regarding human rights, specifically drinking water and sanitation regulations. Such individual standards will be analyzed in the next Part of the paper. Many countries in Latin America use a special legal action to constitutionally protect fundamental rights, denominated as an amparo.<sup>104</sup> The Spanish word amparo can be translated to protection or safeguard. However, the definition of fundamental rights being protected by the amparo is limited depending on the country analyzed.<sup>105</sup> The amparo is generally agreed to be a constitutional action, not a civil or criminal matter.<sup>106</sup> For instance, some States may limit the definition of fundamental rights as only rights expressed in their constitutions, while others may protect those that are not even protected by statute.<sup>107</sup> For that reason, even if the amparo action is stipulated in a country's judicial system, it may not take a case on a violation of the right to access water because it has not been adopted in their legislature or constitution.

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<sup>104</sup> César Landa, *El Proceso de Amparo en América Latina*, ANUARIO DE DERECHO CONSTITUCIONAL LATINOAMERICANO AÑO XVII, MONTEVIDEO 207, 209-10 (2011), available at <https://www.corteidh.or.cr/tablas/r27649.pdf>.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 210-13.

The action or writ of amparo differs from the action of constitutionality.<sup>108</sup> The action of unconstitutionality refers to an action taken by any individual or entity against a law, statute, policy, or an action that violates the Constitution's articles, stipulations, or jurisprudence.<sup>109</sup> Other countries might have different names for this action, but they are the same power in essence.<sup>110</sup> As a consequence, if a statute is found to be unconstitutional, it may be found to be entirely or partially invalid.

Alternatively, the writ of amparo seeks “to protect the fundamental rights that have been violated.”<sup>111</sup> Depending on the State, the writ of amparo may have broad, intermediate or limited coverage.<sup>112</sup> In some Latin American countries, the amparo may protect every fundamental, constitutional and/or human right, while others only protect those rights enumerated in their constitutions, and some only apply the amparo to acts from the government that are based on abuse of power.<sup>113</sup> Likewise, nations have established that the amparo may be applied when any illegal act or omission from a public or private party results in a fundamental right being harmed or violated, but others may limit the harm only by governmental entities.<sup>114</sup> Because of the different mechanisms behind the action, pursuing a writ of amparo will look different in almost every country that allows for this option. Additionally, the action may be so limited that it only protects rights that were

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<sup>108</sup> Gloria Orrego Hoyos, *The Amparo Context in Latin American Jurisdiction: An Approach to an Empowering Action*, N.Y.U. GLOBALEX (updated Mar./Apr. 2023), [https://www.nyulawglobal.org/globalex/amparo1.html#\\_edn1](https://www.nyulawglobal.org/globalex/amparo1.html#_edn1).

<sup>109</sup> Allan R. Brewer-Carías, *La Justicia Constitucional en America Latina*, 4 (Aug. 1996), available at <https://allanbrewercarias.com/wp-content/uploads/2007/08/392.-.364.-Justicia-Constitucional-en-América-latina.-Libro-García-Belaúndo-y-Fernández-Segado.pdf>.

<sup>110</sup> For instance, the judicial review in the United States is a similar action.

<sup>111</sup> Landa, *supra* note 104, at 216.

<sup>112</sup> *Id.* at 210-24.

<sup>113</sup> *Id.* at 210-13.

<sup>114</sup> *Id.* at 213-19.

safeguarded in the first place, whether by law or constitution, which, in some levels, would defeat the purpose of having a different type of lawsuit than the action of constitutionality.

### *C. Liability of the States*

For an individual, a community, or an institution to sue a State who is directly or indirectly violating their right to access to water, it is necessary to start with an analysis of the country's domestic laws.<sup>115</sup> The first element for a State to be liable for a violation of this magnitude is the recognition of the right to access water in their constitution or legislation. If the country recognizes the right, and the State, or a third party hired by the State, infringes upon it, then they may be exposed to domestic or national liability.

The plaintiff can take different procedural routes, subject to the country. In one route, the plaintiff may present a lawsuit for damages against the government, or the specific agency. However, this action may not be available in countries where the government has specific or general immunity, which prevents it from being sued by individuals. In another route, the plaintiff can attempt to sue a specific public institution for enacting a statute or administrative ordinance that would violate their access to water, then they may present an action or writ of unconstitutionality. In this case, the plaintiff may also demonstrate the unconstitutionality of a municipal ordinance that allows a third party to directly or indirectly violate fully or partially their access to water. In some countries, the governments have shown solidarity and compliance with international agreements that have been ratified by modifying their national codes and laws to conform with the treaty. Even so, if the nation

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<sup>115</sup> It is imperative for the reader to understand that every State has their own judicial resources and actions which may not be shared by other nations. If a human right has been violated, the authors recommend consulting with a national lawyer for their specific country's judicial procedures.

does not comply with the treaty voluntarily, an action of constitutionality may still be appropriate if the proper procedure of ratification has occurred.

Ongoing confusion regarding the legal weight of the General Comments and the resolutions passed by the UN influences whether a country's national supreme court or constitutional court will take on the case. Since General Comments are not considered legally binding, a person cannot sue for the violation of them in their national courts, *per se*. Additionally, the Security Council did not pass the Resolution, so it did not automatically become legally binding.<sup>116</sup> Therefore, the States' intent and actions could indicate that it does not view it as a legally binding instrument. For that reason, an evaluation of precedents and jurisprudence surrounding Resolution 64/292 is necessary.

As of 2024, the right to water has been used as authority for decisions in international tribunals, but Resolution 64/292 has not been the instrument for the basis of the decisions. Instead, courts have based their opinions solely on the right or other treaties, without pointing to this particular international document. For instance, in *Yakye Axa Indigenous Community v. Paraguay*, a case brought to the Inter-American Court of Human Rights, the court based part of its decision in the right to water as seen in the ICESCR.<sup>117</sup> This case relied on the argument that the Resolution 64/292 is not legally binding. However, with General Comment No. 15 and jurisprudence from international court, the ICESCR may be used to bring forward cases where this human right is violated.

Additionally, high courts in countries across the Americas, like Argentina and Colombia, have also recognized the existence of this right, which is explored more in depth in the next Part. However,

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<sup>116</sup> U.N. Charter art. 5.

<sup>117</sup> *Yakye Axa Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 125 (2005), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_125\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf). This case can be read more in depth in the Paraguay Part of this paper.

Resolution 64/292 has not been used as a basis for a decision in courts of renowned international reputation. For this reason, it may be concluded that countries and nations can give legally binding authority to the Resolution, if it is within their authority, but international acceptance has not been resolved.

If suing a State in national courts is not an option for an affected individual or community, then relief may still be available. Even if national courts perceive an international regulation to be general or abstract, international norms and decisions can contribute to refining the rule into a more concrete interpretation.<sup>118</sup> The Office of the High Commissioner for Human Rights in the UN (“OHCHR”) has stated that individuals have three main procedures for alleging violations before human rights treaty bodies: 1) Individual Communications, 2) State-to-State complaints, and 3) Inquiries.<sup>119</sup>

Individual Communications are complaints “from or on behalf of a person or group... claiming to be victims of a violation of the Covenant by a State party.”<sup>120</sup> A complainant may bring a claim to the appropriate UN body—for access to water, that would typically be the CESCR—if the alleged violation interferes with a right enumerated in any of the nine core human rights treaties.<sup>121</sup> The

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<sup>118</sup> U.N. Hum. Rts., *Individual Communications – Human Rights Treaty Bodies*, <https://www.ohchr.org/en/treaty-bodies/individual-communications> (last visited Oct. 30, 2024).

<sup>119</sup> U.N. Hum. Rts., *Complaints about human rights violations*, <https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations> (last visited Oct. 30, 2024).

<sup>120</sup> U.N. Hum. Rts., *Individual Communications – Human Rights Committee*, <https://www.ohchr.org/en/treaty-bodies/ccpr/individual-communications> (last visited Oct. 30, 2024).

<sup>121</sup> The other eight core human right treaties are: International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities. U.N. Hum. Rts., *Individual Communications – Human Rights Treaty Bodies*, <https://www.ohchr.org/en/treaty-bodies/individual-communications> (last visited Oct. 30, 2024).

procedure and complaint mechanism should be structured so that any layperson may access it.<sup>122</sup> Any person may bring a complaint against the violating State, if certain requirements about recognition are met, and no lawyer is required.<sup>123</sup> However, it is necessary for all domestic remedies to be exhausted before the CESCR considers a communication.<sup>124</sup> In theory, this principle creates a just balance between an individual person the State, given that States typically have more experience, resources, and knowledge on international legal matters. For a communication to proceed, the complaint has to be brought against a State that: a) is a party to the treaty in question, and b) has recognized the competence of the Committee, in this case, the CESCR.<sup>125</sup>

A State recognizes the CESCR's authority and competence by signing and ratifying the Optional Protocol to the ICESCR ("Optional Protocol"), therefore making them a State Party to the Optional Protocol.<sup>126</sup> The Optional Protocol establishes that the CESCR will not receive communications if it concerns a State Party to the ICESCR that is not a party to the Optional Protocol.<sup>127</sup> As of November of 2024, the only States analyzed in this paper that are a State Party to the Optional Protocol are Honduras, Costa Rica, Ecuador, Venezuela, Bolivia, Argentina, and Uruguay.<sup>128</sup> Amongst the signatories that are not part of the State Parties are Chile, Paraguay, and Guatemala.<sup>129</sup> Finally, the

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> G.A. Res. 63/117, art. 3, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, (Dec. 10, 2008).

<sup>125</sup> U.N. Hum. Rts., *Individual Communications – Human Rights Treaty Bodies*, <https://www.ohchr.org/en/treaty-bodies/individual-communications> (last visited Oct. 30, 2024).

<sup>126</sup> G.A. Res. 63/117, *supra* note 124, at art. 2.

<sup>127</sup> *Id.*

<sup>128</sup> U.N. Status of Ratification Interactive Dashboard, *supra* note 8.

<sup>129</sup> *Id.*



countries who took no action in the Optional Protocol are Canada, the United States, Mexico, Nicaragua, Panama, Colombia, Peru, and Brazil.<sup>130</sup>

In summary, only individuals from those seven countries that are State Parties may bring Individual Communications to the CESCR against their State for violating or obstructing their rights under the International Covenant of Economic, Social, and Cultural Rights. Most States taking no action or signing but not ratifying the Optional Protocol defeats one of the purposes of creating the International Covenant since the most experienced and appropriate Committee cannot steward the rights and promises given to their residents. It takes away power from the individuals to ensure their rights are respected. Individuals that already have a power disadvantage against States have once again found themselves unable to access another conflict resolution alternative, this time by not providing an international tool created to aid specific groups.

If Individual Communications are nearly impossible for individuals to access, the Optional Protocol still provides two options for other entities to intervene. The Optional Protocol allows for State-to-State, also known as Inter-State communications, where a State Party may complain in a communication about another State Party violating the ICESCR.<sup>131</sup> Last, Inquiries are the final mechanism for alleging violations before the CESCR.<sup>132</sup> Inquiries are investigations by the CESCR after receiving reliable information about grave or systematic violations by a State Party of any ESC rights.<sup>133</sup> In this instance, the CESCR may open an investigation and, preferably, work with the State

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<sup>130</sup> *Id.*

<sup>131</sup> G.A. Res. 63/117, *supra* note 124, at art. 10.

<sup>132</sup> U.N. Hum. Rts., *Complaints about human rights violations - Inquiries*, <https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations#inquiries> (last visited Oct. 30, 2024).

<sup>133</sup> G.A. Res. 63/117, *supra* note 124, at art. 11.

Party to look into and resolve the incident.<sup>134</sup> However, this option faces the same obstacle as stated before; communications may only be considered if presented against another State Party.<sup>135</sup>

Between 2018 to 2023, the only countries among those analyzed in this paper with pending cases before the CESCR are Uruguay, Argentina and Venezuela.<sup>136</sup> Most of the Individual Communications or Inquiries presented against the beforementioned stem from Article 11 of the ICESCR, and have to do with evictions, living conditions, and alleged criminalization of a health rights defender.<sup>137</sup>

If presenting a complaint to the CESCR is not an option because a specific nation is not a State Party to the Optional Protocol, then the case may still be heard by the IACHR. According to the American Convention on Human Rights, any person, group of persons, or NGOs may present a complaint alleging a State Party's treaty violation.<sup>138</sup> Moreover, a State Party may present a Communication against another State Party, as long as the defendant nation has declared a recognition of the competence of the IACHR.<sup>139</sup>

Several criteria must be met for a complaint or communication to be admitted by the IACHR: a) the issue has been pursued to exhaustion under domestic law, b) the party must present it within six months of the notification of the final judgement, c) the subject is not pending in another international proceeding, and d) the complaint or communication contains "the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the

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<sup>134</sup> *Id.* at art. 11.

<sup>135</sup> *Id.* at art. 10 and 11.

<sup>136</sup> U.N. Hum. Rts., *Individual communications – Committee on Economic, Social, and Cultural Rights*, <https://www.ohchr.org/en/treaty-bodies/cescr/individual-communications> (last visited Oct. 30, 2024).

<sup>137</sup> *Id.*

<sup>138</sup> American Convention on Human Rights, *supra* note 87, at art. 44.

<sup>139</sup> *Id.* at art. 45.

entity lodging the petition.”<sup>140</sup> However, the first two requirements do not apply if “the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated”, the party claiming a violation of his rights has been denied access to available remedies under domestic law or has been obstructed from fully exhausting those remedies, or “there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.”<sup>141</sup> This exception renders the path to justice more accessible for individuals, given that it allows for more flexibility when it comes to domestic remedies and final judgements, than other alternatives have offered. Additionally, unlike the recognition of the CDESCR, only two nations analyzed in this paper—Canada and the United States—do not recognize the Inter-American Court of Human Rights, and neither ratified the American Convention on Human Rights.<sup>142</sup> For that reason, this Court is more accessible for individuals in the Americas to complain about a violation to the right to access to water.

If a case is admissible, and the IACHR finds that the State has committed a wrongdoing, it will make recommendations to the nation and set a deadline for a State to take such actions or remedies.<sup>143</sup> When the time expires, the IACHR will then take a vote to determine whether the nation took the adequate measures and if they should publish its report on the case.<sup>144</sup>

Similar to the IACHR, the Inter-American Court of Human Rights (“Inter-American Court”) consists of seven judges, from different nationalities.<sup>145</sup> Here, only State Parties and the IACHR may

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<sup>140</sup> *Id.* at art. 46.1.

<sup>141</sup> *Id.* at art. 46.2.

<sup>142</sup> Inter-American Comm’n on Hum. Rts., *B-32: American Convention on Human Rights “Pact of San Jose, Costa Rica”*, <https://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm>.

<sup>143</sup> American Convention on Human Rights, *supra* note 87, at art. 51.2.

<sup>144</sup> *Id.* at art. 51.3.

<sup>145</sup> *Id.* at art. 52.

submit a case to the Inter-American Court.<sup>146</sup> The jurisdiction of the Inter-American Court entails “all cases concerning the interpretation and application of the provisions of [the American Convention on Human Rights] that are submitted to it...”<sup>147</sup> Rulings from the Inter-American Court are binding for the countries that are State Parties to the American Covenant of Human Rights, and said nations will comply with the judgements to which they are parties.<sup>148</sup> Judgement from the Inter-American Court are final and not subject to appeals.<sup>149</sup> Additionally, the Court may give interpretations of the articles of the American Covenant on Human Rights or other treaties regarding human rights in American States, as seen in the aforementioned case *Yakye Axa Indigenous Community v. Paraguay*.<sup>150</sup> Also, the Inter-American Court of Human Rights may, at the request of a State Party, issue an opinion of the compatibility of the requesting country’s domestic laws and international instruments.

International law offers another option that hears water law cases that does not have legally binding or authoritative powers, but it may still be used as a mechanism for conflict resolution. In 1998, the Latin American Water Tribunal (“TLA” for its initials in Spanish) was created.<sup>151</sup> The TLA was created to serve as an alternative justice and ethical tribunal to hear cases associated with water resources in Latin America.<sup>152</sup> The tribunal has presided over eleven hearings and hosted more than

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at art. 62.

<sup>148</sup> *Id.* at art. 68.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Tribunal Latinoamericano del Agua, *Historia*, <https://tragua.org/quienes-somos/historia/>.

<sup>152</sup> Tribunal Latinoamericano del Agua, *Fundamentos*, <https://tragua.org/quienes-somos/fundamentos-vision-mision-objetivos/>.

80 workshops, tours and events throughout different countries in Latin America regarding different aspects of water law, from access to water as a human right to hydric systems management.<sup>153</sup>

### III. APPLICATION BY STATE

There is a justiciability of water rights, or in other words, “the effective access of citizens to safe water and sanitation” in Latin America.<sup>154</sup> There are different “models” of justiciability; some countries have explicitly stated water as a right in their constitutions, directly enforceable by the courts, while others indirectly recognize the right and, though not enforceable constitutionally, those water rights are upheld by courts as being constitutionally grounded. However, there are some countries that do not recognize access to water as a constitutional guarantee.

In Latin America, the right to water is closely linked to water management and the protection of constitutional rights. Even countries that don’t recognize the right to water via constitution have certain procedures for enforcing water rights through other means. A significant portion of the Latin American population lacks access to safe water and sanitation.<sup>155</sup> Physical, economic, and cultural barriers contribute to the lack of access to clean water. Physically, people in rural areas tend to experience a much lower water and sanitation access rate due to a weak drinking water and health

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<sup>153</sup> Tribunal Latinoamericano del Agua, *Foros*, <https://tragua.org/actividades/>; Tribunal Latinoamericano del Agua, *Audiencias*, <https://tragua.org/audiencias/>.

<sup>154</sup> M. Belén Olmos Giupponi & Martha C. Paz, *The Implementation of the Human Right to Water in Argentina and Colombia*, 323 ANUARIO MEXICANO DE DERECHO INTERNACIONAL 334-35 (2015), available at [https://www.sciencedirect.com/science/article/pii/S1870465415000100#:~:text=In%20the%20last%20years%2C%20some,%20and%20Uruguay%20\(2004\).&text=Other%20Latin%20American%20constitutions%20include,of%20Guatemala%2C%20Chile%20and%20Venezuela.](https://www.sciencedirect.com/science/article/pii/S1870465415000100#:~:text=In%20the%20last%20years%2C%20some,%20and%20Uruguay%20(2004).&text=Other%20Latin%20American%20constitutions%20include,of%20Guatemala%2C%20Chile%20and%20Venezuela.)

<sup>155</sup> U.N. Econ. Comm’n for Latin America & the Caribbean, *Basic water and electricity services as key sectors for transformative recovery in Latin America and the Caribbean*, (Sept. 7, 2022), <https://www.cepal.org/en/insights/basic-water-and-electricity-services-key-sectors-transformative-recovery-latin-america-and> (data and description under Figure 3).

infrastructure.<sup>156</sup> Economically, there is a severe lack of investment in energy systems that fuel drinking water services in Latin America.<sup>157</sup> Additionally, as of 2021, only thirty-four percent of wastewater captured from sewer systems was treated, and any progress would require an additional economic investment.<sup>158</sup> Regarding cultural barriers, Indigenous Peoples and Afro-descendant communities in Latin America experience lower rates of access to safe drinking water and sanitation services due to historic marginalization. Within the last fifteen years, Indigenous peoples in fourteen Latin American countries have had significantly less access to water than the rest of the general population.<sup>159</sup> Also in the last fifteen years, Afro-descendants in Latin America, specifically those living in rural populations, experience higher rates of water resource deprivation than non-Afro-descendants living in the same areas.<sup>160</sup>

#### **A. States that recognize water as a human right in their constitution**

There are many countries that demonstrate how fundamental and constitutional guarantees work in practice. This analysis begins with countries that recognize access to water as a human right through constitutional guarantees.

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<sup>156</sup> *Id.*

<sup>157</sup> See U.N. Peace & Dev. Trust Fund, *Potable Water, Sanitation and Renewable Energies to improve the health conditions of the population and promote productive uses in the most lagging behind municipalities of the countries of the northern subregion of Latin America and the Caribbean*, <https://www.un.org/en/unpdf/sdg-2021-07> (last visited Nov. 15, 2024).

<sup>158</sup> *Id.*

<sup>159</sup> CARLA Y. DAVIS-CASTRO, CONG. RSCH. SERV., R46225, INDIGENOUS PEOPLES IN LATIN AMERICA: STATISTICAL INFORMATION 14 (Oct. 27, 2023), available at <https://crsreports.congress.gov/product/pdf/R/R46225>.

<sup>160</sup> See AFRO-DESCENDANTS IN LATIN AMERICA TOWARD A FRAMEWORK OF INCLUSION, WORLD BANK GROUP, (2018), available at <https://documents1.worldbank.org/curated/en/896461533724334115/pdf/129298-7-8-2018-17-29-37-AfrodescendantsinLatinAmerica.pdf>.

## Costa Rica

Costa Rica recognizes water as a human right and explicitly guarantees that right in its constitution. Costa Rica has been state party to the ICESCR since 1968 when they ratified the treaty.<sup>161</sup> Additionally, the State voted in favor of the Resolution 64/292 on the human right to water and sanitation.<sup>162</sup> The Costa Rican representative of the country acknowledged that access to water is an inalienable right and each State is responsible for providing water and sanitation to its citizens.<sup>163</sup> Article 50 of the Costa Rican Constitution was amended in June of 2020, under Law No. 9849, and states that “every person has the basic and inalienable human right to access to drinking water, as an essential good for life.”<sup>164</sup> The article also states that water is a national asset and is indispensable to protect the human right.<sup>165</sup> Its use, protection, and sustainable management must be governed by the provisions of the law to be created for the purposes of water rights, and priority shall be given to the supply of drinking water for consumption by individuals and populations.<sup>166</sup> Costa Rica has particularly high access to water compared to other countries in Latin America.

The CESCR’s Periodic Report 2 (2008) of Costa Rica began by highlighting the State’s measures to address pollution of water to guarantee an adequate standard of living.<sup>167</sup> However, the Committee also mentioned its concerns about clean drinking water access for Indigenous peoples

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<sup>161</sup> International Treaty 4229-A of Costa Rica (Nov. 11, 1968), available at [http://www.pgrweb.go.cr/SCIJ/Busqueda/Normativa/Normas/nrm\\_norma.aspx?param1=NRM&nValor1=1&nValor2=11190&nValor3=12008&strTipM=FN](http://www.pgrweb.go.cr/SCIJ/Busqueda/Normativa/Normas/nrm_norma.aspx?param1=NRM&nValor1=1&nValor2=11190&nValor3=12008&strTipM=FN).

<sup>162</sup> U.N. Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>163</sup> U.N. Press Release GA/10967, *supra* note 69.

<sup>164</sup> CONSTITUCIÓN POLÍTICA DE COSTA RICA art. 50.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Costa Rica*, ¶ 15, U.N. Doc. E/C.12/CRI/CO/4 (Jan. 4, 2008), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW%2FIJb5himUu8zooPmnT%2BwQwlwUI%2FUBYcp85mYtxeiP2NTbuDIqeMZ8LINJybPrVtcmHjzCGxvXHcDokZt4IG2LmJMkn%2FdpR1X3myWAo3ETGb>.

and Afro-descendants.<sup>168</sup> Periodic Report 5 (2016) raised concerns about the country's lack of access to safe drinking water and minimal treatment of wastewater.<sup>169</sup> The Committee also raised concerns on the effects of unsafe drinking water on marginalized and disadvantaged groups in Costa Rica.<sup>170</sup> The Committee requested that Costa Rica establish a system that would properly treat wastewater.<sup>171</sup> The 2020 constitutional amendment declaring the human right to water shows impressive progress from Costa Rica after the 2016 ICESCR Periodic Report.

As of 2022, approximately 81% of the national population has access to safely managed water services.<sup>172</sup> These percentages are similar across other regions of the country, with 80% of the urban population and 81% of the rural population having access to safely managed water. In both urban and rural areas, 19% of the population has access to basic water services, as seen in the graph below. While the population accessing safely managed drinking water is relatively high compared to other Latin American countries, Costa Rica still faces significant challenges in providing safe drinking water services to the entire population.

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<sup>168</sup> *Id.* at ¶¶ 26, 27, 35.

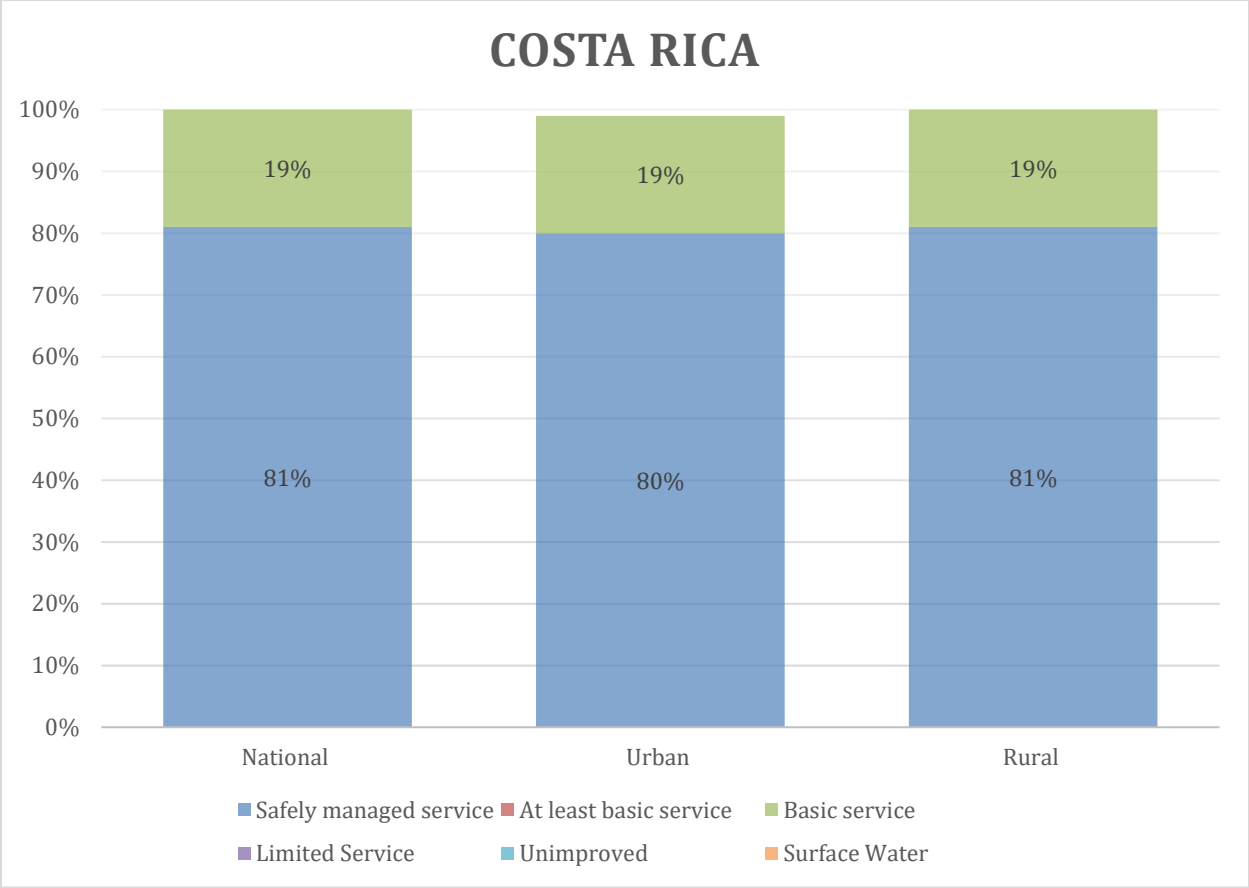
<sup>169</sup> U.N. ESCOR, *Concluding Observations on the Fifth Periodic Report of Costa Rica*, ¶ 49, U.N. Doc. E/C.12/CRI/CO/5 (Oct. 21, 2016), available at <https://documents.un.org/doc/undoc/gen/g16/237/01/pdf/g1623701.pdf>.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at ¶ 50.

<sup>172</sup> For the definition of each category of water services and sources refer to note 86.





Costa Rica's chart<sup>173</sup>

**Honduras**

Honduras recognizes water as a human right, and that right is constitutionally guaranteed. Honduras has been a state party to the ICESCR since ratifying the treaty in 1981.<sup>174</sup> Honduras also voted in favor of the Resolution 64/292.<sup>175</sup> Decree No. 232 of 2012 amended Article 145 of the Honduras Constitution, which declares the right to water and sanitation.<sup>176</sup> The Honduran

<sup>173</sup> U.N. Water, *SDG 6 Snapshot in Costa Rica*, <https://www.sdg6data.org/en/country-or-area/Costa%20Rica> (information as of 2022).  
<sup>174</sup> UN Treaty Body Database, Ratification Status for Honduras, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=76&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=76&Lang=EN) (last visited Dec. 4, 2024).  
<sup>175</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.  
<sup>176</sup> CONSTITUTION OF THE REPUBLIC OF HONDURAS art. 145.

constitution directly recognizes the right to the protection of one's health and proclaims that everyone has a duty to promote and preserve individual and community health.<sup>177</sup> Additionally, the article provides that the State must maintain a satisfactory environment to protect everyone's health and guarantee the preservation of water sources to ensure that public health is not at risk.<sup>178</sup> Lastly, the article states that Honduran law shall regulate the subject of water rights.<sup>179</sup>

The CESCR first mentioned access to water in Honduras's Second Periodic Report (2016), when it expressed concern over the impact of land-grabbing and hoarding of natural resources, which led to conflict in the Lower Aguán Valley and a lack of access to food and water for its local communities.<sup>180</sup> Despite water being constitutionally recognized as a human right in 2012, regions of the State were still experiencing water inaccessibility. Additionally, the committee was concerned over the high number of impoverished families and an increase of forcible evictions by the police.<sup>181</sup> The conflict occurring in the Lower Aguán Valley demonstrates that the declaration of water as a human right has not necessarily led to water access for all individuals in the State of Honduras.

According to the SDG 6 indicators, as of 2022, only 65% of the Honduran population have access to a safely managed drinking water source, as seen in the graph bellow.<sup>182</sup> The urban population fares better than the national average, with 78% of its population accessing safely managed water,

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<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

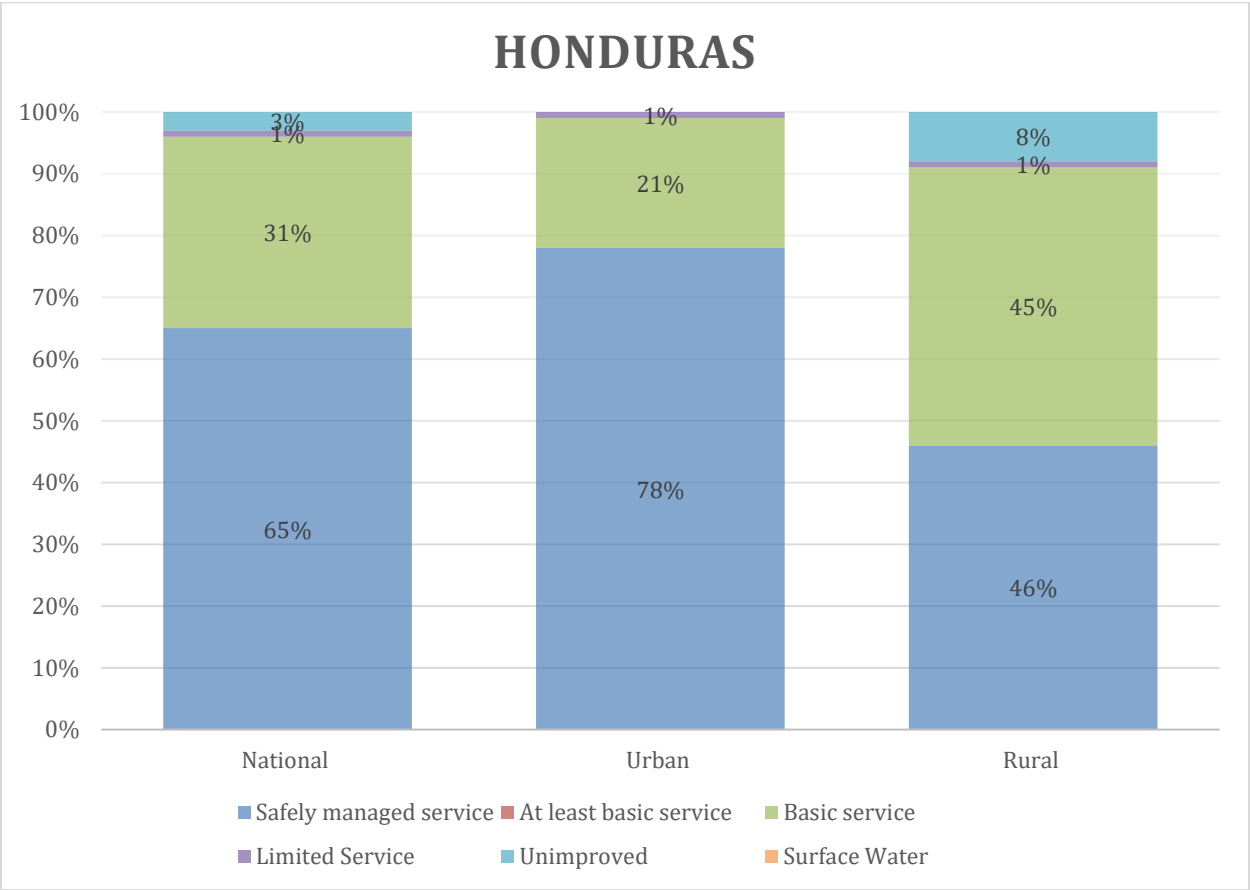
<sup>179</sup> *Id.*

<sup>180</sup> U.N. ESCOR, *Concluding Observations on the Second Periodic Report of Honduras*, ¶ 47, U.N. Doc. E/C.12/HND/CO/2 (July 11, 2016), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW7r%2Fs5PmlHnsb%2BdhE9gELmAtKbtSsGHdyVcvoFuYl8yZr%2B8qKmlReyED5gSAK8obAjechvTGCZRNKiW8H2DkEgwRxdhnC6hefAUycWziP>.

<sup>181</sup> *Id.* at ¶ 48.

<sup>182</sup> For the definition of each category of water services and sources, refer to note 86.

compared to only 46% of the rural population. As for basic services, 31% of the population has access to basic services, 21% of urban populations and 45% of rural populations. Throughout Honduras, at least 1% of the population has access to water as a limited service. Finally, 8% of the rural population only have access to unimproved water, which amounts to 3% of the national population. While Honduras’s numbers for at least basic service show high values, it is concerning that there are still percentages of the population that only have access to limited service, or worse, unimproved water.



Honduras’s chart<sup>183</sup>

<sup>183</sup> U.N. Water, *SDG 6 Snapshot in Honduras*, <https://www.sdg6data.org/en/country-or-area/Honduras> (information as of 2022).

## Bolivia

The Plurinational State of Bolivia (“Bolivia”) recognizes water as a human right and explicitly guarantees the right in its constitution. Bolivia has been a state party to the ICESCR since 1982 when it adhered to the treaty, and elevated to national law in 2000.<sup>184</sup> When Bolivia voted in favor of the Resolution 64/292, the country’s representative noted various widespread diseases caused by the lack of water and sanitation access worldwide.<sup>185</sup> Article 373 (I) of the Political Constitution of Bolivia (2009) states that water is a “fundamental right for life,” and that the State shall promote the use of and access to water based on the principles of “solidarity, complementariness, reciprocity, equity, diversity and sustainability.”<sup>186</sup> Article 373 (II) explains that all forms of water serve social, cultural, and environmental purposes, and the water resources shall not be the subject of private appropriation since they are the subject of federal law.<sup>187</sup>

The CESCR’s First Periodic Report (2001) on Bolivia expressed concern over access to water for those in poverty.<sup>188</sup> The Second Periodic Report (2008) did not mention the right to water.<sup>189</sup> In Bolivia’s Third Periodic Report (2021), the Committee commended the increase in access to “better-quality water sources and improved sanitation.”<sup>190</sup> However, the Committee still expressed concern

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<sup>184</sup> D.S. No. 18950 (May 17, 1982) (Bolivia). Law No. 2119 (Sept. 11, 2000) (Bolivia).

<sup>185</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>186</sup> CONSTITUCIÓN DE POLÍTICA DEL ESTADO art. 373.1 (Bolivia).

<sup>187</sup> *Id.* art. 373.2.

<sup>188</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Bolivia*, U.N. Doc. E/C.12/Add.60 (May 21, 2001), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWzVCXkRUT2pEFOZi2eiiYl7qoxvblTGpkQKt1MY34wQTqPziCpmn4B18Q19J%2Fk3SvEHf57dtSc7DFsdLUKXP4gFnWqw2BtBoCYIHD2w9VAEz>.

<sup>189</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Bolivia*, U.N. Doc. E/C.12/BOL/CO/2 (Aug. 8, 2008), available at <https://documents.un.org/doc/undoc/gen/go8/435/89/pdf/go843589.pdf>.

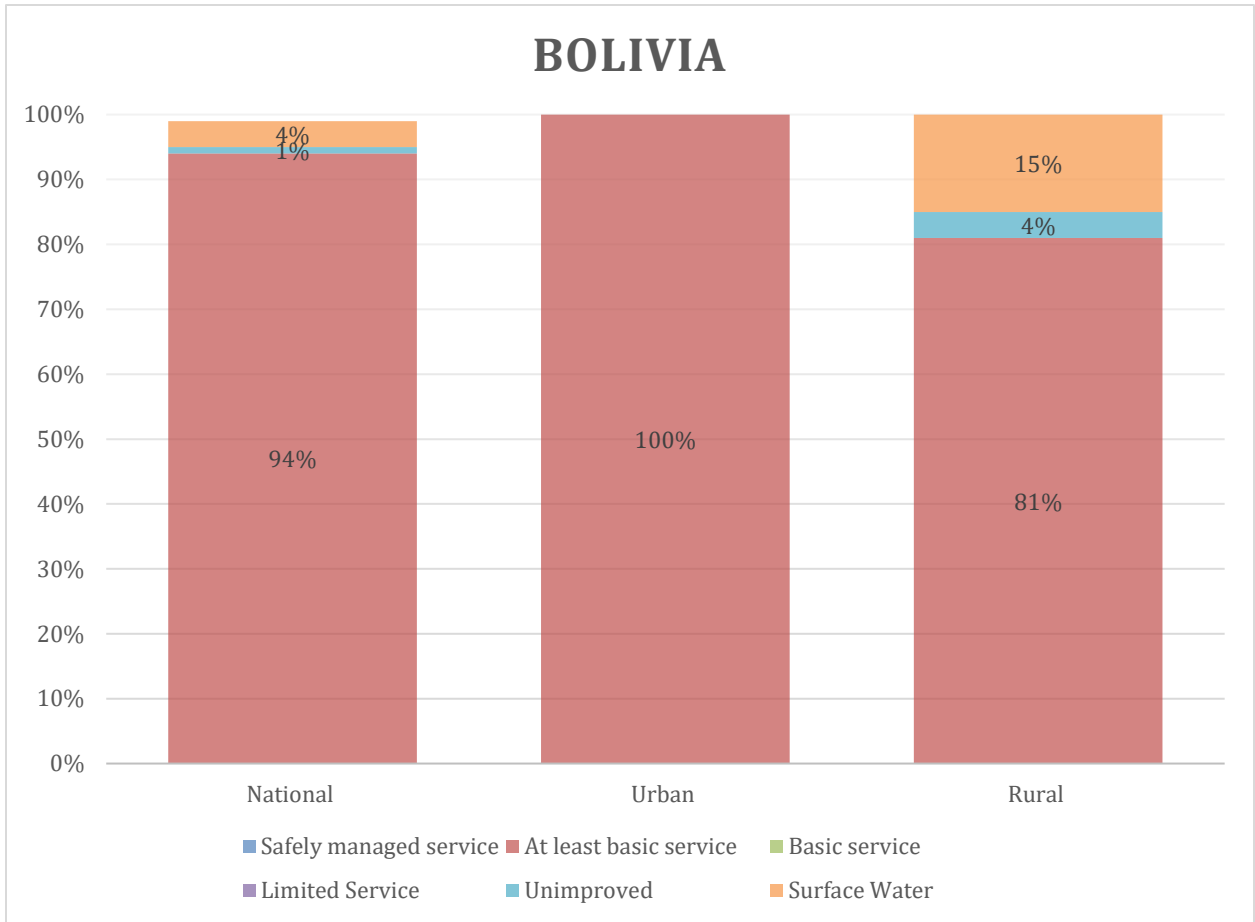
<sup>190</sup> U.N. ESCOR, *Concluding Observations on the Third Periodic Report of the Plurinational State of Bolivia*, ¶¶ 46- 47, U.N. Doc. E/C.12/BOL/CO/3, available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW4OHatHG2mTj7kMWWS6NIIn6pjdT3jfhzwzQhLt2RK35q8NHLUdhy9IK98TyalEURM1ynzMUj7ZbUmZrvd6cZ4uSIHFLs7YIPnsWIJN8ExpH>.

for the low rate of access to sanitation and, once again, expressed its concern for the State's poverty levels and marginalization of Indigenous populations.

As seen in the chart below, 94% of Bolivia's population have access to at least basic drinking water services.<sup>191</sup> However, 1% of the population only have access to unimproved sources and 4% rely on surface water. The percentage of the population with access to at least basic drinking water services is steadily improving, putting Bolivia on track to meet SDG 6 goals by 2030. However, neither the United Nations nor Sustainable Development Reports provide information on the percentage of the population with access to *safe* drinking water and sanitation resources. This lack of information creates a significant obstacle in assessing the progress of SDG 6 in Bolivia. Additionally, rural populations in Bolivia face major challenges in accessing drinking water compared to urban populations. In comparison, 100% of urban populations have access to at least basic drinking water services, which drops to 81% of people in rural settings. Of the remaining 19% of rural populations, 4% rely on unimproved drinking water sources, and 15% use surface water. The fact many Bolivians are still using unimproved sources and surface water is a matter of concern and should be addressed as soon as possible.

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<sup>191</sup> For the definition of each category of water services and sources refer to note 86.



Bolivia's chart<sup>192</sup>

### Ecuador

In the Republic of Ecuador (“Ecuador”), water is recognized as a human right that is firmly guaranteed and protected by the nation’s constitution. In 1969, Ecuador ratified the ICESCR, making it a State Party to the international covenant.<sup>193</sup> Ecuador voted in favor of the Resolution 64/292.<sup>194</sup> Several articles of the Ecuadorian Constitution protect water rights.<sup>195</sup> Article 12 states, “the human

<sup>192</sup> U.N. Water, *SDG 6 Snapshot in Bolivia (Plurinational State of)*, [https://www.sdg6data.org/en/country-or-area/Bolivia%20\(Plurinational%20State%20of\)](https://www.sdg6data.org/en/country-or-area/Bolivia%20(Plurinational%20State%20of)) (information as of 2022)

<sup>193</sup> U.N. Treaty Collection, *Status of Ratification International Covenant on Economic, Social and Cultural Rights*, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en) <https://indicators.ohchr.org/> (accessed Nov.12, 2024) [hereinafter U.N. Status of Ratification of ICESCR].

<sup>194</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>195</sup> See *generally* CONSTITUCIÓN DE LA REPÚBLICA DE ECUADOR.

right to water is essential and cannot be waived. Water constitutes a national strategic asset for use by the public and it is inalienable, not subject to a statute of limitations, immune from seizure and essential for life.”<sup>196</sup> While Article 12 explicitly states water as a human right, Articles 32, 66, 282, 314, and 318 all state that water is a resource that must be protected as a public good for a variety of societal functions.<sup>197</sup>

In 2015, the provincial court of Cañar analyzed the issue of whether it is unconstitutional to limit a human right when a breach of a contract exists.<sup>198</sup> In this case, a consumer brought a suit against the Municipal Public Company of Drinking Water, Sewage and Environmental Sanitation of Cantón Azogues (“EMAPAL” for its name in Spanish) because they cut off her water after she failed to pay months of water service contract fees.<sup>199</sup> The plaintiff argued that the EMAPAL violated her human right to access to water when it removed her water meter.<sup>200</sup> The statute regulating the administration of drinking water and tariffs in Cantón Azogues has a chapter on the suspension of the services for non-payment, which allow the temporary suspension of water services.<sup>201</sup> According to the Court, the plaintiff could have arranged different payment methods to avoid this action from EMAPAL, and allowing for this defense to proceed would open the door for abuses of the law.<sup>202</sup> The case was later heard in the Constitutional Court of Ecuador where it overturned the provincial

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<sup>196</sup> CONSTITUCIÓN DE LA REPÚBLICA DE ECUADOR art. 12.

<sup>197</sup> *Id.* at arts. 32, 66, 282, 314, & 318.

<sup>198</sup> Corte Provincial de Justicia del Cañar [Provincial Court of Justice of Cañar], May 13, 2015, “Mercedes María Pérez Saldaña c. Empresa Pública Municipal de Agua Potable Alcantarillada y Saneamiento Ambiental de Cantón Azogues.”, Case No. J.N. 2015-00262.- (Ecuador), available at [http://doc.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/3d2f77c2-dbeb-45bo-a539-afbc105aba6f/sentencia\\_0232-15-jp.pdf?guest=true](http://doc.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/3d2f77c2-dbeb-45bo-a539-afbc105aba6f/sentencia_0232-15-jp.pdf?guest=true).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> Official Registry No. 81 of Ecuador, arts. 45 and 46. (Aug. 15, 2005).

<sup>202</sup> J.N. 2015-00262.-, *supra* note 198.

court's decision.<sup>203</sup> In the decision, the Constitutional Court ordered EMAPAL to restore the plaintiff's access to water, and declared that the following rights were violated: 1) right to access to water, 2) priority for the elderly and persons with disabilities, and 3) the right to effective judicial protection.<sup>204</sup> In its analysis, the Constitutional Court included that it based its decision in four different perspectives: "the right to water and its content, the State's duties regarding the right to water, the right to water and drinking water services, suspension of drinking water service for non-payment; and, analysis of the specific case."<sup>205</sup> Regarding the right to water and its content, the Constitutional Court bases part of its decision on international treaties, like the ICESCR and the American Convention on Human Rights.<sup>206</sup>

The CESCR's periodic reports on Ecuador have proposed many guidelines on water. Ecuador's Second Periodic Report (2004) urged the State to improve water and sanitation facilities.<sup>207</sup> The Third Periodic Report (2012) expressed concern about rural access to clean water due to mining, and recommended Ecuador to adopt environmental protections and other measures to protect the right to water.<sup>208</sup> When the Fourth Periodic Report (2019) on Ecuador was released, there was

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<sup>203</sup> Corte Constitucional de Ecuador [Constitutional Court of Ecuador], July 28, 2021, "Mercedes María Pérez Saldaña c. Empresa Pública Municipal de Agua Potable Alcantirallada y Saneamiento Ambiental de Cantón Azogues.", Case No. 232-15-JP (Ecuador), available at [http://esacc.corteconstitucional.gob.ec/storage/api/v1/1o\\_DWL\\_FL/e2NhcnBldGE6J3RyYW1pdGUhLCB1dWlkOiczYTFhMTlInSo2MjJhLTQoZmEtYWZjMCo2ZTIjMWVhNzEyZzcucGRmJ3o=](http://esacc.corteconstitucional.gob.ec/storage/api/v1/1o_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUhLCB1dWlkOiczYTFhMTlInSo2MjJhLTQoZmEtYWZjMCo2ZTIjMWVhNzEyZzcucGRmJ3o=).

<sup>204</sup> *Id.* at 38 and 39.

<sup>205</sup> *Id.* at 7.

<sup>206</sup> *Id.* at 7 and 8.

<sup>207</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Ecuador*, ¶ 52, U.N. Doc. E/C.12/1/Add.100 (June 7, 2004), available at <https://documents.un.org/doc/undoc/gen/go4/420/88/pdf/go442088.pdf>.

<sup>208</sup> U.N. ESCOR, *Concluding Observations of the Committee on the Third Periodic Report of Ecuador as approved by the Committee at its forty-ninth session (14–30 November 2012)*, ¶ 25, U.N. Doc. E/C.12/EQU/CO/3 (Dec. 13, 2012), available at <https://documents.un.org/doc/undoc/gen/g12/486/99/pdf/g1248699.pdf>.



concern that the Mining Act would interfere with the human right to water.<sup>209</sup> This is because large-scale mining can have serious environmental impacts, specifically on water quality and access.<sup>210</sup> In light of this concern, the committee suggested that the State prioritize communities that have been affected by environmental degradation.<sup>211</sup> Although water is constitutionally recognized as a human right in Ecuador, the impacts of the Mining Act pose a threat to water access in the State.

As seen in the chart below, 67% of Ecuador's population have access to safely managed drinking water services.<sup>212</sup> From there, 29% have access to basic services, 3% can only access unimproved water, and 2% have to use surface water. On the other hand, 75% of urban populations have access to a safely managed drinking water service and 25% have basic service. The most inequitable distribution of drinking water access in Ecuador is in rural populations, where 53% of people have access to safely managed drinking water services and 35% to basic services, but 7% of people rely on unimproved sources and 5% of people use surface water. It is a matter of great concern that there are still communities that receive drinking water from surface water or unimproved sources, which may leave the State open to liability since it recognizes the right in their national framework.

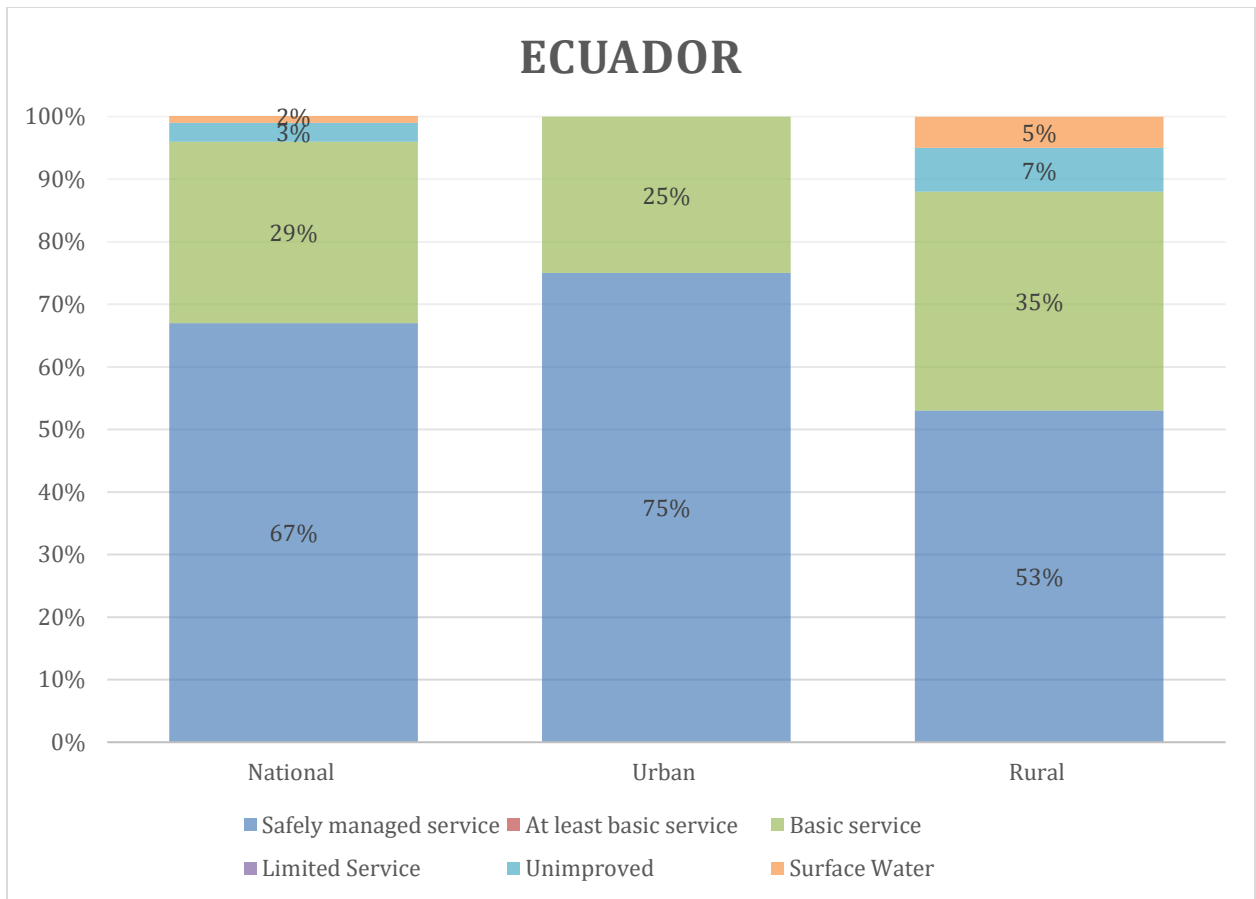
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<sup>209</sup> U.N. ESCOR, *Concluding observations on the Fourth Periodic Report of Ecuador*, ¶ 53, U.N. Doc. E/C.12/EQU/CO/4 (Nov. 14, 2019), available at <https://documents.un.org/doc/undoc/gen/g19/324/87/pdf/g1932487.pdf>.

<sup>210</sup> M.R. Peck et. al., *The Conflict Between Rights of Nature and Mining in Ecuador: Implications of the Los Cedros Cloud Forest Case for Biodiversity Conservation*, 2024;6 PEOPLE & NATURE 1096, 1097 (2024), available at <https://besjournals.onlinelibrary.wiley.com/doi/epdf/10.1002/pan3.10615>.

<sup>211</sup> U.N. Doc. E/C.12/EQU/CO/4, *supra* note 209.

<sup>212</sup> For the definition of each category of water services and sources refer to note 86.



Ecuador's chart<sup>213</sup>

### Peru

In the Republic of Peru (“Peru”), water is recognized as a human right and has a constitutional guarantee. Peru has been a State Party to the ICESCR since 1978 when it ratified the treaty.<sup>214</sup> Peru voted in favor of the Resolution 64/292, and the representative indicated an understanding that the resolution’s aims were carried out to maintain territorial order and States’ sovereign resources.<sup>215</sup> According to the Political Constitution of Peru, the country recognizes the right of every person to

<sup>213</sup> U.N. Water, *SDG 6 Snapshot in Ecuador*, <https://www.sdg6data.org/en/country-or-area/Ecuador> (information as of 2022).

<sup>214</sup> Decree Law No. 22129, Mar. 28, 1978, (Peru), available at <https://cdn.www.gob.pe/uploads/document/file/5309212/4763811-d-ley-n-22129.pdf?v=1697827752>.

<sup>215</sup> Voting Records Summary of Resolution 64/292, *supra* note 67; U.N. Press Release GA/10967, *supra* note 69.

have universal access to drinking water.<sup>216</sup> Despite Peru's declaration of water as a human right, its population has significantly low access to safe drinking water and sanitation services compared to other States. Only 52% of Peru's population has access to safe drinking water.<sup>217</sup>

Additionally, there is a prominent gap in water accessibility between urban areas and rural areas, as well as between affluent households and impoverished households. According to a report published by the National Institute of Statistics and Informatics ("INEI") in 2016, 85% of urban populations in Peru had access to safe drinking water, compared to only 9% of rural populations.<sup>218</sup> Additionally, a study on Peruvian households between 2008 to 2018 demonstrated the gap in safe drinking water access between poor households and wealthy households.<sup>219</sup> According to a 2017 study by the INEI, these poverty levels were determined by the money spent on a basic food basket per person in a household.<sup>220</sup> It found that poor households actually experienced a decreasing trend in access to safe drinking water over the period analyzed, while wealthier households access to safe drinking water increased.<sup>221</sup>

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<sup>216</sup> POLITICAL CONST. OF PERÚ art. 7(A) (reformed by Law No. 30588 of 2017).

<sup>217</sup> Water.org, *Peru's Water and Sanitation Crisis*, <https://water.org/our-impact/where-we-work/peru/> (last visited Nov. 1, 2024).

<sup>218</sup> INSTITUTO NACIONAL DE ESTADISTICA E INFORMATICA, PERÚ: FORMAS DE ACCESO AL AGUA Y SANEAMIENTO BÁSICO [Peru: Forms of access to water and basic sanitation], (Sept. 2016), available at [https://www.inei.gob.pe/media/MenuRecursivo/boletines/boletin\\_agua.pdf](https://www.inei.gob.pe/media/MenuRecursivo/boletines/boletin_agua.pdf).

<sup>219</sup> Akram Hernández-Vasquez et. al., *Inequalities in Access to Safe Drinking Water in Peruvian Households According to City Size: An Analysis from 2008 to 2018*, 20 INT'L J. EQUITY IN HEALTH (June 5, 2021), available at <https://equityhealth.biomedcentral.com/articles/10.1186/s12939-021-01466-7>.

<sup>220</sup> Dante Carhuavilca Bonett, *Monetary Poverty Results 2019*, INSTITUTO NACIONAL DE ESTADISTICA E INFORMATICA 9 (May 2020), available at [https://www.inei.gob.pe/media/cifras\\_de\\_pobreza/presentacion-del-jefe-del-inei-2019\\_ingles.pdf](https://www.inei.gob.pe/media/cifras_de_pobreza/presentacion-del-jefe-del-inei-2019_ingles.pdf).

<sup>221</sup> *Id.* at 30.

Similarly, the mining industry in Peru has significantly impacted water access and quality, primarily due to acid mine drainage.<sup>222</sup> It occurs when mined rocks, exposed to water and air, have a chemical reaction and flow into water bodies.<sup>223</sup> The minerals can infiltrate drinking water, making the water unsafe to drink. The impacts of the mining industry on Peru's water quality and accessibility conflicts with Target 6.3 of SDG 6, which is to improve water quality by eliminating pollution and the release of hazardous chemicals and materials into water bodies in order to increase the recycling and safe reuse of water globally.<sup>224</sup>

The right to water is mentioned in the CESCRs' combined Periodic Reports 2-4 (2012) on Peru.<sup>225</sup> In summary, the Committee raised concerns about inadequate access to water, especially for those living in poverty and in rural areas, which aligns with the trends seen in Peru's water quality and accessibility in recent decades.<sup>226</sup> The Committee recommended that the State address the housing deficit and ensure the right to safe and affordable drinking water.<sup>227</sup>

Peru still faces significant challenges in achieving SDG 6 goals, and the state's rate of improvement is insufficient to achieve those goals by 2030, as seen in the chart below.<sup>228</sup> Only 52% of the Peruvian population has access to safely managed drinking water services. Only 23% of rural populations in Peru have access to safely managed drinking water services, while 60% of urban

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<sup>222</sup> Anthony Bebbington & Mark Williams, *Water and Mining Conflicts in Peru*, 28(3/4) MOUNTAIN RSCH. & DEV. 190, (2008), available at [https://www.jstor.org/stable/pdf/25578190.pdf?refreqid=fastly-default%3Adoco66b74c30c8f319dc442afd822ed1&ab\\_segments=&origin=&initiator=&acceptTC=1](https://www.jstor.org/stable/pdf/25578190.pdf?refreqid=fastly-default%3Adoco66b74c30c8f319dc442afd822ed1&ab_segments=&origin=&initiator=&acceptTC=1).

<sup>223</sup> *Id.* at 191.

<sup>224</sup> U.N. Dep't Econ. & Soc. Affrs., *Sustainable Development Goal 6: Ensure availability and sustainable management of water and sanitation for all*, [https://sdgs.un.org/goals/goal6#targets\\_and\\_indicators](https://sdgs.un.org/goals/goal6#targets_and_indicators).

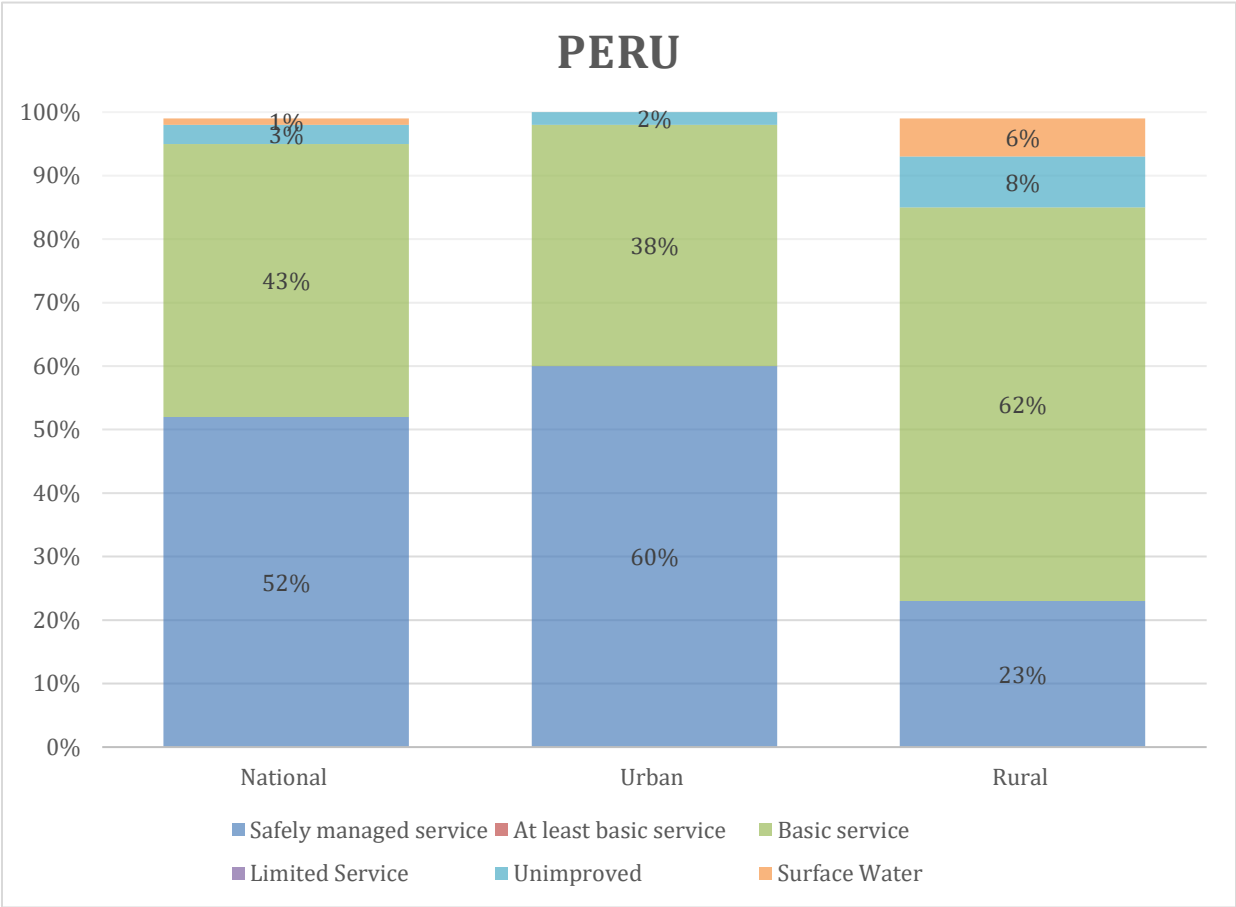
<sup>225</sup> U.N. ESCOR, *Consideration of Reports Submitted by States parties Under Articles 16 and 17 of the Covenant – Peru*, ¶¶ 19, 22, U.N. Doc. E/C.12/PER/CO/2-4 (May 30, 2012), available at <https://documents.un.org/doc/undoc/gen/g12/431/16/pdf/g1243116.pdf>.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> For the definition of each category of water services and sources refer to note 86.

populations have access to a safely managed source. On a similar note, 43% of Peru’s population, broken down into 62% of rural populations and 38% of urban populations, have access to basic services. Finally, both national and rural populations show percentages of communities using unimproved sources or surface water. In the national average, 3% of the population uses unimproved sources and 1% only have access to surface water. Worriedly, in rural communities those numbers increase to 8% of the population having only access to unimproved water sources, and 6% use surface water. Overall, Peru must take significant efforts to ensure access to safe drinking water in order to achieve SDG 6 by 2030.



Peru’s chart<sup>229</sup>

<sup>229</sup> *Id.*

## Colombia

The Republic of Colombia (“Colombia”) does not recognize water as a human right in their constitution or statutes, but it has been recognized by the Constitutional Court of the Nation. Colombia has been a State party to the ICESCR since 1969, when it ratified the agreement.<sup>230</sup> Additionally, Colombia was one of the countries that voted in favor of the Resolution 64/292; however, their representative had concerns over the negotiation process and noted that “the vote had established an unsuitable precedent in human rights matters.”<sup>231</sup> Colombia expressed that the Resolution 64/292 only obligated States to deliver water as a public service, not the right to drinking water in situations where the right to life is not threatened.<sup>232</sup>

Moreover, the Article 366 of Colombia’s constitution provides the right to a reasonable standard of living, specifying that “a basic objective of [the State’s] activity shall be to address the unfulfilled public health, educational, environmental, and drinking water needs of those affected.”<sup>233</sup> The word “unfulfilled” implies that drinking water is not yet a service provided to all individuals. The right to life is also protected by the Colombian constitution.<sup>234</sup> In addition, the constitution expresses that one of the social purposes of the government is to improve the quality of life of its population, including needs like drinking water.<sup>235</sup>

Through amparo actions, the Constitutional Court in Colombia has declared that water is a source of life, thus the interruption of water service threatens the human right to life, therefore

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<sup>230</sup> L. 74/68, December 26, 1968, (Colom.), available at <https://www.suin-juriscal.gov.co/viewDocument.asp?ruta=Leyes/1622486>.

<sup>231</sup> Voting Records Summary of Resolution 64/292, *supra* note 67; U.N. Press Release GA/10967, *supra* note 69.

<sup>232</sup> U.N. Press Release GA/10967, *supra* note 69.

<sup>233</sup> CONSTITUCIÓN POLÍTICA DE COLOMBIA art. 366.

<sup>234</sup> *Id.* at art. 11.

<sup>235</sup> *Id.* at art. 366.

public water and sewage service is a fundamental constitutional right.<sup>236</sup> In 2011, the Constitutional Court recognized water as a fundamental right, as per the definition given by the CESCR as having a dual connotation: one as a fundamental right and the other as a public service.<sup>237</sup> With this decision, access to drinkable water and sanitation is constitutionally protected, even if it not expressly mentioned in the constitution. In that same year, the Constitutional Court stated that it falls to the legislative branch to create national policies and laws to further protect the fundamental right to water and make it a reality for their citizens.<sup>238</sup>

The CESCR has published six periodic reports on Columbia, and the right to water was mentioned in the two most recent reports in 2010 and 2017. In the concluding observations of the Fifth Periodic Report (2010), the CESCR mentioned its concern about how Colombia's access to water is not universal.<sup>239</sup> The Committee highlighted the Chocò region, where 90% of the population lack access to safe drinking water.<sup>240</sup> Additionally, the CESCR called for Colombia to adopt a national water policy so everyone may enjoy this right, especially those living in rural areas of the State.<sup>241</sup>

Later, the CESCR mentioned access to water in Colombia's Sixth Periodic Report (2017).<sup>242</sup> In this report, the right to water was addressed as a stand-alone issue, as well as a problem linked to another concern.<sup>243</sup> For instance, the CESCR recommended that Colombia strengthen its efforts to

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<sup>236</sup> Corte Constitucional [C.C.] [Constitutional Court], noviembre 3, 1992, Sentencia T-578/92, (Colom.).

<sup>237</sup> Corte Constitucional [C.C.] [Constitutional Court], octubre 3, 2011, Sentencia T-740/11, (Colom.).

<sup>238</sup> Corte Constitucional [C.C.] [Constitutional Court], marzo 29, 2011, Sentencia C-220/11, (Colom.).

<sup>239</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Colombia*, ¶ 23, U.N. Doc. E/C.12/COL/CO/5 (June 7, 2010), available at <https://documents.un.org/doc/undoc/gen/g10/428/51/pdf/g1042851.pdf>.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> U.N. ESCOR, *Concluding Observations on the Sixth Periodic Report of Colombia*, U.N. Doc. E/C.12/COL/CO/6 (Oct. 19, 2017), available at <https://documents.un.org/doc/undoc/gen/g17/322/96/pdf/g1732296.pdf>.

<sup>243</sup> *Id.*

provide basic services, such as water, to internally displaced persons and returnees.<sup>244</sup> As an independent issue, the Committee mentioned its concern with the disproportionate and uncontrolled use of water, as well as the pollution of rivers, “on account of mining activities.”<sup>245</sup> These activities have resulted in violations to the right to water, as well as food and health to communities, and environmental harm.<sup>246</sup> For those reasons, the CESCR recommended that Colombia “intensify efforts to ensure that its water resources are duly protected.”<sup>247</sup> The Committee specifically asks for the water being used by the mining company to not intervene with the access to safe drinking water; said mining water should be properly treated.<sup>248</sup>

Colombia’s SDG 6.1 numbers show the reality of the concerns raised by the CESCR.<sup>249</sup> As seen in the chart below, 10% of the rural population use surface water to satisfy their hydration needs. Similarly, 3% of rural populations use unimproved water. Next, the national average shows that 24% of the population uses basic service water, while the rural average is 46% and the urban average is 19%. 81% of urban populations and 41% of rural populations have access to safely managed services for a national average of 74%.

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<sup>244</sup> *Id.* at ¶ 52.

<sup>245</sup> *Id.* at ¶ 59.

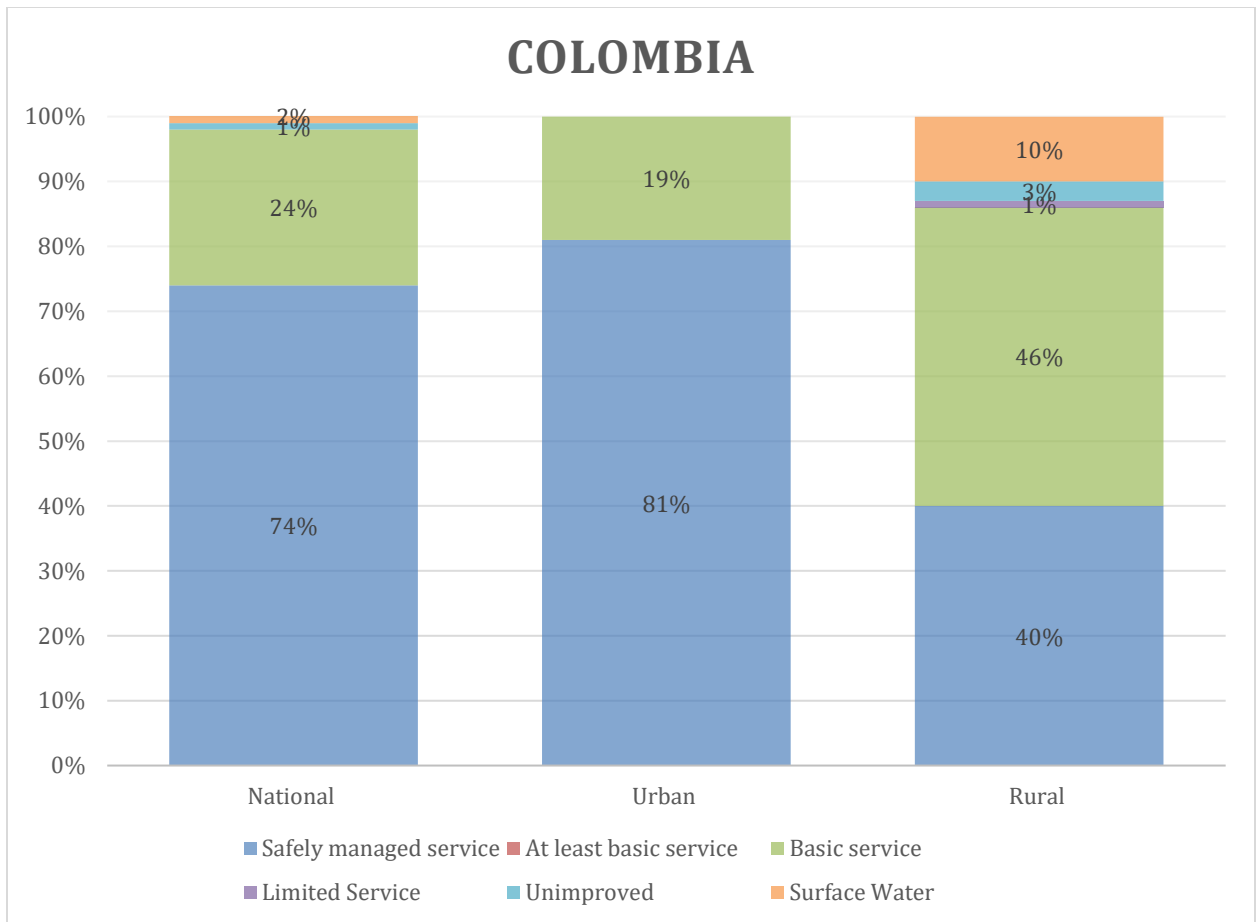
<sup>246</sup> *Id.*

<sup>247</sup> *Id.* at ¶ 60.

<sup>248</sup> *Id.*

<sup>249</sup> For the definition of each category of water services and sources refer to note 86.





Colombia's chart<sup>250</sup>

### Uruguay

The Oriental Republic of Uruguay (“Uruguay”) constitutionally recognized and guaranteed water as a human right in 2004.<sup>251</sup> Uruguay has been a State Party to the ICESCR since it ratified the treaty in 1970.<sup>252</sup> The country voted in favor of the Resolution 64/292.<sup>253</sup> Article 47 of Uruguay’s Constitution states that water is a resource essential for life and access to drinking water constitute a

<sup>250</sup> U.N. Water, *SDG 6 Snapshot in Colombia*, <https://www.sdg6data.org/en/country-or-area/Colombia> (information as of 2022).

<sup>251</sup> CONSTITUCIÓN DE LA REPÚBLICA ORIENTAL DEL URUGUAY art. 47.

<sup>252</sup> Law No. 13.751, July 11, 1969, (Uruguay), available at <http://www.impo.com.uy/bases/leyes-internacional/13751-1969/1#:~:text=Aprobado%2Fa%2opor%3A%20Ley%20N%C2%BA,derechos%20ob%C3%A1sicos%20del%20ser%20humano>.

<sup>253</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

fundamental human right.<sup>254</sup> According to the Constitution, the sustainable management of water resources is dependent on its users—members of civil society— participating in all instances of planning, management and control of water resources.<sup>255</sup> In fact, Law No. 18610, enacted in 2009, created Uruguay’s National Water Policy Law and its guiding principles. It explicitly states that all inhabitants of Uruguay have the right to access drinking water, and that the State must act to effectively protect this right.<sup>256</sup> Additionally, this law gives members of civil society the right to participate in the “formulation, implementation, and evaluation of the plans and policies that are established.”<sup>257</sup> Law No. 18610 creates obligations to the State regarding water protections for its citizens, which helps explain why Uruguay’s population has such high drinking water access.

While Uruguay’s access to safe drinking water is impressively high, the country continues to face major water challenges, primarily due to a drought that has plagued the country since 2020.<sup>258</sup> The State Sanitary Works Administration decided to pull water from river sources, but due to their close proximity to the Atlantic Ocean, the water had high levels of salinity.<sup>259</sup> According to the World Health Organization, sodium levels in water should not be above 200 milligrams per liter, and the waters from those rivers have sodium levels twice that amount.<sup>260</sup> Before the drought in 2020, Uruguay had a large supply of renewable water.<sup>261</sup> So, despite Uruguay having high access to basic

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<sup>254</sup> URUGUAY CONST. art. 47.

<sup>255</sup> URUGUAY CONST. art. 47.1.b.

<sup>256</sup> Law No. 18610, art. 2, (Uruguay), available at <https://www.impo.com.uy/bases/leyes/18610-2009>.

<sup>257</sup> *Id.* at art. 19.

<sup>258</sup> Bautista Martinez, *Running Dry: The Battle for Water Security in Uruguay and Why It Foreshadows a Greater Issue*, HARV. INT’L REV. (Oct. 20, 2023), <https://hir.harvard.edu/running-dry-the-battle-for-water-security-in-uruguay-and-why-it-foreshadows-a-greater-issue/>.

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

drinking water services, these water supplies are not necessarily safely managed, and high salinity in water can lead to devastating cardiovascular outcomes if consumed consistently.<sup>262</sup>

While Uruguay's access to safe drinking water is impressively high, ICESCR's Fifth Periodic Report (2017) on Uruguay expressed concerns over the impact of agrochemicals on water quality.<sup>263</sup> The Committee recommended that the State improve efforts of ensuring water access to marginalized and impoverished communities.<sup>264</sup> SDG Target 6.1 encourages states to achieve universal and equitable drinking water access its equitable distribution of safe drinking water to impoverished communities, as recommended by the CESCR.

Uruguay's rate of improvement to achieve SDG 6 goals has been impressive but still faces challenges. As shown in the chart below, there are some discrepancies between urban population and rural populations regarding access to a safely managed drinking water source. 100% of Uruguay's population has access to at least a basic drinking water source.<sup>265</sup> It is apparent that the state has achieved universal access to drinking water, despite the fact that it's not all safely managed. 95% of urban populations in Uruguay have access to a safely managed drinking water source, and 5% enjoy basic services. This impressive achievement starkly contrasts with that of rural populations, where 95% of people have access to only basic drinking water services, and 5% only have access to water in a limited service. Thus, while Uruguay has achieved universal access to drinking water, the lack of access to safely managed sources in rural areas displays the work that still must be done.

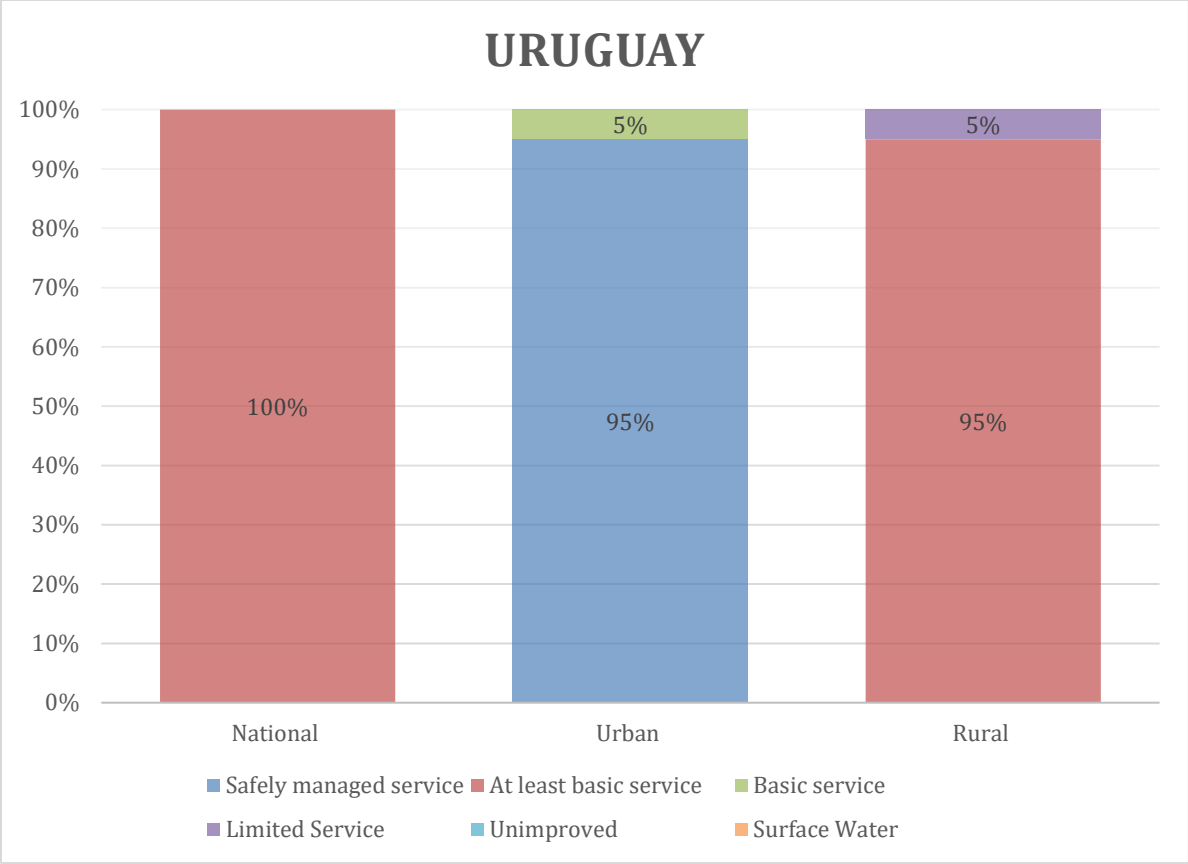
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<sup>262</sup> *Id.*

<sup>263</sup> U.N. ESCOR, *Concluding Observations on the Fifth Periodic Report of Uruguay*, ¶ 44, U.N. Doc. E/C.12/URY/CO/5 (July 20, 2017), available at <https://documents.un.org/doc/undoc/gen/g17/218/19/pdf/g1721819.pdf>.

<sup>264</sup> *Id.* at ¶ 45.

<sup>265</sup> For the definition of each category of water services and sources refer to note 86.



Uruguay’s chart<sup>266</sup>

**Mexico**

The United Mexican States (“Mexico”) is the only country in North America that recognizes water as a human right, and it does so as a constitutional guarantee. In 1981, Mexico acceded to the ICESCR, making it a State Party to the international covenant.<sup>267</sup> When Mexico voted in favor of the Resolution 64/292, the representative stated that his country recognized the right to access to clean water and sanitation and would continue to increase access through its international obligations

<sup>266</sup> U.N. Water, *SDG 6 Snapshot in Uruguay*, <https://www.sdg6data.org/en/country-or-area/Uruguay> (information as of 2022).

<sup>267</sup> Decreto Promulgatorio DO 12 de mayo de 1981 [Promulgated Decree of Mexico (May 12, 1981)], available at <http://www.ordenjuridico.gob.mx/TratInt/Derechos%2oHumanos/D50.pdf>. According to the Vienna Convention on the Law of Treaties, accession is a way for a State to consent to be bound by a treaty. An accession is an act whereby a State accepts to become a State Party to a treaty that has been signed and negotiated by other States. See Vienna Convention on the Law of Treaties, *supra* note 6, at art. 2(1)(b).

and constitutional requirements.<sup>268</sup> However, he emphasized that it was the responsibility of national governments to provide this access for their states.<sup>269</sup> Article 4 of the United Mexican States Constitution proclaims that every person has the right to access water for personal and domestic use in a healthy, sufficient, and affordable manner.<sup>270</sup> The constitution clearly defines the role of the federal and state governments in implementing water rights and access to freshwater resources. The participation of the federal, local, and municipal governments, as well as the participation of citizens, will be necessary to achieve such goals.

The CESCR's Second Periodic Report on Mexico (1994) expressed concern about some of the population in Mexico not having access to basic services like sewage and potable water.<sup>271</sup> Mexico's Third Periodic Report (1999) similarly pointed to inadequate housing and water sewage in Mexico, especially in rural areas.<sup>272</sup> The Fourth Periodic Report (2004) raised the issue that lack of water from the construction of La Parota Dam could be a violation of the affected communities' communal land and ESC rights.<sup>273</sup> La Parota Dam was a project first introduced in 2003, in the state of Guerrero, which was met with strong opposition from local and international groups.<sup>274</sup> Allegedly,

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<sup>268</sup> Voting Records Summary of Resolution 64/292, *supra* note 67; U.N. Press Release GA/10967, *supra* note 69.

<sup>269</sup> U.N. Press Release GA/10967, *supra* note 69.

<sup>270</sup> CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS art. 4.

<sup>271</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Mexico*, ¶ 9, U.N. Doc. E/C.12/1993/16 (Jan. 5, 1994), available at <https://documents.un.org/doc/undoc/gen/g94/150/46/pdf/g9415046.pdf>.

<sup>272</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant*, ¶ 27, U.N. Doc. E/C.12/1/Add.41 (Dec. 8, 1999), available at <https://documents.un.org/doc/undoc/gen/g99/461/95/pdf/g9946195.pdf>.

<sup>273</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Mexico*, art. D, U.N. Doc. E/C.12/MEX/CO/4 (June 9, 2006), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWytCsSqb%2BiO5nV1YV9BSQCrH%2BKKC%2Fvkl3HpFoPrwpuAigiQR1WCOS4KqHBEZdi%2BoZoMoqPctbO3kuhRlyABj9rmDI2ZSCSoguZkuMwwwP Mze>

<sup>274</sup> Amnesty Int'l, *La Parota Project Threatens Rights and Livelihoods*, (Aug. 4, 2007), available at <https://www.amnesty.org/fr/wp-content/uploads/2021/05/AMR410302007ENGLISH.pdf>.

the dam “would have flooded close to 17,000 hectares of land, displaced more than 25,000 people, and affected another 75,000 people downstream of the dam.”<sup>275</sup> The Fifth and Sixth Periodic Reports (2018) expressed concern over the lack of access to water and sanitation for groups internally displaced due to widespread violence and conflict within the country.<sup>276</sup> Additionally, the Committee was concerned that there was a lack of protection of water resources and suitable wastewater treatment facilities.<sup>277</sup> For that reason, the Committee urged Mexico to “intensify efforts to guarantee access to drinking water. . . .for the entire population, especially marginalized groups.”<sup>278</sup>

As seen in the chart below, 43% of Mexicans have access to safely managed water, and the remaining 57% have access to basic services.<sup>279</sup> As expressed in the chart, it is unclear which parts of Mexico’s population have access to safely managed drinking water services, which makes it difficult to analyze how to make significant progress in achieving SDG 6. But still, 2% of the rural population only have access to an unimproved water source, which does not reflect the equitable goals SDG 6 intends to achieve.

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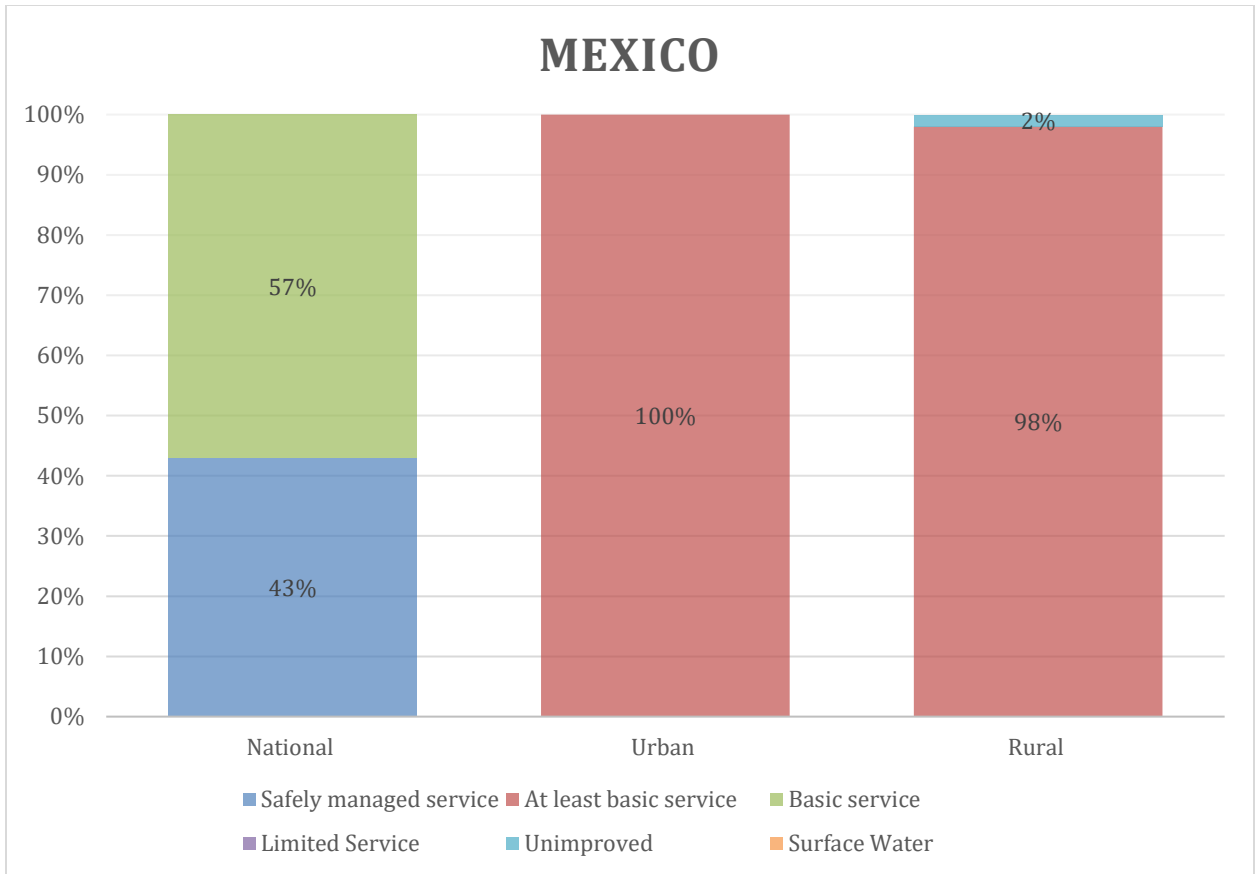
<sup>275</sup> Berkelee Lowrey-Evans, *Hasta la Victoria: La Parota Dam Cancelled*, INT’L RIVERS (Aug. 20, 2012), <https://www.internationalrivers.org/news/blog-hasta-la-victoria-la-parota-dam-cancelled/>.

<sup>276</sup> U.N. ESCOR, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Mexico*, ¶ 55, U.N. Doc. E/C.12/MEX/CO/5-6, (Apr. 17, 2018), available at <https://documents.un.org/doc/undoc/gen/g18/107/00/pdf/g1810700.pdf>.

<sup>277</sup> *Id.* at ¶ 57.

<sup>278</sup> *Id.* at ¶ 58.

<sup>279</sup> For the definition of each category of water services and sources refer to note 86.



Mexico's chart<sup>280</sup>

***B. Countries that recognize water as a human right by legislative statute***

Some States directly recognize water as a human right in a statute, but do not explicitly state the right in its constitution. For example, a State's constitution may recognize the right to universal health or a clean environment, both of which require access to water. Alternatively, a State may have voted in favor of implementing the UN Resolution 64/292, which recognized water as a human right in Latin America, but that state then may not have implemented that right in its constitution. This demonstrates how countries can avoid implementing water rights even if they are technically

<sup>280</sup> U.N. Water, *SDG 6 Snapshot in Mexico*, <https://www.sdg6data.org/en/country-or-area/Mexico> (information as of 2022).

guaranteed by the law. If water rights are not constitutionally guaranteed, there is no promise that a State will follow through with providing the resources.

### *El Salvador*

In the Republic of El Salvador (“El Salvador”), water as a human right is not a constitutional guarantee, but it is recognized by statute. El Salvador has been a State Party to the ICESCR since 1979 when it ratified the agreement.<sup>281</sup> El Salvador’s State representative voted in favor of the Resolution 64/292.<sup>282</sup> In December of 2022, the government of El Salvador approved its Water Resources Law, which prohibited the privatization of water and recognizing access to water and sanitation as a human right.<sup>283</sup> In its opening article, the law establishes that “El Salvador recognizes the human right to water being a right for every person” and provides that the State has the obligation and responsibility to guarantee its enjoyment.<sup>284</sup> This law also created a governmental entity, the Salvadorian Water Authority (“ASA” for its initials in Spanish), which is responsible for governing water usage.<sup>285</sup> While the right to water is not a constitutional guarantee in El Salvador, the Constitutional Chamber of the Supreme Court of Justice of El Salvador ruled that the right to enjoy the environment encompasses all resources, including water, and established that the right to access to water is ascribed to the right to the environment.<sup>286</sup> Additionally, the Court declared that

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<sup>281</sup> Decree No. 27, November 23, 1979, (El Salvador), available at <https://www.pddh.gob.sv/portal/wp-content/uploads/2017/09/Pacto-Internacional-de-Derechos-Economicos-Sociales-y-Culturales.pdf>.

<sup>282</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>283</sup> Decree No. 253, January 4, 2022, (El Salvador), available at <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/38040F9D-D229-4C16-8F55-51EF058A2FoA.pdf>.

<sup>284</sup> *Id.* at art. 1.

<sup>285</sup> *Id.* at art. 10

<sup>286</sup> Amparo Sentence 513-2012, (Dec. 15, 2014), Constitutional Chamber of the Supreme Court of Justice of El Salvador, at 7, available at <https://www.jurisprudencia.gob.sv/DocumentosBodega%2FD%2F1%2F2010-2019%2F2014%2F12%2FAC26E.PDF>.



“water is an indispensable element for life.”<sup>287</sup> With this amparo decision, the Supreme Court of Justice of El Salvador opened the liability to the government for interrupting access to water at a constitutional level, which may be used as a legal argument for legislation and policy surrounding drinking water access.

In Periodic Reports 3-5 (2011), the CESCR highlights water in two different issues: right to housing, and malnutrition and the right to food.<sup>288</sup> Regarding the right to housing, the CESCR showed their concern at the lack of water and sanitation, especially in rural populations.<sup>289</sup> For that reason, the report urged El Salvador to provide water and sanitation to the dwellings.<sup>290</sup> On the right to food, the Committee highlights its satisfaction with the 2012 constitutional amendments which would incorporate the right to food and access to water; however, it was not ratified by the time of the report.<sup>291</sup>

Lastly, the Sixth Periodic Report (2019) of El Salvador raised the right to water and sanitation as a standalone issue.<sup>292</sup> The CESCR expressed its concern over the fact that El Salvador had not recognized the right to water in its constitution.<sup>293</sup> Additionally, the Committee mentioned its concern over the disparity in access to water between rural and urban populations, and the lack of information on measures about the impact on extractive activities in transboundary waters.<sup>294</sup> For

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<sup>287</sup> *Id.*

<sup>288</sup> U.N. ESCOR, *Concluding Observations on the Combined Third, Fourth and Fifth Periodic Reports of El Salvador*, ¶ 18 and 20, U.N. Doc. E/C.12/SLV/CO/3-5 (June 19, 2014), available at <https://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/SLV/CO/3-5&Lang=E>.

<sup>289</sup> *Id.* at ¶ 18.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.* at ¶ 20.

<sup>292</sup> U.N. ESCOR, *Concluding Observations on the Sixth Periodic Report of El Salvador*, ¶ 50-51 U.N. Doc. E/C.12/SLV/CO/6 (Nov. 9, 2022), available at <https://documents.un.org/doc/undoc/gen/g19/335/14/pdf/g1933514.pdf>.

<sup>293</sup> *Id.* at ¶ 50.

<sup>294</sup> *Id.*

those reasons, the report recommended that El Salvador makes more effort in ensuring protection of its water resources, providing water supply, and taking measures to ensure transboundary waters are not impacted by extractive activities.<sup>295</sup> Finally, the CDESCR mentioned insufficient access to drinking water as a concern related to the issue of adequate standard of living in prisons, and recommend that persons deprived of liberty receive clean drinking water.<sup>296</sup>

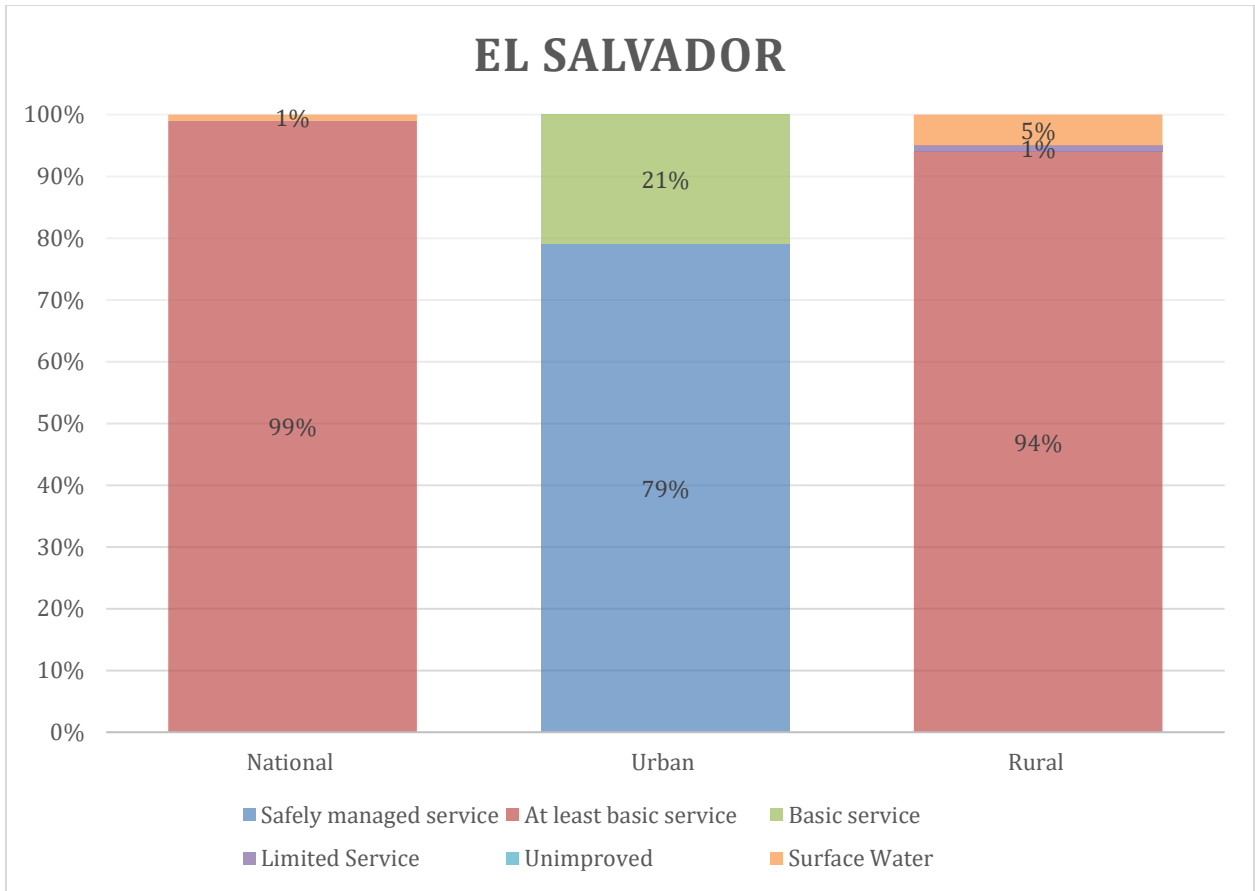
As seen in the chart below, 99% of El Salvador's population have access to at least basic drinking water services, and 1% rely on surface water.<sup>297</sup> 79% of urban populations have access to a safely managed drinking water services, while 21% have access to basic drinking water services. Although 94% of El Salvador's rural populations have access to at least basic drinking water services, 1% have access to limited services, and a concerning 5% of rural populations rely on surface water sources. Increasing the treatment of surface water and access to safely managed drinking water is vital.

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<sup>295</sup> *Id.* at ¶ 51.

<sup>296</sup> *Id.* at ¶ 55.

<sup>297</sup> For the definition of each category of water services and sources refer to note 86.



El Salvador's chart<sup>298</sup>

### Chile

The Republic of Chile (“Chile”) recognizes water as a human right, but not as a constitutional guarantee. Chile became a State Party to the ICESCR in 1972 when it ratified it, and promulgated in 1989.<sup>299</sup> Additionally, Chile voted in favor of the Resolution 64/292.<sup>300</sup> The Chilean Water Code, the law that regulates the nation’s distribution of water, was first created in 1981 but has been reformed

<sup>298</sup> U.N. Water, *SDG Snapshot in El Salvador*, <https://www.sdg6data.org/en/country-or-area/El%20Salvador> (information as of 2022).

<sup>299</sup> Decree No. 326, April 28, 1989, (Chile), available at <https://www.bcn.cl/leychile/navegar?idNorma=12382>.

<sup>300</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

many times in recent years, last amended in May 2024.<sup>301</sup> In 2022, the Chilean legislative branch reformed the Chilean Water Code, making 110 modifications, including the recognition of access to water as a human right.<sup>302</sup> Law No. 21.435 has been the most substantial reform to the Code and established specific provisions regarding water rights in Chile.<sup>303</sup> Since that reform, Article 5 of the Chilean Water Code now provides that “access to drinking water and sanitation is an essential and inalienable human right that must be guaranteed by the State.”<sup>304</sup> The law also required that individuals who hold water use rights register their rights with the Water Property Registry.<sup>305</sup>

The update established that specific volumes of water shares will be allocated to individuals and these shares can be renewed every thirty years, and authorities can grant shares for shorter periods if necessary.<sup>306</sup> The volume of water depends on the availability of supply and sustainability of underground sources. Previously, there was no renewal period, and water shares did not depend on availability of supply, this update allows for more efficient water usage and a fairer distribution of water resources.<sup>307</sup>

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<sup>301</sup> D.F.L. No. 1.122, August 13, 1981, (Chile), available at <https://www.bcn.cl/leychile/navegar?idNorma=5605> [hereinafter the Chilean Water Code]. The Chilean Water Code has received many amendments since its creation. For that reason, it may be confusing to differentiate between the most updated version of the Chilean Water Code, and specific laws that made targeted changes to sections, articles or even paragraphs. In order to refrain readers from confusion, the authors will refer to the most updated version of the Chilean Water Code by just stating “Chilean Water Code” and the laws amending it as “Law No. x, which amended the Chilean Water Code”.

<sup>302</sup> Law No. 21.435 of Chile, April 6, 2022, (Chile), available at <https://www.bcn.cl/leychile/navegar?idNorma=1174443&idParte=10322783&idVersion=2022-04-06>.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.* at art. 5.

<sup>305</sup> *Id.* at art. 6.

<sup>306</sup> *Id.*

<sup>307</sup> See generally *id.*

In 2021, a year prior to the major reforms, the Supreme Court of Chile heard a constitutional case, whereby the parties were disputing the lack of water affecting the Petorca province.<sup>308</sup> In its decision, the Court stated that Chile, by ratifying different international treaties, had voluntarily adopted binding obligations to protect access to water as a human right.<sup>309</sup> Some of the international documents mentioned by the Court are the American Convention on Human Rights and General Comment No. 15.<sup>310</sup> As per the nation's constitution, "It is the duty of the State's bodies to respect and promote those [essential] rights, guaranteed by this Constitution, as well as by international treaties which have been ratified by Chile and that are in force."<sup>311</sup>

The CESCR's Periodic Report 3 (2004) on Chile expressed approval of the State's creation of the Indigenous Land and Water Fund, which is meant to improve water access to Indigenous people.<sup>312</sup> However, in the Periodic Report 4 (2015), the committee expressed concern over the lack of access to drinking water and sanitation services, particularly in rural areas, and the disproportionate use of water by the mining industry.<sup>313</sup> The committee recommended that the State intensify measures to ensure access to drinking water and sanitation services for disadvantaged and marginalized groups, including adopting standards to process wastewater in mining.<sup>314</sup>

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<sup>308</sup> Corte Suprema de Justicia [C.S.J.] [Supreme Court], 23 de marzo de 2021, Rol de la causa: 131.140-2020, constitucional (Chile), available at <https://www.indh.cl/bb/wp-content/uploads/2021/03/CS-revoca-Recurso-agua-petorca.pdf>

<sup>309</sup> *Id.* At 9

<sup>310</sup> *Id.* at 11-14.

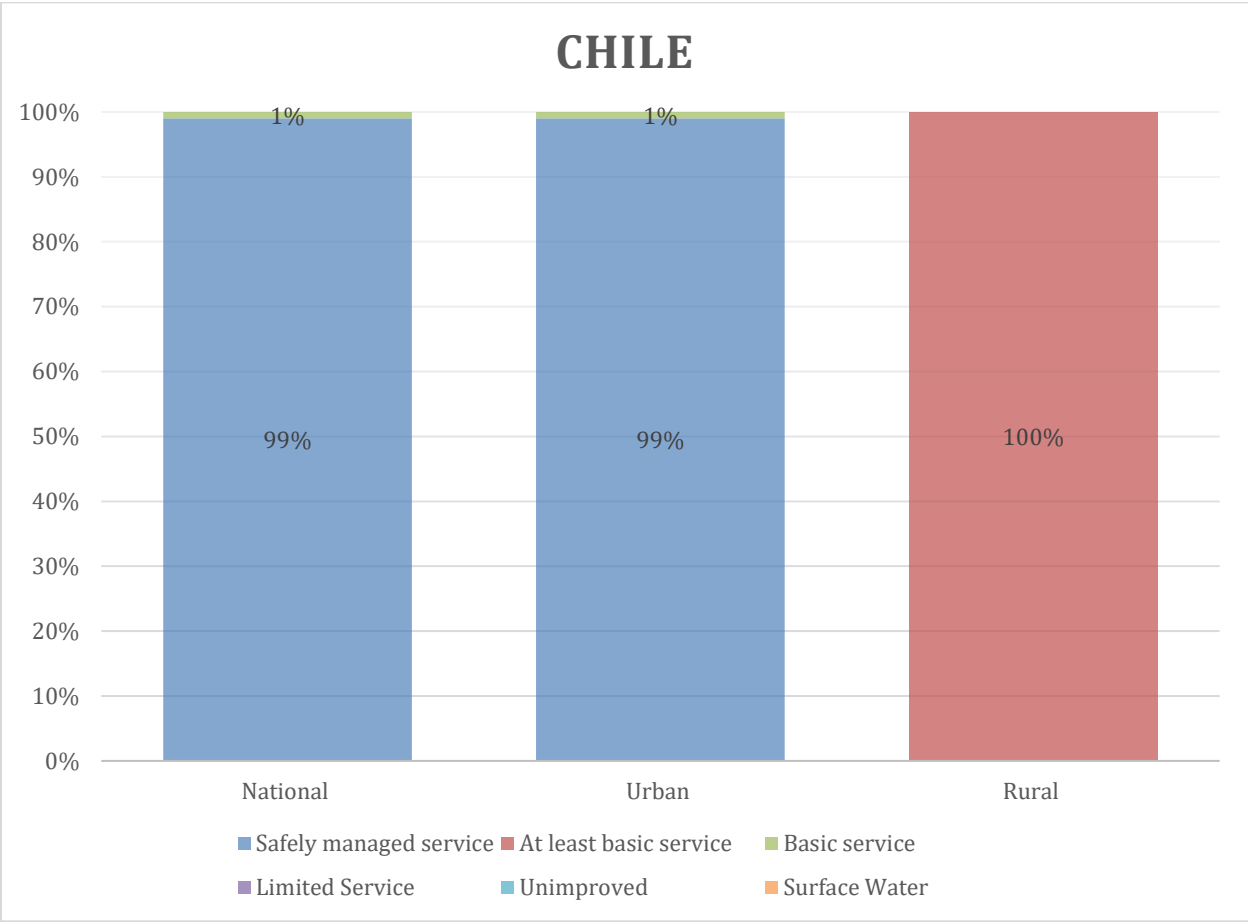
<sup>311</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 5

<sup>312</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Chile*, U.N. Doc. E/C.12/1/Add.105 (Dec. 1, 2004), available at <https://documents.un.org/doc/undoc/gen/go4/449/65/pdf/go444965.pdf>.

<sup>313</sup> U.N. ESCOR, *Concluding Observations on the Fourth Periodic Report of Chile*, ¶ 27, U.N. Doc. E/C.12/CHL/CO/4 (July 7, 2015), available at <https://documents.un.org/doc/undoc/gen/g15/150/05/pdf/g1515005.pdf>.

<sup>314</sup> *Id.*

Chile’s progress towards the SDG 6.1 goals is moderately improving, and out of the countries in the Americas, is one of the closest to reaching these goals by 2030 or shortly thereafter. 99% of Chile’s population have access to safely managed water services, and the remaining 1% have access to basic services.<sup>315</sup> The same goes for urban populations; however, 100% of rural populations only have access to at least a basic drinking water service. Even though these statistics are impressive when compared to other countries, the discrepancy between urban and rural water access demonstrates a need for more equitable water distribution and treatment, as CESCR recommended.



Chile’s chart<sup>316</sup>

<sup>315</sup> For the definition of each category of water services and sources refer to note 86.

<sup>316</sup> U.N. Water, *SDG 6 Snapshot in Chile*, [https://www.sdg6data.org/en/country-or-area/Chile#anchor\\_6.1.1](https://www.sdg6data.org/en/country-or-area/Chile#anchor_6.1.1) (information as of 2022).

## Paraguay

The Republic of Paraguay (“Paraguay”) recognizes the human right to water by statute, but not in its constitution. Paraguay became a State party to the ICESCR in 1992 with its accession to the international covenant.<sup>317</sup> Paraguay voted in favor to adopt UN Resolution 64/292.<sup>318</sup> Paraguay’s constitution does not directly state drinking water as a human right. However, the constitution states that it is the responsibility of the departmental government to organize services, such as public works, electricity, and drinking water, that will affect more than one municipality.<sup>319</sup> While there is mention of drinking water services in Paraguay’s constitution, there is no guaranteed right to drinking water for its citizens.<sup>320</sup> Paraguayan Law 3239, published in October of 2007, outlines the regulations and management of all waters within Paraguayan territory.<sup>321</sup> It states that the National Water Resources Policy will focus on guaranteeing access to drinking water for all inhabitants since it is recognized as a human right.<sup>322</sup> Additionally, the Law establishes as a principle that water is a human right, and it is the government’s duty to guarantee that right in both quantity and quality.<sup>323</sup>

In 2005, the Inter-American Court of Human Rights decided the *Yakye Axa Indigenous Community v. Paraguay*, which involved a territorial dispute between the Tribe and State.<sup>324</sup> The state of Paraguay failed to recognize Yakye Axa’s property rights for decades, and Inter-American Court ultimately decided that the State had violated the tribe’s rights to property and protection, as

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<sup>317</sup> Law No. 04/92 (Mar. 24, 1992) (Uruguay), available at

<https://www.pj.gov.py/images/contenido/secretariadegenero/marcolegal/LEY-4-1992.pdf>.

<sup>318</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>319</sup> CONSTITUCIÓN DE LA REPÚBLICA DE PARAGUAY art. 163.

<sup>320</sup> *See id.*

<sup>321</sup> Law No. 3239, art. 1 (July 10, 2007) (Paraguay), available at <https://faolex.fao.org/docs/pdf/par87462.pdf>.

<sup>322</sup> *Id.* at art. 4.

<sup>323</sup> *Id.* at art. 3(b).

<sup>324</sup> *Yakye Axa Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 125 (2005), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_125\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf).

well as their rights to health due to their limited ability to sustain their traditional methods of livelihood, including access to clean water.<sup>325</sup> The Tribe's lack of access to clean water for decades also greatly impaired consumption and their ability to hunt, fish, and farm.<sup>326</sup> Additionally, the Court found that "Special detriment to the right to health, ... detriment to the right to ... access to clean water, [has] a major impact on the right to a decent existence and basic conditions to exercise other human rights. . ."<sup>327</sup> In the decision, the Court established that "the State must provide them with the basic services and goods required for their subsistence," as long as the Indigenous community remains landless.<sup>328</sup> This decision reflects the accountability sentiment that the Inter-American Court has imposed on States when they fail to act, which can be as harmful as an active violation.

While Paraguay's score for SDG 6 appears to be improving, significant challenges remain for the country to meet SDG 6 goals by 2030. The CESCR's First Periodic Report (1996) and Periodic Report 2-3 (2008) in Paraguay did not discuss the right to water. However, in the CESCR's Fourth Periodic Report (2015), the Committee expressed concern for the lack of drinking water and sanitation in Paraguay, particularly in rural areas.<sup>329</sup> The Committee urged the State party to take steps to address these issues.<sup>330</sup>

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<sup>325</sup> See Ushma Vyas, *Yakye Axa Indigenous Community v. Paraguay*, 38 LOY. L.A. INT'L & COMP. L. REV. 1601 (2016), available at [https://iachr.ils.edu/sites/default/files/iachr/Cases/Yakye\\_Axa\\_Indigenous\\_Community\\_v\\_Paraguay/vyas\\_yakye\\_axa\\_indigenous\\_community\\_v.\\_paraguay.pdf](https://iachr.ils.edu/sites/default/files/iachr/Cases/Yakye_Axa_Indigenous_Community_v_Paraguay/vyas_yakye_axa_indigenous_community_v._paraguay.pdf).

<sup>326</sup> *Id.* at 1611-12.

<sup>327</sup> *Yakye Axa Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 125 (2005) at p. 81 / ¶ 167.

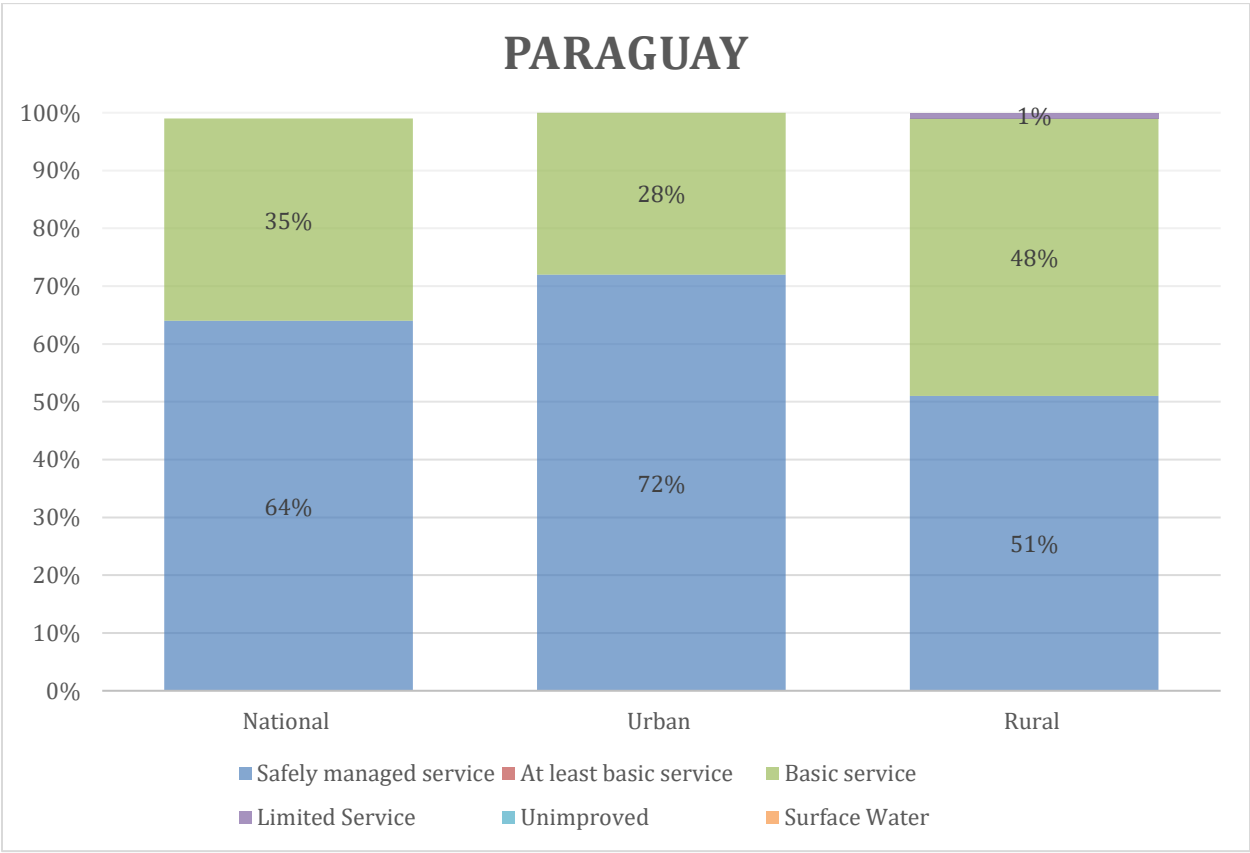
<sup>328</sup> *Id.* at 104, ¶ 242.4.

<sup>329</sup> U.N. ESCOR, *Concluding Observations on the Fourth Periodic Report of Paraguay*, ¶ 27, U.N. Doc. E/C.12/PRY/CO/4 (Mar. 20, 2015), available at <https://documents.un.org/doc/undoc/gen/g15/o6o/11/pdf/g15o6o11.pdf>.

<sup>330</sup> *Id.*



As seen in the chart below, 64% of Paraguay’s national population have access to a safely managed drinking water, and 35% have access to basic water services.<sup>331</sup> From that, 51% of people in rural areas have access to a safely managed drinking water service and 48% of this population has access to basic services, as opposed to 72% of the population in urban areas enjoying safely managed water and the rest 28% having access to basic service. Additionally, the subset of the population that only have access to limited services are in rural areas.



Paraguay’s chart<sup>332</sup>

<sup>331</sup> For the definition of each category of water services and sources refer to note 86.

<sup>332</sup> U.N. Water, *SDG 6 Snapshot in Paraguay*, <https://www.sdg6data.org/en/country-or-area/Paraguay> (information as of 2022)

## Venezuela

The Bolivarian Republic of Venezuela (“Venezuela”) recognizes the right to water by statute. Venezuela became a State Party to the ICESCR in 1978 upon its ratification.<sup>333</sup> Additionally, Venezuela voted in favor of passage of the Resolution 64/292.<sup>334</sup> During the Assembly meeting to discuss and vote on the resolution, the Venezuela’s representative commented that they rejected the fact that water had become a commodity, since it is a necessity for life.<sup>335</sup>

In January 2007, Venezuela passed the Water Law of 2007, establishing that access to water is a fundamental human right and is one of the principles for integrated water management.<sup>336</sup> Later, in 2018, Venezuela passed the Water Law Regulation, which complements the Water Law of 2007.<sup>337</sup> However, this law does not regulate or mention access to water as a human right. Moreover, only one of Venezuela’s periodic reports has mentioned access to water. Venezuela’s Third Periodic Report (2015) recommended that the country adopt a comprehensive social housing strategy that ensures the availability of adequate basic services, such as water.<sup>338</sup>

In Venezuela, 93% of the national population has access to at least basic drinking water services, while only 6% of the population has access to safely managed drinking water services, as seen in the chart below.<sup>339</sup> According to the SDG 6 information provided by the UN, there is no information on access to drinking water in urban and rural populations. This is highly concerning given that without

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<sup>333</sup> U.N. Status of Ratification of ICESCR, *supra* note 193.

<sup>334</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>335</sup> U.N. Press Release GA/10967, *supra* note 69.

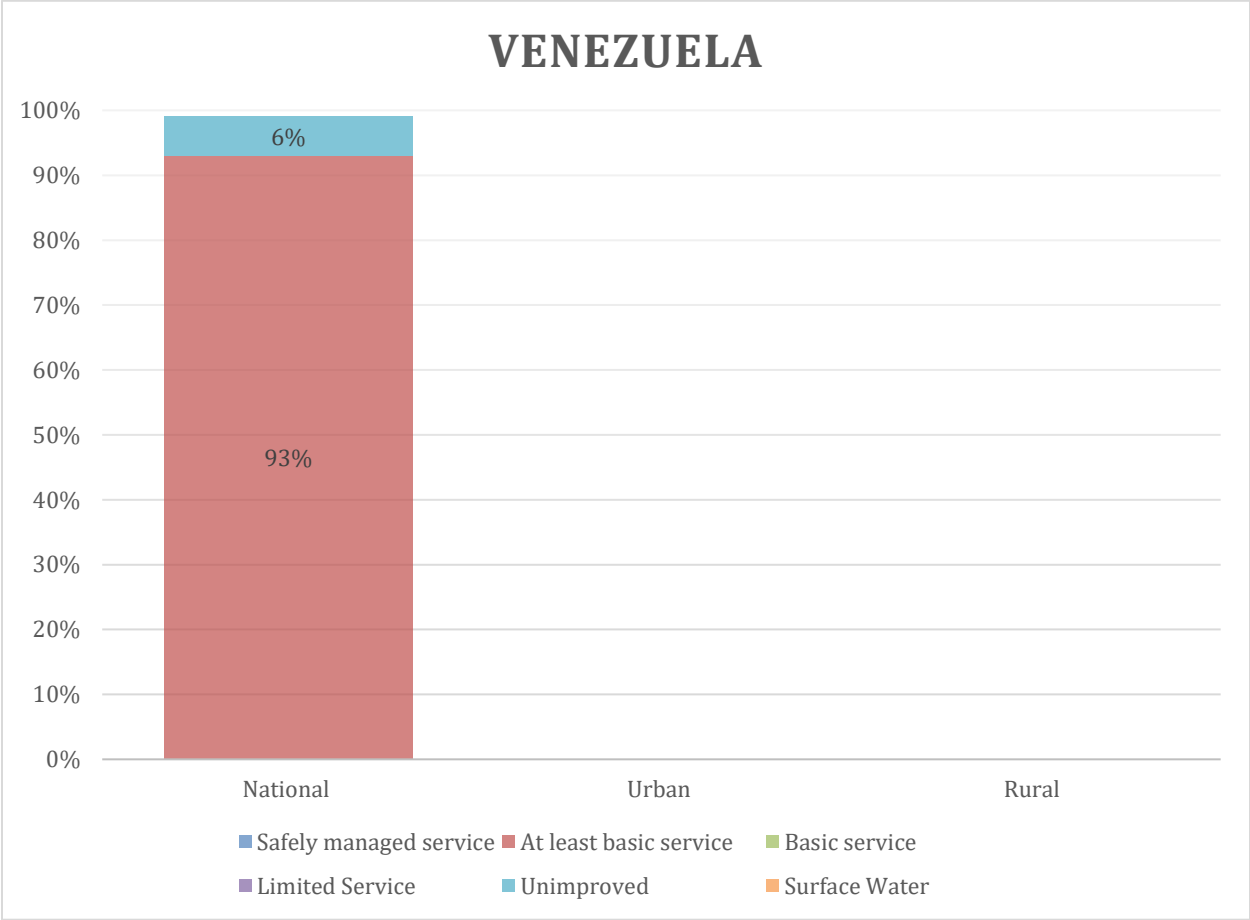
<sup>336</sup> Official Gazette No. 38.595 (Jan. 2, 2007) (Venezuela), available at <https://faolex.fao.org/docs/pdf/ven69647.pdf>.

<sup>337</sup> Decree No. 3367, Water Law Regulation, (Apr. 12, 2018) (Venezuela), available at <https://faolex.fao.org/docs/pdf/ven182736.pdf>.

<sup>338</sup> U.N. ESCOR, *Concluding Observations on the Third Periodic Report of the Bolivarian Republic of Venezuela*, ¶ 25(d), U.N. Doc. E/C.12/VEN/CO/3 (July 7, 2015), available at <https://documents.un.org/doc/undoc/gen/g15/150/11/pdf/g1515011.pdf>.

<sup>339</sup> For the definition of each category of water services and sources refer to note 86.

this information, a fair assessment of the needs of rural and urban populations cannot be achieved. Besides being unable to meet the SDG 6 goals by 2030, by not sharing the information on the water access status of its citizens, Venezuela may be subject to liability for interruptions and violations of this human right, given that it is recognized in its legislation.



Venezuela’s chart<sup>340</sup>

***C. Countries where water is not recognized as a human right by statute or constitution***

The States that do not recognize access to water as a human right in their constitution or statute leaves the people residing in their nations with limited legal mechanisms to protect this human right.

<sup>340</sup> U.N. Water, *SDG 6 Snapshot in Venezuela (Bolivarian Republic of)*, [https://www.sdg6data.org/en/country-or-area/Venezuela%20\(Bolivarian%20Republic%20of\)](https://www.sdg6data.org/en/country-or-area/Venezuela%20(Bolivarian%20Republic%20of)) (information as of 2022).

Some of these countries may still have alternative methods to bring justice to those harmed by a violation or obstruction of this right, like the writ of amparo or constitutional courts. However, these options are very limited in some of the countries analyzed and do not provide certainty as to outcomes.

### ***Argentina***

The Argentine Republic (“Argentina”) does not recognize the right to access water in their constitution or legislation, however the Supreme Court of Argentina has instructed courts to protect the right. Argentina is a State party to ICESCR since 1986 when it ratified the treaty.<sup>341</sup> When voting in favor of the Resolution 64/292, the representatives of the country maintained that their domestic law remains subject to the major human rights treaties and stated that water access is a primary responsibility of the State.<sup>342</sup> Remarkably, the first UN Water Conference was held in Mar del Plata, Argentina, in 1977.<sup>343</sup>

The National Constitution of Argentina recognizes the right to the protection of health, which differs from other constitutions analyzed because it does not reflect explicitly the right to health.<sup>344</sup> Furthermore, the constitution expresses the right to a healthy environment for human development; again, making the government responsible for the protection of this right.<sup>345</sup> The Argentinian Constitution also places several international treaties in its constitutional hierarchy,

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<sup>341</sup> Law No. 23.313, Apr. 17, 1986, (Arg.), available at <https://www.argentina.gob.ar/normativa/nacional/ley-23313-23782/texto>.

<sup>342</sup> U.N. Press Release GA/10967, *supra* note 69 (the Argentinian representative did not clarify which treaties they are exactly referring to, but it would not be unjust to imply them to be the Core International Human Rights Instruments).

<sup>343</sup> Jacob Amengor, *UN Water Conference: From Mar del Plata to New York and Beyond*, INT’L WATER ASS’N (Mar. 17, 2023), <https://iwa-network.org/un-water-conference-from-mar-del-plata-to-new-york-and-beyond/>.

<sup>344</sup> Art. 42, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

<sup>345</sup> *Id.* at art. 41.

which is superior to domestic laws, including the ICESCR.<sup>346</sup> Finally, Argentina understands that while there are rights enumerated in the constitution, this fact does not negate the existence of other rights not enumerated.<sup>347</sup> The Constitution also gives provinces of the State the authority to regulate the natural resources within their territories.<sup>348</sup>

In 2014, the Supreme Court of Justice of Argentina heard the case *Kersich, Juan Gabriel vs. Aguas Bonaerenses* and found that: 1) the contamination of water in a community that affects many individuals should be dealt with in a collective proceeding, instead of individual cases, and 2) maintained an injunction ordering the supply of drinking water while the case is being heard in the lower courts.<sup>349</sup> The Court stated that access to drinking water directly impacts the life and health of persons, and should be protected by judges.<sup>350</sup> Moreover, as a basis for its decision, the Court cited international documents, such as Resolution 64/292 and General Comment No. 15.<sup>351</sup> However, it is unclear whether this decision creates a new responsibility to Argentina. On the one hand, it creates an obligation against a company, while citing the human right to water. On the other hand, the Court did not explicitly create this responsibility upon the State or government, only judges; it does not include parameters, guidelines, or duties to the other branches of government in Argentina, only the judicial. For that reason, it may be concluded that, based on this decision, the legislative branch of Argentina should recognize the human right to drinking water, as well as

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<sup>346</sup> *Id.* at art. 75(22).

<sup>347</sup> *Id.* at art. 33.

<sup>348</sup> *Id.* at art. 124.

<sup>349</sup> Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 2/12/2014, Recurso de hecho *Kersich, Juan Gabriel y otros c/Aguas Bonaerenses S.A. y otros s/ amparo*, Fallos (CSJ 42/2013 (49-K)) (Arg.), available at <https://www.cij.gov.ar/nota-14507-La-Corte-dijo-que-el-acceso-al-agua-potable-incide-directamente-sobre-la-vida-y-la-salud-de-las-personas--por-lo-que-debe-ser-tutelado-por-los-jueces.html>.

<sup>350</sup> *Id.* at 11.

<sup>351</sup> *Id.* at 12.

institute regulations to ensure its protection. In a similar case, the court dealt with water cuts due to non-payment, and the judge adopted a protective measure holding that the cuts were unjustified and considered a violation of constitutional rights.<sup>352</sup>

The CESCR has mentioned the right to water and sanitation in two separate periodic reports. They were first mentioned in Argentina's Third Periodic Report (2011).<sup>353</sup> The Committee introduced the topic in response to the lithium exploitation in the Salta and Jujuy provinces, and consequently, they were concerned that these practices have had a negative effect on access to water, as well as subsistence, for Indigenous communities.<sup>354</sup> Later, Argentina's Fourth Periodic Report (2018) mentioned the right to water.<sup>355</sup> It came up in three different topics: poverty, housing, and mining and the environment.<sup>356</sup> For poverty, the Committee commented on their concern of massive increases in the cost of utilities, including water, in vulnerable groups and the middle class.<sup>357</sup> The CESCR recommended that Argentina implement a long-term poverty reduction strategy, including human rights objectives.<sup>358</sup>

According to the SDG 6 data provided by the chart below, there is no information on Argentina's national or rural access to drinking water services or sources. 100% of urban populations have access to at least basic drinking water services.<sup>359</sup> In order to properly assess Argentina's progress

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<sup>352</sup> Acción de Amparo Quevedo, Miguel Angel, Marquez, Ramón Hector, Boursiac, Ana María, Pedernera Luis Oscar y Otros c/Agua Cordobesas S.A., Civ. y Com. Córdoba, 8/4/2002, no. 260.

<sup>353</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Argentina*, ¶ 9, U.N. Doc. E/C.12/ARG/CO/3 (Dec. 14, 2011), available at <https://documents.un.org/doc/undoc/gen/g11/477/34/pdf/g1147734.pdf>.

<sup>354</sup> *Id.*

<sup>355</sup> U.N. ESCOR, *Concluding Observations on the Fourth Periodic Report of Argentina*, ¶¶ 43,47, U.N. Doc. E/C.12/ARG/CO/4 (Nov. 1, 2018), available at <https://documents.un.org/doc/undoc/gen/g18/329/63/pdf/g1832963.pdf>.

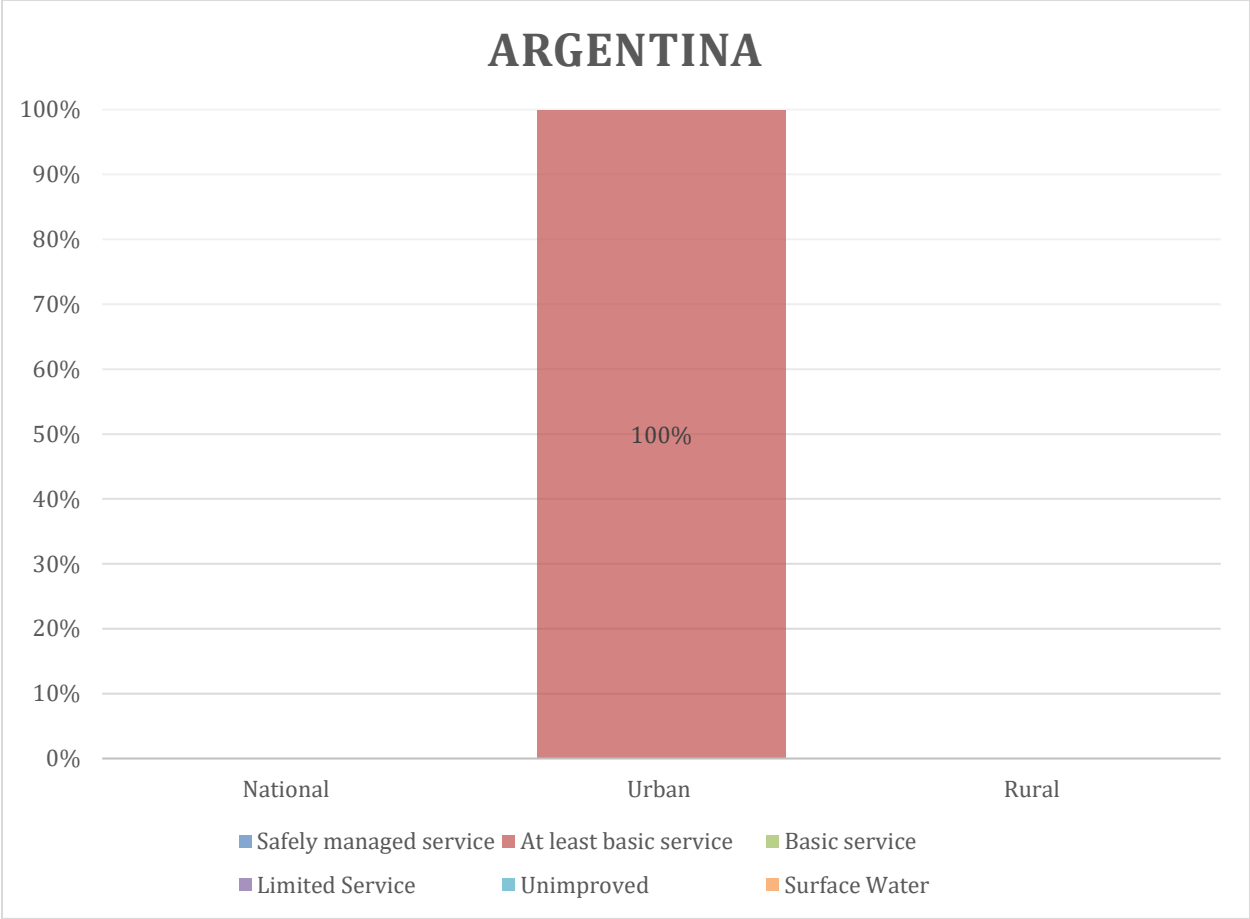
<sup>356</sup> *Id.* at ¶¶ 43, 47, 57-58.

<sup>357</sup> *Id.* at ¶ 43.

<sup>358</sup> *Id.* at ¶ 44.

<sup>359</sup> For the definition of each category of water services and sources refer to note 86.

towards achieving SDG 6, there must be more information on access to safely managed drinking water services and basic drinking water services. This information is especially critical to rural populations, which typically experience lower drinking water quality and struggle to access to a safely managed drinking water service.



Argentina’s chart<sup>360</sup>

<sup>360</sup> U.N. Water, *SDG 6 Snapshot in Argentina*, <https://www.sdg6data.org/en/country-or-area/Argentina> (information as of 2022).

## *Guatemala*

The Republic of Guatemala (“Guatemala”) is among the countries that do not recognize water as a human right in statute or constitution but references this fundamental right in a national policy. Guatemala ratified the ICESCR in 1988, making them a Member State party to the treaty.<sup>361</sup> Guatemala was also one of the States to vote in favor of the Resolution 64/292.<sup>362</sup> However, when voting, its representative commented that by adopting or voting in favor of the resolution, Guatemala’s approval did not “lead to any right or obligation at the international level.”<sup>363</sup>

Guatemala’s Constitution establishes the water regime in the sovereign State by declaring that all waters are public property, inalienable and imprescriptible.<sup>364</sup> Moreover, the constitution expresses the right to health without any discrimination, establishing the duty of the government to guarantee this right.<sup>365</sup> Additionally, the Guatemalan government has the constitutional duty to prevent environmental pollution and maintain an ecological balance.<sup>366</sup> Finally, the constitution declares that treaties and conventions that have been ratified by Guatemala will have supremacy over domestic law, when considering human right matters.<sup>367</sup>

In 2013, Guatemala passed Governmental Decree No. 418-2013, which approves the National Policy for the Water and Sanitation Sector (“National Policy”).<sup>368</sup> The document highlights, as a principle of National Policy, that access to water and sanitation as a human right is an important

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<sup>361</sup> Decree No. 69-87 (Oct. 6, 1987) (Guatemala), available at <https://conap.gob.gt/wp-content/uploads/2020/08/4-Decreto69-1987Congreso.pdf>.

<sup>362</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>363</sup> U.N. Press Release GA/10967, *supra* note 69.

<sup>364</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, art. 127.

<sup>365</sup> *Id.* at art. 93.

<sup>366</sup> *Id.* at art. 97.

<sup>367</sup> *Id.* at art. 46.

<sup>368</sup> Governmental Decree No. 418-2013 (Oct. 17, 2013) (Guatemala).



element to live a dignified life.<sup>369</sup> While it is mentioned in the National Policy that water and sanitation are necessary for life, and therefore are human rights, it is necessary to analyze whether recognizing a human right in a national policy translates to it becoming a duty guaranteed by the State, or if it is necessary that a human right be recognized in statute.

It is common to have laws that recognize a human right followed up by a national policy to regulate the access to that right, but this is not the case in Guatemala. While the question of whether a human right recognized by a national policy imposes legal responsibility and liability on a State is outside of the scope of this paper, it would be worthwhile to explore further. International courts have declared that the right to life also includes the right against obstruction for access to conditions that make life dignified.<sup>370</sup> Later, in 2016, several legislators presented a bill to create a legal framework for water, where access to water and sanitation is lawfully recognized as a human right, but it never became a law.<sup>371</sup>

In Guatemala's Periodic Reports, the CESCR has noted the right to water only once, specifically in its Fourth Periodic Report (2022).<sup>372</sup> In its observations, the Committee, noted its concern for the country's "limited access to good quality drinking water and adequate sanitation services."<sup>373</sup> Because of this, the CESCR has recommended that Guatemala adopt a law that recognizes water as

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<sup>369</sup> GOBIERNO DE GUATEMALA, POLÍTICA NACIONAL DEL SECTOR DE AGUA POTABLE Y SANEAMIENTO [NATIONAL POLICY FOR THE WATER AND SANITATION SECTOR], at 5, available at [https://www.segeplan.gob.gt/downloads/clearinghouse/politicas\\_publicas/Salud/Politica\\_Nacional\\_del\\_Sector\\_de\\_Agua\\_Potable\\_y\\_Saneamient.pdf](https://www.segeplan.gob.gt/downloads/clearinghouse/politicas_publicas/Salud/Politica_Nacional_del_Sector_de_Agua_Potable_y_Saneamient.pdf).

<sup>370</sup> Villagran Morales y Otros vs. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999)

<sup>371</sup> Bill No. 5070 (May 18, 2016) (Guatemala), available at [https://www.congreso.gob.gt/assets/uploads/info\\_legislativo/iniciativas/Registro5070.pdf](https://www.congreso.gob.gt/assets/uploads/info_legislativo/iniciativas/Registro5070.pdf).

<sup>372</sup> U.N. ESCOR, *Concluding Observations on the Fourth Periodic Report of Guatemala*, ¶ 40, U.N. Doc. E/C.12/GTM/CO/4 (Nov. 11, 2022), available at <https://documents.un.org/doc/undoc/gen/g22/583/o8/pdf/g22583o8.pdf>.

<sup>373</sup> *Id.*

a human right, addresses climate change, and sets penalties for violations, as well as create a system for waste water treatment.<sup>374</sup> Additionally, the CESCR points out that marginalized and rural communities are more likely to lack drinking water access and sanitation, which they suggest to be required in the proposed statute.<sup>375</sup> Finally, the CESCR urges Guatemala to work with legislators, policymakers, municipal authorities, and other governmental agencies to make its requirements a reality in the country.<sup>376</sup> However, Guatemala has yet to implement the changes in their legislation.

As seen in the chart, in Guatemala, 56% of the national population has access to safely managed drinking water services, while 38% of the population has access to basic drinking water services.<sup>377</sup> 1% of the national population have access to water in a limited service, while 3% have access to an unimproved water source and 2% have access to only surface water, both of which are concerning figures. 66% of urban populations have access to safely managed drinking water services, and 32% have access to basic services, yet 2% rely on unimproved water sources. On the other hand, only 46% of rural populations have access to safely managed drinking water services and 45% have access to basic services; meanwhile, 2% of the rural population access water as a limited service, 4% as unimproved water, and 3% as surface water. Guatemala still has significant progress to make since large portions of the population do not have access to a safely managed drinking water source, or even basic service.

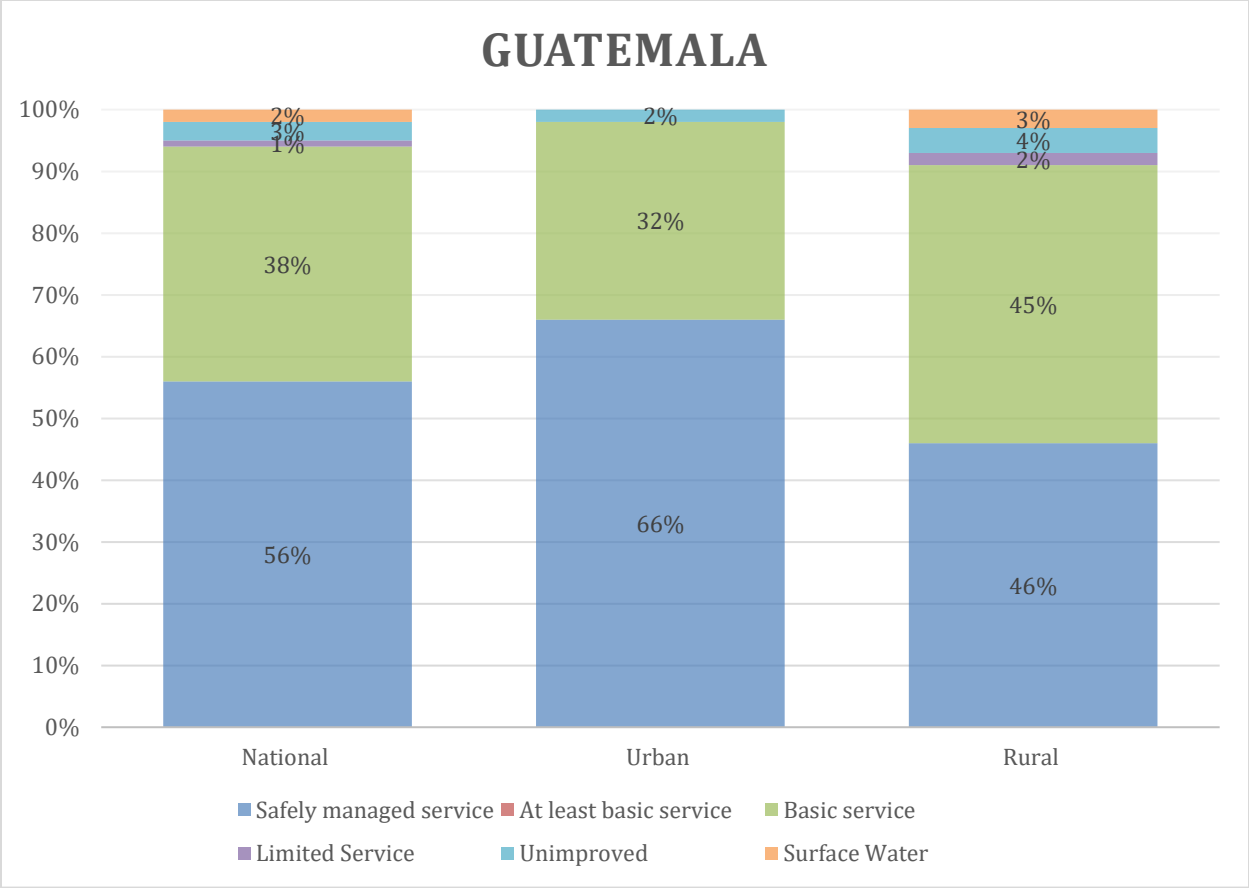
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<sup>374</sup> *Id.* at ¶ 41.

<sup>375</sup> *Id.* at ¶ 40.

<sup>376</sup> *Id.* at ¶¶ 58-59.

<sup>377</sup> For the definition of each category of water services and sources refer to note 86.



Guatemala's chart<sup>378</sup>

**Nicaragua**

The Republic of Nicaragua (“Nicaragua”) recognizes water as a human right but has not explicitly provided a constitutional guarantee. Nicaragua has been a State Party to the ICESCR since 1980 when it ratified the agreement.<sup>379</sup> When the UN adopted the 2010 Resolution 64/292, Nicaragua’s representative welcomed it as a “historic milestone after some fifteen years of discussion at the global level.”<sup>380</sup> However, the State still never constitutionally or statutorily recognized water as a

<sup>378</sup> U.N. Water, *SDG 6 Snapshot in Guatemala*, <https://www.sdg6data.org/en/country-or-area/Guatemala> (information as of 2022).

<sup>379</sup> U.N. Status of Ratification of ICESCR, *supra* note 193.

<sup>380</sup> Voting Records Summary of Resolution 64/292, *supra* note 67; U.N. Press Release GA/10967, *supra* note 69.

human right. Water is mentioned in the Nicaraguan constitution as an obligation of the State to promote, facilitate and regulate public services, which includes water resources, and declares them as unwaivable rights.<sup>381</sup> Additionally, the Constitution states as part of the rights of the Atlantic Coast communities that the government “recognizes the enjoyment and use of the water and forests in their communal lands.”<sup>382</sup> None of these provisions recognize the access to water as a protected human right, but rather as a public good to be accessed by all.

The State’s water law is based upon the regulations of Law No. 620 of 2007, also known as the General Law of National Waters, which created the legal framework for water accessibility and consumption.<sup>383</sup> It established as a principle that water access is an unwaivable right to every human being.<sup>384</sup> Similarly, it recognized that the preservation of water is a fundamental duty of the State.<sup>385</sup> The General Law of National Waters established that drinking water services may not be privatized and must retain its public characteristic.<sup>386</sup> This law also obligates the State to provide the supply of and regulate drinking water “at differentiated costs and favoring the sectors with fewer economic resources.”<sup>387</sup> In the same article, the law provided that drinking water for consumers living in extreme poverty may not be interrupted, unless there is force majeure.<sup>388</sup> The law also establishes that human consumption has the highest priority in water usage.<sup>389</sup> While the law specifically

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<sup>381</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE NICARAGUA [Cn.] tit. VIII, ch. III, La Gaceta, Diario Oficial [L.G.] 9 January 1987, as amended by Ley No. 330, Jan. 18, 2000, Reforma Parcial a la Constitución Política de la República de Nicaragua, L.G. Jan. 19, 2000, at art. 105, available at [https://www.oas.org/juridico/spanish/mesicic3\\_nic\\_const.pdf](https://www.oas.org/juridico/spanish/mesicic3_nic_const.pdf).

<sup>382</sup> *Id.* at art. 89.

<sup>383</sup> Law No. 620, Ley General de Aguas Nacional [General Law of National Waters], tit. ch. LA GACETA, DIARIO OFICIAL [L.G.] Sept. 4, 2007 (Nicar.), available at <https://faolex.fao.org/docs/pdf/nic74427.pdf>.

<sup>384</sup> *Id.* at art. 13(c).

<sup>385</sup> *Id.*

<sup>386</sup> *Id.* at art. 4.

<sup>387</sup> *Id.* at art. 5.

<sup>388</sup> *Id.*

<sup>389</sup> *Id.* at art. 66.

establishes that water is an unwaivable right, as well as the constitution, this does not translate on a global scale as an expressed recognition of a human right.<sup>390</sup>

The right to water has only been mentioned in one of the three CESCR periodic reports on Nicaragua. In Periodic Report 2-4 (2008), the Committee expressed concern that 45% of Managua's population live in unplanned settlements. As a suggestion, the CESCR asked Nicaragua to improve water supply to the existing dwellings.<sup>391</sup>

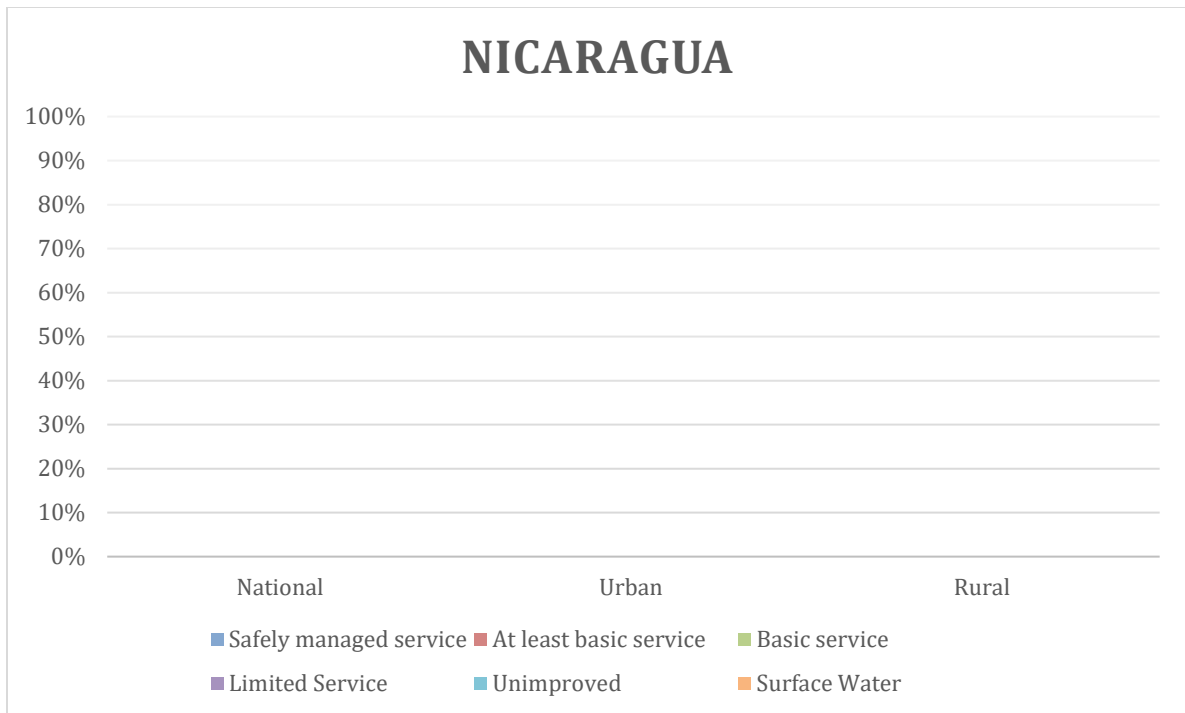
As of 2022, Nicaragua has not reported data for SDG 6.1, as seen in the graph below.<sup>392</sup> This data is critical to analyzing the percentage of the Nicaraguan population that lacks access to basic water needs. The numbers and values can be assumed by Nicaragua's periodic reports; yet without formal data, it makes achieving SDG 6 goals a near impossible task.

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<sup>390</sup> Whether this means that on a national level an unwaivable right is a fundamental or a human right is beyond the scope of this paper.

<sup>391</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Nicaragua*, ¶ 25, U.N. Doc. E/C.12/NIC/CO/4 (Nov. 28, 2008), available at <https://documents.un.org/doc/undoc/gen/go8/456/31/pdf/go845631.pdf>.

<sup>392</sup> U.N. Water, *SDG 6 Snapshot in Nicaragua*, <https://www.sdg6data.org/en/country-or-area/Nicaragua> (information as of 2022).



Nicaragua’s chart<sup>393</sup>

### ***Panama***

The Republic of Panama (“Panama”) does not recognize the human right to access water in its constitution or statutes. Panama ratified the ICESCR in 1977, making it a Member Party of the international treaty.<sup>394</sup> Additionally, the country voted in favor of the Resolution 64/292.<sup>395</sup> In 2023, Panama ratified the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (“Water Convention”), making it the first country from Latin America and the Caribbean to join.<sup>396</sup> The Water Convention is an international treaty originally created for European

<sup>393</sup> *Id.*

<sup>394</sup> Panamanian Law No. 13 of 1976, of the Republic of Panama, (Oct. 27, 1976), available at [https://infojuridica.procuraduria-admon.gob.pa/norma\\_screen?numsec=16896](https://infojuridica.procuraduria-admon.gob.pa/norma_screen?numsec=16896).

<sup>395</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>396</sup> Press Release, Panama is the first Latin American country to join UN Water Convention, U.N. Econ. Comm’n for Europe Press Release (July 6, 2023), <https://unece.org/media/environment/Water-Convention/press/380975>.

countries but was later opened to countries around the world in an amendment.<sup>397</sup> The Water Convention does not touch on the subject of drinking water as a human right, but introduces the topic of management of collective water resources.<sup>398</sup>

The Panama Canal Authority and the Ministry of Environment (formerly the National Authority of the Environment) are responsible for managing the hydric resources of Panama.<sup>399</sup> In 2012, the two entities created the National Plan for Integrated Water Resources Management of the Republic of Panama 2010-2030 (“PNGIRH”).<sup>400</sup> The drafters mentioned that the PNGIRH is based on the understanding that the Panamanian State recognizes that drinking water and sanitation are a fundamental right, which goes hand in hand with economic and social development, and the protection of natural ecosystems, pointing to the Resolution 64/292 as the basis of this argument.<sup>401</sup> However, similar to Guatemala’s analysis, this leaves an open question of whether a State can recognize a human right through a national policy, and have the full effect of the law.

Panama’s constitution recognizes the obligation of the State to protect the health of the people.<sup>402</sup> Additionally, the constitution creates the obligation of the State to provide clean water,

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<sup>397</sup> U.N. ESCOR, Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 2897 U.N.T.S., vol. 2897, p. 92, U.N. Doc. ECE/MP.WAT/14 (Jan. 12, 2004), available at <https://unece.org/DAM/env/documents/2004/wat/ece.mp.wat.14.e.pdf>; Amendments to Articles 25 and 26 of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, C.N.150.2004, (Reissued on March 10, 2004) (Depositary Notification), available at [https://treaties.un.org/doc/Treaties/2004/02/20040217%2005-46%20AM/Ch\\_XXVII\\_05\\_bp.pdf](https://treaties.un.org/doc/Treaties/2004/02/20040217%2005-46%20AM/Ch_XXVII_05_bp.pdf).

<sup>398</sup> Convention on the Protection and Use of Transboundary Watercourses and International Lakes (with annexes), Mar. 17, 1992, 1936 U.N.T.S. 269, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201936/v1936.pdf>.

<sup>399</sup> Law No. 8 of 2015, of the Republic of Panama, (Mar. 25, 2015) available at [http://gacetas.procuraduria-admon.gob.pa/27749-B\\_48682.pdf](http://gacetas.procuraduria-admon.gob.pa/27749-B_48682.pdf); Law No. 19 of 1997, of the Republic of Panama, (June 11, 1997), available at <https://pancanal.com/wp-content/uploads/2021/10/acp-law-s1.pdf>.

<sup>400</sup> NAT’L PLAN FOR INTEGRATED WATER RES. MGMT., OF THE REPUBLIC OF PANAMA 2010-2030, approved by Resolution No. CAN-002-2012 of July 24, 2012, available at <https://faolex.fao.org/docs/pdf/pan118989anx.pdf>.

<sup>401</sup> *Id.* at 22-23.

<sup>402</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ art. 109.

air and food for the proper development of human life.<sup>403</sup> In October of 2024, the National Assembly of Panama passed a bill that “grants water as a human right for every personal on the national territory.”<sup>404</sup> As of right now, the bill is waiting for the President of the Republic to approve or veto it.<sup>405</sup>

The right to water has been highlighted in every one of the ICESCR reports on Panama. In the First Periodical Report (1995), the CESRC mentioned its concern about the housing situation in the country, specifically pointing to the lack of water as part of this problem, given that 16.3% of the population did not have access to drinking water.<sup>406</sup> The report also noted how these numbers are higher in Indigenous regions and poorer provinces and communities.<sup>407</sup> In Panama’s Second Periodic Report (2001), lack of access to water is cited as one of the principal subjects of concern for the country.<sup>408</sup> The CESRC recommended improving the access to water, specially to indigenous and poorer communities.<sup>409</sup> Finally, in the Third Periodic Report (2023), the right to water and sanitation is raised as its own topic.<sup>410</sup> The Committee recognized the increase that has been shown in the access to safe drinking water in Panama, as well as the treatment of contaminated water, specifically

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<sup>403</sup> *Id.* at art. 118.

<sup>404</sup> Bill No. 15 (July 8, 2024) (Panama).

<sup>405</sup> *Id.*

<sup>406</sup> U.N. ESCOR, *Report on The Technical Assistance Mission to Panama of The Committee On Economic, Social And Cultural Rights*, ¶ 26, U.N. Doc. E/C.12/1995/8 (June 20, 1995), available at [https://digitallibrary.un.org/record/188615/files/E\\_C.12\\_1995\\_8-EN.pdf?ln=en](https://digitallibrary.un.org/record/188615/files/E_C.12_1995_8-EN.pdf?ln=en)

<sup>407</sup> *Id.* at ¶ 26, 48 and 55. The Indigenous regions, and other communities include Bocas del Toro, Chiriquí, Veraguas, San Blas, San Miguelito, Felipillo, Alto de Llano, Chorrillito, and Nueva Esperanza.

<sup>408</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Panama*, ¶ 12, U.N. Doc. E/C.12/1/Add.64 (Sept. 24, 2001), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuWzVCXkRUT2pEFOZizeiiYl5geZ2VqCj3BTYJPV222rqgX7Tb4xAWL93q8L9uM5M1svq8YSCUM75vSeqGets5KmRYKSKkHeqlkLOoL%2BSr7EqI>.

<sup>409</sup> *Id.* at ¶ 28.

<sup>410</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Panama*, ¶ 38, U.N. Doc. E/C.12/PAN/CO/3 (Mar. 31, 2023), available at <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/C.12/PAN/CO/3&Lang=E>.



where it is much-needed—Indigenous communities.<sup>411</sup> However, a new concern for the CESCR arose during the COVID-19 pandemic, since many water outages were reported when mobility restrictions were in place and COVID cases were increasing.<sup>412</sup> For those reasons, the CESCR recommended that Panama “take legislative and administrative measures to safeguard the right to drinking water and sanitation. . . redouble its efforts to improve access to water....with a particular focus on the most disadvantaged and marginalized groups” and pay attention to the General Comment No. 15.<sup>413</sup> These recommendations further the argument that stating the right to water in the National Plan neither grants the right the full protection under the law nor impose liability on the State.

According to the PNGIRH, Panama’s main categories of water use are human consumption, hydroelectric energy, the Panama Canal, agricultural activities, industrial activities, and tourism.<sup>414</sup> Hydroelectric energy on average uses 99% of the total volume of water, however, this usage is not for consumptive uses; this means that the water, once turbined, returns to the natural channel.<sup>415</sup> As for activities that are for consumptive uses, agricultural activities take 92% of the volumes of water usage, with domestic consumption taking 6%, and industrial and tourism using 1% each.<sup>416</sup> Finally, the PNGIRH shows that 88.22% of communities in Panama’s provinces receive water from an aqueduct, while that number drops to 61.52% on Indigenous reservations.<sup>417</sup>

According to the SDG 6 information provided by the UN, no data shows that any population groups in Panama have safely managed drinking water services, as seen in the graph below. However,

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<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

<sup>413</sup> *Id.* at ¶ 39.

<sup>414</sup> NAT’L PLAN FOR INTEGRATED WATER RES. MGMT., OF THE REPUBLIC OF PANAMA 2010-2030, *supra* note 400, at 61-62.

<sup>415</sup> *Id.* at 60 (using data from 2005-2010).

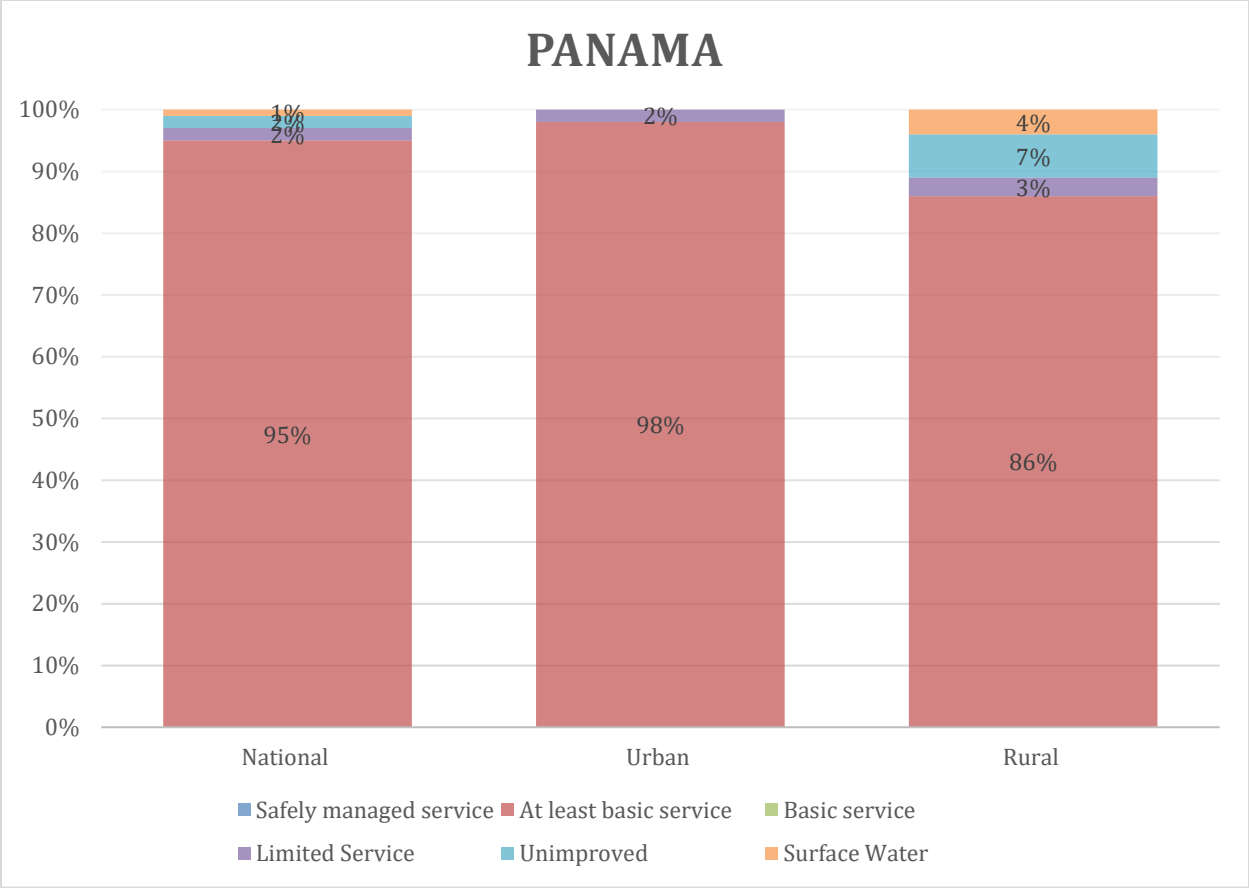
<sup>416</sup> *Id.* at 62.

<sup>417</sup> *Id.* at 64.

95% of the population has access to at least basic drinking water services.<sup>418</sup> 98% of urban populations have access to at least basic drinking water services, while 86% of rural populations have access to at least basic drinking water services. Nationally, 2% of the population has access to limited water services, 2% to unimproved water, and 1% to surface water. In rural populations, a notable 7% of people only have access to unimproved drinking water sources, 3% of people have access to limited drinking water services, and 4% of people use surface water. In urban populations, only 2% rely on limited water service. The numbers that Panama reflect are worrisome, given that a substantial portion of population lack access to even basic service water, and that data cannot distinguish safely managed and basic services. For those reasons, it appears Panama will not fulfill their SDG 6 goals by 2030.

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<sup>418</sup> For the definition of each category of water services and sources refer to note 86.



Panama’s chart<sup>419</sup>

**Brazil**

The Federative Republic of Brazil (“Brazil”) does not recognize water as a human right in its constitution or legislation. Brazil became a State Party to the ICESCR in 1992 with its accession to the international covenant.<sup>420</sup> Likewise, Brazil voted in favor of the adoption of the Resolution 64/292.<sup>421</sup> During the testimonial phase, the representative of Brazil stated that the right to water and sanitation is connected to other rights, such as life, health, food, and adequate housing.<sup>422</sup>

<sup>419</sup> U.N. Water, *SDG 6 Snapshot in Panama*, <https://www.sdg6data.org/en/country-or-area/Panama> (information as of 2022).  
<sup>420</sup> Legislative Decree No. 226, of Brazil (Dec. 12, 1991), available at <https://legis.senado.leg.br/norma/538595/publicacao/15647457>.  
<sup>421</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.  
<sup>422</sup> U.N. Press Release GA/10967, *supra* note 69.

Additionally, Brazil's representative declared that the States have the responsibility to guarantee those rights.<sup>423</sup> The constitution of Brazil does not mention the right to water, but declares the right to life as a fundamental right and the right to health as a social right.<sup>424</sup>

In 1997, Brazil enacted the National Water Act, which regulates the country's water bodies, and its policies.<sup>425</sup> The National Water Act makes no mention of and does not expressly recognize the human right to access water. However, the Act establishes as one of its principles that, in the event of shortages, priority shall be given to human and animal consumption over any other use.<sup>426</sup>

In 2020, Brazil passed the Law No. 14,026 of 2020 amending the legal and regulatory framework for water and sanitation.<sup>427</sup> This law gave the National Water Agency ("ANA" for its initials in Portuguese) the authority to regulate the standards for basic sanitation services, to improve the structural conditions of basic sanitation, and other provisions.<sup>428</sup> As with the National Water Act, it is mentioned that ANA may recommend the restriction of water usage for human consumption.<sup>429</sup> But again, this law does not recognize access to water as a human right.

Brazil's first periodic ICESCR report was published in 2003, with an immediate mention of the right to water.<sup>430</sup> The CESCR mentioned how at least 42% of families live in inadequate homes

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<sup>423</sup> *Id.*

<sup>424</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] arts. 5-6 (Braz.).

<sup>425</sup> Lei No. 9433, de 8 de Janeiro de 1997, Diário Oficial da União [D.O.U.] de 09.01.1997 (Braz.), available at [https://www.planalto.gov.br/ccivil\\_03/leis/l9433.htm](https://www.planalto.gov.br/ccivil_03/leis/l9433.htm).

<sup>426</sup> *Id.* at art. 1.

<sup>427</sup> Lei No. 14.026, de 15 de Julho de 2020, Diário Oficial da União [D.O.U.] de 16.07.2020 (Braz.), available at [https://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2020/lei/l14026.htm](https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l14026.htm).

<sup>428</sup> *Id.* at art. 2.

<sup>429</sup> *Id.* at art. 7.

<sup>430</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant – Brazil*, U.N. Doc. E/C.12/1/Add.87 (June 26, 2003), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuWzVCXkRUT2pEFOZi2eiiYI6UxHSLwh8vQ838JyKnWQRGV3%2FBIA55CRo%2BjVBVEpgLEJRIcisWosjAoFUXJaxbf2DDPadRLwCS8iazPYk%2FivQ>

without basic sanitation and with inadequate water supply.<sup>431</sup> The CESCR also expressed its concern over prisoners and detainees' living conditions, particularly the lack of access to safe drinking water.<sup>432</sup> Later, in the response to Brazil's Second Periodic Report (2009), the Committee once again mentioned the right to water.<sup>433</sup> In this report, the Committee noted that more than six million people in Brazil lived in precarious urban settlements and recommended that the State adopt additional measures to address this issue, including improving water and sanitation facilities.<sup>434</sup>

Most recently, in Brazil's Periodic Report (2023), access to water is discussed more directly than previous reports.<sup>435</sup> It is first mentioned in relation to the right to adequate housing, when the Committee recommended that Brazil "provide durable housing solutions for people living in informal settlement and... improve their living conditions and access to water and sanitation facilities..."<sup>436</sup> Additionally, this was the first report where the CESCR explicitly articulated the right to water and sanitation as a standalone issue.<sup>437</sup> The CESCR showed concern about access to safe drinking water and sanitation being more difficult to access in rural areas, as well as water pollution affecting downstream communities.<sup>438</sup> For those reasons, the Committee recommended that Brazil: 1) intensify efforts to ensure universal access to safe drinking water and sanitation services, without discrimination; 2) guarantee that safe drinking water and sanitation services are affordable, in

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<sup>431</sup> *Id.* at ¶ 33.

<sup>432</sup> *Id.* at ¶ 37.

<sup>433</sup> U.N. ESCOR, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant - Brazil*, U.N. Doc. E/C.12/BRA/CO/2 (June 12, 2009), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW%2FtFdKDkhtvol%2BRelV2x8DYMuc3wSJ2Ffrs9%2FJeRowxEUefp%2F5smsRcrp6Mib846cZ1GWE73xxbMhoI8ETSobeFP%2B2HuzUkBztn7fLnzgt8h>.

<sup>434</sup> *Id.* at ¶ 25.

<sup>435</sup> U.N. ESCOR, *Concluding observations on the Third Periodic Report of Brazil*, U.N. Doc. E/C.12/BRA/CO/3 (Nov. 15, 2023), available at <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/C.12/BRA/CO/3&Lang=E>.

<sup>436</sup> *Id.* at ¶ 48(b).

<sup>437</sup> *Id.*

<sup>438</sup> *Id.* at ¶ 51.

alignment with General Comment No. 15; and 3) Protect water resources by: a) mitigating the adverse effects of economic activities, natural resource exploitation, and climate change, and b) implementing a legal framework to hold both state-owned and private companies accountable for polluting water resources.<sup>439</sup> In that sense, the report also recommended that Brazil take measures on the use of pesticides so that they do not pollute water and negatively affect the “affordability of safe drinking water.”<sup>440</sup> Finally, the Committee recommended that Brazil “ensure that all schools have adequate water supply and sanitation facilities” when reviewing the right to education.<sup>441</sup> Without a doubt, this particular report exemplifies the connection between access to water and sanitation and many other recognized human or fundamental rights.

The chart below reflects that 87% of Brazil’s population has access to safely managed drinking water services, and 12% of the population has access to basic drinking water services.<sup>442</sup> 89% of urban populations and 76% of rural populations have access to at least safely managed drinking water services. 2% of Brazil’s rural populations only have access to an unimproved water source. Overall, an impressively high portion of Brazil’s population has access to safely managed drinking water services. However, the urban population’s values make it harder for Brazil to achieve SDG 6 goals by 2030.

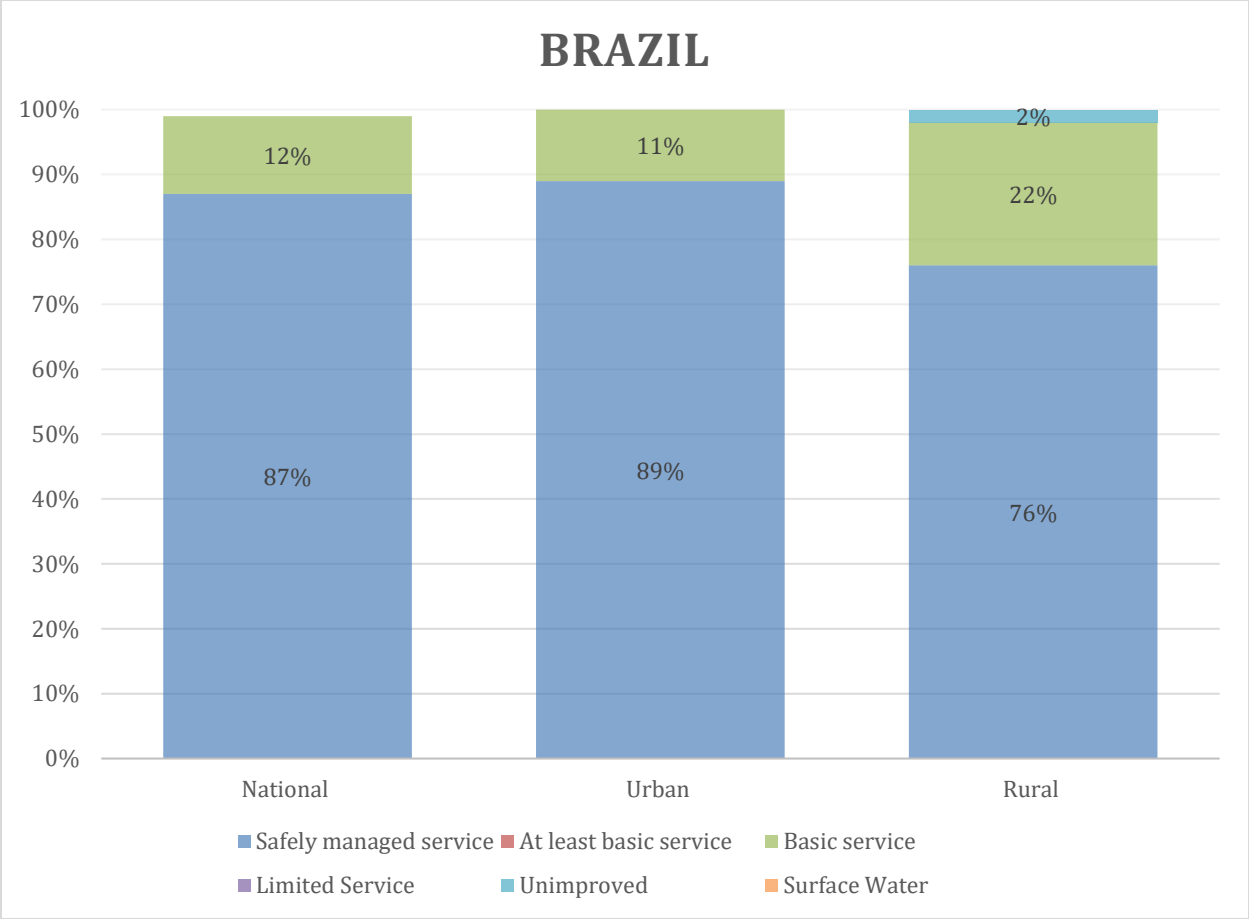
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<sup>439</sup> *Id.* at ¶ 52.

<sup>440</sup> *Id.* at ¶ 66.

<sup>441</sup> *Id.* at ¶ 68.

<sup>442</sup> For the definition of each category of water services and sources refer to note 86.



Brazil's chart <sup>443</sup>

**Canada**

Canada does not recognize water as a human right in its constitution or statute. In 1976, Canada acceded to the ICESCR, making it a State Party to the international agreement.<sup>444</sup> However, it abstained from voting on Resolution 64/292.<sup>445</sup> When voting, the representative of Canada stated that “the non-binding resolution appeared to determine that there was indeed a right without setting out its scope.”<sup>446</sup>

<sup>443</sup> U.N. Water, *SDG 6 Snapshot in Brazil*, <https://www.sdg6data.org/en/country-or-area/Brazil> (information as of 2022)

<sup>444</sup> 1976 Can. T.S. No 46.

<sup>445</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>446</sup> U.N. Press Release GA/10967, *supra* note 69.

The Canadian Charter of Rights and Freedoms (“Canadian Charter”) establishes a framework of protected rights for the nation.<sup>447</sup> The Canadian Charter forms part of the State’s constitution and is divided into seven different categories of rights and freedoms.<sup>448</sup> Among the legal rights category, the Canadian Charter provides that “everyone has the right to life.”<sup>449</sup> While it does not explicitly mention the right to water, a direct line between health, water and life may be drawn to show the protection that this right needs.

In 2013, the Safe Drinking Water for First Nations Act went into effect.<sup>450</sup> This law became very controversial among some of the communities of the First Nations, and they asked for the repeal and replacement of the law, for “imposing unjust liability on First Nations without proper resources ...”.<sup>451</sup> The First Nations are “1 out of 3 recognized Indigenous Peoples in Canada, along with Inuit and Métis.”<sup>452</sup> Later, in 2021 and 2022 said law was repealed, and new legislation was introduced.<sup>453</sup> In the meantime, Canada has presented consultation drafts for a new proposal to different organizations and communities. On June 5, 2024, the proposed legislation was referred to the Standing Committee on Indigenous and Northern Affairs in the House of Commons.<sup>454</sup>

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<sup>447</sup> Canadian Charter of Rights and Freedoms, Constitution Act, 1982, Part I, *being* Schedule B to the Canada Act, 1982, c. 11 (U.K.), available at <https://laws-lois.justice.gc.ca/eng/const/page-12.html>.

<sup>448</sup> *Id.*

<sup>449</sup> *Id.* at art. 7.

<sup>450</sup> Safe Drinking Water for First Nations Act, S.C. 2013, c. 21 (Can.), available at [https://laws.justice.gc.ca/eng/AnnualStatutes/2013\\_21/FullText.html#:~:text=First%20Nations%20Act-.S.C.%202013%2C%20c.,of%20Canada%2C%20enacts%20as%20follows](https://laws.justice.gc.ca/eng/AnnualStatutes/2013_21/FullText.html#:~:text=First%20Nations%20Act-.S.C.%202013%2C%20c.,of%20Canada%2C%20enacts%20as%20follows).

<sup>451</sup> <https://afn.bynder.com/m/1dcd394b7cb8dd76/original/Safe-Drinking-Water-Legislat-GB-Infrastructure-Issues-Update.pdf>

<sup>452</sup> Gov. of Canada, *First Nations*, <https://www.rcaanc-cirnac.gc.ca/eng/1100100013791/1535470872302> (accessed Nov. 29, 2024).

<sup>453</sup> Parliament of Canada, An Act Respecting Water, Source Water, Drinking Water, Wastewater and Related Infrastructure on First Nation Lands (proposed), <https://www.parl.ca/LegisInfo/en/bill/44-1/c-61> (accessed Nov. 4, 2024).

<sup>454</sup> See *id.*



Since Canada is a State Party to the ICESCR, it must participate in the periodic reports by the CESCR. Canada has had a total of six periodic reports, and access to water has been mentioned in four different ones. Access to water was first mentioned in Canada's First Periodic Report (1998), when the CESCR discussed the failure of the State to provide safe and adequate drinking water to Aboriginal communities.<sup>455</sup> Afterwards, in Canada's Fourth and Fifth Periodic Reports (2006) conclusions were published together.<sup>456</sup> In these reports, the CESCR once expressed concern over the significant disparities between Aboriginal communities and the rest of the population, including the access to water.<sup>457</sup> Additionally, the CESCR "regrets that the State party does not recognize the right to water as a legal entitlement..."<sup>458</sup> For that reason, the Committee recommended that Canada "review its position on the recognition on the right to water", to ensure equal and adequate access to all the people living in its nation.<sup>459</sup> In 2016, access to water came up again.<sup>460</sup> In the subcategory denominated adequate standard of living, the CESCR stated its concern with the restricted access to safe drinking water and lack of water regulations for the First Nations.<sup>461</sup> Accordingly, the Committee urges Canada to ensure access to safe drinking water to the First Nations, as well as ensuring their active participation in water planning and management.<sup>462</sup>

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<sup>455</sup> U.N. ESCOR, *Consideration of Reports Submitted Under Articles 16 and 17 of the Covenant– Canada*, ¶ 17, U.N. Doc. E/C.12/1/Add.31 (Dec. 10, 1998), available at <https://documents.un.org/doc/undoc/gen/g98/149/17/pdf/g9814917.pdf>.

<sup>456</sup> U.N. ESCOR, *Consideration of Reports Submitted Under Articles 16 and 17 of the Covenant– Canada*, U.N. Doc. E/C.12/CAN/CO/4 and E/C.12/CAN/CO/5 (May. 22, 2006), available at <https://documents.un.org/doc/undoc/gen/go6/427/83/pdf/go642783.pdf>.

<sup>457</sup> *Id.* at ¶ 15.

<sup>458</sup> *Id.* at ¶ 30.

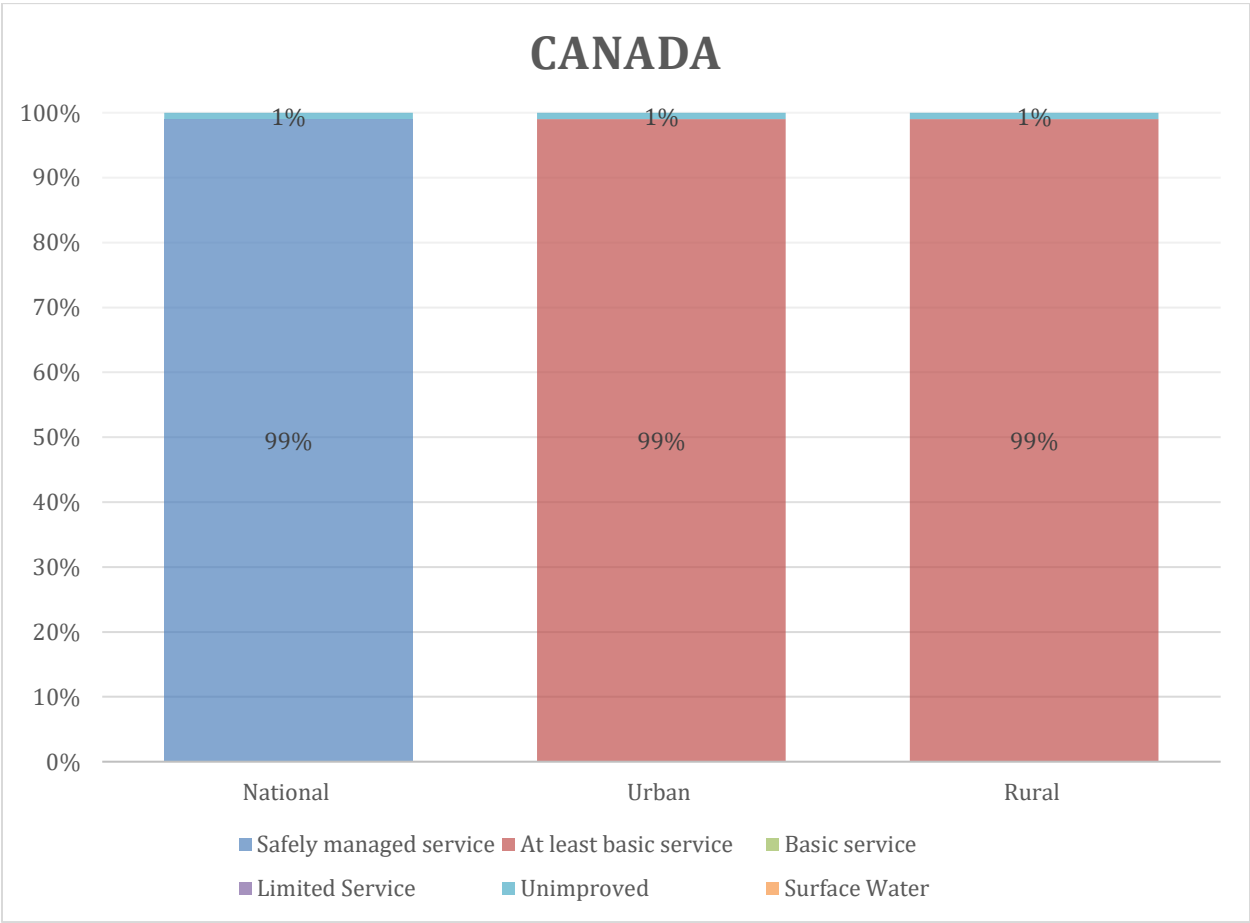
<sup>459</sup> *Id.* at ¶ 64.

<sup>460</sup> U.N. ESCOR, *Concluding observations on the sixth periodic report of Canada*, U.N. Doc. E/C.12/CAN/CO/6 (Mar. 23, 2016), available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW4yzVsFh%2Fj1u%2FtoKVExfQT6EfAENdSjJTaz3raPv3QWT3Y59q3zadXvBYMplNW5%2FsveoBdxLZoVN%2Fzz31c7YEgqRmoDpoVivqHozyN5ilam>.

<sup>461</sup> *Id.* at ¶ 43.

<sup>462</sup> *Id.* at ¶ 44.

As shown in the chart below, 99% of the Canadian population has access to safely managed drinking water services. <sup>463</sup>99% of both urban and rural populations have access to at least basic drinking water services, but the remaining 1% of the population only have access to unimproved water sources. Because the data for urban and rural populations cannot distinguish safely managed water services from basic services, it is hard to determine whether Canada will be able to achieve its SDG 6 goals by 2030, but given the national average, it is a possibility.



Canada’s chart<sup>464</sup>

<sup>463</sup> For the definition of each category of water services and sources refer to note 86.

<sup>464</sup> U.N. Water, *SDG 6 Snapshot in Canada*, <https://www.sdg6data.org/en/country-or-area/Canada> (information as of 2022).

## *United States*

The United States of America (“U.S.” or “United States”) demonstrates a unique case for water rights compared to Latin American states. Water as a human right is neither explicitly stated in the United States Constitution nor is the right federally recognized. The United States is not a State Party to the ICESCR. Instead, it is merely a signatory of the treaty as of 1977.<sup>465</sup> The difference between being a signatory and a Member State is that a signatory did not go through the process of ratifying the international document, which means that the State is not legally bound to implement its provisions. Additionally, the United States abstained from voting on Resolution 64/292 after calling for the vote.<sup>466</sup> The U.S. representative stated that the resolution describes the right to water in a way that does not exist in international law and urged that the text was not drafted in a transparent way.<sup>467</sup>

While the constitution does not recognize water as a human right, the country has laws such as the Clean Water Act (“CWA”) and the Safe Drinking Water Act (“SDWA”) that regulate water quality standards.<sup>468</sup> The SDWA, which has been in effect since 1974, is the primary federal legislation regulating drinking water quality in the United States and requires the Environmental Protection Agency (“EPA”) to set national standards for protection against harmful contaminants, which are then implemented by local utilities.<sup>469</sup> However, the SWDA has limitations when it comes to widening access to clean water.

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<sup>465</sup> See U.N. Status of Ratification Interactive Dashboard, *supra* note 8.

<sup>466</sup> Voting Records Summary of Resolution 64/292, *supra* note 67.

<sup>467</sup> U.N. Press Release GA/10967, *supra* note 69.

<sup>468</sup> See 33 U.S.C. §§ 1311-1313, 1341-1346; 42 U.S.C. § 300g-1.

<sup>469</sup> ELENA H. HUMPHREYS & MARY TIEMANN, CONG. RSCH. SERV., RL31243, SAFE DRINKING WATER ACT (SDWA): A SUMMARY OF THE ACT AND ITS MAJOR REQUIREMENTS 2 (July 1, 2021), available at <https://crsreports.congress.gov/product/pdf/RL/RL31243/31#:~:text=Enacted%20in%202018%2C%20America%E2%80%99>

For example, the SDWA offers financial assistance to states and local governments for drinking water infrastructure projects, including a program to assist small and disadvantaged communities.<sup>470</sup> The statute authorizes grants for eligible entities to fund projects that would assist public water systems in meeting SDWA requirements.<sup>471</sup> Eligible entities are public water systems that serve a disadvantaged community or a community that may become disadvantaged through the cost of carrying out the project.<sup>472</sup> America’s Water Infrastructure Act of 2018 expanded SDWA grants by allowing for the EPA administrator to give grants to underserved communities who need assistance with certain classifications of contaminants.<sup>473</sup> Most recently, the Bipartisan Infrastructure Law of 2021 dedicated billions in federal dollars to SDWA programs to address emerging drinking water contaminants and the replacement lead service lines across the country.<sup>474</sup>

Within the U.S., two states have articulated the right to clean water in their state constitutions: Massachusetts and Pennsylvania.<sup>475</sup> California has recognized the right as well, but only in statute.<sup>476</sup> California law provides that “that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”<sup>477</sup> Despite this sentiment, the statute later reads “this section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure

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[95%20Water%20Infrastructure%20Act%20%28AWIA%3B,to%20develop%20water%20system%20compliance%20capacity%20and%20sustainability.](#)

<sup>470</sup> 42 U.S.C. § 300j-19a.

<sup>471</sup> 42 U.S.C. 300j-19a(a).

<sup>472</sup> 42 U.S.C. 300j-19a(c).

<sup>473</sup> Pub. L. 115-270 (2018).

<sup>474</sup> See U.S. Env’t Prot. Agency, *Water Infrastructure Investments*, <https://www.epa.gov/infrastructure/water-infrastructure-investments> (last visited Nov. 22, 2024).

<sup>475</sup> MASS. CONST. art. 97; PA. CONST. art. 1, § 27.

<sup>476</sup> California’s Human Right to Water Act (2012) (codified at CA. WATER CODE § 106.3).

<sup>477</sup> CA. WATER CODE § 106.3(a).

beyond the obligations that may exist pursuant to subdivision (b).<sup>478</sup> This law expresses an intention in widening access to water to all. Unlike other states and countries, California has taken an extra step in expressly recognizing that “a broader focus on “disadvantaged communities” ..., including the poor, should be targeted for equitable support in gaining their right and access to safe drinking water in the public realm.”<sup>479</sup> However, with no recourse or requirement for any action by the state, it is little more than that—intent.

Article 97 of the Massachusetts Constitution states that “the people shall have the right to clean . . . water. . . and the protection of the people in their right to the . . . utilization of . . . water. . . is hereby declared to be a public purpose.”<sup>480</sup> This provision represents protection of the environment rather than legislation aimed at protecting citizen’s rights to safe water access. The constitutional article provides that the legislature has the “power to enact legislation necessary or expedient to protect such rights.”<sup>481</sup> However, it falls short of creating an obligation for the state of Massachusetts to protect these rights.

According to the Constitution of the Commonwealth of Pennsylvania, adopted May 18, 1971, “the people have a right to clean air, pure water. . .” further providing that “Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. . .”<sup>482</sup> This provision is also known as the Environmental Rights Amendment (“ERA”).<sup>483</sup> As a constitutional

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<sup>478</sup> *Id.*

<sup>479</sup> Lisa Kaas Boyle and Evelyn Wendel, Public Drinking Water Policy on Tap at a Fountain Near You, *available at* [https://static.wixstatic.com/ugd/32079b\\_5e33a7c942b64aodbod283dcocb77646.pdf](https://static.wixstatic.com/ugd/32079b_5e33a7c942b64aodbod283dcocb77646.pdf)

<sup>480</sup> MASS. CONST. art. 97.

<sup>481</sup> *Id.*

<sup>482</sup> PA. CONST. art. 1, § 27.

<sup>483</sup> Policy Brief: Pennsylvania’s Constitutional Environmental Rights Amendment, PENNFUTURE, *available at* <https://www.pennfuture.org/Files/Admin/ERA-Policy-Br.pdf>.

amendment, there is no direct pathway to recourse nor any statutory component to provide one. The ERA has been the subject in three landmark cases, with the most recent one making a final decision of which of the other two jurisprudences should be applied.<sup>484</sup> In *Payne v. Kassab*, the Pennsylvania Supreme Court laid out a test to balance environmental values and other societal concerns in its interpretation of ERA.<sup>485</sup> The three-part test must satisfy three elements: 1) Does it comply with other environmental regulations?; 2) Is there evidence of a reasonable effort to limit environmental intrusion to the minimum?; and 3) Do the benefits outweigh the environmental harm?<sup>486</sup> For years, the threefold test, known as the *Payne* test, was used for analyzing the ERA until *Robinson Township v. Commonwealth* was decided. In this 2013 case, the Pennsylvania Supreme Court criticized the *Payne* factors as too narrow, offering a new perspective on the ERA.<sup>487</sup> It established that the first clause of the article refers to the people's rights and the government has the responsibility to take care of it, but it does not "impose express duties on the political branches to enact specific affirmative measures . . ."<sup>488</sup> Second, the term public natural resources is broad enough for it to "change overtime to conform . . . with the development of related legal and societal concerns."<sup>489</sup> Third, the Commonwealth is the trustee and the people are the beneficiaries of the public trust construed to protect the natural resources, as seen in the law.<sup>490</sup> In *Pennsylvania Environmental Defense Found. v. Commonwealth*, the Pennsylvania Supreme Court affirmed the

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<sup>484</sup> See *Payne v. Kassab*, 361 A.2d 263 (Pa. 1976); *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013); *Pennsylvania Environmental Defense Found. v. Commonwealth*, 161 A.3d 911, 916 (Pa. 2017).

<sup>485</sup> *Payne v. Kassab*, 361 A.2d 263 (Pa. 1976).

<sup>486</sup> *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwith. 1973) (*affirmed in Payne v. Kassab*, 361 A.2d 263 (Pa. 1976)).

<sup>487</sup> *Robinson Township v. Commonwealth*, 83 A.3d 901, 966-67 (Pa. 2013).

<sup>488</sup> *Id.* at 951-52.

<sup>489</sup> *Id.* at 955.

<sup>490</sup> *Id.* at 975.

principles in *Robinson* and established that the Commonwealth has a fiduciary duty to “conserve and maintain” public natural resources on behalf of public trust beneficiaries across Pennsylvania and must fulfill its trust duties at all times.<sup>491</sup> Again, the language of this amendment seems more concerned with maintaining the value of the environment than promoting water access.

Because U.S. law limits when governmental entities and officials’ liability, some communities have struggled to find meaningful relief for interruptions or violations to clean water access.<sup>492</sup> Take Flint, Michigan, for example. In April 2014, the city of Flint changed its main drinking water source from Lake Huron to the Flint River.<sup>493</sup> That change in water source caused corrosion in supply pipes which allowed lead to leach into the city’s tap water.<sup>494</sup> During what has become known as the Flint water crisis, at least twelve people died and seventy became sick as a result of lead contamination.<sup>495</sup> Consequently, the residents of the city filed a class action suit against the state, the city, the county, and two engineering firms, which resulted in a settlement that has provided financial compensation to Flint residents, with most compensation going to children.<sup>496</sup> Additionally, in 2016, Michigan’s Attorney General brought criminal charges against Michigan Department of Environmental Quality

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<sup>491</sup> *Pennsylvania Environmental Defense Found. v. Commonwealth*, 161 A.3d 911, 933 (Pa. 2017).

<sup>492</sup> The Federal Tort Claims Act allows for claims against officials in limited circumstances. States have similar provisions under their respective constitutions and statutes. See *Reconciling State Sovereign Immunity with the Fourteenth Amendment*, 129 HARV. L. REV. 1068 (2016), available at <https://harvardlawreview.org/print/vol-129/reconciling-state-sovereign-immunity-with-the-fourteenth-amendment/>.

<sup>493</sup> Ctr. for Disease Control & Prevention, *Story: Flint Water Crisis*, (Apr. 8, 2024), <https://www.cdc.gov/casper/php/publications-links/flint-water-crisis.html#:~:text=On%20April%2025%2C%202014%2C%20the,contaminants%20into%20municipal%20drinking%20water.>

<sup>494</sup> Merrit Kennedy, *Lead-Laced Water in Flint: A Step-by-Step Look at the Makings of A Crisis*, NPR NEWS (Apr. 20, 2016), <https://www.npr.org/sections/thetwo-way/2016/04/20/465545378/lead-laced-water-in-flint-a-step-by-step-look-at-the-makings-of-a-crisis>.

<sup>495</sup> *Flint Water Crisis: \$626m Settlement Reached for Lead Poisoning Victims*, BBC NEWS (Nov. 10, 2021), <https://www.bbc.com/news/world-us-canada-59243426>.

<sup>496</sup> *Opinion and Order Granting Final Approval of A Partial Settlement, In re Flint Water Cases*, (E.D. Mich. Nov. 10, 2021), available at [https://www.flintwaterjustice.com/\\_files/ugd/464ee6\\_c14711b526064bcc5b71e5967effcd.pdf](https://www.flintwaterjustice.com/_files/ugd/464ee6_c14711b526064bcc5b71e5967effcd.pdf).

employees and the city's utilities administrators.<sup>497</sup> However, none of the criminal prosecutions were ultimately successful.<sup>498</sup>

The United States holds impressive values regarding their SDG 6.1, as seen in the graph below. With 97% of the U.S. population has access to safely managed water services.<sup>499</sup> 98% of urban populations enjoy safely managed water services and the remaining 2% have access to basic water services. However, as seen in other nations, the status of rural areas is less certain, but 100% of rural populations appear to have access to at least basic service. Regardless, this puts the United States in a close track to accomplish its SDG 6 by 2030.

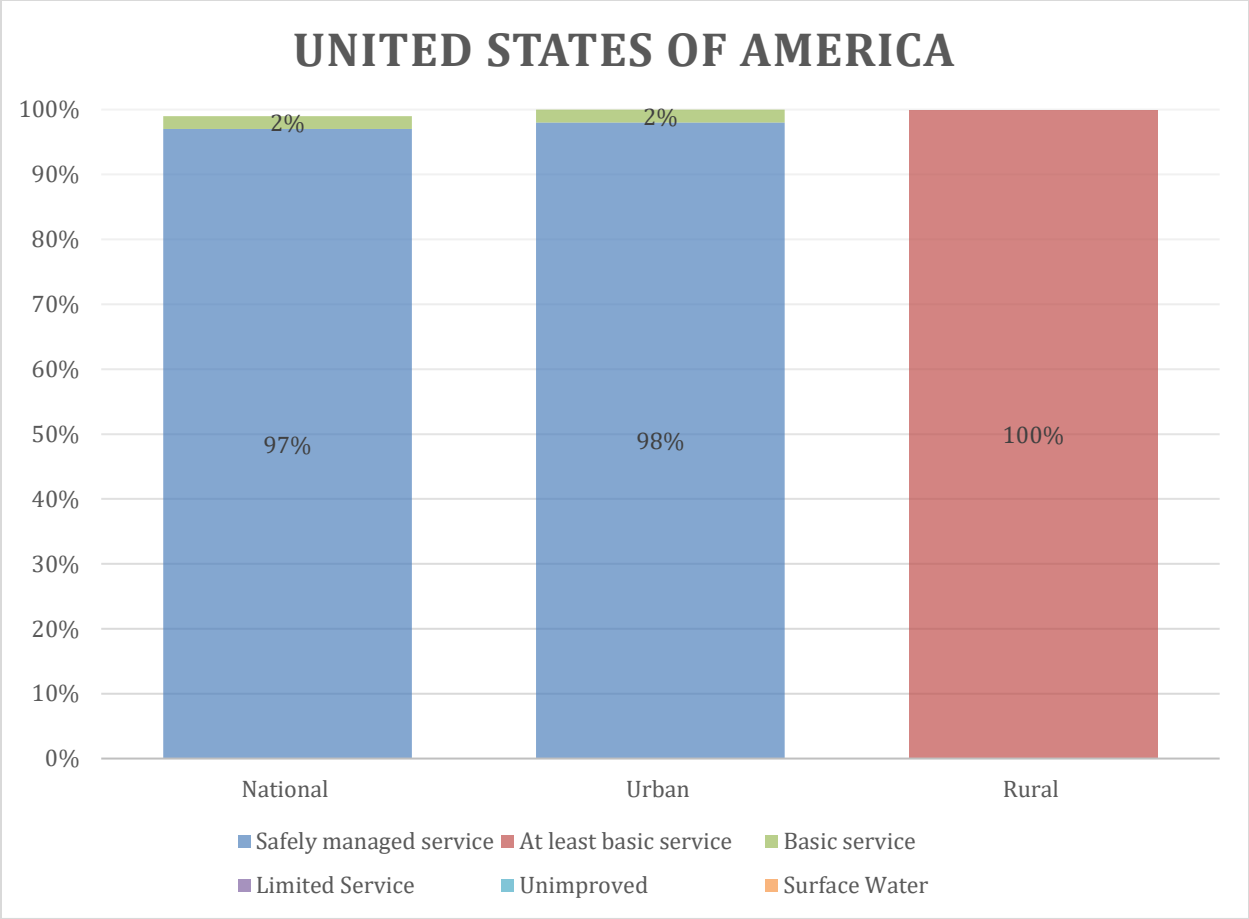
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<sup>497</sup> Annie Snider, *Michigan AG Files Criminal Charges Over Flint Crisis*, POLITICO (Apr. 20, 2016), <https://www.politico.com/story/2016/04/flint-water-crisis-criminal-charges-222206>.

<sup>498</sup> *Michigan's Top Court Won't Revive Flint Water Charges Against 7 Key Figures*, ASSOCIATED PRESS (Oct. 31, 2023), <https://apnews.com/article/flint-water-0584aedee52a09cc7e88a64aa5da6169>.

<sup>499</sup> For the definition of each category of water services and sources refer to note 86.





United States' chart<sup>500</sup>

<sup>500</sup> U.N. Water, *SDG 6 Snapshot in United States of America*, <https://www.sdg6data.org/en/country-or-area/United%20States%20of%20America> (information as of 2022).

#### IV. CONCLUDING THOUGHTS

Many issues presented throughout the paper, from complex legal systems in national and international courts to lack of information on water supply, especially in rural populations. This paper does not propose a solution to address these issues but highlights the information and tools that residents and decisionmakers should be aware of. For access to water as a human right to be able to be guaranteed and protected, States must implement practical measures for water supply into their national legal frameworks to ensure water access. It should not be treated as a matter of convenience for States to choose what is easiest to implement. One thing is for sure, a State cannot have security in its water supply without a legal framework protecting access to water as a human right, even if their values for SDG 6 seem to be perfect or nearly perfect, and vice versa. Such is the case in the United States, where the nation shows impressive numbers for SDG 6, making it close to achieving the 100% goal, but it is missing state regulations that would allow for individuals to find the government liable for violating their right to access water. Similarly, the U.S. is not subject to international liability because it does not recognize the ICESCR, the Optional Protocol, or the Inter-American Court of Human Rights. On the other hand, there are countries, such Venezuela, that grant access to water as a human right in its statutes, recognize the jurisdiction of the Court, and are a party to the ICESCR and the Optional Protocol; yet, they are missing almost all data for SDG 6 values, since they do not report any numbers for rural or urban populations' water usage or availability.

Similarly, some countries do not recognize access to water as a human right explicitly and have concerning values in their SDG 6 reports. For instance, in Nicaragua, where the recognition of access to water as a human right in legislation remains unclear, is a State party to the ICESCR, voted in favor

of the Resolution 64/292, yet it does not share data on their water usage for SDG 6. The same goes for Argentina. This precludes a holistic assessment of water quality and quantity by an international organization.

The States who signed and ratified the ICESCR and the Resolution 64/292 have a duty to their citizens to recognize the right to access water. Governments have a responsibility to the people living in their nations, including protecting, guaranteeing and providing access to their very basic human rights. One of the purposes of Resolution 64/292 is to hold States accountable for their water management practices, and push nations to legislatively act on this very pressing issue. Moreover, States must continue to advance higher and better values for water, especially to their more vulnerable communities, including Indigenous territories. Based on the SDG 6 charts of most countries, access to safely managed water services is significantly lower for rural populations than urban, including countries like Colombia, where the difference between the urban access to safely managed water and their rural population is over 40%.

Finally, this paper has opened the floor to many questions revolving access to water and its category as a human right. Some States like Nicaragua have stipulated that water is a human right on national frameworks like national policies. This makes it unclear to determine if the recognition means that the State has opened its liability for violations to this right to proceed, or whether this action was merely ceremonial. Additionally, some States have classified water as different categories like luxuries or commodities, as well as right and a common. This may allow for a future debate to be made on whether that means that water should be protected as a merchant necessity or a basic social necessity as water stress levels continue to rise, and climate change and improper use escalates water scarcity.

Finally, the authors' arguments revolve around two principles: a) the right to life was the first, and arguably most important, human right, and b) water is an essential and irreplaceable resource for sustaining life; one cannot exist without the protection of the other. Nations must begin to look at different ways to implement other countries' methods, laws, and resources to inform themselves of decisions regarding the framework of access to water. Regardless of their legislative frameworks, States should provide the people residing in their countries with the legal tools to ensure their rights are guaranteed, protected, and enforced.

## V. ADDENDUM

For further reading of academic and international sources, please refer to the following list:

- Rodrigo Castillo Jofré et. al., Normative Sources and Jurisprudential Development of the Human Right to Water in Latin America, 21 ICON 1559 (2023) (human right to water in Latin America), available at <https://academic.oup.com/icon/article/21/5/1559/7450165>
- Mario Peña Chacón, Derecho Humano al Agua, Pro Humanitas (2009) at 7, available at <https://biblioteca.corteidh.or.cr/tablas/r24593.pdf>
- Antonio Pulgar Martínez, El Derecho Humano al Agua y al Saneamiento y su Relación con la Protección del Medio Ambiente en América Latina, 16 Anuario de Derechos Humanos 99, 2020 (discussing water and sanitation as a human right in Latin America), available at <https://anuariocdh.uchile.cl/index.php/ADH/issue/view/5462>
- José de Jesús Becerra Ramírez and Irma Salas Benítez, El derecho humano al acceso al agua potable: aspectos filosóficos y constitucionales de su configuración y garantía en Latinoamérica, 19 Revista Prolegómenos Derechos y Valores 125, available at <https://dialnet.unirioja.es/descarga/articulo/5331224.pdf>
- Juan Pinos and Antonio Malo-Larrea, El Derecho Humano de Acceso al Agua: una revisión desde el Foro Mundial del Agua y la gestión de los Recursos Hídricos en Latinoamérica, 13 INVURNUS 12, available at <https://dspace.uazuay.edu.ec/bitstream/datos/11509/1/%282018%29%20Pinos%20%26%20Malo%20-%20El%20derecho%20humano%20de%20acceso%20al%20agua%20una%20revisión%20des>

[de%20el%20Foro%20Mundial%20del%20Agua%20y%20la%20gesti3n%20de%20recursos%20h3dricos%20en%20Latinoam3rica.pdf](#)