

Amicus Curiae Statement
of
The Center for Water Security and Cooperation

**Request for an advisory opinion on the Climate Emergency and Human Rights
submitted to the Inter-American Court of Human Rights by the Republic of Colombia
and the Republic of Chile**

In response to the President of the Court's call for written opinions under Article 73(3) of
the Rules of the Court

December 18, 2023



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1. The Center for Water Security and Cooperation is a non-profit organization incorporated and based in Washington, D.C. in the United States. The work of the Center is international, as is our mission to improve the laws, policies, practices and standards surrounding water to ensure water security for current and future generations. Much of the work of the Center is focused on creating stronger legal protections for water access, ensuring that access is guaranteed to all, encouraging transboundary cooperation on water issues, and developing laws that properly address the threats to water.
2. Water is one of the most—if not the most—essential element for human survival. Clean, sufficient water is required for drinking, cooking, hygiene, and basic sanitation. Water is also required for every piece of food, whether grown, raised, or caught. Water is also necessary for many industrial processes including almost all electricity generation, where water is used for cooling or used to generate steam that moves turbines. Commercial and educational centers also require water to operate, and water is necessary in restaurants, offices, schools, and every business in between. Water also provides an important means to transport goods, create boundaries, and support culture and religious practices. Water is foundational to nearly every aspect of human and biological life. With it, humanity can thrive. Without it, we die.
3. Water is also under threat from overuse, misuse, and the impacts of climate change. Increased floods, droughts, pollution, and erosion, among others, are all directly tied to climate change. While some States are taking action to mitigate the impacts of climate change, many are not taking sufficient action to protect water and to safeguard its availability for its people. When clean, sufficient water is not accessible, people will turn to water that is polluted and unclear, leading to illness and death.
4. Climate change has become one of the greatest threats to water, exacerbated by pollution, overconsumption, poor management, and ineffective protection. The Center’s work focuses on water, and our observations are designed to enhance the Court’s understanding of how the climate emergency is driving inequality and inequity around water, and the need for the Court to clarify the protections for water under the American Convention on Human Rights.
5. This court has, in its past jurisprudence, noted that there is a human right to water that is connected to the human right to a clean environment.¹ This right, founded on Article 26 of the American Convention of Human Rights (ACHR), is confirmed in international human rights principles as reflected in the work of the Committee on Economic, Social

¹ *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 121. See also *Case of Indigenous Communities of the Lhaka Honhat (Our Land) Ass’n v. Arg., Merits, Reparations, and Costs, Judgment (hereinafter “Indigenous Communities of the Lhaka Honhat”)*, Inter-Am. Ct. H.R. (sec. C) No. 420, ¶222 (Feb. 6, 2020).

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and Cultural Rights (CESCR) and the UN General Assembly.² These rights, which have been noted by the Court, require the States to progressively achieve those rights, and to provide protection, information, and to fulfill other duties in order to protect them.

6. The climate emergency does not undermine these guarantees; if anything, it heightens them. The duty of the government to mitigate the impacts of climate change on water supply and infrastructure becomes greater if water is becoming scarcer. As the Court noted in discussing the right to water:

Este Tribunal ha indicado que “el acceso al agua” implica “obligaciones de realización progresiva”, pero que “sin embargo, los Estados tienen obligaciones inmediatas, como garantizar [dicho acceso] sin discriminación y adoptar medidas para lograr su plena realización”. Entre las obligaciones estatales que pueden entenderse comprendidas en el deber de garantía se encuentra la de brindar protección frente a actos de particulares, que exige que los Estados impidan a terceros que menoscaben el disfrute del derecho al agua, así como **“garantizar un mínimo esencial de agua” en aquellos “casos particulares de personas o grupos de personas que no están en condiciones de acceder por sí mismos al agua [...], por razones ajenas a su voluntad.”**³
7. The Court’s interpretation highlights that States have existing immediate obligations to provide water to those cannot access sufficient clean water for reasons outside of their control. The climate emergency does not lessen this obligation; instead, it heightens it. Climate change can slowly erode the availability of water, through a long drought; it also creates acute crises—as in floods, when municipal water supplies may be interrupted and natural sources may be corrupted by disease, debris, or decay. The State’s obligations must expand to meet these challenges—and the State must be prepared to take these actions—to ensure that the requirements of non-discrimination and basic water provision are not interrupted.
8. This entails that even though much of the right to water is considered a right of “progressive realization” under the American Convention, there are core obligations that every State must meet. These core obligations, regardless of the impact of climate on a State, cannot be set aside. As States consider their duty to mitigate, protect, and otherwise address the impact of climate, they must ensure that water is provided without discrimination to those who cannot otherwise access it. As clean water becomes more and more scarce, the right to water will require extensive planning of water use, consideration of water usage, and increased protections against pollution by every State. Without this planning and built-in protections, the right to water will disappear as the climate emergency worsens.

² *Id.* at paras. 224-230.

³ *Id.* at para. 229 (emphasis added).

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9. In order for these basic needs to be met, every person must be provided both the information and the judicial recourse to enforce these rights. Information about the financial stability of utilities, their policies on water shutoffs, about rates for water and wastewater services, their water quality data, and contact points are exceptionally important. Information about financial stability and the policies of these utilities help those who rely on that utility understand and support their utility. It informs those same people of their rights and responsibilities when it comes to water service. More than anything, it allows for greater transparency and human investment in the utilities and their operation. When utilities do not provide the service that is required under the law, having clear regulatory or judicial recourse is critical. Water shutoffs can imperil a family in days, leading to migration, eviction, or illness. The judicial power of every state must clearly protect against unlawful shutoffs and enforce the rules of non-discrimination and access for the most vulnerable. These core rights cannot be left to international processes; the impact of losing water access is acutely felt in days. Any deferral of judicial review is unconscionable.

Conclusion

10. The Court has already defined many of the contours of the right to water as it exists under the American Convention. The climate emergency and its impact on water security—the availability of clean, safe water—requires stricter obligations today to ensure that the rights of each individual are protected tomorrow. The Court’s inclusion of the right to water in the guarantees of the Convention must be reaffirmed; in fact, the Court has already addressed the impact of climate change on the right to water in its prior cases. These guarantees must be given primacy, particularly those comprising basic access to clean, safe water to drink. Regardless of the situation, without clean, safe water people will not be able to survive. This requires that the right to water be given special consideration among the many different obligations owed by States, even as they face the multiple threats from climate change.

Thank you for your consideration of our views. Please be assured of our greatest respect and appreciation.

Respectfully,



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