

The Inter-American Court's Evolving Jurisprudence in “Water” as a Human Right: The Access to Water in Indigenous Communities

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The jurisprudential evolution of the human right to water in international law has contributed to an unclear consensus on how to understand the right to water. Early scholarship in water rights such as Winkler explain that the right to water developed and through international covenants, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Previous research has looked through both regional and international law to see where water rights are implied from universal to local levels. This paper unifies different scholarly angles – for example scholars working in water rights and others examining how human rights developed before regional courts - to reveal the gap between lawyers and political scientists. It uses novel data from the Inter-American Court of Human Rights (IACtHR) to investigate how a regional human rights court developed its jurisprudence concerning water rights in indigenous communities over time (from 2010 to 2020). Particularly, we conducted a content analysis searching for ‘water’ or ‘access to water’ within the IACtHR’s database. This is the first scholarly attempt to investigate the change in water rights within the IACtHR’s database over the last decade. Our findings show that the IACtHR has greatly developed its jurisprudence, as it now explicitly refers to the right to access of water under the right to cultural integrity. The paper uses two case studies to demonstrate empirically how the IACtHR makes these concepts stick in practice. This shows that the jurisprudential progression of water rights is leading towards clarity.

Introduction

Water is considered a contested human right¹. This is so because, initially, water was not explicitly included in many human rights conventions. For example, the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) did not include a specific article considering water as a human right. Hence, it is part of courts’ work to deal with the inclusion of water as a human right in decisions. Regional human rights courts – such as the European Court of Human Rights (ECtHR), African Court of Human and Peoples’ Rights (ACtHR) and Inter-American Court of Human Rights (IACtHR) – have worked more specifically in enhancing this right in the past decade².

Despite the lack of explicit references to water rights within these international conventions, water-related cases are prone to arise. In fact, Bond & Dugard explain that “numerous water-related violations” are being brought before domestic courts such as in South Africa. Going beyond the letter of international conventions, this paper will tackle the evolution of jurisprudence of the IACtHR while defining water as a human right and expanding the boundaries for this right.

The central question guiding this research is, “How does the Inter-American court develop its case-law in indigenous water rights through its jurisprudence?” To answer this, we first

conducted a content analysis with the term “access to water” within the set of case-law available in the IACtHR’s database. We then selected two legal cases involving water rights, out of the initial results which included fourteen cases (cited at the end of the paper), to investigate and evaluate the development of water rights through time. Our findings analyze two empirical cases that help the reader understand water rights and offer valuable insights to address present day issues.

The significance of this research extends beyond the issue of water rights. Although the American Convention of Human Rights does not explicitly cite “water” in its articles, water is frequently associated with the right to an adequate standard of living, health, and food¹.

Through this research, we aim to broaden and clarify existing knowledge and empirical findings on the right to water and past, present, and future of the overall development of human rights. The implications of these findings allow the reader to think about the intersection between “water rights” and its practical applications in international humanitarian work. Overall, this research endeavors to push the boundaries of current understanding, encouraging further and full implementation of water as a human right.

Literature Review

From the Universal to the Local

Among the most important human rights is the right to access water. Water is essential for humans' survival, hygiene, and well-being. Many communities around the world do not have access to potable water or sufficient access to water in general. In fact, this is a recurrent issue before international courts, particularly because many domestic courts have been working to build a more proactive jurisprudence in water rights. One exceptional example is that of the Constitutional Court of Columbia, which recently positively enforced water rights in the Latin American Region³. Rather than approaching water rights from a theoretical perspective, the following section will synthesize sets of literature that involve the different aspects necessary to bring water rights cases before courts.

Although water as a human right has been pursued as a socio-economic right before international courts, countries lack both legislation and resources to make this right permanent. Poor communities and indigenous communities are the ones that suffer the most from lack of access to water. But to have access to water in practical terms, states – through courts – will need to validate water as a human right. Rather than solely pushing for the establishment of water as a human right universally, the IACtHR has pursued water rights in practical circumstances with indigenous communities.

In this context, Sultana investigates “how universal calls for rights articulate with local historical geographical contexts, and the barriers and potentials that emerge from this”⁴. This author calls for a geographical and contextualized understanding of the “right to access to water rights” by indigenous communities. She further explains “in recognizing the importance that water activists place on the concept of rights, we seek to engage productively with, rather than dismissing, the human right to water. Rather than foreclosing possibilities, it is imperative to seek out and explain critical opportunities”⁴.

According to Winkler, “the provisions most obviously relating to water. . . in the Social Covenant or ICESCR, include the right to an adequate standard of living and. . . the right to health”¹. Winkler suggests that if these rights are universally recognized, then water should fall under these categories, as it is protected by the Social Covenant/ICESCR.

Although water is not explicitly stated as a human right within most internationally recognized legal documents, one can gather information and implications from certain documents which mention water rights in specific situations. Nevertheless, these implications often lack clarity. For example, one of the first international treaties that dealt with water as a human right is the ICESCR¹. Although it does not explicitly refer to water, it can be implied through the recognition of other rights, like the right to an adequate standard of living. CEDAW (Convention

on the Elimination on All Forms of Discrimination against Women), CRC (Convention on the Rights of the Child) and CRPD (Convention on the Rights of Persons with Disabilities) expand on this right ((Winkler 2017, 44)). There is, however, no specific or concrete definition of an adequate standard of living ((Winkler 2017, 42)), rather the interpretation of it, thus leaving this implication unclear.

Current scholarship sheds light on various aspects of water rights in international law, providing a foundation to explore where we can and cannot use implications to inform water rights. Studies have explored articles in various conventions (American Convention, Geneva Convention, etc.). For example, Winkler defines water through international conventions, and she analyzes peripheral conventions – such as the International Convention on the Rights of Women – to capture the conceptualization of water as a human right. In addition, she investigates the different implications of certain rights including but not limited to the right to an adequate standard of living, the right to health, the right to food, and so on.

Latin America & Indigenous Communities

Indigenous communities have been affected by the lack of access to water caused by the conflict between water as a public good versus water as a private resource used to generate profits. According to authors such as Strand and Dugard et al, such struggles are at the core of the debate over considering water as a human right^{5,6}. In fact, “this critique has been strengthened by indigenous people communicating their dismay about the despoilation of their homelands and their determination to protect them ‘for future generations’”⁵. Many indigenous communities express their alternate views to support the critique due to the “despoilation of their homelands”. Water can play a critical role in indigenous culture and individuals are motivated to raise their voices to protect it⁵. This demonstrates the interconnectedness that indigenous people have with their land in relation to water. Therefore, if indigenous people stand up to protect their rights to their lands and cultural preservation, they will also defend their right to water.

In this context of recognizing water as a human right, particularly for indigenous communities, the Inter-American Court of Human Rights started to develop its case-law back in 2010. The first case that mentioned “water” as human rights is the Case of the Xákmok Kásek Indigenous Community v. Paraguay⁷. Another example is the Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina of the IACtHR highlights some of these community problems that lie at the intersection between the right to water and those of indigenous people⁸.

Addressing the development of indigenous water rights' case-law is critical for several reasons. Firstly, understanding the implications of given case-law can allow for the development

of a clearer standard so courts can understand water rights better. For example, certain articles of the American Convention, such as Articles 26 (cultural life), or 21 (communal property)⁹, could imply that water is a human right¹, but clarity would make this easier to study and utilize. Thus, the Inter-American Court has the capacity to decide how to expand water as a human right. International courts have been increasingly driven to policymaking in recent years, while advancing human rights ((Bojan Bugarcic, "Courts as policy-makers: lessons from transition." (Harv. Int'l LJ 42 2001), 247.)). The jurisprudence of international courts can help address ambivalence in the understanding of water as a human right. Addressing case-law and its deeper meanings combined with a clear weighing of pros and cons of past cases is crucial to build this jurisprudence.

From Indigenous Communities to Poor Communities Around the World

International instruments for the study of water rights have been emphasized by scholars as critical in establishing reliable decision making. For example, Dugard refers to the activists who fought for the right to water in South Africa. These people had to take into their own hands the progress of society and many were unsuccessful⁶. In addition, according to Sultana, "From Buen Vivir [a movement for indigenous rights] in Ecuador and Bolivia, to the movement against apartheid in South Africa, the postwar social contracts in the countries of Western Europe, the recent agitations in poor communities of color against water shut-offs in Detroit, Michigan, or the collectivizing for legal water connections in the slums of the Global South, the basis for a claim to one's right to water is influenced by a range of factors"⁴. This shows the importance of institutionalizing the right to water.

Despite the progress in water rights research, several gaps persist. The clarity that many papers have identified in theory has not yet been matched by empirical research. The IACtHR's jurisprudence is an example of the fact that water rights have not been formally well-established. The interplay between different human rights in which water could be a factor, depending on the context, remains unclear. Furthermore, many academic studies do not explicitly consider the future of water rights. There is a lack of consensus in academic articles as to which human rights can and cannot imply water. For example, the right to life might imply the right to water, however certain academic research suggests otherwise. In accordance with Strang, although "universal human rights to water were enshrined in international law", "many people have yet to attain these rights"⁵. As water rights continue to evolve, it remains to be seen whether water rights will be more universally conceived by courts or more focused in contextualized and geographical locations.

Considering the identified gaps and increasing significance

of clarity and consensus in water rights case-law, the primary research question guiding this study is: "How does the Inter-American court develop its case-law in indigenous water rights?" This research question seeks to provide a comprehensive understanding of the progression of the Inter-American court's case-law concerning water rights. To address this question, the research will use case studies directly from the Inter-American court's database, from different time periods to show progression and both with respect to water rights. By comparing and contrasting, and then evaluating these case studies, the research aims to contribute to clarifying the ambiguity of water rights and provide recommendations to their development.

Methods

Although the literature review provides several examples of water rights across the globe, epistemologically, it would not be feasible to investigate water rights in more than one region of the world, and more than one international court. Hence, we selected the IACtHR instead of other regional or constitutional courts. We began with a content analysis within the database of the Inter-American Court of Human Rights ("jurisprudencia.corteidh.or.cr") and searched for the word "water". The results of this analysis accounted for 209 occurrences. These citations (that only related to the word water) resulted in many occurrences that did not necessarily apply to the right to water, instead referring to contaminated water, companies' names, etc. After this initial analysis, we refined the search for "access to water" and identified 14 (fourteen) key cases. Researching terms such as "access to water" was the most reasonable empirical trace to find evidence of water rights within the jurisprudence of the IACtHR.

One key innovation in this paper is the identification of 14 cases within the IACtHR's jurisprudence that deal specifically with access to water. The benefit of this content analysis is that it can be expanded to other regional systems such as the African Regional System or the European System on Human Rights. Scholars can use "access to water" to find cases that are related to these human rights. Initially, we concluded that from these 14 cases countries such as Argentina, Brazil, Paraguay and Venezuela had one or more cases which scored positively for the content analysis on "access to water". We decided to exclude Venezuela from the analysis because they are no longer part of the IACtHR system. We decided to work with Argentina and Paraguay because they both had cases in 2010 and after 2020. Although this paper does not aim to reach generalizable trends for the IACtHR's jurisprudence, it is a substantial starting point for other researchers to build from this design for other countries beyond Argentina and Paraguay.

To provide a more in depth understanding of the right to water within the Inter-American Court of Human Rights' jurisprudence, we selected two cases that were easier to compare

regarding access to water. Hirschl provides a logic of most similar cases in which the two “most similar cases” have multiple common possible explanations but different dependent variables¹⁰. Applying this logic, we selected two cases, one from 2010 and one from 2020, to understand how the Inter-American Court developed the jurisprudence on water rights in the past decade. The two cases were also selected by country, in this case Paraguay and Argentina, to analyze how the right to water can be approached in two areas with significantly different levels of development of social and economic rights. Initially, we observed that the right to water is directly linked to property rights (article 18), but, considering that water rights are directly linked to community rights more broadly, we noticed that the explanatory link between these cases is more related to “health rights”.

Subsequently, we applied the logic of most similar cases to the “within-case” study, and identified similar possible explanations for the two cases, accounting for a dependent variable. Both cases have the following possible explanations: (i) Communal property, which according to Article 20 serves as practice for as hunting and fishing; (ii) juridical rights, because the indigenous communities were not able to file claims with the State under proper procedure; (iii) decent existence, because the lives of both communities were disrupted due to the lack of fair land distribution; and (iv) the difference, since in the Paraguayan case the cultural integrity of the community was not threatened, but was in the Argentinian case. The dependent variable used for the analysis of the case studies is whether the recognized indigenous land had been affected by the state. In the case of Xákmok Kásek Community v Paraguay, the size of the recognized land has been affected by the state, whereas in the case of Lhaka, the size was not affected by the state but rather by private actors – local farmers. The result for both cases is positive, meaning that the Inter-American Court decided to grant rights to the indigenous communities with the fault of the State or private actors.

Xákmok Kásek Community v. Paraguay: Case Summary

The Facts

Initially, the indigenous people of the Chaco in Paraguay used an extensive area of land for agriculture and remained without contact with Europeans until the end of the 19th century. In 2004 the Xákmok Kásek community filed a claim to the 10,700 hectares they recognized as their land, but there was a lack of administrative action by local authorities, and the Paraguayan Senate rejected the bill. The communities were constantly being displaced in the mid to late 2000s and a nature reserve was declared by the President of the Republic on the land claimed by the community (without consultation), thus taking away more of their land. Therefore, the group filed an action on

unconstitutionality against the nature reserve declaration.

The Proceedings

The Commission declared that the right to life included the right to decent conditions and existence. With regards to this, the representatives of the community indicated that the failure to restore the land from the State made it difficult for them to hunt, fish and gather on their land. From May to August 2009, the State had only supplied members 2.17 liters of water per day, while the international standard is a minimum of 7.5 liters.

The quality of the water supplied by the State also did not meet international standards. Therefore, the community had not received acceptable water distribution services nor was there a submission of evidence on the provision of water. Moreover, with regards to the human rights of children, the Court reiterated points stated on access to food and water. Overall, the negligence from the State towards the community especially through the failure to restore their land stripped the Community of the rights to a decent existence, cultural integrity, and communal property.

The Law

According to the American Convention of Human Rights (ACHR), the connection of the community to natural resources must safeguard the rights to life, including access to and quality of water, to personal integrity, to juridical personality, of the child, to respect and guarantee rights without discrimination. Specifically, the lack of right to a decent existence is broken down into several parts, one of which being “Access to and quality of water”⁷. The Court declared that this constituted a violation of Article 4 and Article 1 of the American Convention, to the disadvantage of the community⁷.

The Operative Paragraphs

Initially, the court rejected the State’s request to suspend the proceedings unanimously. Subsequently, the court declared 7 votes to 1 that:

“2. The State violated the rights to communal property, judicial guarantees and judicial protection recognized in Articles 21(1), 8(1), 25(1) of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the Xákmok Kásek Community, in the terms of paragraphs 54 to 182 of this judgment. (76)”

In addition, the court declared unanimously that:

“8. The State violated the rights of the child established in Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of all the children of the Xákmok Kásek Community, in the terms of paragraphs 259 to 264 of this judgment.” By seven votes to one, that:

“9. The State failed to comply with its obligation not to discriminate established in Article 1(1) of the American

Convention, in relation to the rights recognized in Articles 21(1), 8(1), 25(1), 4(1), 3 and 19 of the American Convention, in the terms of paragraphs 273 to 275 of this judgment.” Unanimously, that:

“10. The State indicated its acceptance of certain reparations, according to the provisions of paragraph 32 of this judgment, and this has been assessed positively by the Court, as established in the said paragraph of this judgment,”⁷.

Per the tradition of several cases of the Inter-American court, the court also ordered that: “This judgment constitutes per se a form of reparation,”⁷. The Inter-American court is known by its controversial jurisprudence which requires unconventional types of reparations. Perez writes that the IACtHR’s reparation system is used to ensure full restitution concerning the problem at hand. For example, in this judgment the Court recommended the State of Paraguay to deliver an official summary of this judgment on a radio station⁷.

Although there is no direct order to the right to water, the court determined that the State should grant some rights with regards to the land. These rights included the protection of territory and the granting of 1,500 hectares to the Community⁷. In addition to the right to water, the State also indicated the right to health through the establishment of a permanent health clinic to provide supplies for adequate healthcare, potentially including clean water and sanitation.

Critique

As seen from the paragraphs above, the right to water does not necessarily fall into any one specific category but we can see implications for water rights in the analysis of other related rights. This approach has been leveraged by other authors, such as Winkler, who analyzed the right to water within the broad scope of international law. Examples of water rights she mentioned (in similarity to the Inter-American Court) are implied under: The right to health (Article 4) The right to adequate standard of living (decent existence) (Article 4) The right of child (Article 19) The right to communal property (Article 21).

In addition, the case recognizes that if the land is tied with any cultural significance to the group, then freedom of expression must be permitted. Strand demonstrates a similar connection between water and its cultural value. However, while Winkler might have associated land with water in her analysis of water rights, Strand explicitly connects only water to culture. We do know that the land had cultural significance, but it is undetermined whether the land, water and cultural meaning all connect.

Lhaka Honhat v. Argentina: Case Summary

The Facts

The indigenous people of Salta, Argentina have disputed a land claim with the State for over 35 years. It has been confirmed that this community has been living on the land before the establishment of the Argentine State. Criollos, who are non-indigenous farmers, had been living on indigenous land. Whilst the State claims that these people farm on unfenced land, it is proven that most criollo families have established fencing. The Lhaka Honhat Association represents the indigenous community, and they have sent several requests to the State, and filed judicial actions to formalize communal ownership and property within their land.

The Proceeding

The Court considered that the right to indigenous communal property was violated because the right to property protects not only the connection to indigenous land, but the connection between indigenous people and their resources, which could include water. It was stated that the resources needed for survival and indigenous tradition (e.g., water) are protected by the right to communal property.

In addition, the right to water is directly stated along with the right to movement and residence, to a healthy environment, to adequate food, and to participate in cultural life. The representatives argued that under the right to a healthy environment, logging and other detrimental activities had an impact on the natural habitat, affecting their water supply. Thus, several rights could be affected by environmental damage.

The CESCR indicates that water quality, availability and accessibility must be protected for all people. It states that “water should be treated as a social and cultural good, not primarily as an economic good”. The Court also considered that the right to an adequate standard of living is related to the right to water, both in the Universal Declaration of Human Rights and the ICESCR and CESCR.

The Law

The importance of the land and its connection to the people, specifically in relation to water, must be protected according to Article 26 of the American Convention, which protects the rights to cultural identity, a healthy environment, adequate food, and water (Page 93); Article 8 of the American Convention, which protects judicial guarantees (Page 98); and Articles 21 and 23 of the American Convention, which protect communal property (Page 60)

The Operative Paragraphs

After the unanimous declarations on the State's responsibility of the violation of the rights to property (in relation to judicial protection and political rights), and life (in relation to cultural integrity), the Court established reparations. These reparations urged the State to provide the right to water as follows:

With regards to the right to communal property, that:

"9. The State, within six years of notification of this judgment, shall arrange the removal of the criollo population from the indigenous territory, as established in paragraphs 325, 329 and 343 of this judgment.

10. The State, within six years of notification of this judgment, shall remove from the indigenous territory the fencing and the livestock belonging to the criollo settlers, as established in paragraphs 325, 330 and 343 of this judgment."16 With regards to the right to cultural identity (including access to food and water), that:

"11. The State, within six months of notification of this judgment, shall submit a report to the Court identifying critical situations of lack of access to drinking water or food and shall draw up and implement an action plan, as established in paragraphs 332 and 343 of this judgment.

12. The State, within one year of notification of this judgment, shall prepare a report establishing the actions that must be implemented to conserve water and to avoid and rectify its contamination; to guarantee permanent access to drinking water; to avoid the persistence of the loss or decrease in forestry resources and effort to recover them, and to facilitate access to nutritional culturally acceptable food, as established in paragraphs 333 to 335 and 343 of this judgment."9.

Critique

Based on the facts of the case, one would assume it would have mostly violated the right to communal property (which the Court does), however it is evident that the right to cultural integrity greatly affected water rights. On the one hand, Winkler states that the right to communal property can imply the right to water in most situations, given the land involves natural resources which could include water. Other authors have connected loss of land with the right to cultural integrity. Strang provides the example of Maori water beings which are said to provide a sentient land and waterscape⁵. Similarly, the indigenous group in Argentina could find sentience in the area fenced off by the Criollo settlers, perhaps through cultural practice including water. In conclusion, the case has the intent to explore indigenous rights further with respect to the importance of water.

Analysis

Using similar logic to implicitly relate the right to water with the right to communal property, the Inter-American Court has developed its jurisprudence in indigenous water rights by establishing an evolutionary case-law. In early 2010, the IACtHR jurisprudence was superficial regarding water rights. Later, the IACtHR more explicitly mentioned water as a human right, and purposely included the right to water under the right to cultural significance, thus constituting judgements directly related to the right to water.

Communal Property

Comparing the two cases, it appears that both used similar legal reasoning to tie water rights to communal property, according to article 20 of the American Convention. In the case of the Xákmok Kásek Indigenous Community v. Paraguay in 2010, the Court decided that the State had violated the right to communal property. The land was used by the indigenous group for traditional practices such as hunting and fishing, where they needed to use the land's resources (including water). Despite this, the land claimed was seized by the state. As stated in the case, "The ways in which this relationship [between the indigenous group and the land] is expressed could include traditional presence or use, by means of spiritual or ceremonial ties; sporadic settlements or crops; hunting..."⁷. The crucial point here is that the Court connected the indigenous value of the land ("by means of spiritual or ceremonial ties") to the right to communal property. By analyzing further jurisprudence of the IACtHR, one can conclude that the IACtHR implicitly connected communal property to water rights.

In the case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina of 2020, the Court stated that the right to communal property covers resources of the land, which could be used for survival/tradition (Article 30 of the American Convention). This land was taken by settlers/farmers rather than the state. In addition to connecting indigenous people with their land, water - as part of the natural resources of this land - could also be included as a human right (Lhaka Honhat Association (Our Land) v. Argentina). This shows that still, in 2020, they used similar legal reasoning to imply, but not explicitly state, the right to water. This suggests that their jurisprudence still has room to develop its clarity.

Cultural Values

The case of the Xákmok Kásek Indigenous Community v. Paraguay from 2010 does not directly discuss the lack of access to water as a right. Instead, it is a subsection under the right to a decent existence to discuss the problems concerning water distribution. The Court observed that "that the water supplied

by the State from May to August 2009 amounted to no more than 2.17 liters per person per day. In this regard, according to international standards, most people need a minimum of 7.5 liters per day per person to meet all their basic needs, including food and hygiene”⁷. The court had only included this under the right to life because it was linked to survival, however this doesn’t capture several important uses of water. According to Winkler, water does not fall under this category, and it blurs the clarity it should achieve¹.

The early jurisprudence of the IACtHR usually associated water rights with the right to life (Article 4 of the American Convention). This is so because the American Convention has no explicit mention to water rights in its first 33 articles. As one can note from the later evolvement of the IACtHR’s jurisprudence, the implicit right to water has led to other implications, for example, the right to a healthy environment and therefore cultural identity (Article 26 of the American Convention). In fact, water rights are not solely conceived as individual rights but affect communities as a whole and judges may have considered that framing it as part of environmental rights could enhance the understanding of water as a human right.

In the case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina, the right to water is explicitly protected by cultural integrity as the environment has cultural value to it, and within the environment, water should be protected. According to the Court, “The right to water is protected by Article 26 of the American Convention and this is revealed by the provisions of the OAS Charter that permit deriving rights from which, in turn, the right to water can be understood. These include, for example, the right to a healthy environment and right to adequate food”. This means the Court explicitly stated that the water was a right under the right to cultural integrity. This association between the right to water and cultural integrity demonstrates a forward-thinking opinion of the Court. The Court was only able to develop its jurisprudence in such a way due to the increased number of cases involving environmental rights brought before the Court. Therefore, the Lhaka Honhat case is proven to be a stronger case 10 years later because its legal rationale connects water rights to community. In contrast, the Xákmok Kásek case falls short in its rationale because it related back to the right to life, or the individual. As they were able to make this considerable distinction in 2020, the Court successfully developed its jurisprudence in indigenous water rights case-law over this time.

In addition, there has been demonstrable progress in judgements directly related to the right to water. As an example, in the 2010 case of the Xákmok Kásek Indigenous Community v. Paraguay it was declared that there would be compensation for the land. However, there was no direct or explicit relation to water. Specifically, they stated that “The State must return to the members of the Xákmok Kásek Community the 10,700 hectares it is claiming, in the way and within the time established in

paragraphs 281 to 290 of this judgment”. Therefore, although they allowed for action to happen which could affect the accessibility of water for the indigenous group, they did not explicitly state it. This shows that the Court was still in the early stage of constructing its jurisprudence on water rights, despite its decades of jurisprudential development in other human rights areas.

In the 2020 case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina, the Court explicitly referred to water in the operative paragraphs and ensured that the community was given formal reparations concerning the violation of the right to water. The Court declared that: “The State, within one year of notification of this judgment, shall prepare a report establishing the actions that must be implemented to conserve water and to avoid and rectify its contamination; to guarantee permanent access to drinking water. . .”. This shows that the Court went into detail on situations/contexts as to where the right to water was violated and what needed to be done to guarantee that right as any other, thus helping establish water as a human right. Considering that the IACtHR explicitly includes the right to water in the operative paragraphs of the case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina, chances are that the right to water will be evoked by this Court in future cases.

Conclusion

In conclusion, this research sought to address the gap of clarity within indigenous water rights’ case-law and the Inter-American jurisprudence. Through a comprehensive examination of the issue of water as a human right, the paper demonstrates that the issue of water as a human right is one that needs significant focus and development globally. While much needs to be done to develop jurisprudence on this issue, there has been some encouraging progress in recent years.

This paper has specifically explored two case studies of different time periods, studied directly from the Inter-American Court’s database. This paper aimed to discover how the Inter-American Court develops its case-law in indigenous water rights. The analysis shows that the Inter-American Court has made a great deal of progress in their jurisprudence, evaluating the importance of clarity overall, specifically through the distinct explicit reference to water as a human right, and the way it has been valued as a reparation through access to water. These results offer a nuanced understanding of how the Court makes progressive changes in decision-making and how indigenous water rights are increasing their presence within international law.

The implications of these findings are far-reaching. By successfully solving the puzzle of the IACtHR’s lack of clarity in water rights and filling the gap identified in the Literature

Review's analysis of the current research landscape regarding consensus in water rights, this research contributes to decision making in future cases which involve water rights because it provides an evaluation of the pros and cons with the Inter-American court's development. This was done so through the analysis. The resolution of this gap not only clarifies the past development but also challenges and expands existing understanding in the field.

These findings are particularly noteworthy because they show that there has been some encouraging progress where the Court has progressed in establishing case-law that benefits the communities more practically, while also highlighting areas where there is still room for growth, adding a layer of complexity to the existing body of literature. Drawing upon Winkler's study of water rights, it is evident that whilst some examples of human rights have been able to explicitly tackle water rights (i.e., the right to cultural integrity), others have not (i.e., the right to communal property). Framing water rights primarily under cultural integrity limits the Court when applying their jurisprudence in water rights to various cases, as it might not cover niche aspects found in certain cases. For example, in the case of *Rodríguez Revolorio et al v. Guatemala*, the IACtHR recognized access to water under the right to humane treatment, as the facts of the case concerned access to water with regards to sanitation. In this case, the right to cultural integrity did not apply, meaning the need for permanent and sufficient access to water would not be amended the same way it did in the *Lhaka Honhat v. Argentina* case. This means there is more work to be done within this field.

Specifically, future research could continue to critique the IACtHR's approach in recognizing the human right to water using Winkler's different angles in which she draws upon water rights. In addition, they can use a broader range of related case studies to evaluate the generalization of our conclusion. This would contribute to the more practical approach of pressuring the IACtHR to institutionalize water rights and develop its current jurisprudence and it would build upon the current infrastructure of indigenous water rights in academia.

To conclude, the importance of these findings extends beyond the immediate research question. This paper not only advances academic understanding but also has practical implications for international human rights courts. As we reflect on the significance of these findings, it becomes evident that they contribute substantially to the ongoing discourse in indigenous water rights and provide a solid foundation for future research endeavors in this area.

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Appendix

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