

ANA M. BADIA MARTÍ
(Dir.)

LAURA HUICI SANCHO
(Coord.)

AGUA, RECURSO NATURAL LIMITADO

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Water and sustainable development goals: the role of the private sector

Mara TIGNINO

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1. INTRODUCTION

In 2015 the General Assembly of the United Nations adopted resolution 70/1 'Transforming Our World: the 2030 Agenda for Sustainable Development' (Agenda 2030)¹. Guided by the principle that 'no one will be left behind', this resolution establishes 17 goals and 164 objectives. These objectives, based on the Millennium Development Goals (MDGs) approved by the United Nations General Assembly in 2000, establish the international political agenda from 2015 to 2030.

For over a decade, the MDGs have been the focus of attention in debates on global policy and national policy planning. With the need to define a framework for replacing the MDGs, the post-2015 development agenda has been formally underway since the Rio + 20 conference held in June 2012, when the international community agreed to start a process to develop a set of Sustainable Development Goals (SDGs). The SDGs outline a universal agenda that encompasses the three dimensions of sustainable development (economic, social and environmental), with the aim of addressing the many interrelated challenges that our world faces. The 2030 agenda applies to both developed and developing coun-

¹ *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (25 September, 2015). See: M. ORME, Z. CUTHBERT, F. SINDICO, J. GIBSON and R. BOSTIC, 'Good Trans-boundary Water Governance in the 2015 Sustainable Development Goals: a Legal Perspective', *Water International*, vol. 40:7, 2015, pp. 969-983.

tries and to ensure the implementation of the SDGs, states must be able to convert the SDGs into national objectives and develop and implement policies in order to achieve them. To comply with the SDGs, countries must involve all sectors and even venture beyond their borders. One example is Goal 6.5, which requires the implementation of integrated water resources management (IWRM) at all levels, including those that involve cross borders.

The MDGs were not meant to be a set of legally binding obligations but rather a set of moral and practical commitments. Likewise, the SDGs are not considered to be legally binding obligations but they do have legal consequences. The SDGs address the key systemic barriers to sustainable development such as inequality, unsustainable consumption habits, low institutional powers and environmental degradation.

Water plays a central role in the implementation of the SDGs. The 2030 Agenda dedicates a separate goal to water. Goal 6, entitled 'Ensuring the availability and sustainable management of water and sanitation for all' highlights the multidimensional, complex nature of water management. This Objective includes six Goals: 1) to achieve universal and equitable access to safe drinking water at an affordable price for all; 2) to achieve access to adequate and equitable services for sanitation and hygiene for all; 3) to improve water quality by reducing pollution; 4) to significantly increase the efficient use of water in all sectors; 5) to implement the integrated management of water resources at all levels, even by means of cross-border cooperation; 6) to protect and restore ecosystems related to water². These goals are related to human rights which guarantee access to water and sanitation and the governance of transboundary water resources.

After examining the characteristics of objective 6 and its complementarity with the other SDGs (1), this chapter will analyse the role of the

² Goal 6, entitled 'Ensure availability and sustainable management of water and sanitation for all', includes the following objectives: "6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all; 6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations; 6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally; 6.4 By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity; 6.5 By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate; 6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes; 6.a By 2030, expand international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies; 6.b Support and strengthen the participation of local communities in improving water and sanitation management". *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (25 September 2015).

private sector in achieving the SDGs (2) and the links between private companies and human rights obligations (3). The case studies on the protection of indigenous rights (4) and the obligations of water service providers (5) will be discussed so as to highlight the central role of human rights in the management of water resources.

2. THE ROLE OF WATER IN IMPLEMENTING THE SDGs

Objective 6 cannot be seen as a separate entity without taking into account the other SDGs. The implementation of the various goals, from access to water and sanitation to cooperation on transboundary waters, requires a global interpretation of the SDGs seen as a whole. Water is present in many of the objectives and goals and is intrinsically linked to other problems of sustainable development such as poverty, hunger, health, education, and gender inequality, the integrity of ecosystems, climate change and catastrophes.

Objective 6 is both directly and indirectly related to the goals of each of the other objectives. Specifically, four of the SDGs (Objectives 3, 11, 12 and 15) explicitly mention water in one or more of their proposed targets. One example of these is Objectives 11 and 12, which focus on making cities and human settlements more sustainable and guaranteeing sustainable consumption and production patterns. Both objectives refer directly to water, and specifically to reducing the number of water-related catastrophes (Target 11.5) and to reducing the release of chemicals into water (Target 12.4). Another essential factor highlighted in Objective 11 is the improvement of the resilience of cities and human settlements. Resilience to some signs of climate change such as heatwaves, drought, hunger and desertification cannot be strengthened without the sustainable use and access to water. Within this context, we must recall Target 6.4: "By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity". Implementing Objectives 11 and 12 will become increasingly problematic if water management is not efficiently addressed in cities and human settlements. Furthermore, if the patterns of sustainable consumption and production are not properly implemented, water resources will be seriously harmed.

A more thorough review of all the SDGs indicates that objectives and targets that do not explicitly mention water also have strong synergies with Goal 6. For example, poverty cannot be eradicated (Goal 1) or most other SDGs cannot be achieved without making major investments in the field of water³.

³ UN General Assembly Report of the Open Working Group of the General Assembly on Sustainable Development Goals, Doc. A/68/970 (12 August 2014).

Another example of how water is vital to achieving sustainable development is found in Goal 2, which focuses on ending hunger, achieving food security and promoting sustainable agriculture. Although the goals of this objective do not specifically mention water, this issue is particularly relevant since agriculture is a sector that consumes a large amount of water (both surface and groundwater) and plays an important role in sustainable adaptation to climate change. On the other hand, water may be considered intrinsic to Objective 2 because of the fundamental role it plays in addressing food security and the importance of improving agricultural productivity to reduce poverty, which is the overall objective of the sustainable development agenda⁴.

Another area in which water is not explicitly mentioned, but which nevertheless is intrinsically linked with it, is the energy sector. Goal 7 concerns guaranteeing "access to affordable, reliable, sustainable and modern energy for all". In this context, it is important to mention the existence of hydroelectric energy, which has long been considered a source of sustainable energy. Currently hydroelectric power accounts for approximately one fifth of the world's electricity production and, for many countries, it is the only national energy resource⁵. Therefore, Goal 7 is closely linked to the water objective and to Goal 6.4 on the increasingly efficient use of water resources. Goal 13 should also be mentioned since it concerns the need to "take urgent action to combat climate change and its impacts". This is an essential component of sustainable development, since in many aspects climate change has had a profound effect on water resources throughout the world. Unpredictable rainfall has caused serious floods and made certain human settlements vulnerable, requiring the need to introduce adaptation strategies to manage flood zones⁶. Goal 13.2 concerns "integrate climate change measures into national policies, strategies and planning". This undoubtedly includes managing and protecting water.

Finally, Goal 15, which addresses protecting, restoring and promoting the sustainable use of terrestrial ecosystems is clearly related to sustainable water management. This is of vital importance for transboundary water resources since international watercourses are the habitat for wide variety of species. Pollution, climate change and environmental pressures arising from population growth are just some of the challenges facing the effective and sustainable management of transboundary waters while protecting ecosystems. For this reason, it is important to integrate conservation and preservation values within development decisions.

⁴ *Ibid.*

⁵ M. ORME, Z. CUTHBERT, F. SINDICO, J. GIBSON and R. BOSTIC, 'Good Transboundary Water Governance in the 2015 Sustainable Development Goals: a Legal Perspective', *Water International*, vol. 40:7, 2015, pp. 969-983.

⁶ *Ibid.*

3. SDGs AND THE PRIVATE SECTOR

Transnational corporations play an important role in achieving the SDGs. The Addis Ababa Conference on Financing for Development held in July 2015 highlighted that the private sector should partner with governments, non-governmental organizations and intergovernmental organizations in order to finance sustainable development and projects to fight poverty⁷. In this context, the former Director of Food and Agriculture in the UN Global Compact, Puvan J. Selvanathan, stated that "the interesting thing is that now companies discuss the same issues in the same way as the public sector. Now companies are part of the game". He also explained that "when it comes to resources, it does not matter whether they are provided by companies or governments; the important thing is that they have an impact"⁸. Companies, especially transnational corporations, are important partners needed to carry out sustainable management of natural resources. Synergies between governments and the private sector must not compromise the adequate protection of water resources and human rights.

Although the main responsibility to protect the environment and guarantee the protection and respect of human rights depends on the states, private companies also have responsibilities. The concept of corporate social responsibility (CSR) currently includes obligations regarding human rights. The *Council of Companies for Sustainable Development* defines this concept as "the constant commitment of companies to behave ethically and to contribute to economic development while improving the quality of life of workers and their families, as well as the local community and society in general"⁹. The legal aspects of this concept are still vague, but there are many examples of human rights obligations in private companies, including those industries whose activities may influence the right to water and the environmental protection of water resources. Examples of this trend are the UN Global Compact, the Guiding Principles on Business and Human Rights adopted by the Human Rights Council in 2011, the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation in 2012 and the Guidelines on Transnational Corporations, last updated by the Organization for Economic Cooperation and Development (OECD) in 2011. There are also some specific practices that have a direct impact on the protection of water resources, including the 'CEO Water Mandate', which is part of the UN Global Compact, the Alliance for Water Ad-

⁷ Third Conference on Financing for Development, 13-16 July 2015, Addis Ababa *Action Agenda of the Third International Conference on Financing for Development*, A/RES/69/13 (27 July 2015), http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/69/13&referer=http://www.un.org/esa/ffd/ffd3/&Lang=S [last visited on 5 February 2016].

⁸ United Nations Conference on Trade and Development (UNCTAD) and Nestlé, *Summary of the Global Forum for the Creation of Shared Value*, 2014, p. 8.

⁹ WBCSD, *Corporate Social Responsibility: Meeting Changing Expectations*, 1999, p. 3.

ministration and the Protocol for the Evaluation of the Sustainability of Hydroelectric Energy¹⁰. All these initiatives prove that the private sector has obligations in the management and protection of water resources.

4. THE LEGAL ASPECTS OF THE CONCEPT OF SOCIAL RESPONSIBILITY AND OBLIGATIONS IN THE FIELD OF HUMAN RIGHTS IN THE WATER SECTOR

States are still the main players responsible for international human rights law, but they are not the only ones. There is a growing trend to recognise the responsibilities of private companies in international human rights law. These responsibilities are increasingly addressed on an international level. It may be said that there has been an evolution of the concept of corporate responsibility in the last two decades. The obligations of the private sector include the human right to water as well as other human rights related to access and protection of water resources.

Water is not expressly recognised as a right among the leading instruments of international human rights law, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. In 2002, the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No. 15 on the Right to Water, which deems that the right to water is implicitly recognised in Article 11.1 on the right to an adequate standard of living and in Article 12.1 on the right to health within the ICESCR¹¹. General Comment No. 15 is a key document that offers an authoritative interpretation of Articles 11 and 12 of the Covenant.

In July 2010, the United Nations General Assembly described access to water as a fundamental human right and reaffirmed the relationship between the right to water and the right to sanitation¹². The General Assembly recognises that "the right to safe and clean drinking water and sanitation as a human right that is essential, for the full enjoyment of life

¹⁰ This Protocol was developed by the International Hydropower Association. See <http://www.hydropower.org/topics/featured/hydropower-sustainability-assessment-protocol> [last visited 11 October 2017].

¹¹ Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11 (20 January 2003). Available at [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf) [last visited on 25 January 2016].

¹² On 17 December 2015, a UN General Assembly resolution explicitly recognised the 'human right to sanitation' as an independent right, together with the 'human right to clean water'. The resolution recognises that "the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity". UN General Assembly Resolution, A/C.3/70/L.55/Rev.1 (17 December 2015).

and all human rights"¹³. It also called on "states and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all"¹⁴. Two months later, the Human Rights Council, referring to this specific General Assembly resolution, stressed that the right to water and sanitation stems not only from the right to an adequate standard of living, but is also inextricably related to the right to health, as well as the right to life and human dignity¹⁵. These two resolutions form an authoritative confirmation of the international consensus on the existence of a human right to water and sanitation in human rights law.

Among the basic obligations that represent with immediate effect "minimum essential levels of each of the rights enunciated in the Covenant", the CESCR recognises the obligation to "ensure the right of access to water and water facilities and services" on a non-discriminatory basis, especially for vulnerable or marginalized groups¹⁶. Furthermore, the Committee expressly recognises that the 'obligation to protect' requires any states involved to prevent third parties, including private companies, from interfering with the right to water. This obligation includes adopting measures to prevent third parties from rejecting access to water and contaminating or unfairly exploiting water resources¹⁷. Likewise, the obligation of states to protect such includes an extraterritorial dimension, which means that "States parties should also take steps to prevent human rights contraventions abroad by corporations which have their main offices under their jurisdiction"¹⁸. In General Comment No. 15, the UN Committee on Economic, Social and Cultural Rights declares that the "steps should be taken by States Parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries"¹⁹.

5. PRIVATE INVESTMENTS AND THE RIGHTS OF INDIGENOUS PEOPLES IN RELATION TO WATER

When analyzing the relationship between human rights and private sector activities, it is of paramount interest that we examine the relationship between environmental protection and certain rights of indigenous peoples, in particular the ownership and use of land and water resources.

¹³ UN General Assembly Resolution A/64/292 (28 July 2010).

¹⁴ *Ibid.*

¹⁵ Human Rights Council, A/HRC/RES/15/9 (30 September 2010).

¹⁶ General Observation No. 15, par. 37 (b), p. 12.

¹⁷ *Ibid.*, par. 23, p. 33.

¹⁸ Committee on Economic, Social and Cultural Rights, *Declaration on the obligations of the states involved in relation to the business sector and economic, social and cultural rights*, E/C.12/2011/1, 2011, par. 5.

¹⁹ General Observation No. 15, par. 33.

Indigenous peoples enjoy specific protection, which includes traditional methods of water management. States also have a duty to protect vulnerable groups, including their access to water. This means that states must ensure for indigenous peoples the conditions that may guarantee them a dignified existence and that their water resources are not sold or privatized²⁰. However, as the United Nations Guiding Principles on Business and Human Rights state, companies, especially multinationals, have a responsibility to respect human rights regardless of each government, particularly in scenarios where governments do not provide protection of fundamental human rights²¹.

Companies should ensure a special protection of indigenous people's rights. The environment in which indigenous peoples live provides the indispensable natural resources to guarantee an adequate standard of living and a decent life. In this context, it is convenient to mention the case of the Mayagna (Sumo) Awas Tingni Community against Nicaragua regarding the communal property rights over the ancestral lands of members of indigenous communities. In this case, the state granted a concession to a private company without the consent of the community and failed to guarantee an effective solution to the community's protests regarding their property rights. Thus, the Inter-American Court of Human Rights stated that "indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their economic survival"²². Furthermore, the Court decided that even the delimitation, demarcation and titling of the lands of the members of the Mayagna (Sumo) Awas Tingni Community, Nicaragua must refrain from carrying out acts that may lead state agencies or third parties to act with their acquiescence or tolerance which may affect the existence, value, use or enjoyment of the assets located in the geographical area where the members of the Mayagna (Sumo) Awas Tingni Community live

²⁰ See the separate Opinion of Judge A. A. CANÇADO TRINDADE, in the Judgment of the Court of the Inter-American Court of Human Rights, *The Sawhoyamaya Indigenous Community against Nicaragua* (29 March 2006), par. 2-3.

²¹ In particular, Principle 11 of the Guiding Principles on Business and Human Rights of the United Nations states that "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved". The commentary to this Principle also states that "the responsibility to respect human rights constitutes a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and willingness of States to meet their own human rights obligations and does not reduce those obligations. This concerns an additional responsibility to comply with national laws and regulations for the protection of human rights". Guiding Principles on Business and Human Rights of the United Nations, HR/PUB/11/04, 2011, http://www.ohchr.org/Documents/Publications/Guiding-PrinciplesBusinessHR_SP.pdf.

See also WORLD ECONOMIC FORUM, GLOBAL AGENDA COUNCIL, *Shared Responsibility. A New Paradigm for Supply Chains*, 2015, p. 8.

²² Inter-American Court of Human Rights, *The Mayagna Community (Sumo) Awas Tingni Community against Nicaragua*, Judgment of August 31, 2001, par. 149.

and carry out their activities²³. Although this case is not directly related to water management, it illustrates the impacts that economic activities may have on the territories where indigenous peoples live.

The African Commission on Human and Peoples' Rights has also contributed to the recognition of the rights of indigenous peoples to use natural resources. In the case of the *Center for the Development of Minority Rights against Kenya*, the Endorois community alleged that the defendant state sold part of the ancestral territory to third parties²⁴. In particular, it alleged that concessions were granted to private companies for the extraction of rubies on the lands of the Endorois. These concessions included the construction of a highway, which created a negative impact on the surroundings of Lake Bogoria, an area vital for the religious and traditional practices of the Endorois²⁵. The Commission linked the right of access to water sources to religious freedom alleging that:

"culture, religion and traditional way of life [of the Endorois] are intimately intertwined with their ancestral lands, Lake Bogoria and the surrounding area. It agrees that Lake Bogoria and the Monchongoi forest are central to the Endorois' way of life and without access to their ancestral land, the Endorois cannot fully exercise their cultural and religious rights, and feel disconnected from their land and ancestors"²⁶.

It therefore concluded with the decision that a violation of Article 8 on the freedom of religion of the African Charter on Human and Peoples' Rights had been committed and recommended the respondent State "must pay adequate compensation to the community for all the loss suffered" and "pay royalties to Endorois from existing economic activities"²⁷.

In both cases presented to the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights, access to information and public participation are a means of exercising the right to the use of lands and water resources. Indigenous peoples have often been endowed with specific rights in the use of water resources.

6. THE OBLIGATIONS OF SUPPLIERS OF WATER AND OTHER INDUSTRIES

An intense debate has arisen concerning the participation of private players in the supply of drinking water, sanitation, wastewater and sew-

²³ *Ibid.*, par. 4.

²⁴ See M. TIGNINO, 'Principle 23: The Environment of Oppressed Peoples', in J. VINALES (ed.), *The Rio Declaration on Environment and Development. A Commentary*, Oxford University Press, 2015, p. 557-568.

²⁵ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 4 February 2010, par. 5, 13-14.

²⁶ *Ibid.*, par. 156.

²⁷ *Ibid.*, 'Recommendations'.

age services. On the one hand, some argue that water must remain a public good, administered by the authorities of the states, since it is essential for human life and is the essence of the environment. The supporters of this approach allude to many examples in which the private sector has managed water poorly and with a lack of transparency. Furthermore, private players might have significantly increased the price and water quality could have fallen. On the other hand, supporters of private participants argue that such private players can efficiently manage water services, repair and expand networks and reach more people at a lower price. Sometimes the debate between supporters and critics of private sector participation in supplying water services has become rather emotional and the complexity of water values makes it difficult to reach a solution shared by all stakeholders.

The relationship between public and private suppliers in the water sector poses a number of challenges. The UN Special Rapporteur on the Human Right to Water, Ms. Catarina de Albuquerque, highlighted the right of people to participate in the decision-making processes regarding the choice of whether to delegate or not these services to a private operator. In her opinion:

“Regardless of its modalities, the decision of the State to delegate or not delegate service provision must be taken in a democratic and participatory process. All those concerned must be enabled to participate throughout the process and to monitor, evaluate and report on possible human rights abuses. Participation has to be active, free and meaningful and allow for a genuine opportunity to influence decision-making”²⁸.

She also pointed out that:

“When deciding to delegate service provision, and once that fundamental decision has been taken, the subsequent process of tendering, bidding and contract negotiation also must be transparent. The terms of reference and the final contract should be made available for public scrutiny and commenting. Commercial confidentiality must not jeopardize the transparency requirements provided for under the human rights framework”²⁹.

The Special Rapporteur on the Right to Water has highlighted the need to balance ‘public’ and ‘commercial’ interests. The decision to delegate the provision of services to private players may imply the confidentiality of the procedure. However, access to information and clear rules on acquisition must be guaranteed to ensure access to information for local populations.

²⁸ OHCHR, Report by the Independent Expert on the issue of human rights obligations related to access to drinking water and sanitation, Catarina de Albuquerque, 2010, A/HRC/15/31, ar. 63 (c), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/148/31/PDF/G1014831.pdf?OpenElement> [last visited 31 January 2016].

²⁹ *Ibid.*, par. 36.

States do not automatically renounce their international human rights obligations when privatizing the provision of water services³⁰. If states fail to guarantee that companies providing these services comply with the obligations of the state’s human rights, the states themselves will be exposed to problems of reputation and legal consequences. Private sector providers must prevent all infringements against the human right to water. The increase in prices for water supplies may be just one example of such infringements³¹. However, not all increases in prices imply that the human right to water has been violated. For example, a price increase may be necessary to ensure the sustainability of the water supply. The human right to water is only violated when the most vulnerable part of the population fails to have access to water due to high prices. Therefore, the participation of the private sector *per se* does not constitute an infraction against the human right to water. Possible violations of the human right to water may depend on a non-existent or incomplete state regulatory framework. States have a duty to adopt national legislation and policies of appropriate subsidies to ensure affordable access to water for the most marginalized and vulnerable groups of individuals and communities³².

In addition to water service suppliers, there are other industries that also have commitments to human rights related to the sustainable management of water resources. The human right to water has been at the core of national cases involving the responsibilities of states and private players. One such example is the *Vellore Citizens Welfare Forum v. Union of India* (*Forum of the welfare of citizens of Vellore against Union of India*) filed before an Indian court³³. This case illustrates the relationship between the protection of the environment and the human right to water. The claimants stressed that contamination of water sources was caused by more than 900 tanneries located in the State of Tamil Nadu. These industries were discharging effluents into underground water resources, agricultural lands and the Palar River, which was the main source of water for the population of this area. As a result, the population ended up without access to drinking water. The Court noted the importance of the leather industry for the country, in particular the State of Tamil Nadu, which is the main exporter of leather as it makes up approximately eighty

³⁰ Principle 5, the Guiding Principles on Business and Human Rights of the United Nations, states that “states should exercise adequate oversight with a view to fulfilling their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights”.

³¹ See C. DE ALBUQUERQUE and I. T. WINKLER, ‘Neither Friends nor Foe: Why the Commercialization of Water and Sanitation is not the Main Issue for the Realization of Human Rights’, *Brown Journal of Human Rights*, vol. 17, 2010, p. 176.

³² I. WINKLER, *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation*, Hart, Oxford, 2012, p. 245. See also UNECE/WHO, *No One Left Behind. Good Practices to Ensure Equitable Access to Water and Sanitation in the Pan-European Region*, 2012, p. xv.

³³ Supreme Court of India, *Vellore Citizens Welfare Forum v. India*, 28 August, 1996, <http://indiankanoon.org/doc/1934103/> [last visited 6 February 2016].

per cent of the country's leather exports. However, the Court also noted that this industry had no right "to destroy the ecology, degrade the environment and pose as a health hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry"³⁴. The Court indicated that the Constitution protects the right to water and noted that the right to a clean environment is the very basis of this right³⁵. It also noted that efforts to encourage the industry to build water treatment facilities and establish surveillance systems to control pollution had no effect 10 years on. For the Court, there was no justification for allowing the industries more time, so it decided to require tanneries to develop surveillance systems to control pollution and ordered a specific time frame in order to carry it out. Once the deadline expired, the industries again requested authorization from the state to continue their operations. They now needed a new authorization granted by the state to continue operating. This case clearly illustrates the justiciability of the right to water and that states must impose well-designed regulatory frameworks to prevent third parties from violating the right to water.

Another case presented before the High Court of Kerala, in India, serves as a good example of the need to guarantee the conservation of underground water resources. In the case of *Perumatty Grama Panchayat v. State of Kerala*, the council of a town cancelled the licence granted to a factory that produced soft drinks and bottled water. The over exploitation of underground water by the factory led to shortages and the drying up of the source of drinking water. The company objected saying that no national laws regarding the extraction of underground water resources existed and these resources were located on lands owned by private companies. The Court noted that Article 21 of the Constitution of India protects water resources and in particular maintained that "the state is the trustee of all natural resources which are, by their nature, meant for public use and enjoyment"³⁶. The ruling states that underground water is a public resource that must be protected by the state. Water resources must not be overexploited, since the rights of present and future generations may be endangered. If the state fails to protect the supply of drinking water, this may lead to a violation of the right to life protected by the Constitution of India. The right to water is part of the right to life³⁷. In a decision handed down in 2003, the Court recognized that all landowners have the right to use the water resources located on their land, but this use must be reasonable. In these circumstances, the Court ordered the factory to cease to extract underground water³⁸. However, both the local community and

³⁴ *Ibid.*, par. 9.

³⁵ *Ibid.*, par. 15.

³⁶ Kerala High Court (India), *Perumatty Grama Panchayat v. State of Kerala*, 16 December, 2003, par. 34, <http://indiankanoon.org/doc/1161084/> [last visited 6 February 2016].

³⁷ *Ibid.*, par. 34.

³⁸ *Ibid.*, Order No. 1.

the company decided to appeal the 2003 decision. In April 2005, a High Court judge overturned the 2003 ruling and determined that the company could extract a certain amount of water under certain conditions. The people then decided to file the complaint with the Supreme Court, the decision of which is still pending³⁹. Furthermore, in 2011, the State of Kerala also passed legislation establishing a three-member Committee whose task was to determine the amount of compensation owed to local communities affected by the uses of groundwater. However, it should be noted that the company has been closed since 2004⁴⁰. This proves that an action in justice combined with public pressure can be successful. In addition, it also shows that the right to water plays an important role in the allocation of groundwater resources. The excessive use of water by third parties may constitute a violation of the right to water. The same may be said in the context of the pollution of water resources. One such example is the pollution of underground water resources caused by pineapple plantations in Costa Rica. During her visit to Costa Rica in 2009, the UN Special Rapporteur on the Right to Water addressed the issue of negative impacts caused by the use of herbicides on pineapple plantations. These chemicals can seep through the soil and contaminate groundwater. Consuming this water for a long period of time can cause health problems. Although the Supreme Court of Costa Rica ruled in 2009 that public authorities had an obligation to clean up the area and restore potable water, local communities continue to be deprived of their right to clean water⁴¹. In 2015, this case of water pollution in Costa Rica was presented to the Inter-American Commission on Human Rights⁴².

The aforementioned cases highlight that the private sector has several obligations related to water, including the obligation not to cause damage to water resources, the obligation to restore the environment when damage has occurred and the responsibility of not compromising human rights such as the right to water, the right to health or the right to a clean environment.

7. FINAL CONSIDERATIONS

There is a growing global concern regarding water scarcity. As a natural resource, the private sector controls many water operations and con-

³⁹ P. CULLET, *Water Law, Poverty and Development, Water Sector Reforms in India*, Oxford, Oxford University Press, 2009, p. 131.

⁴⁰ R. KRISHNAKUMAR, 'Plachimada's Claims', *Frontline, The Hindu*, vol. 27, no. 15, July 2010, <http://www.frontline.in/static/html/fl2715/stories/20100730271503300.htm> [last visited 6 February 2016].

⁴¹ Visit to Costa Rica, 2009, A/HRC/12/24/Add.1 par. 44-45, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/143/63/PDF/G0914363.pdf?OpenElement> [last visited 31 January 2016].

⁴² 'Water contamination case heads to Inter-American Commission of Human Rights', *The Tico Times News*, 20 March 2015, <http://www.ticotimes.net/2015/03/20/water-contamination-case-heads-to-inter-american-commission-of-human-rights> [last visited 31 January 2016].

licts related to the uses of water resources may arise. In these cases, priority must be given so as to meet vital human needs⁴³. In some disputes related to the limitations of the uses of water resources for industrial purposes, one of the issues at stake may be the relationship between legitimate social and general environmental interest and commercial interest. Human rights must be taken into account in order to achieve a balance among these interests.

Access to drinking water is an internationally recognized fundamental human right that private companies must respect regardless of their size, sector or geographical location. In view of the risks of water shortages and pollution, industries must respect the demands for due diligence. These requirements include the private sector's obligation to avoid negative impacts on the water supply of vulnerable or marginalized communities. Furthermore, when a company supplies water or sanitation services, the responsibility related to respecting human rights includes additional considerations regarding the acquisition process, negotiating the content of each contract and the subsequent operations following the signing of the contract, and businesses must take into account all human rights, including civil, political, socioeconomic and cultural rights.

⁴³ See Art. 10 of the UN Convention on the Law of the Non-navigational Uses of International Watercourses which maintains that "In the event of a conflict between uses of international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs".