

**ON THE MEANING AND SCOPE OF INDIVIDUAL HUMAN  
DUTIES AND OBLIGATIONS IN THE AMERICAN  
DECLARATION OF THE RIGHTS AND DUTIES OF MAN OF 1948**  
*SIGNIFICADO Y ALCANCE DE LOS DEBERES Y OBLIGACIONES HUMANAS  
INDIVIDUALES EN LA DECLARACIÓN AMERICANA DE LOS DERECHOS Y  
DEBERES DEL HOMBRE DE 1948*

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**RESUMEN:** Cada derecho humano tiene un deber humano correspondiente. La Declaración Americana de los derechos y deberes del hombre (ADHR), bajo su capítulo II, impone una amplia gama de deberes a los individuos. Evidentemente, podría volverse contenciosa cuando un instrumento jurídico sobre los derechos y libertades fundamentales de las personas les prescribe explícitamente deberes. Después de establecer el escenario para el debate destacando los principales argumentos contra los deberes humanos individuales e indicando el carácter jurídico de los deberes humanos en la ADHR, este trabajo considera críticamente e intenta aclarar el contenido exacto y las condiciones de aplicación de esas obligaciones para los particulares. A modo de conclusión, alega que el capítulo II de la ADHR constituye una adición notable a la agenda internacional de derechos humanos.

**PALABRAS CLAVE:** Derechos y libertades fundamentales; deberes y obligaciones humanas individuales; obligaciones perfectas e imperfectas; los derechos humanos de los Estados; Declaración Americana de los Derechos y Deberes del Hombre (ADHR) de 1948; Declaración Universal de Derechos Humanos (UDHR) de 1948; dignidad humana; correlación de derechos y deberes; familia, sociedad, comunidad, Estado, Novena Conferencia Internacional de los Estados Americanos; América Latina y Centroamérica; Carta Africana de los Derechos Humanos y de los Pueblos (ACHPR).

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**ABSTRACT:** Each human right has a corresponding human duty. The American Declaration of the Rights and Duties of Man (ADHR), under its Chapter II, imposes a wide range of duties on individuals. Clearly, it might become contentious when a legal tool on the fundamental rights and liberties of individuals explicitly prescribes duties on them. After setting the scene for debate by highlighting the main arguments against individual human duties and indicating the legal character of human duties in the ADHR, this work critically considers and tries to clarify the exact content and conditions of implementation of those duties for individuals. By way of conclusion, it claims that Chapter II of the ADHR constitutes a noteworthy addition to the international human rights agenda.

**KEYWORDS:** Fundamental rights and freedoms; individual human duties and obligations; perfect and imperfect obligations; states' human duties; American Declaration of the Rights and Duties of Man (ADHR) of 1948; Universal Declaration of Human Rights (UDHR) of 1948; human dignity; correlation of rights and duties; family; society; community; State; the Ninth International Conference of American States; Latin and Central America; The African Charter on Human and Peoples' Rights (ACHPR).

**SUMMARY:** 1. INTRODUCTORY REMARKS. 2. HUMAN DUTIES AND OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW. 3. A CRITICAL DISCUSSION OF THE ARGUMENTS AGAINST INDIVIDUAL HUMAN DUTIES AND OBLIGATIONS. 4. THE CORRELATIVITY BETWEEN HUMAN RIGHTS AND HUMAN DUTIES AND OBLIGATIONS. 5. THE LEGAL CHARTER OF THE DUTIES AND RIGHTS IN THE ADHR. 6. IMPLEMENTATION OF THE HUMAN DUTIES AND OBLIGATIONS. 7. FINAL REMARKS.

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## I. INTRODUCTORY REMARKS.

The American Declaration of the Rights and Duties of Man of 1948 (hereinafter 'ADHR' or the 'Declaration'),<sup>2</sup> the first international expression of human rights principles,<sup>3</sup> presents several peculiarities compared to other international<sup>4</sup> and to some regional human rights instruments like the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the European Social Charter (ESC),<sup>5</sup> of which the most noteworthy are perhaps the protection of both civil and political and economic, social and cultural rights<sup>6</sup> and the extensive references to and

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<sup>2</sup> Inter-American Commission on Human Rights (IACHR), American Declaration of the Rights and Duties of Man, 2 May 1948, available at: <https://www.refworld.org/docid/3ae6b3710.html> [accessed 21 February 2019]. See generally Thomas Buergenthal, 'La relación conceptual y normativa entre la Declaración Americana y la Convención Americana sobre Derechos Humanos' (1989) 35 *Revista Instituto Interamericano de Derechos Humanos*, número especial en conmemoración del 40º aniversario de la DADH, 1989.

Christina M. Cerna, 'Reflections on the Normative Status of the American Declaration of the Rights and Duties of Man' (2009) 30 *University of Pennsylvania Journal of International Law*, p. 1211-1237; Mrak E. Wojcik, 'Using international human rights law to advance queer rights: a case study for the American declaration of the Rights and Duties of Man' (1994) 55 *Ohio State Law Journal*, pp. 649-664.

<sup>3</sup> See e.g. Claudio Grossman, 'American Declaration on the Rights and Duties of Man and The Inter-American Commission on Human Rights', in Rudolf Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (Oxford: OUP, 2010), online edition [www.mpepil.com]; Antonio Augusto Cancado Trindade, 'The Inter-American Human Rights System at the Dawn of the New Century: Recommendations for Improvement of its Mechanism of Protection', in David J. Harris and Stephen Livingstone (eds.), *The Inter-American System of Human Rights* (Oxford: OUP, 1998), pp. 395-96. See also Carlos R. Fernández Liesa, *El Derecho Internacional de los Derechos Humanos en perspectiva histórica* (Navarra: Civitas Thomson Reuters, 2013), p. 12 ff.

<sup>4</sup> The major human rights instruments include the trilogy of documents commonly referred to as the International Bill of Rights: (a) the 1948 Universal Declaration of Human Rights, G.A. Res. 217 A (II), U.N. Doc. A/810, at 71 (1948) [hereinafter UDHR]; (b) the 1966 International Covenant on Civil and Political Rights, G.A. Res. 2200 A(XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter ICCPR, what many call the Bible of the human rights movement; and (iii) the 1966 International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A(XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) [hereinafter ICESCR]. The last two instruments entered into force in 1976.

<sup>5</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (1995); and the European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89 (1965), which forms the basis for the European human rights system. See generally Petrus van Dijk, Godefridus J. H. van Hoof, Arie Bernardus van Rijn, Leo F. Zwaak (eds.), *Theory and practice of the European Convention on Human Rights* (Cambridge: Intersentia, 2018); Ergec Rusen, Jacques Velu, *Convention européenne des droits de l'homme* (Cork: Primento Digital Publishing, 2014); Javier García Roca y Pablo Santolaya (Coordinadores), *La Europa de los Derechos Humanos: El Convenio Europeo de Derechos Humanos* (Madrid: Ius Et Praxis, 2005), pp. 315-326.

<sup>6</sup> Civil and political rights, the staple of the human rights movement, have been usually referred to as "first generation" rights, while economic, cultural, and social rights, are called "second generation" rights. On the notion of 'generations' of human rights, see e.g. Fausto Pocar, 'Some Thoughts on the Universal Declaration of Human Rights and the Generations of Human Rights' (2015) 10 *Intercultural Human Rights Law Review*, pp. 43-54; Marjoleine Yolante Ariane Zieck, 'The concept of "generations" of

the elaboration on individual human duties and obligations.<sup>7</sup> While a number of legal writers have mostly drawn attention the protection of socio-economic rights,<sup>8</sup> there has been little discussion about the notion of individual human obligations and duties in the context of the ADHR.<sup>9</sup> A deep understanding of the meaning of the fundamental rights and freedoms encompassed in the Declaration, and the processes through which they are protected, would be deemed necessary in order to explain the link between the notions of fundamental rights and duties upon the individuals. Individual human rights cannot make any sense in a vacuum, devoid of the duties imposed upon the individuals.<sup>10</sup> Indeed, this is true not only in the African continent<sup>11</sup>, but also in any other continent of the world. This work aims at filling this gap, by focusing on the human duties and obligations upon individuals to which the entire second Chapter of the Declaration (Articles XXIX to XXXVIII) is dedicated.

The ADHR was intended by its drafters as a regional human rights instrument for the people of the Americas that should take into account the Latin American's perception of individual human rights as collective in their dimension, alias as requiring for their recognition, their mode of exercise and their means of protection a collective process that demands the intervention of other individuals, groups, and communities in accordance with the general principle of the correlation of rights and duties. The logic

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human rights and the right to benefit from the common heritage of mankind with reference to extraterrestrial realms' (1992) 25 *Verfassung und Recht in Übersee*, pp. 161-198.

<sup>7</sup> See e.g. Douglas Hodgson, *Individual Duty within a Human Rights Discourse* (London: Taylor and Francis, 2017). International Council on Human Rights Policy, *Taking duties seriously: Individual duties in international human rights law: A Commentary* (Switzerland: Versoix, 1999).

<sup>8</sup> See e.g. Christina M. Cerna, above n. 1, p. 1211 ff; Mrak E. Wojcik, above n. 1, p. 649 ff. See also Marco Gerardo Monroy Cabra, 'Aplicación de la Declaración Americana de Derechos y Deberes del Hombre por la Comisión Interamericana de Derechos Humanos' (1989) 6 *Revista Instituto Interamericano de Derechos Humanos, Número especial en conmemoración del 40º aniversario de la DADDH*, pp. 131-132; Pedro Nikken, 'La Declaración Universal y la Declaración Americana. La Formación del Moderno Derecho Internacional de los Derechos Humanos' (1989) 6 *Revista Instituto Interamericano de DD.HH.*, p. 86 ff. See also Damián A. González-Salzberg, 'Economic and social rights within the Inter-American Human Rights System: thinking new strategies for obtaining judicial protection' (2011) 18 *International Law, Revista Colombiana de Derecho Internacional*, pp. 117-154.

<sup>9</sup> But see Paolo G. Carozza., 'From conquest to constitutions: Retrieving a Latin American tradition of the idea of human rights' (2003) 25 *Human Rights Quarterly*, pp. 286-287; Thomas Genthall, *International Human Rights in a Nutshell* (St Paul, Minnesota, 1995), p. 178 ff.

<sup>10</sup> See e.g. Georg Lohmann, 'Individual Human Rights and Obligations Towards Communities' (2015) 8 *J Fudan Journal of the Humanities and Social Sciences*, pp 387-399; Jean Thomas, 'Our Rights, but whose Duties?: Re-conceptualizing Rights in the Era of Globalization', in *Boundaries of state, boundaries of rights : human rights, private actors, and positive obligations* (Cambridge: CUP, 2016), pp. 6-24; Jordan Paust, 'The Other Side of Right: Private Duties Under Human Rights Law' (1992) 5 *Harv. Hum. Rts. J.*, pp. 51-63.

<sup>11</sup> See e.g. B. Obinna Okere, 'The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems' (1984) 6 *Human Rights Quarterly*, pp. 141-59.

behind this principle as elaborated upon by the Brazilian jurist Dunshee de Abranches is that rights and duties should work together as a means towards the achievement of universal respect for and promotion of human dignity.<sup>12</sup> However, this does not mean, however, that every right or freedom implies a correlated duty and every duty implies a right or a freedom.<sup>13</sup> In fact, there are several duties regarding individuals, also in the text of the Declaration, which are not duties on those individuals.<sup>14</sup> In the same vein, individuals may have rights and freedoms which are not rights and freedoms against anyone in particular.<sup>15</sup> Counterpart duties may either be positive or negative; positive when they prescribe a duty to act in such a manner as to realize somebody's right (this is normally associated with social, economic and cultural rights).<sup>16</sup> They are negative when they require of someone to refrain from doing something, as it is generally the case with civil and political rights.<sup>17</sup>

Several reasons can be put forward to explain the choice of this peculiar setting for the Declaration. The main one is the Latin American's historical leadership in the drafting of the ADHR, as documented and acknowledged in particular by Mary Glendon, who also pointed out the strong contribution given by the Latin American delegates to the drafting of the UDHR and to the insertion and formulation of the

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<sup>12</sup> See C.A. Dunshee de Abranches, 'Estudio comparativo entre los pactos de las Naciones Unidas sobre derechos civiles, políticos, economicos, sociales y culturales y los proyectos de convencion interamericana sobre derechos humanos' (1973) 1 *Anuario interamericano de derechos humanos = Inter-american yearbook on human rights*, pp. 168-212. For further references on this issue, see e.g. Nickel, J. W. 'How human rights generate duties to protect and provide' (1993) *Human Rights Quarterly*, pp. 15, 77-86; Monica Pinto, 'Remarks on the Role of the Inter American Commission of Human Rights in the Protection of Human Rights: Achievements and Contemporary Challenges', in Christina M. Cerna (ed.), *Regional Human Rights Systems*, vol 5 (Abingdon: Ashgate publishing, 2014), ch. 8.

<sup>13</sup> See also Ralph Beeddar, 'Duties of individuals under international and regional human rights instruments' (1999) 3 *The International Journal of Human Rights*, pp. 46-47.

<sup>14</sup> See Eva Brems, *Human Rights: Universality and Diversity* (Boston: Martinus Nijhoff, 2002) p. 574 ff. See also M. Malilla, *The Place of Individuals' Duties in International Human Rights Law* (University of Pretoria: PhD thesis, 2017), available at: [https://repository.up.ac.za/bitstream/handle/2263/60063/Malila\\_Place\\_2017.pdf](https://repository.up.ac.za/bitstream/handle/2263/60063/Malila_Place_2017.pdf) who, in relation to the ACHR, stresses that duties in the African model go further than merely correlative rights.

<sup>15</sup> See Eric R. Boot, *Human Duties and the Limits of Human Rights Discourse* (Amsterdam: Springer, 2017), p. 34 ff.

<sup>16</sup> On the meaning of the distinction between positive and negative duties correlative to human rights, see recently Marinella Capriati, 'The Universal Scope of Positive Duties Correlative to Human Rights' (2018) 30 *Utilitas*, available at: <https://philpapers.org/rec/CAPTUS>

<sup>17</sup> See Marinella Capriati, op. ult. cit.

references to human rights in the United Nations Charter.<sup>18</sup> Closely related to this, is the Latin American's long and notable history of receptivity to socialist thought that goes back to the nineteenth century.<sup>19</sup> Reference should be made here, in particular, to the impact of the socialist ideas of Claude Henri de Saint-Simon (1790–1825) and Charles Fourier (1772–1873) that are clearly visible in the political treatise *Dogma Socialista* of Esteban Echevarría (1805–1851)<sup>20</sup> and which later culminated in the Argentine Constitution of 1853.<sup>21</sup> Another possible concurrent explanation is that by identifying the 'duty-holders' to be both individuals and the community as the Declaration does in its second Chapter, the enforcement of duties and obligations is potentially enhanced. In fact, whilst the State acts as the mediator and enforcer of such individual and community obligations and duties,<sup>22</sup> even where a State does not operate effectively, obligations and duties remain in existence. The reason behind this is that human rights need constant reference to individual responsibility for their implementation.<sup>23</sup> A fourth explanation is that whereas the 'rights' system is ideal for questions of freedoms, the 'duty-based system has advantages for the provision of benefits given that each state accepts the human rights of individuals only in parallel with its responsibility to the community at large.<sup>24</sup> A fifth related explanation could be based on the idea shared by most drafters of the Declaration, in particular by the Latin American delegates at the Ninth International Conference of American States where the ADHR was negotiated,<sup>25</sup> that the welfare of the community, family and state are of

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<sup>18</sup> See Mary Ann Glendon, 'The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea' (2003) 16 *Harvard Human Rights Journal*, pp. 30-31; Thomas Buergenthal, 'The Revised OAS Charter and the Protection of Human Rights' (1975) 69 *AJIL*, p. 828 ff.

<sup>19</sup> References are found in Steven Levitsky, Kenneth M. Roberts (eds.). *The Resurgence of the Latin American Left* (Baltimore: The Johns Hopkins University Press, 2011), p. 36 ff.

<sup>20</sup> See *Argentina's Constitution of 1853, Reinstated in 1983, with Amendments through 1994*, available at: [https://www.constituteproject.org/constitution/Argentina\\_1994.pdf?lang=en](https://www.constituteproject.org/constitution/Argentina_1994.pdf?lang=en)

<sup>21</sup> For further informations on this issue, see e.g. Sheldon B. Liss, *Marxist Thought in Latin America* (Berkeley: University of California Press, 1984), p. 47 ss.

<sup>22</sup> *Amplius*, see Umozurike, 'The African Charter on Human and Peoples' Rights' (1983) 77 *AJIL*, p. 902, noting that States have a responsibility to inculcate the underlying principles and ideals in their subjects.

<sup>23</sup> See Eric R. Boot, above n. 12, p. 47.

<sup>24</sup> See e.g. Douglas Hodgson, above n. 6, p. 120 ff. See also Annemarie Devereux, 'Should 'Duties' Play a Larger Role in Human Rights? - A Critique of Western Liberal and African Human Rights Jurisprudence' (1995) 18 *UNSW Law Journal*, p. 464, stressing that a duty-system properly founded in conceptions of 'human dignity' could equally foster a sense of self-worth in recipients and lead to greater compliance in terms of provision of benefits.

<sup>25</sup> See Jr Woerner, Frederick Frank, *A History of the Ninth Inter-American Conference. Bogotá, Colombia* (Arizona, The University of Arizona, 1965), p. 27. See also Charles G. Fenwick, *The Ninth International Conference of American States* (1948) 42 *AJIL*, p. 554 ff.

paramount importance and should be explicitly protected, although without precedence over the individual's own needs.<sup>26</sup> Finally, a last explanation is that, given the existence of the general principle of correlation of duties and rights, duties constitute a valid way of interpreting rights.<sup>27</sup>

The Preamble of the Declaration stresses the rights and freedoms of the individual as an individual in her own right and also as an individual pertaining to the community. The pre-eminence of the individual person and her rights prevails in the declaration to a substantial level, however, at the same time it is further assured through the prescription of duties and obligations on other members of the community and society. According to paragraph two of the Preamble to the ADHR 'the fulfillment of duty by each individual is a prerequisite to the rights of all'.

## II. INDIVIDUAL HUMAN DUTIES AND OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW.

The ADHR is the first (but not the only) human rights instrument that focuses on individual human rights duties and obligations. Other human rights instruments such as the African Charter on Human and Peoples' Rights (also known as the 'Banjul Charter'),<sup>28</sup> the African Charter on the Rights and Welfare of the Child<sup>29</sup> and the

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<sup>26</sup> See Álvaro Paúl, 'The Travaux Préparatoires of the American Declaration on the Rights and Duties of Man, and the Remote Origin of the Inter-American Court (Los Trabajos Preparatorios De La Declaración Americana De Los Derechos Y Deberes Del Hombre Y Del Origen Remoto De La Corte Interamericana)' (2017) *UNAM - Instituto de Investigaciones Jurídicas*, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3076460](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3076460)

<sup>27</sup> Amplus, see Denis j. Hilton, Laetitia Charalambides & Stéphanie Hoareau-Blanchet, 'Reasoning about rights and duties: mental models, world knowledge and pragmatic interpretation' (2016) 22 *Thinking & Reasoning*, available at: <https://www.tandfonline.com/doi/abs/10.1080/13546783.2015.1076520?journalCode=ptar20>

<sup>28</sup> Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <https://www.refworld.org/docid/3ae6b3630.html> [accessed 22 February 2019].

<sup>29</sup> Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), available at: <https://www.refworld.org/docid/3ae6b38c18.html> [accessed 22 February 2019].

Universal Declaration of Human Rights (UDHR),<sup>30</sup> as well as the American Convention on Human Rights (ACHR),<sup>31</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>32</sup> and the International Covenant on Civil and Political Rights (ICCPR)<sup>33</sup> - the latter two only in their preambles - each of them refers, to a different extent, to the human rights, duties and obligations of individuals. Moreover, references to human rights, duties and obligations are of course mostly present in other human rights instruments such as the Universal Declaration of Human Responsibilities (UDHRe)<sup>34</sup>, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms<sup>35</sup> and the Declaration Toward a Global Ethic<sup>36</sup>, generally known as human duties declarations that exclusively encompass human rights duties and obligations upon private individuals and institutions.

The realization that the life of man gains meaning within a human community has strongly influenced the wording of Article 27 of the Banjul Charter that provides that ‘the rights and freedoms of each individual shall be exercised with due regard to the

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<sup>30</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 22 February 2019].

<sup>31</sup> Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at: <https://www.refworld.org/docid/3ae6b36510.html> [accessed 22 February 2019].

<sup>32</sup> Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at: <https://www.refworld.org/docid/3ae6b36510.html> [accessed 22 February 2019].

<sup>33</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 22 February 2019].

<sup>34</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 22 February 2019].

<sup>35</sup> UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, available at: <https://www.refworld.org/docid/3b00f54c14.html> [accessed 22 February 2019].

<sup>36</sup> Parliament of the World's Religions, Declaration Toward a Global Ethic, available at: [https://parliamentofreligions.org/pwr\\_resources/\\_includes/FCKcontent/File/TowardsAGlobalEthic.pdf](https://parliamentofreligions.org/pwr_resources/_includes/FCKcontent/File/TowardsAGlobalEthic.pdf)



rights of others, collective security, morality and common interest'.<sup>37</sup> Article 28 of the same Charter provides that 'Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance'.

The subsequent Article 29 further stresses the strong connection between the individual and his/her community and thus states that every individual '... shall have the duty *to* preserve the harmonious development of the family ... work for the cohesion and respect of the family *and* his parents at all times, *and work to* maintain them in case of need'. Again in Article 29 of the Banjul Charter the individual in the enjoyment of his rights and freedoms is subject to the general duty to 'preserve and strengthen social and national solidarity, particularly when the latter is strengthened'.

In his contribution on the meaning and language of human rights duties under the Banjul Charter, Makau wa Mutua explained that the series of explicit duties and obligations spelled out in Articles 27 – 29 of the African Charter 'provide a new basis for individual identification with compatriots, the community, and the state'.<sup>38</sup> Indeed, as the author recognizes, these duties and obligations '... represent a rejection of the individual 'who is utterly free and utterly irresponsible and opposed to society'.<sup>39</sup> Equally importantly, they represent the quintessence of the formulation of rights in pre-colonial African societies.<sup>40</sup>

The Banjul Charter does not always formulate the said obligations and duties of the individual in operative terms, leaving it to the State to operationalize the obligations and duties.<sup>41</sup> In the formulation of such obligations and duties, restrictions will be imposed on the freedoms and rights of individuals. Nevertheless, in the introduction of such restrictions certain restraints are expected on the part of the State, even though the

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<sup>37</sup> On the subject, see also J Sloth-Nielsen and BD Mezmur, 'A Dutiful Child: The Implications of Article 31 of the African Children's Charter' (2008) 52 *Journal of African Law*, pp. 159-189.

<sup>38</sup> See Makau w. Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 *Va. J. Int'l L.*, p. 368.

<sup>39</sup> *Ibidem*.

<sup>40</sup> See Paolo G. Carozza, *above n. 8*, p. 178 ff; Timothy Fernyhough, 'Human Rights and Precolonial Africa', in Ronald Cohen et al. (eds.), *Human Rights and Governance in Africa* (University Press of Florida, 1993), p. 39 ff. See also Isaac Niguema, 'Droits de l'homme et droit traditionnel en Afrique: pourquoi faire?', in *Karel Vasak amicorum liber: les droits de l'homme à l'aube du XXIe siècle = los derechos humanos ante el siglo XXI = human rights at the dawn of the twenty-first century* (Bruxelles: Bruylant, 1999), p. 671 ff.

<sup>41</sup> See Makau w. Mutua, *above n. 35*, p. 368. See also Nsongurua J. Udombana, 'Between promise and performance: revisiting states' obligations under the African Human Rights Charter' (2004) 40 *Stan. J. Int'l L.*, pp. 105-142.

Banjul Charter – unlike the UDHR - does not explicitly provide that in the exercise of his freedoms and rights, everyone shall be subject only to such limitations as are determined by law, exclusively for the purpose of securing due respect and recognition for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.<sup>42</sup>

The American Convention on Human Rights (ACHR)<sup>43</sup> provides, in terms analogous to the UDHR, that ‘The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare in a democratic society’.<sup>44</sup>

Similarly, the ADHR in Article XXVIII states that ‘The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy’.<sup>45</sup> As its language suggests, Article XXVIII is a provision that can have an impact in practice given that it imposes the duty upon the State, for the purpose of reserving limitations on rights, to take into consideration the accepted rules and standards in democratic societies as they are found in many other international human rights instruments.<sup>46</sup>

### **III. A CRITICAL DISCUSSION OF THE ARGUMENTS AGAINST INDIVIDUAL HUMAN DUTIES AND OBLIGATIONS.**

Private individuals and corporations frequently carry human rights duties and obligations complementarily, notwithstanding that international human rights

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<sup>42</sup> Article 29 of the UDHR provides that ‘Everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society...’.

<sup>43</sup> Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at: <https://www.refworld.org/docid/3ae6b36510.html> [accessed 28 February 2019].

<sup>44</sup> Article 32, para. 2 of the ACHR.

<sup>45</sup> See also the preamble of the ADHR that states that: ‘The fulfilment of duty by each individual is a prerequisite to the rights of all’.

<sup>46</sup> See Mohamed Elewa Badar, ‘Basic principles governing limitations on individual rights and freedoms in human rights instruments’ (2003) 7 *The International Journal of Human Rights*, p. 63 ff. See also Jorgelina Alimenti, ‘Captive Audience Speech: Argentina’ (2007-2008) 29 *Comp. Lab. L. & Pol’y J.*, p. 71 ff.

instruments generally still only acknowledge duties and obligations upon States.<sup>47</sup> Using the fundamental right to life as an example, John Knox observed that:

*‘it has become apparent that several human rights, like the right to life would be of little consequence if it did not give rise to the correlative duties, the duty not take an innocent life in the case of the right to life.’*<sup>48</sup>

Both the individual and the corporation have ceased to be only the bearers of rights, but rather have become the bearers of rights, duties and obligations.<sup>49</sup> The apprehension of correlating human rights with individual human duties and obligations was perceived by Professor Thomas Buergethal as an invitation for the introduction of the unlimited restricting on enjoyment of fundamental freedoms and rights.<sup>50</sup> Ben Saul,<sup>51</sup> Okoth-Ogendo,<sup>52</sup> Rhoda Howard and Jack Donnelly also doubt the subjection of human rights to individual human duties<sup>53</sup> given that ‘all duties will be aimed towards the preservation of the state and of the interests of those who control it’.<sup>54</sup> While all four agree that duty towards the state may be easily manipulated and turned into an authoritarian rule, Howard and Donnelly raise the interesting points that the idea of rights being subject to individual obligations and duties is admissible in the case of ‘non-state societies in which each person fulfills his roles along with others, all of the roles together creating a close-knit tradition bound group’.<sup>55</sup>

These and other fears have been addressed by other authors, in particular by Makau wa Mutua in his masterpiece work ‘The Banjul Charter and the African Cultural

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<sup>47</sup> See *ex multis* Ivar Kolstad, ‘Human Rights and Assigned Duties: Implications for Corporations’, available at: <https://core.ac.uk/download/pdf/59167859.pdf>

<sup>48</sup> See John H. Knox, ‘Horizontal Human Rights Law’, (2008) 102 *AJIL*, p. 2 ff.

<sup>49</sup> See Samantha Besson, ‘The Bearers of Human Rights Duties and Responsibilities for Human Rights – A Quiet (R) Evolution’ (2015) 32 *Social Philosophy & Policy*, pp. 244-68.

<sup>50</sup> See Thomas Buergethal, *supra* note 8, p. 178.

<sup>51</sup> See Ben Saul, ‘In the Shadow of Human Rights: Human Duties, Obligations, and Responsibilities’ (2000-2001) 32 *Colum. Hum. Rts. L. Rev.*, p. 565 ff., stressing that rights are threatened if duties and responsibilities are codified at international level.

<sup>52</sup> See Thomas Buergethal, *above* n. 8, p. 178.

<sup>53</sup> See Rhoda Howard, Jack Donnelly, *International Handbook of Human Rights* (London: Greenwood Pub Group, 1987), p. 25 ff. See also Amnesty International, ‘Muddying the Waters: The Draft “Universal Declaration of Human Responsibilities”—No Complement to Human Rights’, available at: <https://www.amnesty.org/en/documents/ior40/002/1998/en/>; K. Suter, ‘The Quest for Human Responsibilities to Complement Human Rights’ (2010) 26 *Medicine, Conflict and Survival*, pp. 199-206.

<sup>54</sup> See Thomas gential, *supra* note 8, p. 178 ff.

<sup>55</sup> See R. E. Howard and J. Donnelly (eds.), *International Handbook of Human Rights* (New York, Greenwood Press, 1987), p. 25 ff.

Fingerprint: An Evaluation of the Language of Duties'.<sup>56</sup> In this author's words, 'there is nothing inherently sinister about *the series of explicit duties and obligations spelled out in Articles 27 through 29 of the African Charter, as they merely repeat duties formerly imposed on members of pre-colonial communities*'.<sup>57</sup> Following a similar line of reasoning, Annemarie Devereux observed in more general terms that 'emphasis on *human* duty means that the provider's and recipient's interests coincide, whereas an emphasis on 'rights' implies competition and antagonism'.<sup>58</sup>

Note must be taken to the fact that Makau wa Mutua, inspired by Joseph Raz, added the caveat.<sup>59</sup> that 'using duties enables some communal goods to be recognized which cannot easily be reduced to a matter of rights ...',<sup>60</sup> and that '... even some rights (e.g. to support) are put in the form of duties - e.g. duty to maintain one's children and the duty to pay taxation', confirming the conclusion that duties may in fact be more enforceable than 'rights', even where the two are correlative'.<sup>61</sup>

#### **IV. THE CORRELATIVITY BETWEEN HUMAN RIGHTS AND HUMAN DUTIES AND OBLIGATIONS.**

It was a common perception amongst the drafters of the ADHR that, when living in a community, the rights necessarily entail obligations and duties.<sup>62</sup> This is precisely why it has been inserted in the Preamble to the Declaration that 'the right of one implies the correlative duty of others to respect it' and also that '*the rights and duties are interrelated in every social and political activity of man*'. If that is correct, the converse

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<sup>56</sup> See Makau W. Mutua, 'The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties' (1995) 35 *Va. J. Int'l L.*, p. 339.

<sup>57</sup> *Ibidem*, p. 368.

<sup>58</sup> See Annemarie Devereux, above n. 21, p. 464 ff.

<sup>59</sup> See Joseph Raz, 'Rights-Based Morality', in Jeremy Waldron (ed.), *Theories of Rights* (Oxford: OUP, 1985), pp. 183-84.

<sup>60</sup> See Annemarie Devereux, above n. 21, p. 481.

<sup>61</sup> *Ibidem*.

<sup>62</sup> See e.g. Marit Hovdal Moan, 'Justifying Claims of State Responsibility to Meet the Needs of Irregular Migrants', in Jennifer Gunning, Søren Holm (eds.), *Ethics, Law, and Society*, t. IV, (Burlington: Ashgate, 2005), p. 327 ff; Marie-Luisa Frick, *Human Rights and Relative Universalism* (Cham: Palgrave Macmillan, 2019), p. 72; Liora Lazarus, Benjamin Goold, Rajendra Desai and Qudsi Rasheed, *The relationship between rights and responsibilities* (2009) 18 *Ministry of Justice Research Series*, available at: [https://www.matrixlaw.co.uk/wp-content/uploads/2016/03/23\\_11\\_2010\\_05\\_42\\_34\\_research-rights-responsibilities.pdf](https://www.matrixlaw.co.uk/wp-content/uploads/2016/03/23_11_2010_05_42_34_research-rights-responsibilities.pdf) See also William N. Eskridge, Jr., 'Relationship between Obligations and Rights of Citizens' (2001) 69 *Fordham L. Rev.*, p. 1721 ff.

must also be correct: a duty exists because somebody has a right that should be respected. While this perception can be criticized as being too rigid and mechanical, it offers a practical, straightforward way of identifying and outlining the correlative relationship between human rights and human duties.

In their intention to furnish a clear-cut understanding and easy recognition of the protected human rights and prescribed human obligations and duties, the drafters of the ADHR kept the first ones neatly separated from the latter. In fact, while Chapter one of the Declaration is entirely focused on the rights and freedoms, Chapter two deals exclusively with human duties and obligations. Although it is not unreasonable to maintain that the State can be considered a duty-carrier, the individual is the main duty-holder under Chapter two of the ADHR.

The obligations and duties under Chapter II of the Declaration are obligations and duties of the individual as is explicitly indicated throughout this Chapter; however it remains unclear who are the rights holders vis-a-vis the obligations and duties of the individual encompassed in Chapter two of the Declaration.

Yet it has nevertheless been held that the obligations and duties in the Declaration are addressed at the family or the community rather than the State.<sup>63</sup> The terse language used in Chapter II, if applied literally, confirms this conclusion.

The Declaration points out to the individual, her human obligations and duties towards the society, the family and the State. The individual is under an obligation to conduct himself/herself in relation to other human beings so that to guarantee that each and every one can fully form and develop his personality (Article XXIX). The individual is under a duty to aid, support, protect and educate his minor children (Article XXX); children are under a duty to respect their parents under any and every circumstance and to help, support and defend them when it is indispensable (Article XXX); the individual should place his physical and intellectual abilities at the service of the community (Article XXXVII); every able-bodied individual is under a duty to render whatever civil and military service his country may require for its defense, and, in case of public disaster, to render such services as may be in his power (Article

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<sup>63</sup> Amplius, see Christina M. Cerna, 'Reflections on the Normative Status of the American Declaration of the Rights and Duties of Man' (2008-2009) 30 *U. Pa. J. Int'l L.*, p. 1211 ff.

XXXIV); every able-bodied individual is also under a duty to hold any public office to which she may be elected by popular vote in the state of which she is a national (Article XXXIV); taxes should be paid (Article XXXVI); every person is under the obligation to obey the law and other legitimate commands of the authorities of his country and those of the country in which she may be residing (Article XXXIII); every person has the duty to cooperate with the state and the community with respect to social security and welfare, in accordance with her ability and with existing circumstances (Article XXXV). To some extent the focus on social security, welfare and national security might be used to establish a duty relationship between the State and the individual. In fact, Articles XXIX to XXXVIII encompass some basic concerns for American countries that (with few exceptions) were lacking generalized social security schemes, and therefore relied on self-help programmes. At the same time it stresses the related to the safeguarding of social security concern, namely that it should lead to the development and well-being of individuals.<sup>64</sup>

The strong relationship between the individual or the community or the family derived from the mutually acknowledged relationship between the community and the individual. The said relationship has been elucidated by Gustavo Carlo, Silvia Koller, Marcela Raffaelli and Maria Rosario de Guzman as follows:

One of the hallmark characteristics of many Latino societies is their strong collectivist orientation that is reflected inter alia in familism and attachment and loyalty to one's family and community.<sup>65</sup>

Duties in the ADHR thus do not meaninglessly signify obedience to the family or the community, but they are a product of Latin American customs and values in a human rights document.

This interrelationship between human rights and human duties and obligations has become a distinct character of the constitutional charters of various countries, including Latin American countries like Cuba, Venezuela, the Dominican Republic, Mexico and Costa Rica., with the State progressively being identified as a beneficiary of

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<sup>64</sup> Article XVI of the ADHR reads as follows: 'Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living'.

<sup>65</sup> See Gustavo Carlo, Silvia Koller, Marcela Raffaelli and Maria Rosario de Guzman, 'Culture-Related Strengths Among Latin American Families: A Case Study of Brazil' (2007) 3 *Faculty Publications, Department of Child, Youth, and Family Studies*, p. 64 ff.

obligations and duties.<sup>66</sup> The survey of a few of such constitutional provisions demonstrates that the language and content of obligations and duties are similar to the language and content of the obligations and duties of the individuals in the ADHR. The insertion of these obligations and duties into the constitutions derived from the conviction that the enjoyment of fundamental freedoms and rights cannot be separated from human obligations and duties. The rationale is indirectly indicated, by way of example, in Article 75 of the Constitution of the Bolivarian Republic of Venezuela of 1999 that stipulates: ‘Family relationships are based on equality of rights and duties, solidarity, common effort, mutual understanding and reciprocal respect among family members’.<sup>67</sup> A similar language has been used, *mutatis mutandis*, in Article 90 of Costa Rica's Constitution of 1949.<sup>68</sup> The individual is thus correspondingly obliged to accomplish a set of obligations and duties that are intended to be vital to the life of the nation to which the individual belongs.

The subsequent obligations and duties upon the individual from the Constitution of the Bolivarian Republic of Venezuela might be deduced from the constitutions of several other Latin American countries:

- duty to be active participants in the development process;
- respect the rights and freedoms of others;
- promote democracy;
- further the national interest;
- duty to pay taxes;
- duty to strengthen solidarity.

It would appear thus that the constitutional provisions have expanded the scope of application of the duty upon the State.

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<sup>66</sup> This list is a brief survey of a number of countries that include specific duties in their constitutional texts. It is based on a more comprehensive study undertaken by Douglas Hodgson, *Individual Duty within a Human Rights Discourse* (Abingdon: Routledge, 2003), p. 10 ff.

<sup>67</sup> The English text of the Constitution of the Bolivarian Republic of Venezuela of 1999 is available at: [https://www.constituteproject.org/constitution/Venezuela\\_2009.pdf](https://www.constituteproject.org/constitution/Venezuela_2009.pdf)

<sup>68</sup> Article 90 of the Costa Rica's Constitution of 1949 reads as follow: ‘Citizenship is the set of political rights and duties that correspond to the Costa Ricans older than eighteen years of age’.

## V. THE LEGAL CHARACTER OF THE DUTIES AND RIGHTS IN THE ADHR

Unlike the UNDHR the ADHR and ACHR encompass large range of obligations and duties of the individual. Article XXIX, XXX, XXXI, XXXII, XIII, XXXIV, XXXV, XXXVI, XXXVII and XXXVIII of the ADHR are specific and might be summarized as follows:

- duty to the State;
- duty to the society;
- duty to the family;
- duty to work to the best of his abilities and competences;
- duty to pay taxes;
- duty to obey the law;
- duty to refrain from political activities in a foreign country;
- duties with respect to social security and welfare;
- duty to vote;
- duties toward children and parents;
- duty to receive instructions.

As regards to their specificity, the provisions on the duties upon the individual encompassed in the ADHR are analogous to the corresponding provisions of the ACHPR<sup>69</sup>.

One can classify the human obligations and duties into two categories, those that may become implementable through legislation and those that are merely advisory<sup>70</sup> in

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<sup>69</sup> See Makau W. Mutua, above n. 48, p. 339 ff.

<sup>70</sup> Amplius, see e.g. Fernando Berdion Del Valle, Kathryn Angel Sikkink, '(Re)discovering Duties: Individual Responsibilities in the Age of Rights' (2017) 26 *Minnesota Journal of International Law*, pp. 189-245; Maria del Carmen Patricia Morales, 'Human Duties and Responsibilities for the Reinforcement of Human Rights: the Declaration of Human Duties and Responsibilities', in *Between rights and responsibilities: a fundamental debate* (Cambridge: Intersentia, 2016), p. 67 ff; Tom McCarthy, 'Human rights and human duties do we need a declarations of human responsibilities: some personal observations', in A. Fernando (ed.), *Karel Vasak amicorum liber: les droits de l'homme à l'aube du XXIe*



nature since it is not difficult to observe that some of these obligations and duties cannot be turned into practice. Actually, most of these obligations and duties are meant to function as a sort of ‘ethical(?)code of conduct’ for all nationals of American countries. Articles XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII and XXXVIII fall within the former category and might be implemented through domestic legislation. Articles XXIX and Article XXX, in the part where they refer to the duty of children to honor their parents always (...), appear only hortative.

Elaborating on aforementioned distinction, it is possible to distinguish noteworthy illustrations of the first category, i.e. obligations and duties in the ADHR that can be implemented, even if this happens through other instruments. For instance, the example offered by Article XXXI that expects the individual to acquire at least an elementary education. These tie in with the obligation of the State under Article XII that ‘every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity’. The State is thus under an obligation to adopt legislation and other measures that would guarantee the right, not only against infringements coming out from State agencies but even from the beneficiaries of this right. The obligation to pay taxes as indicated in Article XXXVI is without uncertainty a further common feature of the tax legislations of every State. An additional example of enforceability of individual human duty under the ADHR might be derived from a combined reading of Article XXXIII and Article V which prescribes that ‘every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life’. In compliance with its obligations under Article I of the Declaration, the State shall adopt legislative and other measures aimed at protecting the life, liberty and security of every person. Individuals would be liable for a breach of that law and failure of the State to effectively protect the life and security of its citizens will be a violation of its duties.

On the other hand obligations and duties of individuals such as those referring to the duty to work to the best of her abilities and competencies, to conduct herself in relation to others or that each and every one may fully form and develop her personality and that children should honor their parents always are at the best mere moral encouragements.

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*siècle = los derechos humanos ante el siglo XXI = human rights at the dawn of the twenty-first century - Les droits de l'homme à l'aube du XXIe siècle* (Bruxelles: Bruylant, 1999), p. 655 ff.

## VI. IMPLEMENTATION OF THE HUMAN DUTIES AND OBLIGATIONS.

Considering individual human duties and obligations, it is indispensable to identify the mechanisms for their implementation. Although few authors (if none) are against the values represented in the human responsibility declarations, the majority of them are against their protection through human duties and obligations upon the individual.<sup>71</sup> This is because they often argue that the human duty provisions lack specificity and the capacity for practical application,<sup>72</sup> given that these are duties that are generally seen as belonging to the category of duties that Immanuel Kant called 'imperfect obligations'.<sup>73</sup> It will then make it hard for the State to invoke them against the individual who has allegedly violated them

It is the present author's opinion that this fear may be mitigated if one considers the duties upon the individual within the framework of the general obligations upon the State. The State has the primary duty to enact normative and other measures to guarantee the unhampered enjoyment of the freedoms and rights protected. That duty should be interpreted to extend to a duty of the State to guarantee that the individuals for whose benefit the obligations are intended effectively enjoy them. Although *prima facie* not evident, this is the conclusion that indirectly arises from the Preamble of the Declaration, in the part where it provides that the enjoyment of any right or freedom should always be preceded by the fulfillment of the corresponding duty. When the Preamble is read together with Article XXVIII of the ADHR, it becomes possible to understand how the State comes to carry on the obligation to guarantee that the duties upon the individual are performed. It is because Article XXVIII subjects the enjoyment of freedoms and rights by the individual to those of other persons, morality, collective security and common interest that it becomes admissible to hold the State responsible for the actions of private persons that negatively affect the interests of others.<sup>74</sup>

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<sup>71</sup> See, e.g., the authors quoted above, supra n. 42, 43 and 45.

<sup>72</sup> See Ben Saul, above n. 43, p. 565 ff.

<sup>73</sup> See Immanuel Kant, *The Metaphysics of Morals (Cambridge Texts in the History of Philosophy)* (Cambridge: CUP, 1996), pp. 187-98. On the distinction between perfect and imperfect duties, see also Patricia Greenspan, 'Making Room for Options: Moral Reasons, Imperfect Duties, and Choice' (2010) 27 *Social Philosophy and Policy*, pp. 181-205.

<sup>74</sup> Article XXVIII of the UDHR provides that: 'The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy'.

The Inter-American Commission of Human Rights ('IACHR' or the 'Commission') in its report on *Poverty and Human Rights in the Americas* found Latin America and the Caribbean governments responsible for their lack of efforts in fighting extreme poverty and inequality.<sup>75</sup> According to the Commission, governments have a duty to use their policies, including fiscal policies to protect their citizens, in particular the most vulnerable, from poverty persistence, both through legislative and non-legislative measures and to prioritize women's and indigenous peoples' rights into their state policies as well as those of other groups disproportionately affected by poverty and inequality.<sup>76</sup>

The obligations of the State to protect and promote the enjoyment of all human freedoms and rights forces it to adopt measures through legislation to protect the beneficiaries of the protected freedoms and rights against social and political interferences and to promote them by providing for effective remedies and by guaranteeing also that individuals are able to exercise their rights and freedoms, for instance, by raising awareness and even by stimulating tolerance.

The continuous responsibility of the State to monitor compliance of its legislations that are aimed at preventing the abuse of the rights of individuals by others is very well demonstrated in the landmark decision of the IACHR in *Lenahan v. United States*.<sup>77</sup>

Before the Commission, the applicant Lenahan filed a complaint against the United States for the violation inter alia of her and her children's rights of life and of physical integrity for not having been protected by the local police<sup>78</sup> – Lenahan's daughters were abducted by her estranged husband and were killed after the Castle Rock, Colorado police repeatedly refused to implement her domestic-violence restraining order against him.

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<sup>75</sup> Inter-American Commission on Human Rights (IACHR), *Preliminary Report on Poverty, Extreme Poverty, and Human Rights in the Americas*, January 2017, available at: <https://www.refworld.org/docid/586ca7d54.html> [accessed 27 February 2019].

<sup>76</sup> Ibidem, paras. 105 to 114.

<sup>77</sup> Inter-Am. Comm'n H.R., *Lenahan v. United States*, Case 12.626, Report No. 80/11, T 168 (2011).

<sup>78</sup> See Nancy Chi Cantalupo, 'Jessica Lenahan (Gonzalez) v. United States & Collective Entity Responsibility for Gender-Based Violence' (2012) 21 *American University Journal of Gender Social Policy and Law*, pp. 233 ff, who stresses that the applicant Lenahan also claimed human rights violations by the U.S. courts, which failed to provide her with a remedy.

The IACH held that the U.S. was to blame for the inaction of its police officials and judicial authorities.<sup>79</sup> More specifically, the Commission argues that the U.S. disregarded several articles of the American Declaration such as Article I (Right to Life), Article II (Right to Nondiscrimination and Equal Protection), Article VII (Special Protection for Children) and Article XVIII (Right to Judicial Protection).<sup>80</sup>

Although it not the State itself that committed the infringements against the applicant's rights, the State however was held responsible; it is a responsibility of the State to guarantee the safety of its citizens and residents.

That the State carries responsibilities even under the provisions that impose duties upon individuals is further supported by the IACHR's Report on the Situation of Human Rights in Ecuador.<sup>81</sup> This report, in Chap. VIII, argues that '... *the State's* protection of the right to life and physical integrity may best be advanced through measures to support and enhance the ability of individuals to safeguard and vindicate those rights'.<sup>82</sup> Moreover, it maintains that 'Where the right to life ... has been infringed upon by environmental contamination, the Government is obliged to respond with appropriate measures of investigation and redress'.<sup>83</sup> The State is, thus, expected to guarantee that the individuals accomplish their obligations.

## VII. FINAL REMARKS

The provisions on human obligations and duties in Chapter II have turned to be one of the most distinct features of the ADHR. The obligations and duties upon the individual as contained in the Declaration are a blend of both detailed but indirectly implementable normative obligations, and duties and moral advices but with larger focus on obligations and duties to the society. To be fully consistent with the traditional Latin American traditions and values at the time of the Declaration, the obligations and

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<sup>79</sup> Inter-Am. Comm'n H.R., *Lenahan v. United States*, above n. 69, para. 213.

<sup>80</sup> *Ibidem*, paras. 160-170.

<sup>81</sup> IACHR, *Report on the Situation of Human Rights in Ecuador*, 24 April 1997, OEA/Ser.L/V/II.96, Doc. 10 rev. 1.

<sup>82</sup> *Ibidem*, Chap. VIII ('The Human Rights Situation of the Inhabitants of the Interior of Ecuador Affected by Development Activities').

<sup>83</sup> *Ibid.*

duties upon the individuals have been granted space and visibility in the ADHR. The impact upon the constitutional charters of Latin American and Central American countries has become commonplace and although the lack of their self-executing character has often been (rightly) claimed against these obligations and duties, it is a widely accepted opinion that a large number of them might be implemented with the cooperation of national legislators.