ANALYSIS OF VIDEOS TO ESTABLISH THE CULTURE OF DRINKING WATER AND DOMESTIC CONSUMPTION AS A HUMAN RIGHT

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KEYWORDS

Culture
Drinking Water
Domestic consumption
Human rights
National Constitution
Water quality
Ecuador

ABSTRACT

The purpose of this research was to analyze the culture of access to water for domestic consumption as a human right and existing difficulties in Esmeraldas-Ecuador. A socio-legal approach was used, from the legal bodies that develop the right, Ecuadorian Constitution (2008), Organic Law of Water Resources, Uses and Development of Water (2014), Organic Code of Territorial Organization, Autonomy and Decentralization (2010) and Organic Environmental Code (2017).

Received: 10/08/2023
Accepted: 11/10/2023
1. Introduction

Water is a human right of unquestionable importance for people's lives (Becerra & Salas, 2016, p.131); that is why the Constitution of the Republic of Ecuador (2008) in its Article 318 prescribes the following: "water is strategic national heritage of public use, inalienable and imprescriptible domain of the State, and constitutes a vital element for nature and for the existence of human beings". Despite this constitutional formality, there are evident limitations in some of the twenty-four provinces that make up the country and particularly in the province of Esmeraldas, where this right is not adequately satisfied.

In order to achieve the results and provide answers to the research problem, the general objective was formulated as follows: to analyze, from a socio-legal perspective, access to drinking water for domestic consumption as a human right in the city of Esmeraldas. Consequently, the specific objectives were: to diagnose the socio-legal conditions of the social reality of drinking water for domestic use in the urban-marginal areas of Esmeraldas; to systematize the opinion of the inhabitants of the sectors that do not receive this quality public service, and to verify the information of the residents of the city of Esmeraldas and officials of the Empresa de Agua Potable de Esmeraldas (EAPE) who provide the drinking water service, about their reality regarding access to water and its distribution conditions.

In this order of ideas, in order to contextualize the object of research, the province of Esmeraldas is identified as the seventh of 24 provinces of the country, founded on November 20, 1847; currently has 643,654 inhabitants, according to the demographic projection of the National Institute of Statistics and Census (INEC), the province has an area of 14.893 square kilometers with seven cantons, being the administrative capital the city of Esmeraldas, where a total of 95194 people live; more than 40% say they have difficulties when accessing quality water for human consumption, according to INEC statistics (2020).

This problem is not of recent date, since after the "El Niño" phenomenon in the years 1997-1998, the construction of a new drinking water system was approved, with the objective that the people of Esmeraldas could have permanent access to this public service of quality and in the necessary quantity. As a consequence, hundreds of millions of dollars have been invested, but still in some sectors of the city residents complain about the poor quality of drinking water received in their homes through pipes, sometimes two days a week, while others receive drinking water in tankers; this situation highlights the importance and justification of this article based on a socio-legal reflection to contrast the legal requirements with the social reality.

Based on the panorama described above, the circumstances experienced by the citizens were analyzed in relation to: the lack of quality drinking water, the position of the authorities in this regard and the inadequate use of the resources allocated for this social good, which are not used to improve the service with the consequent impact on households. In this sense, the way to carry out this analysis was based on a quantitative, descriptive and field study, in accordance with which the subjects of the study were directly approached to know their experiences and feelings in relation to the quality of the drinking water service for human consumption, their disagreements, anguish and impotence, evidencing the historical character of this social problem that has lasted approximately two decades.

The survey was applied as a research technique, the instrument was a questionnaire with closed questions to facilitate its quantification. The field study was carried out in the following neighborhoods: La Propicia, 15 de Marzo, Cananga, San Martín Alto, 50 Casas, 24 de Mayo, Nuevos Horizonte, Voluntad de Dios, Winchele, 20 de Noviembre, La Guacharaca and El Arenal.

With respect to the theoretical framework, a review of research works and institutional reports was carried out, which allowed dimensioning the right to water in terms of content and scope, as well as an exhaustive analysis of the current regulations on the subject, composed of: the Constitution of the Republic of Ecuador (2008), the Organic Law on Water Resources, Uses and Development of Water (2014), the Organic Code of Territorial Organization, Autonomy and Decentralization (2010) and the Organic Environmental Code (2017).

The research work is structured as follows: the first part is dedicated to the introduction, where the fundamental aspects of the state of the art of the research, the context in which it is developed and the objectives are presented. This is followed by the methodology and approach used, the theoretical orientation, theorization, findings, and the most significant conclusions and recommendations obtained. With the results of the research and the recommendations, the current situation of drinking water
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supply for domestic consumption in the city of Esmeraldas could be improved for the benefit of its inhabitants. Based on these initial assumptions, the present investigation was carried out with the materials and methods described below.

2. Development of the research

The approach adopted for the development of the research is socio-legal, descriptive and field-based. In the first instance, the analysis of legal documents was carried out to identify the right to water consumption as such. In addition, the descriptive-observational method was the way to process all the information. According to Tamayo (2006) the descriptive type of research:

comprises the representation, recording, analysis and interpretation of the actual nature and composition or processes of the phenomena, in such a way that it complements the field aspect since the findings were taken in their natural context as were the most genuine experiences and experiences of the people, and their interpretation in the form of social awareness (p. 51).

Consequently, this method focuses on personal and social experience and does not presuppose the world beyond what can be effectively described or perceived with the senses; hence, the questionnaire technique applied to subjects of interest for the research is used to obtain relevant information that describes the current situation and its short and medium term perspectives.

For this purpose, the technique and instrument used to obtain information was a questionnaire applied to 89 neighbors, 15 officials and 9 workers of the drinking water company EAPE attached to the Decentralized Autonomous Government of the canton of Esmeraldas; to learn about the frequency with which they receive drinking water in the city of Esmeraldas, its quality and the difficulties they experience for the effective exercise of the right to water. This was complemented with direct observations in the contexts involved. For the analysis of the data, descriptive statistics were used, which allowed the counting, tabulation and respective analysis to then be plotted in tables and represented graphically.

The research not only sought to learn from the primary source what citizens think and feel about the lack of water for domestic use, but also about the scarcity, availability and quality of this vital liquid in their homes, based on the assumption that its distribution in tankers does not meet the required hygienic standards, which causes a violation of the constitutional right of access to water, complying with the parameters of physical accessibility, equal access and its economic reach to all people (DPE, 2011).

The researcher’s own experience as an active part of the city of Esmeraldas, where he has lived for more than 25 years, becomes a source of valuable information on the presentation of some social circumstances that occur daily and that contrast with the constitutional and legal norms on the human right to water, where there are difficulties for its use and exploitation for quality human consumption.

The most important analytical categories related to the human right to water are the obligations of the State with respect to the material, infrastructural and institutional conditions it must create, the powers it grants to its holders and the ways to claim in case of non-compliance with those obligations by public authorities at the national or local level; it is one of the basic rights of the person that “is inalienable, universal, not subject to limitations and enforceable at all times by its holders, in addition to admitting the use of judicial or administrative channels for its effective protection” (Justo, 2013, p.12), and “are therefore justiciable rights” (Casal, 2015, p.27).

Water that can be fit for human consumption is called drinking water, and as such constitutes a vital liquid that represents a primordial device for coexistence, not only for human beings, but for all species and living beings. In addition, due to its functionality and conditional nature for life, it has made possible the improvement of cultures and the development of many societies. For this reason, in 2010, the United Nations explicitly recognized the human right to water and sanitation, reaffirming that clean drinking water and sanitation are essential for the realization of all human rights (UN, 2018, p.13).

In this sense, water as a natural resource involves certain particularities that make it a unique element on earth, constituting a scarce resource that does not depend on the will of human beings to produce it. Because of this, it is the hydrological cycle that determines the volume of water existing in nature, offering humans only a few possibilities to control the phenomenon; it should be noted that the management that the individual can perform on this cycle is quite unpredictable, since its natural
production is sufficiently irregular, being found between cycles of droughts and floods that have been deciphered.

It is important to note that for our ancestors and some generations ago, access to fresh water for human and community consumption did not require any type of legal protection, since this vital liquid of essential consumption for living beings is not only a human right inherent to every person, but today it enjoys legal protection, both at the international and national level; in spite of this, in some places there are limitations for its use, exploitation and domestic consumption, placing at risk the conditions that make possible its access with quality.

As Tello (2006) states "even though in the legal field the right to water has minimal recognition, ethically the realization of this right seems to us to be a demand for social justice, since it is truly outrageous that there are so many millions of human beings who lack access to the primary good for survival" (p.103).

In this order of ideas it is highlighted that the emergence of this right means its necessary protection for the realization of consubstantial and universal values, since it constitutes the fruit of its legal reaction that allows ensuring that every human being has access to fresh water for human consumption with quality and in sufficient quantities, cementing its content either by interpretation of other human rights or by autonomous construction, in such a way that the existence of bodies that regulate this human right opens the scenarios where the man who is restricted in its use, is in his full right to demand, claim this obligation to the central State.

To realize the human right to water, at the United Nations Water Conference held in 1977 in the city of Mar del Plata, the United Nations made a series of requests to national States, including that they urgently assess the situation of their public water supply and sanitation facilities and services, and establish programs aimed at improving these services and facilities and extending them to the entire population.

As concrete measures, in 1997 the UNO called for the establishment of sectoral development policies and plans through the implementation of detailed studies of the national public water supply sector; the development of new criteria and material means which respond as much as possible to the particular conditions of the country; identifying and preparing investment projects, improving the operation and maintenance of facilities, especially the monitoring of drinking water quality, assessing water resources and their conservation, protecting water resources from pollution and the spread of diseases caused by their exploitation, and improving staff resources and management services.

In accordance with international instruments, declarations and directives on the human right to water, in Ecuador there is a legal regime that starts with the 2008 Constitution as mentioned above, and is developed in special legislation, specifically in the Organic Law on Water Resources and Water Uses and Development (2009). As regards the Constitution, Article 318 establishes an order of priority of water use: "human consumption, irrigation that guarantees food sovereignty, ecological flow and productive activities".

Thus, the first of the limits to the exercise of the right to water is determined by its specific destination, since licenses cannot be granted for the use or exploitation of water for productive purposes if the limits of the ecological flow are exceeded or if the needs of food sovereignty or human consumption have not been satisfied beforehand. Once these needs have been met, water may be used for other purposes, always following the established order and verifying its availability.

From this derives another important consequence, because the essential content of the right to water lies in the access to the quantity and with the adequate quality necessary to satisfy the needs of human and domestic consumption, including the right to have this vital minimum provided free of charge, that is, not subject to any fee, all in accordance with the provisions of Article 140 of the Organic Law on Water Resources and Water Uses and Development (2009).

On the other hand, the human right to water is fundamentally directed towards individuals, and its content lies in the possibility of having access to drinking water of sufficient quality and quantity to satisfy the needs of personal and domestic consumption; When the Constitution refers to water as a natural resource or patrimonial good, it uses only the expression water, while when it is treated as a human right, except in article 12, it refers to drinking water; that is, water that is fit for human consumption and is intended for that purpose, as can be seen in articles 66, 264, 314, 318, 318, 326 and 375.
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From a more general perspective, the right to water has been subject to interpretation by national and international bodies: in the first case, the Ombudsman’s Office of Ecuador (DPE, 2011), undertook the task of defining the "content and scope of the right of access to water", identifying its essential content as access to water, which "must be equitable and without discrimination, taking into account the cultural, social and environmental dimensions of water" (p.37). As criteria to ensure the effective enjoyment of the right to water, the DPE (2011) considers three essential requirements to be met:

Physical accessibility, "i.e., that water service and facilities are within physical reach of the entire population; they should be within each home, educational institution, workplace or in their immediate vicinity" (p.37).

Access without discrimination, "in that water, services and facilities must be accessible to the entire population without any distinction, particularly guaranteeing access to vulnerable groups, which is associated with an equitable and sustainable distribution of water" (p.37).

Economic accessibility, "i.e., that the direct and indirect costs and charges for water supply, services and facilities should be affordable to all people, without compromising or jeopardizing the exercise of other rights" (p.38).

The legal framework to enforce the right to water is composed of the 2008 Constitution, which establishes the general principles and responsibility of public entities, the Organic Law on Water Resources, Uses and Development of Water (2014), the Organic Code of Territorial Organization, Autonomy and Decentralization (2010), which defines the competencies of the Decentralized Autonomous Governments in water matters, and the Organic Environmental Code (2017), which establishes the obligations of the central State and decentralized entities, in terms of care for the environment, natural resources and water.

The following table shows the most relevant articles of each of its legal bodies, with their normative content, where the distinctive elements of the human right to water can be appreciated, which are the obligations of the State, the prerogatives of its holders and the institutional, normative and institutional guarantees to make it effective, including the order of priority of the use and exploitation of water and the principles related to its ownership and public management.

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<th>Table 1 Legal framework of the human right to water</th>
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<td><strong>Legal body</strong></td>
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| Constitution of the Republic (2008) | 66. The right to a dignified life, which ensures health, food and nutrition, drinking water, housing, environmental sanitation.  
The municipal governments shall have the following exclusive powers, without prejudice to others determined by law: 4. To provide public drinking water, sewage and wastewater treatment services.  
314. The State shall be responsible for the provision of public drinking water, irrigation and sanitation services.  
318. The public sanitation service, drinking water supply and irrigation shall be provided only by state or community legal entities.  
326. The right to work is based on the following principles: 15. The paralysis of public services of drinking water and sewage is prohibited.  
The State, at all levels of government, shall guarantee the right to habitat and decent housing, to which end it shall: 6. Guarantee the uninterrupted provision of public drinking water and electricity services to public schools and hospitals. |

3. Purpose of the Law. The purpose of this Law is to guarantee the human right to water, as well as to regulate and control the authorization, management, preservation, conservation, restoration, use and exploitation of water resources, comprehensive management and its recovery, in its different phases, forms and physical states, in order to guarantee the sumak kawsay or good living and the rights of nature established in the Constitution.

86. Water and its priority. In accordance with the constitutional provision, the order of priority among the different uses or functions of water is: a) Human consumption; b) Irrigation that guarantees food sovereignty; c) Ecological flow; and, d) Productive activities.

140. Fee for the supply of raw water for human and domestic consumption. The delivery of the minimum vital quantity of raw water established by the Single Water Authority for the provision of drinking water services shall not be subject to any tariff. When the volume delivered to the service providers exceeds the minimum vital quantity determined, the corresponding rate will be applied, in accordance with the provisions of this Law and its Regulations.


55. Exclusive competencies of the autonomous decentralized municipal government. d) To provide public services of drinking water, sewage, wastewater treatment, solid waste management, environmental sanitation activities and those established by law.

41. Functions. The functions of the provincial decentralized autonomous government are the following: e) To execute the exclusive and concurrent competences recognized by the Constitution and the law...environmental management, irrigation...

Organic Environmental Code (2017)

191. Monitoring of air, water and soil quality. The National Environmental Authority or the competent Decentralized Autonomous Government, in coordination with the other competent authorities, as appropriate, shall monitor and follow up on the quality of air, water and soil, in accordance with the regulatory and technical standards issued for this purpose.

Source: legal bodies cited. Author’s elaboration.

3. Results

Due to the global health crisis from which the citizens of Esmeraldas have not escaped, the questionnaires were applied telematically to 89 neighbors, using the Google Forms platform. In this context, it was determined that there is not enough knowledge about the fact that the quality and availability of fresh water for domestic consumption is a specially protected object whose owners are natural persons without discrimination of any kind. Likewise, it was determined that the current state of water supply for human consumption in the city of Esmeraldas is insufficient.

The questionnaire applied was prepared with closed questions whose answers were represented in percentage terms in the form of quantifiable and tabulated numerical data, which is complemented by the results obtained from the analysis of the documents and the descriptive-field method applied; this questionnaire is in line with the quantitative approach that allows quantifying data and making interpretations of reality. The results of the survey on drinking water consumption applied to 15 officials and 9 workers of the EAPE-2021 are presented below.

Question: Did you know that the consumption of quality drinking water is a human right?

The quality of this right as fundamental is evidenced in the Constitution of Ecuador (2008), which qualifies it as basic for the good life of the people.

According to the data shown, 57% of EAPE officials and workers know that the Ecuadorian State does provide resources for the provision of drinking water to citizens and 43% do not know, a value that is worrying. However, the mere provision of financial resources is not enough to guarantee the effectiveness of this right, as rightly pointed out by the Public Defender’s Office of Ecuador (DPE, 2011).
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The data collected show that 88% of the officials and workers surveyed say that drinking water reaches the different neighborhoods and sectors of the city through pipes and 12% are unaware of this basic service. The lack of adequate infrastructure to meet the demand for drinking water in Esmeraldean households affects their right of access to water, as noted in their study by Becerra & Salas (2016).

Thirty-eight percent of EAPE officials and workers say that water is sent to neighborhoods without a water network by tankers once a week, while 25% say that it is sent twice a week and the remaining 38% consider other data, so there is a lack of knowledge of the frequency of sending water by tankers to areas without a drinking water network. Although the people surveyed say that water does reach the neighborhoods, its lack of frequency affects one of the basic requirements of the human right to water, which is its physical accessibility Ecuador (DPE, 2011).

Seventy-five percent of those surveyed state that they are aware of the existence of complaints from users of drinking water in the city due to the non-delivery of the vital liquid, and the remaining 25% respond that they do not know about it, so that the high percentage of affirmative data ensures that the service is inefficient and produces periodic complaints. Although it is a right of provision of which it is said that they are not justiciable (Casal, 2015), in the case of Ecuador this objection does not apply since the rights recognized in the Constitution are directly applicable, without the need for legislative development, and their holders can claim before the courts when they are restricted or violated, as is the case with the right to water in the city of Esmeraldas.

4. Conclusions

From the socio-legal perspective, it is evident that the Ecuadorian Constitution of 2008 recognizes water as a human right, where different obligations are derived for the State, in conditions of free of charge, in no case will people be deprived, on the contrary, the social reality explored where there is an evident non-compliance with all these regulations and social justice; Furthermore, because of this inhumane treatment, the social debt of the State is accumulated with the population of Esmeraldas, which is precisely in the social group excluded from a life with quality and therefore health, hygiene and all the basic dimensions of a good life.

According to the results obtained from the theoretical and field research carried out, it can be seen in the city of Esmeraldas, the existence of difficulties to optimally guarantee the human right to water to meet the domestic needs of the population; There are structural difficulties such as inappropriate use of resources, inadequate distribution system, water distribution process with few hygienic conditions, so it was evidenced some non-compliance with the requirements of the human right to water, where in each of the homes of the city drinking water arrives with the periodicity, quality and quantity required to meet the basic domestic needs. The consequence of not complying with these requirements is that there is a gap between the duty to be demanded by the norms and the social reality verified by the research.

It is important for people to satisfy their human right to have drinking water in sufficient quantity and quality. The central government and the decentralized autonomous governments must fulfill their obligations both in the creation of the necessary infrastructure and in the provision of drinking water services, as required by the Constitution and other applicable norms, since these authorities were elected to guarantee the fair and equitable distribution of the basic goods and services necessary for the development and development of the people. According to the information gathered from those consulted, this non-compliance of obligations is currently evident in some of the neighborhoods of the city of Esmeraldas, due to the difficulties presented for the effective delivery of drinking water, with all the required conditions.

The difficulties identified in the study to make effective the human right to water of the inhabitants of the neighborhoods of the city of Esmeraldas, is a clear manifestation that the central government and the local government have not created the conditions of infrastructure and services to meet the demand for drinking water for domestic consumption. Therefore, it is recommended to comply with the requirements of this right at the constitutional level, so that Esmeraldeños can have access to quality drinking water, in sufficient quantity and with adequate frequency, which also guarantees its physical and economic accessibility without discrimination.
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