

# Human Right to Water and Energy: Challenges and Opportunities

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## Abstract

The social dynamic, at least in democratic states, is governed by the institution's ability to regulate coexistence in such a way that balance, justice, and equity persist. The analysis developed below aims to establish a connection between effective public normative functions and ensuring that the most vulnerable populations have unconditional access to essential services. It is the role of the managing state to ensure this through expeditious public policies across time and the national territory, translating into the right to development for all human beings, individually and collectively.

In summary, this is an analysis of the regulation that, while governing, effectively impacts its population, particularly the most vulnerable, who require greater protection. Their guaranteed access to vital resources like water must be expedited. This proposed analysis employs a qualitative hermeneutic methodology, emphasizing dogmatic documentary analysis and providing factual attributes, especially concerning public administration and regulatory functions in social law matters.

## 1. Introduction

Two essential elements stand out in Colombia's Political Constitution, consolidating its nature as a social state under the rule of law. The first is dignified life as an undisputed premise inherent to the human species and the contextual conditions that determine its well-being. As a consequence of these conditions, the second element is intimately linked to the possibility and opportunity for harmonious development, which the state, as an institution, must commit to ensuring. This factual consideration justifies its existence.

Based on the above, this analytical exercise focuses on the administration and utilization of a vital natural resource for individual existence, such as water, and its designation as a public service—a necessary administrative undertaking to provide structure.

In this context, beyond its institutional significance, it is necessary to determine its role in social interaction. This places water within a much more rigorous framework when approached from the perspective of a vital input that supports the realization of human dignity, both individually and within the dynamics of coexistence. This makes it as fundamental a right as the right to life, primarily because ensuring access to water is crucial. If access depends solely on individuals' economic resources, the state cannot guarantee it. Such a situation implies the need for stable and permanent income for the entire population—a prerogative that remains unachieved.

Consequently, given water's importance in individual and collective development, and the impossibility of guaranteeing income for every citizen and resident in the national territory, it becomes the state's responsibility to ensure rational access to this resource. This responsibility transcends legal obligations to become a natural commitment, which involves an implicit solidarity pact to guarantee safe and permanent supply, along with the infrastructure implications. At the same time, reciprocal responsibility for rational use must be acknowledged. Although water is considered a renewable natural resource, irrational management has severely undermined this attribute, leading to a dramatic reduction in supply sources.

At this point, it must be recognized that the democratic legal paradigm, which upholds the validity of fundamental human rights, walks the path of a social state under the rule of law, where human dignity and all its implications

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are prioritized as one of its core pillars. In the pluralistic legal framework declared in the 1991 Constitution, differences are acknowledged, including the limitations individuals and communities face in managing their rights. Positive discrimination, also integrated into the constitutional text, identifies and protects these groups, thus serving as an expeditious mechanism to effectively promote collective protection guarantees—particularly for the most vulnerable. In this scenario, the guiding values of public action align with equality, human dignity, and substantive democracy. Together, they shape the public sphere of the constitutional state and compel public authorities to prioritize fundamental rights to ensure their coverage.

This examination highlights the complexities of political opportunism in the instrumentalization of rights. Bureaucratic formalities often contradict the country's realities, resulting in effects that exacerbate inequality and deepen social divides. Access to basic essential services, such as water, remains contingent on users' economic capacity, disregarding the vulnerabilities previously discussed. While this debate may seem outdated given the advancements in human rights, which presume certain guarantees as inherent to existence, this remains an unresolved issue. It continues to mobilize the legal structure and has been the subject of constitutional deliberations.

In summary, the methodical development presented below addresses the genuine and effective access to fundamental rights at their most basic level. The possibility of enjoying resources like water must, under no circumstances, be contingent on fluctuating public policies instituted by the government in power, particularly for vulnerable sectors of the population. Neither should it become a political tool for achieving such access. This implies that measures legislated from a public policy perspective must offer unconditional guarantees to provide these vulnerable groups with permanent supply security. This should shield them from the democratic uncertainties that arise from administrative changes.

## **II. Essential Public Services and Fundamental Rights**

Social policy, as understood by governments, aims to alleviate extreme poverty by reducing the gaps that generate it. However, this is not its sole objective. It must also focus on reducing the risks faced by the population as a whole and encouraging the development of human capital, particularly among the most disadvantaged social groups. This rationale underpins the existence of subsidies, pensions, unemployment insurance, and family support programs, fueled by the creation of positive freedoms and collective actions driven by the desire to promote equality. However, this is not about fostering a paternalistic state that becomes fertile ground for political demagoguery. Instead, it is about building a society where public administration fulfills its constitutional function within the framework of a social state under the rule of law.

The dynamic of political agreements, which inevitably generates new tensions, is compounded by the fact that social rights, like freedom rights, are part of fundamental rights and contribute to deepening substantive democracy—real democracy—requiring public authorities' action. The right to equality, as a human right with a social dimension, not only responds to the call for social justice but also imposes obligations on the state to ensure its guarantee and realization. Equality must be understood as encompassing both obligations and guarantees, ensuring that rights are materialized through actions that consider possibilities and opportunities.

Although many jurists still view social rights as more of a political aspiration than a legal domain—arguing that they lack binding legal content due to their indeterminate nature—this thesis is questionable. The eventual materialization of a right cannot condition its existence. Scholars such as Ferrajoli (2010), Abramovich, Añón, and Courtis (2006) argue that fundamental rights have legal validity, particularly in a democracy emphasizing its social state of law, even when such rights are not clearly defined. These scholars stress the urgency of making such rights enforceable as legal obligations.

Adopting this perspective inevitably underscores the importance of social spending to protect and strengthen sound budgetary policies that address the population's justified demands. This requires the creation of enforceable rights without classifications that, rather than providing clarity, create confusion. Such confusion, in turn, becomes

an excuse to delay the development of effective public policies that adequately address the realities they aim to regulate. The essential premise is to satisfy the fundamental rights of a nation's inhabitants.

Nevertheless, one of the defining characteristics of rights is their provision-based nature. This raises the question: what good is a right if sufficient infrastructure is unavailable to bring it to fruition when the goal is to improve the quality of life for the entire population? A case illustrating the gap between the principles underpinning Colombia's social state of law and reality is the provision of potable water and access to energy as indispensable resources for human development. In Colombia, the government, citing the need to generate resources to fund the installation, expansion, and maintenance of potable water networks and treatment systems, along with energy infrastructure, has delegated these basic services to the private sector, subjecting them to market logic (Bollain, 2021).

This situation presents a problem worthy of study. Despite significant progress in this area, it has also generated tremendous inequality in resource distribution. Many Colombians still lack secure access to the minimum vital supply of potable water, basic sanitation, or energy due to their lack of economic resources. This challenge lies not only in public policy but also in legal frameworks.

This reality creates a functional dilemma for the guaranteeing state, contradicting the principle of positive discrimination. On one hand, specific population groups are identified as vulnerable due to socioeconomic deficiencies, granting them a prevailing status. Yet, their development remains dependent on economic capacity, a contradiction evident in the provision of public utilities. When subject to market dynamics, these services become disruptive factors for development, particularly since such dynamics are driven by society members' purchasing power rather than their rights or needs.

From another perspective, equality is the cornerstone of Colombia's social state of law. Yet, in the country, citizens living in poverty continue to face inequity and are deprived of critical rights that jeopardize their existence, precisely because they cannot afford them. Recognizing the rights of people living in poverty has seen significant legal and administrative reforms. However, the gap between legal norms and reality remains undeniable.

Thus, this study aims to explore access to potable water in Colombia, from its origins to the mechanisms developed to recognize and implement this right, endowing it with special attributes. It also seeks to examine energy as an indispensable element for development, which should be included within the concept of a vital minimum (Pérez, 2018).

### **III. Human Dignity and Well-Being in the Social State Under the Rule of Law**

When establishing the criteria by which the state's function gains meaning for citizens, particularly in everyday life where social development is managed and in essential and indispensable needs such as water, the role of positive discrimination as a constitutional tool becomes evident. It aims to provide additional protection by the state to address the limitations faced by certain population sectors. This strategy seeks to supply the necessary resources to overcome such vulnerabilities. Water is specifically mentioned first because it is a public service, second because it is an essential resource for life, and third because its access is conditional on the ability to pay for it. This arises from its designation as a public service in administrative practice. In essence, the "special protection" afforded to vulnerable sectors grants them the unconditional right to access water without any onerous burden.

This principle forms the foundation of this analysis, approached from a legal perspective with the intensity required in a social organization like Colombia, defined by its nature as a social state under the rule of law. In this context, a fundamental right rooted in a resource like water is critical for individuals and society. It also underscores the effective instrumentalization of fundamental rights in a social state under the rule of law, where human dignity and all its implications prevail, including access to such resources. However, this also relates to the government's responsibility in structuring and validating individual and collective rights as an unavoidable premise in public administration.

This aligns with the concept of the welfare state, which differs from other forms of governance because it starts from a specific postulate: historical state structures have failed to realize the principle of material equality. According to this postulate, by focusing solely on ensuring equality before the law (formal equality), past systems have ignored the various power dynamics in social relationships that allow the strong to dominate the weak. (Universidad de la Sabana, 2021, p 2).

In this sense, the state is designed to strengthen individual development so that it can extend effectively to the entire population. Well-being is consolidated through material equality, which becomes meaningful when opportunities are equal for all, yet interwoven with their differences. In other words, the recognition of both limitations and strengths within differences guides the implementation of policies aimed at bridging these gaps. This gives equitable access to rights that naturally and customarily belong to every citizen in a democratic society like Colombia. Thus, the urgency of this nature arises from a narrative of materialization and protection. While legislative production and political campaigns may advance these goals, they are often hindered by bureaucratic obstacles to their implementation. Reality often surpasses legal and formal content, exposing state failures that should serve as opportunities to establish coherent and adequate regulations for social facts. These facts, in turn, are the ultimate purpose of the legal and state apparatus.

The critical issue in this analysis is that such carefully managed resources are wasted by privileged citizens who can afford to use them excessively, impacting their management and distribution. In these circumstances, positive discrimination for economically disadvantaged populations compromises not only their comprehensive development but also threatens other rights essential to their well-being, such as health. Extreme poverty brings a series of problems for those who experience it, with implications across all social areas that affect their dynamics. Consequently, it is reasonable to infer that access to or the lack of public utilities negatively impacts this population sector. Even if the indicators fluctuate annually, the percentage figures correspond to significantly large population segments.

Colombia is one of the most unequal countries in the world, with a Gini index of 54.86 and 36.6% of its population living below the monetary poverty threshold. Poverty rates are higher in small or medium-sized urban and rural areas (45.9%) than in larger cities (33.8%). Over 6.6 million inhabitants (12.9%) experience multidimensional poverty. The country faces serious challenges in overcoming barriers that prevent certain sociodemographic groups (particularly women, Indigenous Peoples, Afro-descendants, rural populations, and people with disabilities) from enjoying equal economic opportunities. Poverty rates are highest among Indigenous and Afro-descendant populations in rural areas and households headed by women. (World Food Program, UN, 2024, p 3).

Focus must be placed on the sociodemographic groups that cannot enjoy equal economic opportunities. In this specific case, it means lacking the resources to consistently pay for public utilities, leaving them unable to meet their consumption needs for their dependents. These groups are identified as vulnerable because their physical, psychological, or socioeconomic limitations obstruct their development. This situation necessitates state intervention to guarantee their full enjoyment of rights. Access to essential public services such as water and electricity contributes to overcoming this condition and thus operationalizes the social state under the rule of law.

#### **IV. Vulnerability, Protection, and Its Instrumental Legitimation**

Discussing positive discrimination involves identifying limitations in the development of population sectors that, being disruptive, affect society as a whole. That is, living conditions depend on the ability to manage everyday life so that both natural and legal rights can be realized beyond formality. This analysis considers two necessary aspects: first, a social organization whose optimal evolution relies on institutions designed for this purpose, and second, the tools that, regardless of philosophical debates, regulate coexistence and ensure dignity, equity, and justice for all members in a democratic state.

The issue for social progress and organizational models is that genuine purposes become diluted in situational processes, influenced by political practices and shifting power dynamics. Such phenomena are more pronounced with the proliferation of media and information dissemination. As a result, priorities shift away from guaranteeing

life, coexistence, work, justice, equality, knowledge, freedom, and peace—values enshrined in the preamble of the Constitution—or striving for a just political, economic, and social order. Instead, emphasis is placed on a social model based on market economics, where purchasing power outweighs the principle of human dignity.

Here lies the contradiction: while rights are formally recognized, the reality reveals gaps that the state has failed to adequately address. This shortcoming perpetuates discussions on basic human existence rights even in modern contexts. One of the most pressing arguments in this analysis is the need for a social state under the rule of law to strengthen institutions and genuinely fulfill their mission to ensure citizen well-being. For vulnerable population groups designated as subjects of constitutional protection, guaranteeing permanent access to essential public services, such as water and energy, is integral to their rights within this constitutional framework.

The social state under the rule of law is a form of political organization distinguished by its mission: to ensure respect, guarantee, and comprehensive realization of human rights, which become the foundation and ultimate reason for the state's existence. Thus, human rights acquire new meaning in a social state under the rule of law. This organizational form adopts a legal structure that transcends the formal recognition of human rights, compelling institutions to act and create the social and material conditions necessary for the full enjoyment of these rights. (Lozano, 2013, p 11).

Lozano Bedoya's definition is useful for illustrating the functional commitment of the state in instrumentalizing citizens' rights. However, it also highlights a recurring issue in political disputes: governance skewed by radicalism, where power is wielded either to act or distort, depending on available resources. Vulnerable sectors often bear the brunt of these dynamics, serving as either scapegoats or victims, as resources intended for their protection become subjects of contention among those in power.

The state's special mission involves ensuring respect for individuals within the collective, as well as guaranteeing human rights in their entirety. This mission must be examined to deconstruct its real dimension or dismiss it as a harmful distraction in the practical realization of collective human rights. While the necessary formality lies in established norms and their accompanying dogmatic framework, real impact concerns human dignity, personal development, and access to means necessary for a decent standard of living.

Thus, from the social state's nature, the state justifies its existence through its ability to manage well-being and, consequently, dignified living. Those who act as the state are subject to norms designed for their regulation, preventing radicalism and absolutism while ensuring citizens' predominant well-being. Colombia's 1991 Constitution exemplifies this principle through its expansive declaration of fundamental rights, inherent to every citizen's existence. These rights require state intervention as the most direct path to their satisfaction and materialization.

In this context, positive discrimination for equity manifests in state actions or omissions tied to access to essential resources for development, such as water. This resource is vital for life, making it a fundamental right. Vulnerable sectors' designation as subjects of special protection reflects their exposure to rights violations within the social dynamic. This designation requires public administration to develop policies ensuring these risks do not materialize. The socio-economic factor is vital for development, recognizing that not all citizens have the same opportunities, possibilities, or capacities to manage their rights. It is precisely within the state's framework that these individuals can be supported to overcome their limitations.

## **V. Water as a Right for Populations with Socioeconomic Vulnerability**

Following the previous discussion, we arrive at the issue of access to a resource like water, which is subject to a semantic debate regarding its use. While classified as a public service, this designation overshadows the fact that water is a fundamental right. This is particularly evident as survival is impossible without its consumption, even if energy use, while essential, is less immediately critical. In general terms: *"Public services are activities that satisfy collective needs, generally essential, and must be offered universally, obligatorily, continuously, and under*

*conditions of equality and quality to the entire community"* (Matías, 2014, p. 318). While these conditions may not always apply strictly, exceptions based on economic capacity cannot be justified.

Thus, attention must focus on a priority that has little to do with market models but instead engages the state's essential functions. The aim is to promote effective well-being management, emphasizing the positive discrimination previously discussed. In summary, the elements that give meaning to the state align with a specific social dynamic lacking genuinely effective mechanisms to address the deficiencies of those identified as subjects of special protection, including those unable to access vital resources due to their precarious economic circumstances.

The prevailing hegemonic trends in the Western world have infiltrated public service theories, leading some to declare them obsolete (Falla, 1994). These trends strip public services of their founding principles (Commission of the European Communities, 2003): solidarity, the social function of the state, property, and public interest—values now more necessary than ever. (Matías, 2022, p 322).

Paradoxically, this is the contradictory tendency of Colombia's democratic state, where individuals lacking socioeconomic advantages bear the consequences in the form of shortages or outright deprivation of essential rights like water and electricity. When discussing exclusion, it is crucial to analyze it in light of opportunities compared to the majority population. Acceptable living standards in terms of income and capabilities provide some with advantageous social standing, while marginalized individuals cannot compete on equal terms. This disparity underscores the need for state intervention.

It is worth noting that the concept of exclusion, in line with the works of Hernández (2010) and Subirats (2004), emerged in the 1970s with René Lenoir, who analyzed poverty levels as factors excluding humanity before the term was adopted into multiple public policies. These policies aimed to overcome the deficiencies associated with the term "poverty," which is often linked to the economist thesis of insufficient income to procure goods and services. Faced with this premise, positive discrimination assigns responsibility to the state to bridge these gaps and develop the necessary instruments to ensure that economically disadvantaged populations do not see their essential rights, enabling life, diminished.

To understand the implications of access to or lack of public services, particularly concerning their significance for the analyzed population, the concept of vulnerability must be reevaluated within the framework of social development. The notion of "fundamental" should be applied to real-life scenarios where immediacy must be an effective attribute. As previously mentioned, designating individuals as subjects of special protection reflects the recognition of characteristics that hinder their full development within a specific context. Thus, positive discrimination becomes relevant in institutional measures to guarantee such populations the necessary conditions to perform adequately.

Anti-discrimination law, particularly affirmative action, seeks substantial—not merely nominal—equality. Both concepts are closely tied to the social character of the state. However, they could be seen as directly violating the principle of equality, essential in all Western countries and those adopting the capitalist economic model (Fuentes, 2015, p. 7).

Eduardo Fuentes Boyano's (2015) perspective offers a coherent approach to positive discrimination. It advocates for equality and the urgent need to guarantee vulnerable populations access to water and, potentially, energy. Fuentes argues that anti-discrimination laws concretize affirmative actions that aim for substantial equality—achieving tangible, effective impacts within communities. In the case under analysis, financing consumption debt cannot serve as a solution, as it exacerbates the problem and contradicts the substantial satisfaction of fundamental rights.

The author also highlights a recurring and detrimental phenomenon in public administration within democratic states. Particularly in Colombia, as a social state under the rule of law, this issue arises within a media-driven framework advocating for comprehensive human rights protection. However, in practice, public policy decisions



often perpetuate a market ideology that excludes vulnerable groups from opportunities. Rights such as employment, dignified housing, and vital resources become utopian ideals overshadowed by public policy favoring those with both political and economic power. Consequently, in a competition for survival, social coexistence and opportunities are directly related to individual or group capabilities and possibilities. These relationships inevitably establish roles of domination and subjugation, making full equality in any society a utopian aspiration.

The 2030 Agenda of the United Nations (2015) offers a viable and necessary alternative, recognizing the harmful dynamics of the past centuries. This agenda emphasizes that one of the world's major environmental crises stems from the social gap between what could be termed social castes—a perspective linked to positive discrimination, though unfortunately subject to political manipulation.

The UN document highlights that poverty extends beyond insufficient income and resources for sustainable livelihoods. Manifestations include hunger, malnutrition, limited access to education and basic services, social discrimination and exclusion, and lack of participation in decision-making. Inclusive economic growth must create sustainable jobs and promote equality (UN, 2016, p. 15).

Unfortunately, poverty is closely associated with social obstacles to accessing basic resources necessary for individual development. In this context, positive discrimination must address a multimodal model resulting from a cycle of consequential deficiencies, stemming from the lack of stable employment opportunities. This often forces individuals into informality or illegality, limiting their survival options and their ability to afford public utilities, healthcare, or even leisure.

Although formal structures and political rhetoric emphasize democracy as a priority under the social state of law, practical realities reveal the persistence of deepening social gaps. As such, essential constitutional principles remain contentious, with arguments for their implementation often sidestepped to ensure a market hegemony contradicting genuine democratic aspirations, particularly regarding fundamental rights like access to essential public services such as water and energy.

## **VI. Jurisprudence on Essential Public Services**

When discussing resources like water and access for human consumption, it is presumed that, as a public service, its provision goes beyond proportional distribution. There is a generalized, prior, and complete understanding that, regardless of what public administration may decide regarding its allocation, water is clearly an essential resource for life. Its deprivation brings disastrous consequences. Consequently, the discussion should not center on economic capacity to facilitate access but on the necessary measures to ensure it.

From this observation, jurisprudence has established a position that leaves no doubt about the importance of resources in this category.

Among the group of essential domestic public services, the right to access potable water stands out. This right: (i) is fundamental only when intended for human consumption, as it directly connects to other fundamental rights such as life in dignified conditions, health, education, public health, etc.; (ii) thus, legal action (tutela) is an appropriate means to enforce the fundamental right to potable water, whether against public authorities or private entities that arbitrarily affect this right; and (iii) the right to potable water for human consumption can be protected through tutela action, even overriding popular action, when the violation of this fundamental right affects one, several, or multiple individuals or when there is a threat of irremediable harm to this right. (Sentence T-752, 2011).

With this ruling, the Constitutional Court extends the scope of special protection subjects to other vulnerable population sectors whose well-being is compromised by a lack of water. Poverty, a defining characteristic of vulnerability, encompasses children, whose guarantees take precedence, and other groups whose minimum well-being is jeopardized. Regarding this, the same ruling specifies categories of individuals subject to special protection:

Thus, the jurisprudence of this Corporation—without denying the legitimacy of public service companies to suspend services for users in arrears on payment—has consistently maintained that when a household targeted for service suspension houses individuals under special constitutional protection (e.g., children, female heads of household, displaced persons, individuals with disabilities, the elderly, etc.), the authority to cut domestic public services is not absolute. Specifically, regarding the right to access potable water, Colombian legal regulations assign a dual character to this resource, classifying it as both a fundamental right and a public service. Consequently, all inhabitants of the national territory must be able to access aqueduct services under sufficient quantity and quality conditions. The state is responsible for organizing, directing, regulating, and guaranteeing its provision according to the principles of efficiency, universality, and solidarity. (Sentence T-752, 2011).

It is essential to clarify that, within a society structured around a market model, the private initiative entrusted with public service provision expects to gain profits from such activities. However, this issue is not about demands arising in this commercial exchange for those with resources to invest. It concerns public corporations, legislators, and political authorities to adequately address protection measures and guarantee access for population sectors unable to secure such fundamental rights independently, even when constitutional mandates are in place.

Constitutional jurisprudence has established exceptions to the general rule of suspending domestic public services when subscribers fail to meet payment obligations. These exceptions directly relate to protecting fundamental rights. For individuals under special constitutional protection, service providers must abstain from suspending services when the individuals affected by such measures are in vulnerable or defenseless situations, thus requiring special protection by the state and private entities. (Sentence T-273, 2012).

In summary, the Court explicitly states that exceptions apply to sectors with which the state has a constitutional duty due to their conditions and Colombia's nature as a social state under the rule of law. This ensures the means to make well-being real and effective for these groups, emphasizing their specific vulnerabilities. Paradoxically, despite such jurisprudential clarity, high courts have repeatedly emphasized these prerogatives in Colombia's organizational framework. Even rulings unrelated to public utilities have addressed positive discrimination.

The legal nature of the right to water as a fundamental right stems from its enshrinement in an international human rights instrument ratified by the Colombian state. Its exercise cannot be limited, even under exceptional circumstances. As such, it forms part of the constitutional block.

(Sentence T-916, 2011).

Moreover, in Sentence C-371 of 2000, the Constitution provides for positive discrimination as a mechanism to reclaim rights for the most marginalized—those unable to compete in the market on equal footing with the rest of the population. Developing this concept, the state must guarantee equality through actions and decisions that may initially seem like privileges for historically disadvantaged groups, ultimately promoting social balance and equitable development. Even this constitutional nature indicates that, in the social State of law, material equality is decisive as a fundamental principle that guides the tasks of the State in order to correct existing inequalities, promote inclusion, participation and guarantee people or disadvantaged groups the effective enjoyment of their fundamental rights. (Sentence C 1064 of 2001).

## **Results and Analysis**

This qualitative investigative exercise focuses on characterizing the case rather than conducting a case study, where "... the objective is the richness, depth, and quality of information, not the quantity or standardization" (Hernández et al., 2008, p. 387). This is a deductive exercise (from the general to the particular), centering on the analysis of access to potable water for a sector of the population whose evident vulnerability makes them subjects of special protection. The case study in qualitative research could also be called a case characterization. As Hernández et al. (2008) state:



Focusing on understanding phenomena by exploring them from the participants' perspective in a natural environment and in relation to their context... examining how individuals perceive and experience the phenomena around them, delving into their points of view, interpretations, and meanings (p. 358).

The characterization of the community and sector was carried out through interviews with one member of each family living in the settlement. Subjects included representatives of the housing board and other public service activists who cooperated with the research and described their struggle with the service provider to obtain the vital liquid for their families. They have filed petitions requesting the installation of energy and water meters to regulate the service, but this has not been possible because their neighborhood is not legally recognized, as the municipality's public service operator explains below. Contact with the community revealed that:

Most residents who expressed opinions about access to potable water and energy emphasized the need for service provision and their willingness to bear the cost. In this sense, people want legal access to potable and regular services. Poverty is not seen as a reason to demand free access to the vital liquid; they understand that the service must be paid for and are willing to do so.

Following this, inquiries were made with the municipal companies in Cartago responsible for providing energy and water services. They provided the following information regarding potable water conditions for families in the observed sector:

- There is no free provision of domestic public services. However, mechanisms within the entity ensure access to the minimum vital supply.
- The community of "El Idema" is not a regulated neighborhood; it is classified as substandard and lacks legal recognition. Therefore, any project aimed at guaranteeing the minimum vital supply would be considered illegal.
- The municipality has funds allocated through the General Participation System, exclusively earmarked for Potable Water and Basic Sanitation. Higher-income strata (5 and 6), along with commercial and industrial sectors, contribute to covering subsidy deficits. In 2013, the municipality allocated COP 649,365,860 to EMCARTAGO to subsidize aqueduct services for families in strata 1, 2, and 3.

The community of "El Idema," classified by the planning office as stratum 1, comprises 186 homes not included in EMCARTAGO's database because they are not legally recognized by the municipality. This prevents any company from providing services. However, as the local mayor is obligated to ensure that all residents have public utilities, the company allows unauthorized use of aqueduct water at no cost to the user. The municipality of Cartago does not have a specific census indicating the number of people without aqueduct service connections. When investigating the composition of each family to identify individuals in vulnerable situations, a general census was conducted, finding that:

- **53% of the community members are subjects of special constitutional protection**, of which **33% are children and adolescents under 13 years old**, amounting to 230 individuals. According to the Constitutional Court, subjects of special constitutional protection include people in special situations that prevent them from fully developing or meeting their basic needs. These include children, the elderly, female heads of households, and other groups recently classified as such, such as reintegrated individuals, displaced persons, and communities with diverse sexual orientations or gender identities. These individuals require more specific attention from the state.

Since each family has a different composition, each household was surveyed individually to determine its members. It was observed that a large portion of the community lives in extreme poverty:

- **304 individuals survive on less than COP 3,000 per day, while the remainder subsist on a maximum of COP 5,000 per day.**

This means that the majority of the analyzed population cannot afford water access and qualifies, under international and national norms, for mandatory access to the minimum vital supply without having to prove eligibility. Their poverty and lack of capabilities are evident.

## Conclusions

In Colombia, the Constitutional Court has paved the way for real equality among Colombians through its rulings. It has granted all individuals the protection of fundamental rights and mitigated the adversities faced by some, acknowledging that leveling the playing field for individuals enables them to compete under equal conditions. Thus, their disadvantages are no longer due to marginal environments but to their personal capabilities.

In this context, the monitoring of the Millennium Development Goals by the United Nations not only examines the level of respect for rights but also evaluates the actions taken by states to achieve the set objectives. Consequently, the right to water must be guaranteed to every person, solely based on their status as a human being. Indeed, the recognition of potable water as a right originated in international law but has progressively permeated the Constitutional Courts of many countries, including Colombia.

In Colombia, access to potable water has been enshrined as an essential public service. From this perspective, the state has aimed to meet the need for this vital resource, particularly in impoverished communities. However, given the government's inability to provide quality public services, it has legally allowed private entities to manage these services under its supervision. Regardless of whether the state or a private entity manages a population's aqueduct, the responsible party must respect the minimum vital water supply and provide at least the essential amount, even when users cannot afford payment. Consequently, private entities are also responsible for guaranteeing rights, especially for disadvantaged individuals.

Analyzing the evolution of the right to water as a human right—from its foundations in international organizations to its culmination in Colombia's Constitution and legal provisions—leads to the conclusion that the Constitutional Court's jurisprudence is the genesis of the right to a minimum vital supply of potable water. This Court's rulings have elevated this resource from being considered merely a public service to a fundamental right.

Furthermore, the Court has developed the concept of the minimum vital, particularly regarding the right to water, and has defined the conditions and characteristics that make this right enforceable for Colombians.

The Court's initial measure was to establish access to potable water as a universal right, with particular emphasis on individuals who, due to their vulnerability, cannot bear the costs of unlimited access to water. For these individuals, the Court determined they are entitled to a minimum vital supply to ensure they are not deprived of this essential resource for human existence.

This minimum vital concept essentially ensures that every person has access to enough water to meet basic needs. Guided by the World Health Organization's recommendations, the Court set this amount at 50 liters per day. Additionally, the water must be of quality suitable for human consumption.

Other characteristics of the minimum vital supply defined by the Court include:

1. **Availability:** Water must be accessible easily and regularly.
2. **Accessibility:** The state must provide the necessary infrastructure to deliver water to all corners of the country at a reasonable cost, ensuring no one is left without access due to inability to pay.
3. **Non-discrimination:** Everyone has the right to access water under equal conditions.

The Court also established guidelines for energy access, particularly for cases where service interruption in stratum 1 households jeopardizes fundamental rights of individuals under special constitutional protection. In such cases, access to 60% of subsidized consumption must be guaranteed. However, there must be evidence of a direct connection between the suspension of electricity and the violation of fundamental rights.

Water is a natural resource indispensable for human existence. It is now treated as a finite element under special international protection. Supranational law has worked to establish directives ensuring that states provide potable water to their populations under pre-determined parameters.

In summary, the minimum vital supply of water has gained significant recognition in Colombia's judicial system, particularly within the Constitutional Court. However, in practice, the progress achieved through jurisprudence is far from being verified due to several factors, including the government's inefficiency as the guarantor of rights in its guiding and sanctioning roles.

In Colombia, where the Constitution defines the state as a social state under the rule of law, the absence of constitutional and legal recognition of the right to water has prompted the Constitutional Court to develop a jurisprudential framework for the minimum vital supply of water. This has been achieved by invoking the constitutional block and incorporating international instruments that regard water as vital for life. It is worth noting that the legislative branch's frequent inefficiency often compels the judiciary to guarantee fundamental rights, even if its actions provoke discontent among the administrative branch, which then faces pressure to implement compliance plans. In reality, democracy systematically requires judges to enforce rights (Gargarella, 2006).

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