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The right to water as a fundamental right

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Abstract

Water is a Human Right of first necessity. We verified that water resources have been used at a rate higher than their replacement capacity, causing problems of water scarcity. This study aims to draw attention of the world community to the need to implement measures to a real social responsibility and cooperative. A review of the literature and an analysis of the various international legal instruments on water resources will be carried out to highlight the absence of social and cooperative responsibility and the need to create sanctions. It is observed that states and international organisations have failed to develop measures to curb their misuse and to overcome the shortage of water in some regions. We believe that the current situation can only be improved through the implementation of policies in terms of social responsibility and cooperative and the companies or the organisations in general.

Keywords: Environment, management, water, water shortage.

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1. Introduction

The sustainability of water supply systems has proved to be a major issue worldwide. It is pointed out that water supply is an essential and fundamental public service for the socioeconomic development of each country.

Water, social and culturally important, is not available to everyone, not in quality or in quantity. This is due in large part to the non-uniform distribution, which means that there are regions with great water availability and others with great deficit. The development of urban areas, major industries, climate change, pollution and lack of investment in infrastructure coupled with the limited supply of water capacity causes enormous pressure on water resources.

The theme of water resources has been the subject of important international instruments and also very relevant debates. States and non-governmental organisations have been changing their role in the implementation of policies, alluding to the importance of cooperation on the part of business and society to the importance of sustainability of the environment. Being the right to the environment is a right of positive benefits from the State, a social right, indispensable to human dignity. Thus, sustainable development refers to the progress that able to answer the needs of the present without compromising the survival of future generations.

Social and cooperative responsibility, within the social framework, has increasingly become a priority for companies and states. Companies have come to gain insight from the need to exploit resources sustainably and take advantages in the implementation of social responsibility and cooperative policies. Given the both, companies' image is reinforced to consumers and society.

We intend to reflect on the current state of the problem and the urgent need to implement measures for the sustainability of our planet.

2. Some water considerations

Water is an essential element for life on planet earth. The surface of our planet is mostly covered by water and its action is known as blue. However, access this essential good is not the same in all regions of the world, and there are places where it is scarce and irregular.

Although blue planet, there is no awareness of limitation and exhaustion of the amount of water in the world. However, the generalised idea of its immensity does not correspond to reality, and fresh water constitutes a minimum amount available.

In nature, water is in different states. Liquid state (oceans, rivers, lakes and groundwater), solid (ice) and gaseous (atmosphere), integrating the hydrological cycle. It can also be classified according to its salinity in fresh, brackish and salty water. Brackish water has more diluted salts than freshwater but less than seawater because of the fresh and salt water flows (Dias, 2007).

It is estimated that the total volume of water on our planet is 1.35 million cubic kilometers and is sufficient to meet all needs. However, the pressing question is its unequal distribution. The oceans are the largest reservoirs of salt water, unsuitable for human consumption, with surface and groundwater being essentially the two primary sources.

In addition to the problems related to the amount of water, there are others, of extraordinary importance, concerning their quality. We can not forget the contamination of water resources, which prevents their use, in particular the supply of human populations.

The guidelines of the World Health Organization for drinking water quality are an inspiring basis for national legislators according to water quality to a set of characteristics regimented by state regulatory systems.

For example, in Portuguese law, Law 58/2005 of 29 December, which approved the Water Law, establishes the bases and institutional framework for the sustainable management of surface water and groundwater. In addition to these, they cover their respective beds and banks, adjacent areas, maximum infiltration zones and protected areas. It is important to note that this instrument listed a set of general principles to which water management must be subject, such as social value, public exploration and management, environmental dimension, economic value, integrated water management and aquatic and terrestrial ecosystems, concern, prevention, correction, cooperation and finally, the reasonable and equitable use of shared river basins reflecting, therefore, a notorious innovation concerning water management and state organisation (Condesso, 2017, p. 78).

The water comes from the original source or through a treatment process carried out in water treatment plants. The water supply system follows a circuit that is developed in the following phases: capture, treatment, elevation, transport, storage, distribution by the various localities and, finally, use by the consumer. In other words, water is potable when it meets the necessary requirements and can only be obtained when it undergoes a phased treatment process, allowing its use to be safe and free of components harmful to public health.

It is important to note, on the basis of international agreements, the distinction between treated water and untreated water. Treated water must meet three requirements: quality, proximity and quantity. It is considered that people only have access to treated water, when it reaches the desired levels of purity and is obtained from a source located within 1 km of the respective houses. It is also noted that water from unprotected streams and wells, although consumed by many populations living in isolated areas and having no other available choices, can not be considered as treated water.

3. Water shortage

Water scarcity occurs when insufficient water to meet human and environmental needs, which has worried the international community.

The availability of water is not the only sign of scarcity, and quality is also a factor. This decidedly influences the volume of water available for human consumption, in fact, committed frequently by pollution. The quality is revealed thus vital, both for the consumer and for the purpose it is intended.

The main causes leading to a shortage are mainly population growth, food production, climate change, abusive consumption of water relative to their availability and the political context of the states.

The amount of water available can no longer keep up with population growth, directly affecting the production of food products. The stark water scarcity has put the world on alert, since the gradual population growth has been accompanied by increased agribusiness productivity. Many regions, which register high plant growth rates, are being affected by lack of water and, therefore, drastically reduce the per capita reserves.

Climate change causes large variations in evaporation and precipitation levels, leading to an unpredictable hydrological cycle. The higher the temperatures, the greater the degree of evaporation in the oceans; these changes being accompanied by periods of severe droughts and destructive floods. The dried, as we know, are reflected in a temporary reduction in water availability due to insufficient rainfall in a given region. This natural disaster affects several areas of our planet and is a major cause of reduced agricultural productivity, loss of animals and even the soil infertility.

Consequently, on 1 August 2018, the world began to live on 'credit', and the total of all the resources that nature can give in a year has been consumed. The consumption of natural resources has exceeded the regenerative capacity of ecosystems for the year (Earth Overshoot Day).

Many of the problems in accessing water resources for millions of people are due to the absence and failures of international aid, the lack of willingness of states and the absence of local organisations committed to efforts to meet the basic needs of populations.

The planet earth is suffering, and echoed alarms are useless. The world population must be aware of the shared responsibility of all to reduce the environmental impact. The adoption of small gestures in everyday life is decisive, particularly through the reduction of water wastage rate, the use of more efficient equipment or the domestic level or industrial.

Water for domestic consumption must comply with certain quality standards, namely, to be free of micro-organisms, chemical substances or any other components harmful to health.

Consumption in agriculture lies in the use of water for irrigation and production of food. This activity is the largest consumer of water, and population growth, changing eating habits and urbanisation increasingly require more food production. There is a long way to go in terms of water resources management in this sector and awareness raising, information and training for farmers.

In the industrial sector, the water used is related to the production process. In industry, water resources perform several functions varying according to the type of plant adopted. 'In the case of the food and pharmaceutical industries, for example, water must have a high purity if it becomes an integral part of the final product or comes into contact with the substances handled at any stage of the process. These standards may be more restrictive than the water quality standards of human consumption' (Minerza & Hespanhol, 2005, p. 54).

4. The legal agenda and the right to water

In recent decades, there has been a greater concern and awareness of the international community on the right to water, checking out various initiatives around this problem.

The United Nations Conference on the Human Environment held in Stockholm in 1972 was the first event to address environmental issues, warning of the need to safeguard natural resources for the benefit of present and future generations. It had the merit of drawing attention to the responsibility of all and to the pressing cooperation to be developed. All citizens have the right to freedom, equality and to enjoy the right conditions of life in a quality environment. It was undoubtedly a milestone, sensitizer for environmental issues, which resulted guiding principles and implementing environmental policies for the international community.

Five years later, the United Nations Conference on Water, held in Mar del Plata, Argentina, in 1977, approved a plan of action, which resulted in a set of resolutions and recommendations on how best to deal with water problems. The primary objective was to improve the sector of water supply and sanitation with the commitment of governments for the period 1981–1990 and also evaluating the use of unhealthy water, efficient use of water resources, the environment, health-public, the use of water in agriculture and pollution control and cooperation in the exploitation of shared resources. However, the objectives to which states have committed have not been met, with difficulties in putting into practice all the envisaged measures. The importance of water as an essential resource for the survival of living beings and for human development was universally recognised.

In 1992, the Dublin Conference was held where the Declaration on Water and Sustainable Development was adopted. This Declaration was a major step in recognising the vulnerability of nature and affirmed the need to value the protection of the environment, health and human well-being. It has also recognised that fresh water is a finite and vulnerable resource, essential to the development of the environment. It reaffirmed the central role of water and the need for good management of water resources as a key to human development. The attribution of an 'economic value' was a crucial step, that is, the proclamation of the right to water does not mean that this resource should be free, otherwise there would be more waste.

In September 2000, the Millennium Summit was held in New York, and resolution 55/2 of 8 September entitled 'United Nations Millennium Declaration' was adopted. This document, of paramount importance, reflects the concerns of 191 countries that have committed to cooperate universally to reduce extreme poverty and hunger, reducing child mortality, providing education to children and overcome gender inequalities. To monitor progress on poverty on all fronts, the 'Millennium Development Goals' have been formulated. One of which is intended to reduce, by 2015, to halve the number of people without access to safe drinking water and basic sanitation.

More recently, the United Nations General Assembly proclaimed the decade 2018–2028 as the International Decade for Action, Water for Sustainable Development, which kicked off on World Water Day, 22 March 2018, and ends on World Water Day, on 22 March 2028.

The UN Draft Resolution emphasises that sustainable development and integrated management of water resources are crucial to achieving social, economic and environmental goals. The document highlights the importance of implementing such programmes and projects, as well as promoting partnerships and engaging the various stakeholders to meet Agenda 2030 for Sustainable Development.

Emphasise that the UN focuses primarily on promoting new partnerships, improving cooperation and strengthening capacity to transform theoretical measures into practical measures, in order to meet the needs of thousands of life. Also warns of the need, urgently, to find effective solutions to the water crisis, awareness of consciousness about the importance of using this resource and ensure sustainable management of water and sanitation for all.

It is necessary to increase the participation of all countries in the world and give special attention to developing countries that are hit hardest because of the exceptional needs for water and sanitation. Antonio Guterres, Secretary General of the UN has warned that over 2 billion people worldwide lack access to safe drinking water and over 4.5 billion to adequate sanitation. Addressing these problems requires political will and cooperation of all in the implementation of programmes and projects that safeguard natural ecosystems.

5. The fundamental right to water

Fundamental rights began to be an idea in the minds of men and 'enjoy priority with respect to the State and society: they belong to the moral and cultural order where one and the other derive their justification and foundation' (Vieira de Andrade, 2012, p. 19).

They have gradually emerged through a set of legal instruments such as the Magna Charta Libertatum, the Petition of Rights, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human Rights, the Covenant International Covenant on Civil and Political Rights and the European Charter on Human Rights. All of them contributed to the recognition of water, as a fundamental right, for the full enjoyment of the right to life and all other human rights.

'Fundamental rights are active legal positions of persons integrated in the State-Society, exercised as opposed to the power-state in the constitutional context' (Gouveia, 2013, p. 1301). Being that the main guarantee of fundamental rights results from them, from their rootedness in the historical-cultural consciousness of humanity and its translation in each concrete society.

The right to water is not expressly provided for in the constitutional texts, it can be deduced from the fundamental right to the environment, which guarantees that everyone has the right to live in a healthy and ecologically balanced environment of life and the duty to defend it. While economic, social and cultural rights, the right to the environment is a second-generation law whose content depends on policies and state intervention in society. The practical realisation of second-generation fundamental rights, in order to ensure adequate protection of the environment and the enjoyment of basic rights, gives citizens the right to equal access and use of water (Scarlet, 1998, p. 49).

The recognition of access to water as a fundamental right is through the 'open clause' that can be termed as enshrined in the constitution materials of fundamental rights process. It happens so, through the interpretation of constitutional provisions which enshrine rights implicit in the broad sense and practice the following in various jurisdictions. The right to the environment and quality of life is a social right, indispensable to the dignity of the human being and integrates the material content of the International Covenant on Economic, Social and Cultural Rights.

Fundamental rights are based on a permanent and absolute principle which is human dignity, which in turn is not disconnected from the social, economic and cultural context of a State. It is a right which, in its subjective dimension, refers to interests and needs that are fundamental, and the lack of respect and non-satisfaction translates into serious suffering, leading to loss of autonomy and even placing the right to life in cause.

However, it is not only enough that the population has access to drinking water but also it is still essential to ensure the minimum coverage to the needs of populations. Water is the source of life and have access to this feature free of harmful bacteria and in sufficient quantity is a prime necessity and not a choice. The fundamental right to a healthy and ecologically balanced environment implicitly includes the right of access to clean water, and the lack of these resources and infrastructure undertake their own subsistence of ecosystems and pose a threat to health. It is necessary more than the minimum to guarantee people a life with human dignity and to ensure the full enjoyment of the exercise of this fundamental right (Hesse, 1996, p. 89).

This second-generation fundamental right is constantly being violated, with the number of people being deprived of the enjoyment of this fundamental right. This situation reflects the lack of action on the part of the states to ensure the minimum conditions of survival and non-compliance with the duty to provide in order to demonstrate their guarantee and effectiveness.

6. Social and cooperative responsibility

The current situation can only be improved through the implementation of policies at the level of social and cooperative responsibility. Assuming always that the exercise of business activities has an effective and transparent operating, the activities of companies with the greatest negative environmental impact are reflected in the inefficient use of natural resources, such as water, the emission of gases that contribute to the worsening of climate change, the intense production of waste and uncontrollable and untreated seas.

Environmental problems are thus directly linked to industrial activities and the transformation of raw materials, with companies having a responsibility to promote ecological policies. The consumer's role has proved crucial, especially in concern with the purchase of environmentally friendly products, increasingly being information and sensitised on the main pollutants. It is necessary that corporate social responsibility go beyond what is required by law. Otherwise, they are only doing their duty and not voluntarily adopting ecological behaviour.

Codes of conduct should be able to influence companies, improving their image with consumers, which have been increasingly aware-for environmental problems.

We cannot fail to stress the fact that many people are constantly challenged by the availability of ecological means. The adoption of new behaviours is one of the challenges humanity faces in the context of sustainable development. Ecological issues such as deforestation, water pollution, uncontrolled discharges and climate change are some examples.

Companies as an integral part of society have a duty to act consciously and responsibly. The world realised that industries are major polluters and that most contribute to the worsening of environmental problems. In the interest of sustainable development and society's pressure to improve the quality of life, environmental legislation has become more demanding. In this way, the responsibility of the companies for the damages caused led the governments of the states to adopt

measures consonant with the good environmental practices. Environmental liability has become, today, a throwing weapon against the devastating behaviour of the environment.

Good environmental practices such as recycling, prevention of air pollution, water treatment, investment in 'environmentally friendly' technologies or environmental management systems are some of the examples adopted in the business world.

Many companies, which operated without environmental impact concerns, seeking to make a profit in a world increasingly competitive and innovative, saw productivity download and their reputation is threatened, in consequence the devaluation of the products or services for their consumers.

Therefore, the change that is imposed concerns a new perception about nature, society and business. The competitiveness of companies has contributed to the adoption of good environmental practices, betting on new technologies and integrating environmental issues in their management. The lack of consumer confidence when connected to the image of a company has decidedly contributed to greater awareness of the problems.

Therefore, companies that adopt policies for the preservation of the environment, which implement anti-pollution equipment and reduce the emission of gaseous pollutants and the production of waste, tend to have a much higher economic gain than those who do not take a responsible position.

In short, sustainable development will only be attainable if social responsibility is naturally valued through actions that respect environmental quality. In this sense, companies must be aware of their social duties, seek to correct practices harmful to the environment and contribute decisively to their sustainability.

7. Conclusion

The water supply is a theme to which we must recognise the importance. The lack of water resources and infrastructures is a serious problem today, because this sector is indispensable for social welfare, public health, economic activities, human development and protection of the environment.

It appears that, despite advances in this sector, water resource management still continues to be a serious issue due to the lack of investment in maintenance and infrastructure related to quality, requiring therefore large capital assets.

Currently, water is considered an increasingly scarce resource, which has worried the international community. The world has been on constant alert and in this context, there were several international conferences to raise awareness communities to the serious problem that plagues us. However, there is a long way to go, with several failures, both by international organisations and by a lack of willingness on the part of the States to implement more environmentally sound policies.

The right of access to water is not explicitly provided for in the constitutions of most states, but can be deduced from the rules which ensure that all have the right to a healthy and ecologically balanced environment. The interpretation of constitutional norms can be called as a fundamental right of second generation, whose content depends on the political choices of the states.

With regard to social and cooperative responsibility, it is unwise for companies to continue to ignore the importance of environmental policy. Although some companies adopt voluntarily relevant policy responsibility for the environment, it has not yet reached the required membership fee. And the inclusion of social responsibility and cooperative represents an added value for the business identity.

Despite the efforts made, reality continues to be frightening and calls for urgent changes, from theory to practice, through compliance with the legal instruments implemented, as well as the

creation of alternative and strategic measures capable of protecting the environment and enabling the maintenance of the life.

In short, it is essential that companies, organisations, states and society in general communicate and cooperate. Overall, the future of planet earth depends on the commitment of all.

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