

Emergence and Protection of the Human Right to Water

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Introduction

Some people may ask: why do we need a human right to water, if there are vast quantities of this resource on the planet? It is true that about 71 percent of the Earth's surface is covered by water.¹ However, the water that we need to satisfy most of societal activities, such as agriculture, industry, recreation, energy production as well as human consumption, is freshwater. In fact, only 2.5% of the world's water is fresh; the remainder - 97.5% - is seawater and undrinkable. In addition, the greater portion of freshwater resources (approximately 68.7%) is found on ice and permanent snow in the Antarctic, the Arctic and in the mountainous regions. Further, 29.9% of freshwater is found in groundwater, and only 0.26% of the total amount of freshwater is concentrated in lakes, rivers and reservoirs.² This last percentage represents the amount of water that is easily available for societal activities. As a result, these activities have become competing uses that fight for limited water resources. To guarantee that competing uses do not undermine the use of water for human consumption to satisfy the most basic needs, the human right to water must be acknowledged.

This paper will briefly explain how the human right to water started to emerge and how activism and judicial action has contributed in its recognition. Particularly we will examine the cases of Bolivia and Colombia.

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¹ USGS Water Science School, "How much water is there on, in, and above the Earth?" <<http://water.usgs.gov/edu/earthhowmuch.html>> accessed on 30 March 2014.

² Igor A. Shiklomanov, 'World Water Resources. A New Appraisal and Assessment for the 21st Century' (1998) United Nations Education, Scientific and Cultural Organisation UNESCO, 4 <<http://www.ce.utexas.edu/prof/mckinney/ce385d/Papers/Shiklomanov.pdf>> accessed 8 August 2013.

Materialization of the Right to Water

Water is an essential element for life; a minimum daily intake of water is necessary for human survival to prevent death from dehydration. It is also necessary for other basic needs, such as sanitation, personal and house cleaning, among others.³ Despite water being a vital resource, the human right to water has not been explicitly incorporated in any of the international conventions on human rights. Nevertheless, discussions regarding its recognition started about four decades ago.

Since the end of the 1960's scientists, politicians and experts in different fields began to realise the fundamental relationship that exists between humans and the environment. They also realised the emerging problems from the scarcity of some natural resources, such as the limited quantities of water resources during certain periods of the year, the uneven distribution of water resource throughout the world, the increasing competition among water uses, and the worsening of water pollution. In 1977, for the first time safe drinking water and sanitation was declared a right during the United Nations Water Conference held in Mar del Plata, Argentina, which was devoted exclusively to the discussion of emerging water problems. Resolution II on 'Community Water Supply' adopted at this Conference declared that *'[a]ll peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs'*.⁴ The Mar del Plata Action Plan indicated as a priority area that *'[a]ction must focus on promoting (a) increased awareness of the problem; (b) commitment of national Governments to provide all people with water of safe quality and adequate quantity and basic sanitation facilities by 1990, according priority to the poor and less privileged and to water scarce areas...'*⁵ Since then, the

³ Peter H. Gleick, 'Basic Water Requirements for Human Activities: Meeting Basic Needs' (1996) 21 Water International 84 <http://www.pacinst.org/reports/basic_water_needs/basic_water_needs.pdf> accessed 28 July 2012.

⁴ UN Water Conference, "Report of the UN Water Conference, Mar del Plata 14-25 March 1997," (1997) E/CONF.70/29, 66.

⁵ UN Water Conference, "Report of the UN Water Conference, Mar del Plata 14-25 March 1997," (1997) E/CONF.70/29, 68.

importance of access to safe drinking water has been discussed and recognised in declarations, action plans, agendas, statements, treaties and resolutions.

Then, in 1979, with the adoption of the Convention on the Elimination of All Forms of Discrimination against Women,⁶ the first explicit reference concerning water appeared in an international convention on human rights. Therein, water is incorporated as an essential element of the right to an adequate standard of living. Article 14(4) of this Convention, addressing the rights of rural women, provides that states should ensure the right ‘*to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications*’.

In 2000, at the United Nations Millennium Summit, held in New York in September of that year, world leaders adopted the Millennium Declaration. During this summit, world leaders committed to reduce extreme poverty and to improve the living conditions of the most disadvantaged. As a result, they set out a series of time-bound targets, which are known as the Millennium Development Goals (MDGs).⁷ The MDG Seven ensures environmental sustainability and, in one of its target, world leaders agreed to halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation. Two years later, in September 2002, the World Summit on Sustainable Development took place. During this Summit, a Plan of Implementation on Sustainable Development was adopted. In the Plan it was agreed that ‘*the provision of clean drinking water and adequate sanitation is necessary to protect human health and the environment*’.⁸ This action was very important because it is estimated that about 70 to 80 percent of illnesses are water and sanitation related.⁹ In fact, each year millions of people, particularly children, die from water-related diseases, including cholera, typhoid, infective

⁶ Convention on the Elimination of All forms of Discrimination against Women (adopted on 18 December 1979, entered into force on 3 September 1981) 1249 UNTS 13.

⁷ United Nations. Millennium Development Goals. Background. Website <<http://www.un.org/millenniumgoals/bkgd.shtml>> 20 November 2012.

⁸ Plan of Implementation of the World Summit on Sustainable Development, p 11, para 8. http://www.unmillenniumproject.org/documents/131302_wssd_report_reissued.pdf accessed 20 December 2012.

⁹ Sujith Koonan and Adil Hasan Khan, “Water, Health and Water Quality Regulations” in Philippe Cullet and others (eds) *Water Law for the Twenty-First Century, National and International Aspect of Water Reform in India* (Routledge, London 2010) 287.

hepatitis, guinea worm and schistosomiasis.¹⁰ The target of the MDG Seven, according to which world leaders committed to halve the proportion of the population without sustainable access to safe drinking water by 2015 was already met in 2010, five years ahead of schedule. Nevertheless, by 2011, 768 million people still do not have access to this resource.¹¹

Recognising the human right to water and achieving the mentioned MDG, is relevant to reduce the negative effects that lack of access to safe drinking water produces, such as 2 million annual deaths¹² and diseases that are attributable to the use of unsafe water and sanitation. Also several and long distance trips made by women and children to water-collection points to fetch the water that is consumed at the household,¹³ which lead children (mostly girls) to drop out of school to help at home. The foregoing are some of the reasons to recognise and effectively implement the human right to water internationally. The main objective to acknowledge this right is that every single person, without discrimination, has access to minimum amounts of safe drinking water to satisfy his/her most basic human needs, such as drinking, food preparation, taking a shower, brushing teeth, washing of hands and cloths, and household cleaning.

In 2002, the UN Committee on Economic Social and Cultural Rights (CESCR) interpreted that the human right to water is implicitly included in article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR) since this provision specifies a list of rights emanating from, and indispensable for, the realisation of the right to an adequate standard of living ‘including adequate food, clothing and housing’. The CESCR deems that the use of the word ‘including’ indicates that this catalogue of rights is not intended to be exhaustive. The CESCR considers that the right to water clearly falls within the category of guarantees

¹⁰ Hendrik J. Bruins, ‘Proactive Contingency planning vis-a-vis Declining Water Security in the 21st Century’ (2000) 8 (2) *Journal of Contingencies and Crisis Management* 64

¹¹ --, *Progress on Sanitation and Drinking-Water: 2013 Update* (World Health Organization and UNICEF, France 2013) 3, 8.

¹² World Health Organization, and Water Sanitation and Health (WSH), ‘Facts and Figures on Water Quality and Health’, <http://www.who.int/water_sanitation_health/facts_figures/en/index.html> accessed 10 September 2013.

¹³ Eva M. Rathgeber, “Women, Men and Water-Resource Management in Africa” in Eglal Rachel, Eva Rathgeber and David B. Brooks (eds), *Water Management in Africa and the Middle East: Challenges and Opportunities* (International Development Research Centre, 1996) 54

essential for securing an adequate standard of living, particularly since water is one of the most fundamental conditions for survival.¹⁴ This acknowledgement was made in General Comment 15 of the CESCR, which provides the first authoritative definition of the human right to water, determines its content and state's obligations to realise it. The human right to water is defined as a right that *entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses*.¹⁵

Because the human right to water has not yet been explicitly included in any of the international human right conventions, it has been discussed whether it really exist. To continue with the process of acknowledging the human right to water as an independent right, Bolivia submitted a proposal, which was adopted through Resolution 64/292, on 28 July 2010, by the UN General Assembly with 122 votes in favour, none against and 41 abstentions.¹⁶ The resolution reads as follows, the General Assembly “*Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights*”.¹⁷ Nevertheless, during the voting some states clearly mentioned that they consider safe drinking water as a right that derived from or is viewed in connection with other rights, instead of an independent right. As a result, due to its relevance but also to the lack of its explicit acknowledgment in an international convention on human rights, the right to water has been recognised in two different ways: as a derivative right and as an independent right. It should be borne in mind that during the adoption of this Resolution, no country denied the existence of the human right to water.

In the next section of this paper we will focus on the recognition of the human right to water at the domestic level to illustrate the role that activism and juridical action have played.

¹⁴ UN CESCR ‘General Comment 15, the right to water’ (2002) UN Doc. E/C.12/2002/11, para 3

¹⁵ UN CESCR ‘General Comment 15, the right to water’ (2002) UN Doc. E/C.12/2002/11, para 2.

¹⁶ UNGA ‘18th Plenary meeting’ (28 July 2010) UN Doc. A/64/PV.108, p 9.

¹⁷ UNGA Resolution 64/292 (2010) UN Doc A/Res/64/292, p 2.

Emergence of the right to water at national level

At the domestic level, surprisingly, the countries that have pushed for the recognition of the human right to water are many of the poorest in the world, which are the ones with the most difficulties to guarantee access to water to its entire population. For instance, some South American countries have recognised the human right to water as an independent right. This acknowledgment has been made in their Constitutions, legislation or the jurisprudence of their courts. For instance, Uruguay, Bolivia and Ecuador explicitly acknowledge the human right to water in their Constitutions; Peru and Venezuela in their legislation; and Colombia in the judgements of its Constitutional Court. We will analyse the emergence of the right to water in two South American countries, Bolivia and Colombia, where social mobilisation and judicial decisions have played the most important role.

Bolivia

In Bolivia water services were provided by municipalities or small cooperatives. In 1997, the private sector became involved in the provision of water, when a subsidiary of the French water multinational Suez secured a long-term concession contract to deliver water in the capital city of La Paz.¹⁸ Then, the privatisation process reached Cochabamba, another of the biggest cities of Bolivia. The main objective of privatisation was to increase the efficiency in the provision of drinking water service and to liberate public funds for investment in rural areas. Thus, the privatisation of water services was arranged in September 1999. Then, in December of the same year, Law 2029 on drinking water and sewerage system was adopted.¹⁹ This Law

¹⁸ Bronwen Morgan, *Water on Tap: Rights and Regulation in the Transnational Governance of Urban Water Services* (CUP, Cambridge 2011) 94.

¹⁹ Ley 2029 (adopted 22 October 1999, published 9 December 1999) Ley de Servicios de Agua Potable y Alcantarillado Sanitario.

considerably changed the institutional framework for water regulations and contained rules to legitimate water contracts with a strong bias privatisation.²⁰

In Cochabamba the privatisation was carried out fulfilling an agreement with the World Bank, favouring the company *Aguas del Tunari*²¹. The concession was granted to the only company that participated in the bidding process, even though the legislation required at least three bidders.²² The concession contract authorised *Aguas del Tunari*, inter alia, to obtain a minimum profit of 15-16 percent for the utility company, charge small farmers for using water for irrigation, and increase tariff up to 35 percent.²³ As a result, a new water tariffs structure was agreed, incorporating differential rates between low-income and high-income household users. Accordingly, the latter group had to pay more per cubic metre, and around twice what lower-income households paid per consumed cubic metre above 12 cubic metres.²⁴ For certain users this new tariffs meant increases in the prices up to 100 and 200 percent.²⁵ The concession contract also granted to the company exclusive rights for both the provision of drinking water and water resources. These exclusive rights affected users who had solved their water supply problem by constructing their own wells and storage tanks,²⁶ because such infrastructure was confiscated. The most affected were the people located in the peri-urban area of the city since

²⁰ Rocio Bustamante, 'The Water War: Resistance against Privatisation of Water in Cochabamba, Bolivia' (2004) 1 (1) *Revista de Gestión del Agua de América Latina* 37.

²¹ Rocio Bustamante, 'The Water War: Resistance against Privatisation of Water in Cochabamba, Bolivia' (2004) 1 (1) *Revista de Gestión del Agua de América Latina* 39.

²² Rafael Marcos Ortíz Jiménez, 'La Gestión del Agua en Cochabamba, Bolivia: Una Historia Agitada' (2006) 34 *El otro Derecho*, ILSA, 167.

²³ Bronwen Morgan, *Water on Tap: Rights and Regulation in the Transnational Governance of Urban Water Services* (CUP, Cambridge 2011) 88.

²⁴ Andrew Nickson and Claudia Vargas, 'The limitations of Water Regulation: The Failure of the Cochabamba Concession in Bolivia' (2002) 21 (1) *Bulleting of Latin American Research* 108-109.

²⁵ In the literature there is not an agreement on how high the water tariff increases were, some alleged they reached 100 percent, others 150 and up to 200 percent. See Andrew Nickson and Claudia Vargas, 'The limitations of Water Regulation: The Failure of the Cochabamba Concession in Bolivia' (2002) 21 (1) *Bulleting of Latin American Research* 101; Bronwen Morgan, *Water on Tap: Rights and Regulation in the Transnational Governance of Urban Water Services* (CUP, Cambridge 2011) 89; Rocio Bustamante, 'The Water War: Resistance against Privatisation of Water in Cochabamba, Bolivia' (2004) 1 (1) *Revista de Gestión del Agua de América Latina* 40.

²⁶ Andrew Nickson and Claudia Vargas, 'The limitations of Water Regulation: The Failure of the Cochabamba Concession in Bolivia' (2002) 21 (1) *Bulleting of Latin American Research* 113.

households were not connected to the water network.²⁷ Additionally, the new legislation, Law 2029, required a license to collect water in any form, therefore it was understood that the rain was also privatised.²⁸ In other words, there was a prohibition to use alternative systems for the provision of water services.

These contractual and legal conditions directly affected the entire population of Cochabamba, regardless of their socioeconomic status. This situation gave rise to a general social unrest expressing the population's social discontent during the first months of 2000. The protests were headed by an organised coalition known as *La Coordinadora Defensa del Agua y de la Vida* (Coalition in Defence of Water and Life). This social movement was composed of rural and urban groups. Although both groups were claiming participation and control over water resources, the inhabitants of the urban area were more concerned about access and affordability issues, while people from the rural area were more involved with preservation of traditional rights, referred to as uses and customs (*usos y costumbres*).²⁹ In March of the same year *La Coordinadora* organised a popular consultation where citizens voluntarily voted in favour of the cancellation of the concession contract and in disagreement with the tariff increases and the privatisation allowed by Law 2029.³⁰ Activists continued protesting, and in April 2000 the government tried to end the water protest by imposing martial law. As a result, activists were arrested, people were injured, persons were killed and the media censored. The resulting violence forced the government to accede to the demands of the social movement led by *la Cordinadora*³¹ and to cancel the concession contract. Thus, the provision of water service was returned to

²⁷ Rocio Bustamante, 'The Water War: Resistance against Privatisation of Water in Cochabamba, Bolivia' (2004) 1 (1) *Revista de Gestión del Agua de América Latina* 40;

²⁸ Oscar Olivera and Tim Lewis, *Cochabamba! Water War in Bolivia* (South End Press, Cambridge 2004) 9; Law 2029 of 1999, Article 76.

²⁹ Bronwen Morgan, *Water on Tap: Rights and Regulation in the Transnational Governance of Urban Water Services* (CUP, Cambridge 2011) 90.

³⁰ Rocio Bustamante, 'The Water War: Resistance against Privatisation of Water in Cochabamba, Bolivia' (2004) 1 (1) *Revista de Gestión del Agua de América Latina* 42; Oscar Olivera and Tim Lewis, *Cochabamba! Water War in Bolivia* (South End Press, Cambridge 2004) 36.

³¹ Bronwen Morgan, *Water on Tap: Rights and Regulation in the Transnational Governance of Urban Water Services* (CUP, Cambridge 2011) 89; Shiva Vandana, *Water Wars: Privatization, Pollution and Profit* (South End Press, Cambridge 2002) 103

SEMAPA, the previous public water operator, which now has an elected board including civil society members.³²

Furthermore, Law 2029 was derogated and replaced by Law 2066 on the provision of drinking water and sewer systems. Law 2066 allows small cooperatives to provide drinking water services, recognises the right of indigenous peoples and peasants over their water resources and drinking water systems and guarantees social participation in the adoption of water tariffs.³³ The water war was an iconic battle fought by the citizens of Cochabamba in order to protect their right to water.

After the first victory of social movements in the ‘water war’ in Cochabamba, social demands in other areas rose to the point of claiming a restructuration of the state, through a constituent assembly.³⁴ In July 2006, few months after Evo Morales became president, an election to form a constituent assembly was held. As part of the constituent assembly 21 commissions were created; one of them was the Commission on Water Resources and Energy. The central focus of the proposal presented by this Commission was to recognise the vital character of water, to emphasise the principles of no privatisation and to acknowledge the human right to water.³⁵ It was considered important to discuss in the constituent assembly a water rights framework. Particularly because the constitutional water provisions that existed at that moment were limited, which resulted in sectorial legislation that was easy to change according to the public policies of the moment. In many cases legislation benefit extractive uses in detriment of human consumption or agricultural production.³⁶

³² Bronwen Morgan, *Water on Tap: Rights and Regulation in the Transnational Governance of Urban Water Services* (CUP, Cambridge 2011) 89.

³³ Ley 2066, Artículos 34, 50 and 57.

³⁴ Pablo Regalsky, *Las Paradojas del Proceso Constituyente Boliviano* (Centro de Comunicación y Desarrollo Andino CENDA, Cochabamba 2009) 62 <http://www.cenda.org/publicaciones/regalsky-paradojas-proceso-constituyente_2010.html> accessed 4 March 2013.

³⁵ Oscar Campanino, “La Propuesta del Agua en la Asamblea Constituyente” (2007) 1 *Agu@mbiente* 41, 44, 47.

³⁶ René Orellana, “Regulación y Régimen de Derechos de Aguas en Bolivia: Reflexiones y Sugerencias mas allá del Debate sobre Autonomías” (2007) 1 *Agu@mbiente* 27.

The right to water is now explicitly recognised, as an independent right in the Constitution of 2009.³⁷ It can be said that this achievement was attained thanks to social movements. Nevertheless, when analysing case-law of the Bolivian Constitutional Tribunal, one can observe that in several judgments between 2001 and 2008, the Constitutional Tribunal also contributed in the protection of the analysed right by granting access to water as a right that derives from the right to life, the right to health, and the right to a dignified life.³⁸ After the new Constitution of 2009, the Constitutional Tribunal continues protecting the right to water, although no longer as a derivative right, but rather as an independent right.³⁹

Colombia

In contrast, in Colombia the main role concerning the recognition of the human right to water has been played by the Constitutional Court, one of the highest judicial bodies of the country charged with the responsibility of safeguarding the Constitution. Just like in many other Latin American countries the privatisation of public services was introduced in Colombia, which was confirmed by the Constitution of 1991. Colombia moved from a state monopoly over water supply systems to a competitive market for water supply with a large participation by private companies. This situation allowed the state to reassume its main functions of monitoring and regulation.⁴⁰ Up until today both public and private companies can provide this service. The Constitution of 1991 not only brought changes regarding the reduction of states intervention in

³⁷ Bolivian Constitution, Article 16 'Every person has the right to water and food'; Article 20 I. Every person has the right to universal and equitable access to basic services, such as drinking water, sewer systems, electricity, gas, postal service and telecommunications. II. It is the responsibility of the state, at all levels of government, to provide basic services through public companies, community or cooperative companies and mixed enterprises. The provision of the service should respond to the criteria of universality, responsibility, accessibility, continuity, quality, efficiency, equitable fees and necessary coverage, with social participation and control. III. Access to water and sewer systems are human rights, and they are not subject to concession or privatisation. (translated by the author).

³⁸ Bolivian Constitutional Tribunal, constitutional decision 0953/2006-R, Judge Rapporteur: Silvia Salame Farjat, 2 October 2006; Bolivian Constitutional Tribunal, constitutional decision 980/2001-R, Judge Rapporteur: José Antonio Rivera Santivañez, 14 September 2001. All the judicial decisions of the Constitutional Tribunal can be consulted in the official website of the Tribunal <http://www.tcpbolivia.bo/tcp/index.php>.

³⁹ Bolivian Constitutional Tribunal, constitutional decision 0559/2010-R, Judge Rapporteur: Abigael Burgoa Ordóñez, 12 July 2010.

⁴⁰ Luis Eduardo Amador Cabra, *Los Servicios Públicos frente a las Reformas Económicas en Colombia* (Universidad Externado de Colombia, Bogotá 2011) 18.

the market and the provision of public service, it also recognised Colombia as a social state, placing on the state several obligations towards its citizens, and extended the catalogue of human rights. Additionally, the Constitution established that international conventions and agreements on human rights ratified by Colombia prevail over all other national legislation, and that the rights and duties incorporated in the Constitution will be interpreted in accordance with those international instruments.⁴¹ Moreover, article 94, enunciates that the rights and guarantees contained in the Constitution and ratified in international agreements should not be understood as a denial of other rights that are not expressly mentioned therein.⁴² This constitutional provision establishes what is known as the clause of unenumerated rights. By virtue of this clause it is possible to protect certain rights that, although not explicitly included in the text of the Constitution, derive from other rights or constitutional principles.⁴³ Furthermore, a new judicial action was established to protect fundamental rights: the *tutela* action (write of protection).⁴⁴

The human right to water is not explicitly acknowledged in the Constitution or in the legislation of Colombia. Nevertheless, the Constitution Court has recognised the importance of water for life and the negative effects that lack of access to drinking might generate for other human rights. As early as 1992, even a decade before the adoption of General Comment 15 of the CESCR, the Constitutional Court declared that water is a source of life, and the lack of this service directly affects the fundamental right to life. Therefore, the public residential service of drinking water and sanitation is a fundamental constitutional right and must be protected as

⁴¹ Colombian Constitution, Article 93.

⁴² Colombian Constitution, Article 94.

⁴³ Manuel Fernando Quinche Ramírez, *Derecho Constitucional Colombiano de la Carta de 1991 y sus Reformas*. (Colección Textos de Jurisprudencia, 3 edn Editorial Universidad del Rosario, Bogota 2009) 117. Jimena Sierra Camargo, 'La impunidad en los Delitos de Violencia Sexual Contra niñas y adolescentes como consecuencia de la presencia de la estructura patriarcal en el derecho Colombiano' In Beatriz Londoño Toro y Diana María Gomez Hoyos (eds) *Diez Años de Investigación Jurídica y Socio jurídica en Colombia: Balances desde la RED Socio jurídica* (Tomo II, Universidad de la Sabana y Editorial Universidad del Rosario, Bogota 2010) 359.

⁴⁴ Colombian Constitution, Article 86. The main purpose of the *tutela* action is the immediate protection of the fundamental constitutional rights of any individual when these rights have been violated or threatened by an act or omission of any public authority, and in cases where the law stipulates by an act or omission of an individual.

such.⁴⁵ While revising a *tutela* action the Court examined whether the right to apply for a connection to the water network is a fundamental right. The Court stated that drinking water service is not a fundamental right when it is intended to be used to urbanise a piece of land, where no persons are yet living there, or for agricultural exploitation.⁴⁶ After this judicial decision the Constitutional Court has continued working in the protection of this right, and has developed an elaborate jurisprudence on the human right to water. Through its jurisprudence line, the Court has clearly established that access to drinking water constitute a fundamental right only when water is used for human consumption.⁴⁷ The Court has also stated that in case there is a lack of available water priority must be given to human consumption over other uses, such as livestock production and industry. Because insufficient water supply for human consumption constitute a threat to the right to life.⁴⁸

The Court has also stated that according to article 93 of the Constitution the legal nature of the right to water must be understood in the light of international instruments ratified by Colombia. In this regard, there are several international conventions that obligate the state to assume its duty to ensure the enjoyment of the right to water, such as articles 11 and 12 of the ICESCR; article 24 of the Convention on the Rights of the Child; and article 14 of the Convention on the Elimination of All forms of Discrimination against Women.⁴⁹ After the adoption of General Comment 15, the Constitutional Court has used this document as a point of reference and has determined the main elements that composed the human right to water, which are: availability, quality and accessibility.⁵⁰

⁴⁵ Colombian Constitutional Court, T-578 of 1992, Judge Rapporteur: Alejandro Martínez Caballero, 3 November 1992.

⁴⁶ Colombian Constitutional Court, T-578 of 1992, Judge Rapporteur: Alejandro Martínez Caballero, 3 November 1992.

⁴⁷ Colombian Constitutional Court, T-055-11, Judge Rapporteur: Jorge Ivan Palacio Palacio, 4 February 2011; Colombian Constitutional Court, T-530-12, Judge Rapporteur: Adriana María Guillén Arango, 10 July 2012.

⁴⁸ Colombian Constitutional Court, T-232-93, Judge Rapporteur: Alejandro Martínez Caballero, 18 June 1993; Colombian Constitutional Court, T-413-95, Judge Rapporteur: Alejandro Martínez Caballero, 13 September 1995.

⁴⁹ Colombian Constitutional Court, T-614-10, Judge Rapporteur: Luis Ernesto Vargas Silva, 5 August 2010.

⁵⁰ Colombian Constitutional Court, T-888-08, Judge Rapporteur: Marco Gerardo Monroy Cabra, 12 September 2008; Colombian Constitutional Court, T-055-11, Judge Rapporteur: Jorge Ivan Palacio Palacio, 4 February 2011.

Although in Colombia there was a strong movement regarding the explicit recognition of the human right to water that started around 2007, requiring the state to provide minimum amounts of drinking water for free to all individual, and against the privatisation of the supply of drinking water requesting the state to provide the service by public entities. This social mobilisation that requested a referendum to modify the Constitution was not successful. When the initiative was analysed by the first commission in one of the Chamber of Congress, it was seriously modified. As a result, promoters and citizens that voted in favour of this initiative did not continue supporting this project, because the incorporated changes were too drastic and against their ideas.⁵¹ Instead, they appealed against the decision taken and obtained a decision in their favour. Thus, the original initiative was subjected to vote by the Commission, but it did not reach the necessary majority required; therefore, the referendum was denied.

Even though the popular initiative supported by social movements was not successful, it seems due to political pressure, the Constitutional Court has played the most relevant role in the protection of the human right to water in Colombia. For instances, in recent jurisprudence the Court has established that water providers (whether public or private) cannot stop providing water to persons under special constitutional protection⁵², even if they cannot pay for the services, because this situation will infringe some of their fundamental rights.⁵³ The Constitutional Court has also established precise rules for the suspension of water service to avoid violation of human rights.⁵⁴

⁵¹ Rafael Colmenares, La Democracia Participativa ha Sido Abolida: el Caso del Referendo por el Agua (RazonPublica.com 4 May 200) <<http://www.razonpublica.com/index.php/politica-y-gobierno-temas-27/25-la-democracia-participativa-ha-sido-abolida-el-caso-del-referendo-por-el-agua.html>> accessed on 7 April 2014.

⁵² Especially protected persons are groups of individuals that are identified by the Constitution (pregnant woman, mother head of a family, elderly, children, teenagers, and handicapped) or the jurisprudence of the Constitutional Court (ethnic groups, persons deprived of their liberty, displaced people, among others) as in need of particular protection of their fundamental rights due to their special circumstances. Colombian Constitutional Court, T-740 of 2011, Judge Rapporteur: Humberto Antonio Sierra Porto, 3 October 2011.

⁵³ Colombian Constitutional Court, C-150 of 2003, Judge Rapporteur: Manuel José Cepeda Espinosa, 25 February 2003, para 5.2.2. See also Colombian Constitutional Court, T-717 of 2010, Judge Rapporteur: Maria Victoria Calle Correa, 8 September 2010, para 29, 48.1.

⁵⁴ Colombian Constitutional Court, T-717 of 2010, Judge Rapporteur: Maria Victoria Calle Correa, 8 September 2010

Additionally, the mayors of Bogota and Medellin, two of the biggest cities in Colombia, have implemented plans to guarantee minimum amounts of drinking water for free only for people who cannot not afford it, ensuring in this way the human right to water. In this way local policy is also contributing in the implementation of this right.

Conclusions

Despite the fact that scientists, politicians and experts in different fields have been discussing the importance of recognising access to water as a human right since 1970's, and that safe drinking water is essential for human survival, the human right to water has not incorporated yet into any international convention on human rights. Nevertheless, in the last decade the acknowledgement of this right has become clearer at the international level, particularly with the adoption of General Comment 15 by the CESCR.

At the domestic level, the recognition of this right in national legal orders has been promoted in some cases by social movements, lobbying and the judicial decisions of the highest courts. In Bolivia, social movements stopped the privatisation process of water resources due to its negative effects, ensuring access to water to all citizens in Cochabamba. Also activism led to change of legislation on water services. Further social movements, after the water war, led to an institutional change of the state, the adoption of a new constitution and the recognition of the human right to water. The general discontent of the population concerning the neo-liberal policies of the government of the time played an important role in these changes. Moreover, the Bolivian Constitutional Tribunal, was also protecting access to drinking water as a derivative right, even before it explicit recognition in the Constitution.

In Colombia, social movements concerning the recognition and protection of the right to water came later, however, they were unsuccessful. It seems due to strong political influence of the government of that moment. Nevertheless, the Constitutional Court, created with the

Constitution of 1991, has been the most active player in the recognition and protection of human rights in general and particularly regarding the human right to water, which has been acknowledged since 1992. The Court has developed an elaborate jurisprudence on the human right to water establishing its content and main elements. Additionally, it has established rules concerning the protection of this right, including for the suspension of drinking water service. The Court has also ordered that water providers keep supplying minimum amounts of drinking water to persons under special constitutional protection even if they cannot afford to pay for the service.

The cases of Bolivia and Colombia illustrate the mechanisms, such as activism and juridical action, that have been used in different countries to achieve the recognition of one of the most essential human rights: access to safe drinking water.