

WATER FOR EVERYONE OR FOR WHO CAN PAY FOR IT? CONTOURS AND DIFFICULTIES OF ACCESS TO WATER AS A FUNDAMENTAL HUMAN RIGHT

Laryssa de Almeida DONATO* **

ABSTRACT: *The presented study has the main objective to analyze the demographic process of distribution and access to water in the situation of drought at Campina Grande - PB. The Water as a basic human right is essential for the achievement of many rights, being necessary the recognition and the normativity of the fundamental right. In regard to the content of the General Comment NO. 15/2003 of the Committee on Economic, Social and Cultural Rights (CESCR), whose protection, following the Universal Declaration of Water Rights constitutes a legal obligation for all men or social groups that make use it. The access to water is recognized as an economic right of the development that does not only involve the satisfaction of today's demands, but also the demands from future generations. The quantity of water is influenced not only by the population growth or by migration flows, but also by the increase of agricultural or industrial production. Undoubtedly, there is a concern with the management of water resources. The binomial availability and management of water resources requires that all national federal entities, implement the access to water as an economic right of the development, and this requires a study of the theories of development. With the Federal Constitution of 1988, the water resources began to receive a more specific treatment as public good, common and finite, turning the water management into an essential element for an effective urban management. The methodology of the research bearing in mind to fulfill the expectations is exploratory and descriptive, with an analytical approach of quantitative and qualitative data; the non-participant observation and the semi structured interview were used as tools for the collection of data; for the analyses of data will be used the analysis of content. The analyses of the results determine that the lack of access to water demands the implementation of public policies, so that the supply may be provided in an equally and democratic way so the population do not feel constantly threatened by water scarcity. In this regard, the study amplifies the debate on the violation of the fundamental human right to drinking water, which is so essential for human life.*

KEYWORDS: *Water; Human Right; Fundamental Right; Democracy; Development.*

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* Laryssa de Almeida Donato, Master's Degree in Regional Development, State University of Paraiba - UEPB. Campina Grande- Paraiba, BRAZIL.

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1. INTRODUCTION

The process of construction of democracy emphasizes the recognition of fundamental rights and the dignity of the human person, therefore, it is necessary to recognize the effecting of access to water as fundamental human right. This legal issue brings to debate important elements as the water management policy, the services and use of water in relation to the advances and setbacks in the democratic process, and the effectiveness of an emancipated citizenship.

The fundamental rights understood as essential warranties, individual, social, and political are legally set out in the Constitution. For certain, in Brazil, the Federal Constitution of 1988 ensured an essential parameter of rights related to liberty, life, equality, education, security, etc., whose main purpose is the respect for the dignity, with legal support of state power and the warranty of the minimum living conditions and development of the human being.

The characterization of the fundamental rights as enabler principles from the lesson of Cavalcante Filho (2008, p.05), locate the same subject rights and with direct effects from the private in relation to the State (SARLET. 2006).

From the point of view that life is not limited, in terms of human rights, as the only act to exist, one that claims a descent existence, requiring for such an economic development, respecting the environment that guarantee social progress. It arises the necessity to study the fundamental role of water for the effectiveness of this process, notably as regards the universality of its respective right and the democratic access.

It is important the mention the Provisional Measure NO. 844 of July 4 2018 enclosed in the Law NO. 11.445/007, as an essential tool for the execution of “ democratic access to water”, since in its item IV it is foreseen the “social control”, which is nothing more than proceedings that ensure the society information, technical representations and participation in the processes of formulation of policies, of planning and evaluation related to public services.

From the analysis of the content of the General Comment NO. 15/2003 of the Committee on Economic, Social and Cultural Rights of UN (CESCR), the water’s protection, according to the Universal Declaration of Water Rights, constitutes a legal obligation for all men or social groups that make use of it. It arises the necessity to know that the use of the refereed vital resource deserves democratic and responsible treatment, from the point of view of rational and sustainable use, by the social actors involved: States, companies and customers.

The guarantee of the right to water, bearing in mind the promotion of the health population, is configured as a recurrent social issue according to which, from the perspective of neo-constitutionalism, the Federal Constitution is not seen as only a programmatic letter with no dirigisme or execution. However, there is concern to recognize the existence of positive rights established in principles or values, which, however, stumble upon the limits traced by negative rights of others or of self-indulgence of the system operators responsible for the supply of goods and service.

The right to health is universal to all Brazilians and strangers that live in Brazil, having its immediate applicability for being a fundamental right. The State is responsible to guarantee the access, as well the protection and promotion of illnesses control.

The economic dimension of finite good: “Water” is proportional to its availability, blocking the developing of many regions, so it is essential for the productive process of many companies (FRACALANZA. 1996). Moreover, as regards the environmental degradation to access water, or post-utilization, it influences directly or indirectly, the health, security and wellbeing of population, the social and economic activities, and the fauna and flora, the aesthetical and sanitary conditions of the environment, and the quality of the environmental resources.

As it can be noticed, a good offer of water (in volume and quality), that preserves the water resources and ensures the economic and social development is a very important matter in nowadays, it requires a higher social control through democracy that can implement the fundamentalism of its right.

In the scenario of semiarid of northeast region, dominated for decades by oligarchies of politicians, that did not encourage the citizenship as a process of emancipation and tool of democratic claim of their population, the water scarcity was always seen as “bargain chip” of the political power. Indeed, this was the case of the access to the natural fountains (rivers, streams, collective water holes, wells), the prioritization of locations for construction of storage devices on lands from whom dams would be constructed.

On the other hand, semiarid regions are marked by policies of bad quality of the water consumed by the great majority of the population, especially from rural zone where water does have not a specific treatment and this amplifies substantially the number of disease vectors caused by the consumption and results also in a consequential child mortality rate.

The environmental impacts resulted from the relationship man-nature interfere negatively, as deforestation, unrestrained use of water by agribusiness, mining, waste by evaporation in arid and semiarid zones. The contamination and the lack of reuse, occupation of watersheds, pollution of rivers and dams, the lack of basic sanitation on large cities, contributed substantially to the reduction of water availability and quality of life.

In this context, it should be approached the problem of water scarcity emphasizing the importance of water recourses management focusing on the sustainable use. Considering that it is democratically necessary to balance the antagonistic interests of different actors ranging from industrial sector to riverside population that lives alongside of rivers and canals, the governmental organs responsible for management and distribution of water need to bear in mind the sustainable development.

Faced with this reality, it is established the water scenario of crisis at Campina Grande – PB. It presents not only the result of factors of climatological and environmental order, but also a combination of social, political, environmental factors, regarding the handling and management of the Açude Epitácio Pessoa (Boqueirão), as the main source to supply the geographic cut in the study and other 18 cities of Paraíba.

Therefore, the issue that will inform the development of this dissertation work can be summarized in the following question: *How has the scenario of water scarcity in Campina Grande - PB developed the democratic and fair process of access and distribution of water, in the last five years?*

Thus, the general objective is to analyze the democratic and equitable process of distribution and access to water in the case of the scenario of water scarcity at Campina Grande - PB in the last five years.

For this standard, the lack of democratic access to water is characterized as a threat to the process of social development, quality of life, social equity and human dignity, because water is a basic precondition for all life.

In Brazil, the National Water Resources Policy instituted through the Law of Waters 9.433/97 has as main objective to ensure today and future generations the availability, in appropriate quality patterns, as well as to promote a rational and integrated upgrade of water resources. Forebode that water is a public domain and in situations of scarcity, the priority use of water is for human and animal consumption.

Therefore, the water in relation to the necessity of life, development and social wellbeing, makes necessary stronger involvement of public power in management and planning of water resources, because in fact the natural phenomenon of water scarcity cannot be considered as the only responsible for water crises. The debate is controversial and opens ways for multiple causes and the consequences of the issue, mainly when it appeals to the legal field ruled by fundamental rights.

Notice that the fundamental right imposes the necessity to recognize in what measure the local population, especially the poor one has access in a democratic way to water, making the water use more responsible, isonomic, and independent of political interferences.

The Declaration on Rights for Development of UN (Resolution NO. 41.128/86), which characterizes human rights inalienable, indivisible and interdependent, constructed through the active participation and control by beneficiaries, maintains the prediction cogent. It was up to the signatory States the implementation of necessary measures, notably, of equality of opportunity of access to basic, natural resources or not. Notice that, even before the mentioned declaration, the proper International Pact on Economic, Social and Cultural Rights, adopted by the General Assembly of UN, in 12. 19. 1966 (passed, in Brazil, by Decree NO. 591/92), in its article.1, already establishes the "development" as a human right.

Therefore, given the situation of the scarcity of natural resources - water, notably, because of the drought of the last years, in the specific case of Campina Grande – PB, the main reservoir, in other words, the Barragem Epitácio Pessoa - Açude de Boqueirão, reached critical levels. It is important to notice how the federative entities (Union, States, Cities, their agencies and concessionaires) are acting to control the public policies regarding the access and the distribution of water resources, aiming at the wellbeing of population and the exploitation of water resources by economic activity.

2. WATER AS HUMAN RIGHT

In the contemporaneity the debate on the access to water, emphasizes its importance as a fundamental right to impose a regime of prevalence and subjections in the light not only of internal law, but also of international law.

It is necessary to mention that, notwithstanding all fundamental rights are considered as human rights, not always the last are considered fundamental.

From the second half of 20th century, the theme of human rights passed to integrate with higher emphasis the legal thinking, overcoming the classical conception of liberalism where each one had its predetermined function on the social scenario, the State with the only function to guarantee the quo status through the police and judiciary.

In some definitions of human rights, however, one cannot perceive any difference between them as regards the conception of human rights:

Rights are considered basic for any human being, independently of specific personal conditions. There are rights that compose an intangible nucleon of rights of human rights submitted to a determined legal order. (AMARAL, 1999. p. 96).

The reason of synonymy between human and fundamental rights is that both would recognize the existence of a hard core pressed on the dignity of the human person. This requires from the State a positive attitude that grants the execution of “a minimum existential¹”, narrowing connected to idea of social justice, in a way that rights leave the programmatic abstraction to an effective concreteness of the individual joy.

This search for concreteness debated by the legal Scholar Canotilho (2003), understands that the fundamental rights can affect when well established constitutionally, otherwise, this could be mistaken with aspirations and abstract hopes that would not reclaim protection and thereof would not have legal consequences.

Therefore, existing human rights not well established, there would be a primarily lack of concreteness, excluding their foundation in the light of constitutional system.

For this reason, this work on the concern regarding the right to democratic access to water, was, initially, approached from the perspective of different constitutions of Latin America, including the Brazilian one, highlighting the existence of a positive framework that recognizes the foundation of the alluded right, going beyond the definition of human right.

Meanwhile, the same Portuguese author CANOTILHO (2003, p.378-379), also considers as fundamental rights, the proper elements constitutive of constitutional legitimacy, because rights as the “human dignity, fraternity, equality and liberty” would not be “consumed” or “dissolved” by “constitutionalization”, that would not be confused, with comment in the doctrine of Robert Alexy, with the formal or material foundation.

For this study, the objective is not to get deep into the legal doctrine. It is only necessary to know that the material foundation is related to the basic structures of society and State, whereby is permitted “the opening of the constitution to other rights, also fundamental. However, not placed on the constitution, in other words, material rights but not formally fundamental” (CANOTILHO. 2003, p.379), a way to protect itself the principle of no exhaustion of fundamental rights, permitting the recognition of new rights, in open clause, by social evolution.

In consonance with the referred doctrine, the Paragraph 2, of Art.5, of the Federal Constitution of 1988, states that: “The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it or from the international treaties in which the Federative Republic of Brazil is a party”.

¹ Against such minimum, the state technocracy, created the theory of “reserve of (financially) possible”, that only the budget, and not the Constitution, could implement public policies.

Notice, therefore, even if there was no positive protection established in the Federal Constitution, related to drinking water, by Paragraph 3 of art.5, The Higher Diploma of Brazil, with the essay given by the Amendment NO. 45/2004:

International human rights treaties and conventions that are approved in each House of the National Congress, in two rounds of voting, by three fifths of the votes of the respective members shall be equivalent to constitutional amendments.

Now, the UN, through the highest authority, the General Assembly, for 122 votes in favor, none against and 41 abstentions, recognized on July 28 2010, the access to clean water and sanitation as essential human right for life and for joy to other rights, approving the Resolution NO. 64/292²³.

In the referred resolution it is stated that the drinking water and the sanitation are globally constituted in a human right essential to full enjoyment of life and of all the human rights. Having then specified what constitutes a component of right to an appropriate level of life, such as the right to housing or food, it requires the States and international organizations to ensure the financial resources, training and transfer of necessary technology, through assistance and international cooperation, in order to improve the access to water and sanitation.

It can be observed in art.2 of the Resolution, one important advance to urge the states and international organizations to provide financial resources that propitiate the increase of capacity to transfer technology, moreover, with international cooperation, in favor of countries in development, the action to offer drinking water and sanitation to all their population.

Such mechanism means, basically, lines of international credit cheaper that can, moreover, be used by state companies which already explore the alluded service, without the need to search for resources in the private initiative to operation of service.

Independently of any conception about the defense or regardless of some liberal conception or stigmatization, it can be observed that the restriction of access to water, through the services of distribution of water and sewage, in the current Brazilian situation will make possible that the private capital be double-benefited, by both the infrastructure and marketing, as well as by the possibility of financial lines of international credits, with a minimum of investment with proper resources.

It is important to emphasize, that even if the resolution was not approved, it would still have the protection of art.11, of International Covenant on Economic, Social and Cultural Rights. This grants to all people the right to an appropriate level of life for themselves and their family, including in such guarantees, with emphasis on the right to food, having protection against starvation as addressed in Paragraph 2, where items 1 and 2 are due the obligation of adoption of concrete programs to:

1. Improve the methods of production, conservation and distribution of food by full use of technical and scientific knowledge, by dissemination of knowledge of principles of educational nutrition and by improvement or reform of agrarian systems, in such a

² Available at: < <http://www.un.org/press/en/2010/ga10967.doc.htm>> accessed on Jan. 8 2018.

³ Available at:

<http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292&referer=http://www.un.org/en/ga/64/resolutions.shtml&Lang=S> Accessed on: Jan. 8. 2018.

way as to achieve the most efficient development and use more efficient of the natural resources.

2. Ensure an equitable distribution of the world food resources in relation to necessities, taking into account the problems from the importers and exporters countries of foodstuffs.

The Committee on Economic, Social and Cultural Rights (CESCR) of United Nations, in its General Comment NO.15, of Jan 20 2003 that addresses the human right to water begins saying that: “Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights” (Paragraph 1).

The human right to water articulates liberties and rights, ensuring that all people dispose of water sufficient, drinkable, accessible and cheap for personal and domestic use. These liberties are the right to maintain the access to a supply of water necessary so that each person can exercise the right to water and the right of the people not to be object of interference, such as arbitrary cuts on supply or the contamination of water resources. The rights refer to a system of supply and water management that offers equal opportunities so that the population can enjoy the right to water.

In this context, the effective access to water is envisaged as a social right that is related, intrinsically, to the citizenship and the dignity of the human person, a Fundamental Principle of Republic (art. 1, II and III of Federal Constitution), and thus it arises in its foundation in a way of manifest that cannot be set aside as a programmatic speech.

The Supreme Court, through the vote of minister Celso de Mello, conceptualized the right to environment as a right of the third generation that assists in an undetermined subjectively way, all humanity; this circumstance justifies the special obligation of State and society to sustain and preserve for the benefit of today and future generations (MACHADO. 2009).

Indeed, the highest Court of Brazilian Justice already had opportunity to decide the issue for more than one time, deciding favorably the possibility of Judiciary Power to intervene in public policies, in an exceptional manner, in order to ensure the effectiveness and the integrity of individual and/or collective rights listed by the Federal Constitution.

The right to water has fundamental importance, but the resources for the satisfaction of large consumption are limited, and thus it generates a conflict for positive pretensions, in which it will be necessary to make dramatic and selective choices among the claims.

In the issue of water, the matter of supply refers to those that suffer with problems of drought. The appropriation of resources by a more organized part of the population, politically and materially (agriculture, trade and industry), cannot be done in detriment of other sensible areas that do not have an organization that enables the access to Judiciary Power thus to secure what could be a fundamental right.

Based in actual understandings, the doctrine is frankly favorable to the theory of minimum existential; however, it is necessary to consider that democracy is not only the equality for all citizens. It goes beyond, extending guarantees of rights through legal

equality determined by law and the access of all the ways capable to ensure the social equality⁴.

The analysis of the function of democracy and its necessity for guaranteeing the rights arises in the social context movements whose main objective is to give the minorities access to public goods and services. However, it is important to know those minorities, and to what extent they would be benefit from such diction of what would be fundamental and pursued by the judiciary, but to the prejudice of a certainly needier majority.

Not otherwise related to fundamental right to water, it is a reflex of various fundamental rights (right to life, health, environment), challenging the Judiciary Power to act in control of the public policies, necessary to the achievement of this right, both in its dimension of defense and preservation of ecological balance, as in its dimension on promotion of all access to water in quantity and quality sufficient for human and animal consume, like is determine at art 1. III, of Law No 9433/97.

It should be understood, therefore, that fundamental rights are the founders of a democratic state, since they ensure the individual, by equality, the achievement and development of its potentiality and satisfaction of social necessities. From the hypothesis that it is applicable and necessary for the construction of a democracy that respects the fundamental rights and the dignity of human person, the Judiciary Power acts in control of public policies, ensuring the adequate consideration by the State as regards Fundamental Rights, moreover the right to water.

The water is a nutrient and, therefore, can be considered as human food, receiving protection by International Covenant on Economic, Social and Cultural Rights.

If this were not sufficient for such right protection, the protection reflex of drinking water should be, bearing in mind the nexus existent between water-food-energy, the fundamental tripod for the sustainable development⁵, and this requires the realization of public policies to ensure the democratic access.

2.1 Water and the National Policies of Water Resources and basic sanitation

Still in force, the Water Codes, promulgated on July 10 1934⁶, even though it originated in a less democratic period, it had as the main objective the establishment of a standardization of the right of property between privates, and the mitigation of this right in relation to necessity of the Union and federal entities, to explore the water resources.

In fact, in addition to the public waters of regular and Sundays use (art.1 to 6), it referred to the common waters non-floating or navigable (art.7), private waters (art.8), groundwater (art.96 to art.101), the disciplinary code of the institutes of the riverbed, land reserved, increasing for accession (alluvium and avulsion), derivation, servitude for aqueduct, concession and permission, between other institutes, that favored *jus imperi* state or the liberalism private of right of property.

⁴ Precisely it is the change of *homo economics* (possessive and individual) to *homo legalis*, what referred Harold Abreu in his work "Para além dos Direitos". (ABREU. 2008. p.47) ABREU, Haroldo. 2008. *Para além dos direitos*. Cidadania e hegemonia no mundo moderno. Rio de Janeiro: UFRJ.

⁵ Available at :< <http://www.unwater.org/water-facts/water-food-and-energy/>> Accessed on Jan. 8 2018.

⁶ Available at: <<http://www2.camara.leg.br/legin/fed/decret/1930-1939/decreto-24643-10-julho-1934-498122-publicacaooriginal-1-pe.html>> Accessed on 08.25.2018.

However, the art.143, which regulates the use of hydraulic energy, so primarily considered on that diploma, emphasized the universality of access to water, as regards the human and animals' consumption and irrigation:

Art. 143. In all exploitation of hydraulic energy will be satisfied precautionary requires of general interests:

- a) of food and the necessities of riverside population; [...]
- d) of irrigation

In fact, when contemplating beyond the food, the “necessities of the riverside population”, and the irrigation, the referred Code pointed to the access to water as a fundamental human right, something pioneer-like, at that time.

The Law NO. 9433 of 1997, known as Law of Waters, did not revoke the Water Code, although it altered the protective pillar of the previous diploma (Right of the State and Right of Property between privates), to include the concern with the rationalization of the use of water resources in order to achieve its conservation and ultra-generational availability.

The Law of Waters regulated the National Water Resources Policy, implementing the National Water Resources Management System, fixing, in the art.2, the following objectives:

- I - assure to today and future generations the necessary availability of water, on minimum quality standards appropriate to the respective uses;
- II - the rational and integrated use of water resources included the aquatic transportation, in order to the sustainable development.
- III - the prevention and the defense against hydrological events of natural sources or resulting from the inappropriate use of natural resources.
- IV - encourage and promote the capitation, preservation and the reuse of rainwater⁷

The concern with the management of water resources noticed on the forecasting tools used in the increment of public polices, as established on the items of art. 5,

- I - the Plans of Water Resources;
- II - the inclusion of water bodies in classes, according the predominant uses of water;
- III - the concessions of rights to make use of water resources;
- IV - the charge for the use of water resources;
- V - the compensation to municipalities;
- VI - the Water Resources Information System⁸

In this regard, when referred to “the inclusion of water bodies”, it has the intention to formulate elements of quality. As regards the “the concessions of rights to make use of water resources”, it can be understood as ways of implementation of polluter-pays principle and of customer payer, being charged by services of water supply and treatment. Concerning the Water Resources Information System, the principle of information transparency prevails, mainly in administrative law;

⁷ Article 2, Law NO. 9433 of 1997. Available at:
< http://www.planalto.gov.br/ccivil_03/Leis/L9433.htm> Accessed on: 07/07/2018

⁸ Article 5, Law NO. 9433 of 1997. Available at:
< http://www.planalto.gov.br/ccivil_03/Leis/L9433.htm> Accessed on: 07/07/2018

The bases of National Water Resources Policy are set out in art.1 of Law No. 9433/97.

Art. 1 The National Water Resources Policy based upon the following foundations:

I - the water is a good of public domain;

II - the water is a limited natural resource, endowed with economic value;

III - in situations of scarcity, the primarily use of water resources are for human and animal consume;

IV - the management of water resources must always provide the multiple use of waters;

V - the river basin is the territorial unity for implementation of National Water Resources Policy and operation of National Water Resources Management System;

VI - the management of water resources have decentralize and include participation from Public Power, customers and communities.⁹

Fair enough, in item I, of article 1 it was indicated that “Water is a good from public domain”, here understood, in its aspect of “common use” in consonance with what is provided in art.225 of Federal Constitution, that “balanced environment”, including the water resources, constitutes a common good of use for the people.

In the item II, it is mentioned that water is a limited natural resource, something of economic value, being understood in a clear way, mainly when analyzing what is stated in article 19, and item II of the referred Law, namely that water should be used in a rational manner.

In turn, item III establishes that the priority in the use in case of water resources scarcity, for human and animal consumption, moves away from any bad interpretation of the previous item, in other words, that the access to water is determined by economic valuation.

Item IV states that “The matter of water resources has always provided the multiple use of water”, that means, it has to ensure the use of water for supply, services of sanitation, production of energy, etc.

In item V, it was recognized as territorial unity for implementation of National Water Resources Policy, the river basin. This favors the real interest of local population around these systems, minimizing municipal or state political squabbles that easily hindered the rational use of resources.

Finally, in item VI, it is mentioned that “ the management of water resources has to be decentralized and counted with the participation of Public Power, of customers and communities”. It makes necessary the use of article 33 of Law 9433/1997, to establish among other agents for the management of water resources, the National Water Agency (ANA), the River Basin Committees and the National Water Resources Council.

Ten years after the advent of the law of water it was published the Law 11.445 of 2007, which set national guidelines for the basic sanitation. The art.2, item I, point “a”, already with the alterations from the Provisional Measure NO.844, of July 6 2018, defined the supply of drinking water as part of basic sanitation, as it can be seen on the following:

Art. 2 For the purposes of this Law, it is considered:

⁹ Article 1, Law NO. 9433 of 1997. Available at:
< http://www.planalto.gov.br/ccivil_03/Leis/L9433.htm> Accessed on: 7/8/2018

I - basic sanitation - set of services, infrastructure and operating facilities:

a) drinking water supply constituted by activities, availability, infrastructure and necessary facilities to public supply of drinking water, from the capitation up to building connections and their measuring instruments

Therefore, it is necessary to move away the old concept that “basic sanitation” only would contemplate the activities of “sanitary exhaustion”, “urban cleaning” and “drainage and management of rainwater”, in its modalities of gathering, transport and treatment, because, notwithstanding such actions being previewed in paragraphs “b” to “d”, of the item I, of art.2 of Law NO. 11445/2007, they do not exclude the activity of “water supply”.

The tuning among such activities, can be perceived, in the same diploma, even in art.3, that establishes, as fundamental principles, beyond the “universalization of access” (item I), the integrality (item II), this, defined as “a set of activities and components of each one of different services of basic sanitation”. Now the “set of activities” is listed in item III and establishes as fundamental principles the water supply, sanitary exhaustion, urban cleaning and handling of solid waste made in a right way for public health and for the protection of environment.

Showing, therefore, after the Provisional Measure no. 844/2018, which basic sanitation is the continent legal term (of which water supply is one of their contents), it is important to emphasize that the referred Provisional Measure brought up the Law No. 11.445/07, as a fundamental instrument for the execution of “democratic access to water”, because in item IV it was provided that the “social control” would be a:

Set of mechanisms and proceedings that ensures to society information, technical representations and participation in the formulation process of policies, planning and evaluation related to the public services of basic sanitation.

This social control, aims to facilitate the universalization of the provided access in item VI, of same act, also altered by Provisional Measure NO. 844/2018, when ensures subsidies “especially for populations and localities of low income”.

Relevant to emphasize, that some authors understand that the referred universalization involves the availability of water for everyone, although not fundamentally free. Still others defend the establishment of a minimum share of water to assist the most in need. Existing a project of law presented on Brazilian Senate, Project of Law of Senate No.34 of 2001, from authorship of Senate Paulo Hartung, that changes the essay on article 4 of Law No. 6.528, of May 11, 1987, to establish monthly minimum share of water for the consumption of residential single-family house¹⁰.

Both understandings are complement and accepted, hermeneutically, by reading the item VI, previously mentioned, because the defrayal of the service provided freely or subsidized, by companies and concessionaires will have to be bear tax compensations.

The objective rule is an undeniable way that the value paid for the water has to be accessible for all consumers, having the possibility to be adjusted in a way to ensure that each citizen has access to water and sanitation services, through social tariffs.

In fact, when referring to universalization of access to basic sanitation, Law No. 11.445, in its article 30, item III, establishes that

¹⁰ Available at: < <http://legis.senado.leg.br/sdleg-getter/documento?dm=3456895>> Accessed on: 07/08/2018

Art. 30. Observed the disposed in the art.29, the structure of remuneration and of charge of public services of basic sanitation consider the following factors:

[...] III - minimum quantity of consume or of use of service, aiming to ensure the social objectives, as the preservation of public health, the adequate service of the customers of low income and the protection of environment.

We can, therefore, observe in a clear way the right to water as a fundamental human right, of democratic management through social control, in which the universality of access can be ensured by supply of a social share, that ensures the minimum existential for worthy survival in society.

2.2 Universalization of fundamental right to water with economic right of the development: a collective human right

Notwithstanding the objective No.06 of Agenda 2030 of UN, it is also established the objective of international solidarity as regards the water management that overcomes the limits of economic cooperation. For the purpose of this test the approach of access to water as human right for development was not chosen, but that of economic right for development, according to famous list of systematized distinctions made by Professor Maria Luiza Feitosa¹¹. Among them stands out that the first, the right to development (RtD), that would have pervasive nature, while the economic right for development (ErD) would have collective nature, and, capable of legal claim as a collective human right, as it aligns to the agenda of the ESCR (Economic, Social and Cultural Rights).

Talking about the analyses of management binomial and water availability, the RtD allows the macroeconomic consideration of the problem, because:

Its object focus preferably the relations of macroeconomic cooperation and their developments in laws and plans of action, the holders of this right could be individuals, legal entities, or communities. (FEITOSA *et al*, 2013, p.229)

Making such theoretic distinctions as regards the fixation of the legal in the spectrum of the collective human rights, it is important to observe the normative evolution of access to water.

In fact, from the beginning of 20th century, in Brazil, appeared the first hydropower plants of higher power, that provoked an intense debate about the legal regime of waters, leading in 1934 to the promulgation of Water Code, by which the hydroelectric concessions, previously made in state and municipalities levels, passed to be a responsibility of the Union.

In the 70s, in the same Century, the quantitative management was depended on the Water Code, while the qualitative management of water depended on environmental legislation, and in the article 21, item XIX, of Federal Constitution of 1988. The National Water Resources Management System was set and it established requirements for legal right concession of use: XIX – establishes a national system for the management of hydric resources and defines criteria for the concession of the right to their use; (article 21, item XIX, CF, 1988).

The referred Constitution established the competence to legislate on water, as being strictly from the Union and emphasized in article 22, item XVIII, that interest directly to

¹¹ FEITOSA, Maria Luiza Alencar Mayer *et al.* , 2013. *Direito econômico do desenvolvimento e direito humano ao desenvolvimento*. Limites e confrontações. Direitos humanos de solidariedade: avanços e impasses. Curitiba: Appris, p. 171-240.

the population of the semiarid region: “It is incumbent on the Union to plan and to promote the permanent defense against the public calamities, especially the drought and the inundations”.

Subsequently, through the Law No. 9433, of January 8th, 1997, occurred the creation of National Water Resources Policy, whereby the water passed therefore to be considerate legally as a concession of the public domain, endowed with economic value and whose priority use, in situations of scarcity, can be for human and animal consumption.

Countless states before the promulgation of the referred federal Law, created their state laws, the first to have a state law of management on water resources was the state of São Paulo in 1991 and Ceará in 1992, and after Sergipe and Bahia in 1995, Rio Grande do Norte and Paraíba in 1996 and Pernambuco in 1997.

In July 17 2000 it was created the ANA (National Water Agency). Autarchy was linked with the Ministry of Environment. However, this was happening with administrative and finance autonomy, possessing, among other attributions, the one to authorize the use of water resources from the Union, to define and supervise the operational conditions to ensure the multiple use of waters, as well as “to plan and promote actions intended to prevent or minimize the effects of drought and inundations(...)”¹².

The water is, without a question, a fundamental factor for the socio-economic-environmental development of the country, and it should be considered as a strategic and structural resource, by having an elevated efficiency in its use and represent a purpose of the National Water Resources Policy.

As regards the environmental aspect, it is important to consider the sustainability in order to contribute to the awareness of society that water resources are finite, being necessary to protect and conserve it, since although we possess one of the biggest fresh water reserves of the world, around 15%, we may face critical situations of drought, seasonal or located, or ecosystems of caatinga forests.

From the social point of view, the conscious use of water, avoids prejudicing the quality of life of their household, reduces the mortality rates for illnesses caused by lack of access to water, and thus it functions as a tool of public health.

Regarding the economic aspect, water is a formidable factor of production to innumerable sectors of economic activity; the minimization of costs, through a better use, strengthens the competitiveness of national and international markets.

It is important, in addition, to emphasize the availability and the water management of drinking water must keep a narrow relation with sanitation. Since the concessionary companies concentrate both activities, searching for a greater use of the existent structures, minimizing or even avoiding in some cases the necessity of expansion and growth of water collection devises for supply through waste water treatment, used by urban population, and agriculture and industrial companies.

¹² Available at : <http://www.adasa.df.gov.br/images/storage/legislacao/resolucoes_adasa/resolucao-122017-dodf.pdf> Accessed on: 02/26/2018

3. RESULTS AND DISCUSSIONS

The research was carried out at Campina Grande - PB, Agreste (harsh climate) from Paraíba that suffers from irregular rainfall, with lack of rivers naturally perennial, in addition to the absence of planning policy for the adequate use of water. The issue of water supply of the city is imbricated in the history, since the localization on the Plateau hamper makes it difficult to implement large reservoirs.

It is important know that the effect of water scarcity is a result also of anthropic actions, such as, deforestation, lack of infrastructure, waste of clean water available, evaporation, in addition the social order and political-scientific actions to face the issue.

The region in most part encompassed by semiarid Northeast region and in it is rural area served poorly with water supply by the state concessionary. The rainy season at Campina Grande - PB, lasts not much more than three months, according to AESA¹³.

The period of drought is always a very hard time for the rural man from Paraíba, since that it does not represent only a period of agriculture loss, but also of death of domestic animals and risk to their own survival.

Whiting this scenario, some solutions were important to implement in order to reduce the scarcity of water for the peasant from Paraíba. The first was the program of water trucks controlled by Army Ministry, Northeastern Military Command. The second solution was the federal program of construction of cisterns.

The “Operação Pipa” is the name that designs the “Programa Emergencial de Distribuição de Água” (Emergency Water Distribution Program) of Brazilian Army. That aims to carry water to human consumption in the affected areas by scarcity of water in the Northeast and in the states of Minas Gerais and Espírito Santo, in the Southeast, which municipalities have declared state of public calamity or emergency. According to data provided by Minister of Defence, Raul Jungman, the program would be responsible for the supply of 79.000 cisterns, benefiting 3,9 million people from Northeast region¹⁴.

On this project, the Army Ministry is responsible for the inspection and control of the program, but the distribution of water is made by water trucks tagged belonging to private individuals, sorted after a registration in the program, that receive a remuneration for the provision of the logistical assistance.

The issue of the beneficiary of water, as a natural limited resource, is not new. The economist Celso Furtado questioned the called “Indústria da Seca” (drought industry) in which the landowners were benefited with the construction, by Federal Government, of dams that furnished water almost for free, in plantations destined to trade of the coast, that, for that matter used large labor force, and remunerated the labors with “salário de fome” (starvation wage). The drought was a “grande negócio para muita gente” (big business for many people). (FURTADO, 1989, p.20).

The National Department of Works against Droughts – DNOCS, created as inspector department in 1909 in the Government of Nilo Peçanha and erected as federal autarchy in 1945, had its use distorted in the period of military regime, in some construction works, for the benefit of landowners and local politicians. However, with the

¹³ Available at: <<http://www.aesa.pb.gov.br/aesa-website/>> Accessed on: Feb. 17 2019

¹⁴ Available at: <<http://www2.planalto.gov.br/acompanhe-planalto/noticias/2016/06/operacao-carro-pipa-distribui-agua-para-cerca-de-4-milhoes-de-nordestinos>> Accessed on Nov. 22. 2017

dismantling, from the Government Collor, created a void in matter of works of storage and distribution of water in Paraíba, since the projects that followed, had technical failures in the conception (take into consideration the “Desastre de Camará”), or a low return in face of investment (in the case of “Barragem de Canaã”).

Today, Campina Grande - PB, the second largest city in the State and the main urban center in the Mesoregion of Borborema, faces a problem of water supply never seen before in recent history, since the only water source, even more than half a century, continues to be the same reservoir Presidente Epitácio Pessoa at Boqueirão.

Thus, one may notice, that, deviations in public works were not only common in dams, but also in roads, buildings, programs (FINOR) and monuments, and the remedy that was imposed in relation to construction of dams, the scrapping of DNOCS was much more harmful to water safety of people of the Mesoregion of Borborema, than any other measure, causing damage to water supply human, animals, and local irrigation.

As considered by Silva (2006, p.81)

The governmental action in the drought from 1998 to 1999 can be considered an almost perfect synthesis of the way the public power behaves during all the 20th century. On the events of drought in the Brazilian semiarid region, the late reaction pressed by local rulers, by the risks of loss of control of the situation and the pressure of the vehicles of communication, public opinion leaders: the delay in the implementation of immediate actions. When the gravity of the problems was advanced and the destination of resources for immediate actions and the cut on resources, right after the gravest period of drought, characterized a discontinuity of actions.

What highlights the irregularity in the distribution of water continue, demonstrates that the problem was not the construction of dams, but the politicians with the tutting fees and misappropriation in the distribution of water by water trucks.

The conflicts coming from public and private interests in the distribution of water renew in times of scarcity urge the necessity to analyze the theme on the distinction between the mere economic growth and the right of development since the first with secondary vocation in relation to production of fruits or products aimed to large urban centers of the country and exportation, would not correspond to the best practices that ensure the development and the dignity of rural local population.

3.1 Data of the research

There were applied questionnaires with half-open questions, in 27 neighborhoods of Campina Grande – PB. The neighborhoods were: Centro, Prata, Alto Branco, Mirante, Malvinas, Pedregal, José Pinheiro, Jeremias, Conceição, Jardim Paulistano, Monte Santo, Monte Castelo, Distrito Industrial, Rosa Cruz, Cuités, Santa Cruz, Santa Rosa, Universitário, Portal Sudoeste, Bodocongó, Ramadinha III, Vila Cabral de Santa Terezinha, Palmeira Imperial, Cruzeiro, Novo Cruzeiro, Liberdade e Catolé.

The research was about the water supply in the period of rationing. Occurrence of illnesses related to water, in the period of rationing, like: Flu, Dengue, Chikungunya, Zika and Diarrhea. Water quality in the period of rationing. Frequency of visits of employees of SUCAM to place the control poison to avoid illnesses. How occurred the supply of the water tanks. Which kind of water was used drink and to cook in times of rationing.

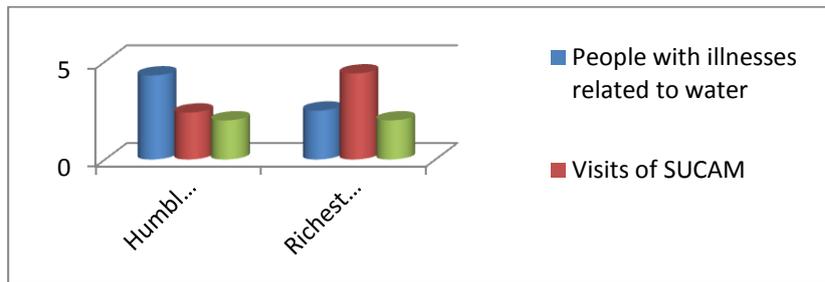
The collection and storage prioritized the issue of scarcity and the water quality in the period of rationing at Campina Grande - PB, it was also asked how occurred the

supply of water tanks and the type of water consumed to drink and cook. In function of the epidemic of arboviruses, it was observed the occurrence of illnesses related with the water like: Flu, Dengue, Chikungunya, Zika and Diarrhea.

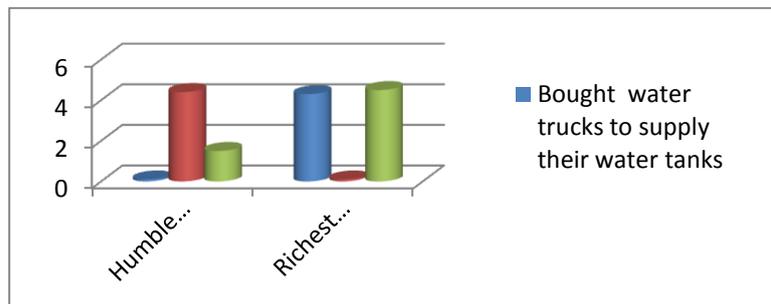
It was noticed, that the neighborhoods considered more central as Centro, Prata, Alto Branco, Mirante and Catolé, all had water tanks. Not observed illnesses related with water, the employees of SUCAM visited the residences with frequency; the way to supply the water tanks was by water trucks or wells that were drilled by virtue of rationing, in an attempt to find water to drink and to cook.

Now in the peripheral neighborhoods, the major part of the population storage water in buckets, barrels. As well as they had water tanks; occurred many cases of illnesses related to water (Flu, Dengue, Chikungunya, Zika and Diarrhea); the employees of SUCAM visited the residencies with less regularity. The way of supply the water tanks was by water coming from the street, in other words, provided by CAGEPA. Since the most of the interviewed affirmed that the value of water trucks were much expensive and the drilling of wells unfeasible. Since the value was higher and they did not possess financial resources to pay for it, they needed to keep the water provided by CAGEPA, the water used to drink was mineral and to cook was water provided by CAGEPA.

All the people interviewed were unanimous in affirming that the water quality was of poor quality, dark and muddy.



Graphic 1- Panoramic Vision of the research. Source: DONATO, Laryssa de Almeida. 2018



Graphic 2- Panoramic Vision of the research. Source: DONATO, Laryssa de Almeida. 2018

As regards the requirement for the choice of neighborhoods was on a random basis, including in the sample of data collected, central and peripheral neighborhoods, with people domiciled with a higher-income and lower, of both sexes, different levels of schooling and varied ages.

From the analysis of the 27 neighborhoods of Campina Grande - PB, is possible to observe that in the neighborhoods considered central had a lower occurrence of illnesses related to water. The frequency of the visits of employees of SUCAM to place control poison occurred with higher priority, the bought of water trucks to complement the quantity of water was higher than as well as the occurrence of well drilling occurred with higher frequency. In regards consume of water to drink and cook, it can be observed a large consume of mineral water, having a small decrease on the consume of this type of water, being more consumed the water provided by CAGEPA, in the period after rationing.

In return, on neighborhoods considered peripheral, it can be observed a larger occurrence of illnesses related to water, the frequency of visits of employees of SUCAM to place control poison occurred with less periodicity and in some places not even occurred, the contract of water trucks to complement the quantity of water was very little. As regards consume of water to drink and to cook. It can be observed, that had a little consume of mineral water, some people even knowing of the risks for the health of water consumption. When reached the "void volume" of Açude Epitácio Pessoa, reported with frequency through the media, continued consuming water provided by CAGEPA, and now in the period after rationing continue only consuming the water provided by CAGEPA.

4. FINAL CONSIDERATIONS

The water as an element of nature needs to have its access universalized, with the use of laws, aiming to avoid their use in an unconscious way, ensuring the balance of environment and therefore a healthy quality of life for their habitants.

The universalization of access stumble upon a demand that grows each day by internal factors to urban habitat or by migratory flux of rural exodus, in a way that constitutes a challenge for municipalities and States. When holder of the shareholding control of the service company of sewer treatment plants and of water treatment plants, plan the growing urbanization with the sufficient consume of water.

In fact, being the water condition of execution to any human activity, to restrict its access, implicates grave violation of right to self-determination of people, precisely in its reflexive area to social democracy bounded to sustainability, that imposes the right to decide in what conditions the individual wants to live, and what world will remain to the next generations.

Therefore, the service of collection and distribution of water and sanitation in Brazil is a joint responsibility of municipality and state, that cannot, in a republican view, be declined by political conflicts or personal interests regards in satisfy desires of private business in search for easy profit.

It is necessary that the public power of many federative entities, and the political representatives, observe the City Statute, that pursuit to balance the offer and demand of

environmental resources used, in a way that the sustainable development reached and ecological disasters avoided by the growing without adequate planning of cities.

In this view, the imposition, by Federal Constitution, in articles 182 and 183, as well as with the articles 4 and 40 of Law 10.257/01, of a master plan to municipalities with more than twenty thousand habitants served as statute of urban planning. That will serve so that municipalities organize the use and the soil occupation with the management of water resources, being fundamental the urban planning and the importance of participation of society to inspect it, so the local development occurs in a social, just and sustainable way.

As regards the compliance of Agenda 2030, the UN, concerning the objective NO. 6, that speaks on the management and availability of drinking water, this stumbles upon Brazil with the difficulty to execute the economic right of the sufficient development and universal distribution of water.

Without the sufficiency in the distribution of water resources, there is no increase of agriculture and industrial productivity. There will not be water safety for the urban population, placing at risk the human consumption.

From the theories of development, the classical theory to take advantage of the priority focus on water, as natural resource, alternates with the search of sustainability, notably pondering the effects of social costs, of contempt to ecological protection.

In fact, despite water is abundant on the planet, only a small portion is possible to be used for collection and consumption. Therefore, the contamination of water by the unwise use of water resources and by population growth, can transform the water into a scarce resource and, thus become an economic issue.

Therefore, it could be observed with this study, that the process of distribution and access to water facing the scenario of water scarcity of Campina Grande, did not occur in an equitable way since that in the neighborhoods considered central the contract of water trucks to complement the quantity of water was higher, as well as the occurrence of well drilling occurred with more frequency. In counterpart, the neighborhood considered peripheral, the contract of water trucks to complement the quantity of water was very little, demonstrating the economic value of water.

As regards the recognition of the population of access to water as a fundamental right, it was observed that the residents of neighborhoods considered more central, have a clearer knowledge and claim their rights, whereas the residents of neighborhoods considered more peripheral, have not this knowledge and believed that all their lack of access is because of their social condition.

Based on the study performed in 27 neighborhoods of the city of Campina Grande – PB, it was observed, that in neighborhoods where people had a greater purchasing power living in Centro, Mirante e Catolé, occurred a less occurrence of illnesses related to water. A higher frequent visits of employees of SUCAM to place poison control with the objective to avoid illnesses related with water, the contract of water trucks for compliment the quantity of water was higher, as well as the occurrence of wells drilling occurred with higher frequency, and there was also a higher consume of mineral water to drink and cook.

In return, in neighborhoods that people had a lower purchasing power, considered in the study as peripheral, it was observed a higher occurrence of illnesses related to water. The frequency of the visits of employees of SUCAM to place poison control occurred

with less periodicity and in some places it did not even occur. The contract of water trucks to compliment the quantity of water was little, and the consumption of water to drink and cook in the large part of the residences was supported by water provided by CAGEPA. When a small consume of mineral water occurred in times of rationing, after the supply of water normalized, the people, however, returned to consume only the water provided by CAGEPA.

In this regard, the research achieved all the proposed objectives being they general or specific. As regards the general objective, it was analyzed the democratic and equitable process of distribution and access to water in face of the scenario of scarcity of the water in Campina Grande - PB, in the last five years, through questionnaires, graphics, tables and bibliographic analyzes. As regards the specific objectives, all the proposed objectives were performed. It was analyzed the relation between the National Water Resources Policy instituted by Law 9.433 of 1997 and the difficulties of access to water, demonstrating that the lack of access of water has been an obstacle to the process of local sustainable development in Campina Grande – PB. It was easily identified that the water represents an economic value, perceived, as an economic good capable to ensure strategic position to those countries that are owners of the sources of water and whose management respects the social ecological cost. From the results it was verified that the lack of access to water can be solved by implementation of public policies and the supply can be made in an equal and democratic way, so that the population does not feel constantly threatened by water scarcity.

In Brazil, the National Policy Area of Water Resources has as the main objective to ensure today's and future's generations the availability, in adequate patterns of quality water, as well as to promote a rational upgrade and integrated water resources, establishing that the water is good of public domain and in situations of scarcity, the priority use of water is for human and animals' consumption.

It is important to emphasize that the Provisional Measure NO. 844/2018 brought the Law NO. 11.445/07, an important mechanism for the execution of "democratic access to water", since in item IV, it envisages the "social control". This social control aims to facilitate the universalization of provided access on item VI, of the same act, also altered by Provisional Measure No. 844/2018, when ensures subsidies "especially for populations and localities of low income."

In addition, it was carried out the mapping of contours and difficulties of access to drinking water facing the water crises in the peripheral and central neighborhoods of Campina Grande - PB, analyzing the recognition of access to water as a fundamental right of human beings having as theoretic anchorage the fundamental human rights.

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