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Notes

## **Water, human right or merchandise?, analysis of the legal regime applicable in Mexico**

## **El agua, ¿derecho humano o mercancía?, análisis del régimen jurídico aplicable en México**

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### **Abstract**

Although one might think that the "debate" to define the legal nature of water has been resolved in all latitudes of the world (in terms of



confirming it as a human right), the reality is that this is not the case. In Mexico there is still a wide normativity that gives it the category of "thing" susceptible to private appropriation, either through the rules of private law, or through the rules of administrative law, through the figure of the concession. That is why in Mexico it becomes relevant to analyze the regulations in the matter, through descriptions and highlighting the most relevant peculiarities of it, so that reality is contextualized. The essential objective of the article is to contribute from the academy to the resolution of the debate in question.

**Keywords:** Water, human right to water, water- merchandise.

## Resumen

A pesar de que se pudiera pensar que el "debate" para definir la naturaleza jurídica del agua ha quedado resuelto en todas las latitudes del orbe (en cuanto a confirmarla como un derecho humano), la realidad es que esto no es así. En México aún persiste una amplia normatividad que le da la categoría de "cosa" susceptible de apropiación privada, ya sea mediante las normas de derecho privado o mediante las reglas del derecho administrativo a través de la figura de la concesión. Por ello en México cobra relevancia analizar la normatividad en la materia a través de descripciones y destacando las peculiaridades más relevantes de la misma, para que se contextúe la realidad. El objetivo esencial del artículo es aportar desde la academia a la resolución del debate en cuestión.

**Palabras clave:** agua, derecho humano al agua, agua-mercancía.

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## Introduction

It would be excessively wordy to relate all the assumptions in which the conflict between neoliberal ideology and its opposite is manifested empirically, but among this accumulation of assumptions, one stands out, because what is at stake is life itself: water (Guerrero, 2011).

That's right, water is the essential component for life, it would not be conceivable without this ingredient, but not only that, water is an integral part of all social processes, in such a way that, social life, would not be susceptible to be replicated without water (Marsily, 2003).

The purpose of this text is to describe the state of the art in terms of current regulations on water in Mexico (exclusively around inland waters), to analyze the legal categories in force around it, to finally demonstrate the pending of the Mexican State to comply with the constitutional mandate of the human right to water and sanitation. Contributing from the academy to the resolution of the debate in question.

The methodology followed in essence corresponds to the documentary review of the state of the art, which in the breakdown

follows a deductive mechanics, starting from the general (supreme norm), to derive in the legal norms of lower hierarchical level.

## Legal regime of water in Mexico

In Mexico, derived from the jurisprudential and dogmatic interpretation of articles 124 and 135 of the Political Constitution of the United Mexican States (Constitution), the national legal order is integrated by a "block of constitutionality" - Constitution, international treaties (TI) and federal laws (LF) - this being the supreme norm of the Union, to which all federal authorities must be subject, state and municipal; we also have that there is a large block of secondary legislation. In addition, a distribution of competences coexists, which determines that all the attributions that are not expressly expressed in the Constitution in favor of the federal authorities will be understood to be so by the state authorities (Simental, 2019).

Given this, the set of regulations that regulate water in Mexico is integrated by legal norms that come both from the block of constitutionality, as well as from secondary legislation, both federal and state, as well as from an extensive normative field coming from the administrative field (Denton, 2006); this without ignoring the wide variety of jurisprudential criteria both under the formula of isolated theses, as well as jurisprudence.

## Constitutional provisions on water

The Constitution expressly refers to water essentially in articles 4, 27, 73, 115 and 122 (Rabasa & Arriaga, 2008), the leading parts of each article are transcribed:

“Article 4.- ...

Everyone has the right to access, dispose of and sanitation of water for personal and domestic consumption in a sufficient, healthy, acceptable and affordable manner. The State shall guarantee this right and the law shall define the bases, supports and modalities for the equitable and sustainable access and use of water resources, establishing the participation of the Federation, the federative entities and the municipalities, as well as the participation of the citizens for the achievement of these purposes. Paragraph added DOF 08-02-2012 (Sixth paragraph).

Article 27. The ownership of the lands and waters included within the limits of the national territory, corresponds originally to the Nation, which has had and has the right to transmit the domain of them to individuals, constituting private property.

...

The nation shall at all times have the right to impose on private property the modalities dictated by the public interest, as well as to regulate, for social benefit, the use of natural elements susceptible to appropriation, in order to make an equitable distribution of public wealth, take care of its conservation, achieve the balanced development of the country and the improvement of the living conditions of the rural and urban population. Consequently, the necessary measures will be taken to order human settlements and establish adequate provisions, uses, reserves and destinations of land, water and forests, in order to execute public works and to plan and regulate the foundation, conservation, improvement and growth of population centers; to preserve and restore the ecological balance; for the fractionation of latifundia; to provide, under the terms of the regulatory law, the organization and collective exploitation of ejidos and communities; for the development of small rural property; for the promotion of agriculture, livestock, forestry and other economic activities in rural areas, and to prevent the destruction of natural elements and damage to property to the detriment of society. Reformed paragraph DOF 06-02-1976, 10-08-1987, 06-01-1992

...

The waters of the territorial seas are the property of the Nation in the extent and terms established by International

Law; inland marine waters; those of lagoons and estuaries that communicate permanently or intermittently with the sea; those of naturally formed inland lakes that are directly linked to constant currents; those of rivers and their direct or indirect tributaries, from the point of the channel where the first permanent, intermittent or torrential waters begin, to their mouth in the sea, lakes, lagoons or estuaries of national property; those of constant or intermittent currents and their direct or indirect tributaries, when the channel of those in all or part of their extension, serves as a limit to the national territory or to two federative entities, or when it passes from one federative entity to another or crosses the dividing line of the Republic; that of lakes, lagoons or estuaries whose vessels, areas or banks are crossed by dividing lines of two or more entities or between the Republic and a neighbouring country, or when the boundary of the banks serves as a boundary between two federative entities or the Republic with a neighbouring country; those of springs sprouting on beaches, maritime areas, riverbeds, vessels or banks of lakes, lagoons or estuaries of national property, and those extracted from mines; and the channels, beds or banks of the lakes and inland currents in the extension established by law. The waters of the subsoil can be freely illuminated through artificial works and appropriated by the owner of the land, but when required by the public interest or other uses are

affected, the Federal Executive may regulate its extraction and use and even establish prohibited areas, as for other waters of national property. Any other waters not included in the previous enumeration, will be considered as an integral part of the ownership of the lands through which they run or in which their deposits are located, but if they are located in two or more properties, the use of these waters will be considered of public utility, and will be subject to the provisions dictated by the federative entities.

...

Article 73. The Congress has the power to:

...

XVII. To enact laws on general means of communication, information and communication technologies, broadcasting, telecommunications, including broadband and the Internet, posts and post offices, and on the use and exploitation of waters of federal jurisdiction. Reformed fraction DOF 11-06-2013

Article 115. ...

III. The Municipalities will be in charge of the following public functions and services: Reformed paragraph DOF 23-12-1999

(a) Drinking water, drainage, sewerage, treatment and disposal of its wastewater; Reformed section DOF 23-12-1999



## Article 122. ...

C. The Federation, Mexico City, as well as its territorial demarcations, and the States and Municipalities conurbated in the Metropolitan Area, will establish mechanisms of administrative coordination in matters of planning the development and execution of regional actions for the provision of public services, in terms of the law issued by the Congress of the Union. For the effective coordination referred to in the previous paragraph, said law will establish the bases for the organization and functioning of the Metropolitan Development Council, which will be responsible for agreeing on actions in the field of human settlements; environmental protection; preservation and restoration of ecological balance; transportation; transit; drinking water and drainage; solid waste collection, treatment and disposal, and public safety”.

From the transcribed articles it is clear and therefore it is possible to prove the following:

- a) Article Four fully recognizes the human right to water and sanitation, which succinctly means the duty of the Mexican State to provide the supply of water necessary for subsistence and to provide quality of life for the population and also to provide sanitation, which essentially consists of the eviction of wastewater from households.

- b) Article 27 indicates the categories of water ownership: national waters, state waters and privately owned waters. The most important bodies of water will have the category of national waters, and the waters that are essentially private (those of the subsoil) may be subject to closure or regulation by the federal authorities.
- c) Article 73 empowers the Congress of the Union to legislate on national waters.
- d) Article 115 indicates the competence of municipalities to provide public water and sewerage services, which is not minor, especially since it is linked to article 4 regarding the human right to water and sanitation.
- e) Finally, Article 122 defines the jurisdiction of Mexico City and its territorial demarcations in terms similar to the provisions of Article 115.

## Secondary (federal) legislation

Secondary legislation on the subject includes both federal and local competition rules (Denton, 2006). In this regard, it is appropriate to bear in mind the distribution of competences provided for in Article 124 of the CPEUM, which was already commented on at the beginning of this work.

As can be seen from the third transitory article of the constitutional reform of February 8, 2012, the Congress of the Union should have issued a General Water Law, which regulated the human right to water and

sanitation and what relates to the national waters indicated by article 27 of the Constitution, however, this has not happened until July 2022. Thus, there is a National Waters Law and at least one local law in each federal entity that regulates matters concerning state waters (Carmona, 2007). Without prejudice to the fact that in terms of private waters, they are regulated by the civil codes of each entity.

## Other regulatory provisions

As already mentioned, the Mexican legal order is not only integrated by the CPEUM and federal and state laws, but also by the extensive public international law materialized in international agreements and treaties to which Mexico is a party. Investigating exhaustively, there is also an extensive legal framework, composed of rules of administrative origin (whether regulations, official Mexican standards, Mexican standards, agreements, decrees and circulars), in addition to the mandatory jurisprudential criteria, which in many cases give an interpretation that redirects to the legal and or constitutional order. It would be neat and unnecessary to make an exhaustive analysis of such an extensive and dispersed normativity, so it is chosen to make a generic description, highlighting the most relevant peculiarities (Carabias & Rabasa, 2007).

## International treaties

According to the official website of the Ministry of Foreign Affairs of the United Mexican States, consulted on January 18, 2020, the International Treaties in force in Mexico (Segob, 2020), on water, some of them are the following:

a) Bilateral treaties:

- Convention between the United Mexican States and the United States of America for the Equitable Distribution of the Waters of the Rio Grande.
- Treaty between the Government of the United Mexican States and the Government of the United States of America for the distribution of the international waters of the Colorado, Tijuana and Bravo rivers, from Fort Quitman, Texas, United States of America, to the Gulf of Mexico.

b) Multilateral treaties:

- Convention on Wetlands of International Importance Especially as Waterfowl Habitat, signed in Iran (02/02/1971).
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed in London, Mexico, Moscow and Washington (29/12/1972).

## State legislation

In the state legislation, two types of normative bodies are included: those that regulate state waters, as well as the regulations that regulate the appropriation of waters by individuals, to which article 27 of the CPEUM alludes, which in general terms falls under the civil code of each federative entity, and that as far as the Civil Code of the Federal District is concerned, entity with greater representativeness for being where water is most required and consumed in the country, that although, officially the federative entity "Federal District" ceased to exist, to remain exclusively as "Mexico City", many legal systems remain unchanged in terms of their denomination, in such a way that, they continue to allude to the Federal District, without having therefore lost their validity (Contreras, 2016), and which certainly regulates the matter in articles 933 to 937, in the following terms:

### "Chapter V

#### Of the domain of the waters

Article 933.- The owner of the property in which there is a natural source, or who has drilled a well, carried out groundwater collection works or built cisterns or dams to capture rainwater, has the right to dispose of such waters; but if they pass from one property to another, their use will be considered of public utility and will be subject to the special provisions that are issued on the subject.

The domain of the owner of a property over the waters referred to in this article does not prejudice the rights that those of the lower properties have legitimately been able to acquire for their use.

Article 934.- If any one drills a well or carries out groundwater collection works on his property, even if for this reason the water of the open in someone else's property decreases, he is not obliged to compensate; but the provisions of Article 840 must be taken into account”.

### **Administrative rules**

With the intention of being concise in what is presented in this work, we only allude to the norms generated by the Federal Executive, but also the state executives can, in their field of competence, create them.

To achieve its identification, the pertinent search was carried out in the Integral System of Standards and Conformity Assessment (SINEC), of the General Directorate of Standards (DGN) of the Ministry of Economy (SE) (SINEC, 2020). Of what has been obtained, only some Official Mexican Standards (bold vignettes) and Mexican Standards (blank bullets) are highlighted, to verify the diversity of these. It is worth mentioning that the Federal Law on Metrology and Standardization (LFMN) mentions different types of official Mexican standards among which we find the Official Mexican Standards (NOM) and the Mexican Standards (NMX). Only NOM standards are mandatory in their scope. NMX

standards express a recommendation of parameters or procedures, although if they are mentioned as part of a NOM standard, as these are mandatory, their observance becomes mandatory. For illustration purposes, the extract of one is included, precisely to denote its normative content and its origin from the Executive Power, some of them are also listed.

- Official Mexican Standard NOM-001-SEMARNAT-1996, which establishes the maximum permissible limits of pollutants in wastewater discharges into national waters and goods.
- Official Mexican Standard NOM-002-SEMARNAT-1996, which establishes the maximum permissible limits of pollutants in wastewater discharges to urban or municipal sewerage systems.
  - Mexican Standard NMX-AA-004 Waters - Determination of sedimentable solids in wastewater - Imhoff cone method, published in the Official Gazette of the Federation on September 13, 1977.
  - Mexican Standard NMX-AA-007 Waters - Determination of temperature - Visual method with thermometer, published in the Official Gazette of the Federation on July 23, 1980.

Extract from the Official Mexican Standard NOM-001-SEMARNAT-1996:

“On the margin a seal with the National Shield, which says: United Mexican States.- Secretariat of Environment, Natural Resources and Fisheries.

Julia Carabias Lillo, Secretary of Environment, Natural Resources and Fisheries, based on the provisions of articles 32 Bis sections I, IV and V of the Organic Law of the Federal Public Administration; 85, 86 sections I, III and VII, 92 sections II and IV and 119 of the National Waters Law; 5th. fractions VIII and XV, 8th. fractions II and VII, 36, 37, 117, 118 fraction II, 119 fraction I subsection a), 123, 171 and 173 of the General Law of Ecological Balance and Environmental Protection; 38 fraction II, 40 fraction X, 41, 45, 46 fraction II and 47 of the Federal Law on Metrology and Standardization, I have had to issue the following Official Mexican Standard NOM-001-SEMARNAT-1996, which establishes the maximum permissible limits of pollutants in wastewater discharges into waters and national goods; and

Inasmuch

That in compliance with the provisions of section I of article 47 of the Federal Law on Metrology and Standardization, the Draft Official Mexican Standard NOM-001- SEMARNAT-1996, ...

...



Objective and field of application This Official Mexican Standard establishes the maximum permissible limits of pollutants in the discharges of wastewater into national waters and goods, in order to protect their quality and enable their uses, and is mandatory for those responsible for such discharges. This Official Mexican Standard does not apply to discharges of water from separate stormwater drains”.

## Jurisprudence

In the same way that we only made a partial reference in terms of the rules derived from the administrative field, the same in terms of jurisprudence, for which the appropriate search was carried out in the Judicial Weekly of the Federation, (2020). It is appropriate to offer a definition of what can be understood by jurisprudence, which means both the criteria of interpretation-application of the rules of positive law, as well as the jurisdictional instrument of substitution of ammes (absence of norm for a specific case) or of solution of antinomies (normative contradiction).

A jurisprudential thesis is then transcribed, which we highlight for two issues, addresses the controversial issue of subsoil waters, and on the other hand alludes to the analysis-application of an official local standard. Subsequently, a brief list of items of jurisprudence is made.

"Subsoil waters. The environmental regulation for the Federal District NADF-003-AGUA-2002, which regulates some of its aspects, invades the sphere of competence that article 27 of the Political Constitution of the United Mexican States reserves to the federation.

Both the fifth paragraph of the aforementioned constitutional precept, as well as the National Waters Law and its Regulations, grant powers to the Federal Executive not only to regulate the extraction and use of groundwater, but also its extraction and discharge, the exercise of which has been manifested in decrees such as the one published in the Official Gazette of the Federation on August nineteen of one thousand nine hundred and fifty-four, in which it established an indefinite ban for the delivery of subsoil waters in the area known as Cuenca or Valley of Mexico. Now, if the Environmental Standard for the Federal District NADF-003-AGUA-2002, published on the twenty-sixth of March of two thousand and four in the Official Gazette of the Federal District, issued by the Ministry of the Environment and the Government of the latter, establishes the conditions and requirements for recharge in the Federal District by direct injection of treated wastewater into the aquifer of the Metropolitan Area of Mexico City, it violates the aforementioned article 27 of the Constitution, by encroachment on the aforementioned federal competence.

Constitutional controversy 57/2004. Federal Executive Power. 22 November 2005. Majority of nine votes. Dissidents: Genaro David Góngora Pimentel and Olga Sánchez Cordero de García Villegas. Speaker: Juan Díaz Romero. Secretary: Laura García Velasco.”

Below is a list of jurisprudential theses related to the subject matter under study in this article. This list seeks to show the importance that the issue has had for the Judicial Power of the Federation, and only as a sampling, since, in the electronic search engine of the official website of the Judicial Weekly of the Federation, when consulting the concept "water", it throws 348 elements, and that only considering the ninth and tenth epochs:

“Human right to the provision of drinking water. The obligation to provide it is a duty of the state, and is not constrained to a prior payment by the governed.

Human right of access to water. Obligations it imposes on states and non-State actors.

Human right to water. As an indispensable resource for subsistence, it requires priority attention through an adequate budgetary exercise (legislation of the state of Nuevo León)”.

## **Analysis of the current legal regime around water in Mexico. Discussion**

To contribute to the discussion, in the first place, the breadth of it is obvious, to the extent that it has given rise to authors who consider the need-feasibility of talking about a specialized legal discipline (branch of law): water law (Farías, 1993). In our opinion, it is not a branch of law, but a dispersed set of regulations that falls on the same object of regulation (Tello, 2008), but from different areas (these yes, specialized) of law, that is, there are provisions that regulate water from constitutional, administrative, environmental, civil, criminal, public international, and even commercial law, but not for this reason, this set of regulations gives a basis for talking about an independent branch of law, but about a legal regime of water.

Once the previous remark has been made, it is appropriate, in turn, to highlight one more, which surely at this point has been deduced: this monograph focuses on inland waters, excludes what is related to the regulation of marine waters -which, on the other hand, have a regulation in essence focused on two aspects (Céspedes, 2011): Pollution and the patrimonial regime on its resources-.

Having made the above remarks, it is necessary to discern the legal analysis around water and its regulation by Mexican positive law.

## Water and its patrimonial categorization

Water is a tangible good, essential for life and for all the productive processes of contemporary society, none escapes the participation of water in these, even if it is indirectly (Camdessus, Badré, Chéret, & Ténrière-Buchot, 2006). In Mexico, property has a manifest regulation that starts from civil law and scales to administrative law and that, in turn, has guiding principles that come from constitutional law, and that has effects on practically the rest of the legal framework (Fernández-Ruiz & Santiago-Sánchez, 2007).

In such a way that, following a descending logic in the legal system, by hierarchy of norms, we have that the CPEUM prescribes the types of property that are allowed in the Mexican State: public, private and communal (this has in turn different species). In relation to water, any of the above types of property can arise, which, in turn, confirms that water is a good susceptible to appropriation, whether public property, private property or communal property (Rabasa & Arriaga, 2008).

Then water is a tangible good that, depending on the conditions in which it is found in nature, in accordance with the criteria set forth in article 27 of the CPEUM, may be integrated into the rules of private appropriation provided by the regulations of civil law, or where appropriate, conform to the rules of administrative and or agrarian law, to be an inalienable good and that only through the concession process could be used by individuals. The fact that there is the possibility that the property owned by the Nation can be concessioned, means in the factual

field that they can become "property" (not in legal terms, but practical) of individuals. In these terms, even in addition to national and private property, there is also the communal patrimonial regime, which does not have secondary legislation that regulates it (Denton, 2006).

There is an interesting theoretical debate about the waters of the subsoil, in the opinion of those who write this text, there is no doubt that, derived from the rational interpretation of what is indicated in article 27 of the Constitution - The waters of the subsoil can be freely illuminated by artificial works and appropriated by the owner of the land ...-, these waters are private property, but the Supreme Court of Justice of the Nation, in various jurisprudences, has "interpreted" that these waters should be categorized as national waters:

"Subsoil waters. It is federal competence to regulate their exploitation, use or exploitation, including their extraction or unloading. Thesis: 175694 P./J. 40/2006 Judicial Weekly of the Federation and its Gazette, Ninth Epoch, Plenary, Volume XXIII, March 2006. Jurisprudence.

Subsoil waters. They are national property. Thesis: 206028, Judicial Weekly of the Federation, Eighth Epoch, Plenary, Volume I, First Part-1, January-June 1988. Isolated thesis.

Subsoil waters. Their birth and appropriation by the owner of the land, does not take away their character of inalienable and imprescriptible. Thesis: 206029, Judicial

Weekly of the Federation, Eighth Epoch, Plenary, Volume I,  
First Part-1, January-June 1988, Isolated Thesis”.

Regardless of the fact that we can agree that groundwater should be part of the catalog of national waters, the reality is that based on the current text of the aforementioned article 27, as it is drafted, without ambiguities or "interpretative" gadgets, they are waters that are owned by the owner of the land (property and or exploitation that can be prohibited by the Federal Executive, which strengthens the argument that they are waters that ordinarily belong to the individual).

## Water as a human right

The recognition of the human right to water, went through a long road, not without difficulties (García, 2008), the essential need for water was never discussed (Barlow, 2009) and as a budget for life—with respect to which the first generation of human rights was conceived (Leff, 2004)—, but various "reasonings" prevented the recognition in the wide individualized repertoire of human rights related to water (Mancisidor, 2008).

Big capital has very clearly defended the position that water is a commodity and therefore States must provide all means for its full "liberation" and insertion in the market (Dávila, 2006; Saldivar, 2007; Cespedes, 2011).

The first solid step towards the realization of the human right to water was taken in November 2002, when the Committee on Economic, Social and Cultural Rights adopted General Comment No. 15 on the right to water. Article I.1 stipulates that "The human right to water is indispensable for a dignified human life". Observation No. 15 defines the right to water as the right of everyone to have sufficient, healthy, acceptable, physically accessible and affordable water for personal and domestic use (General Comment No. 15, 2002).

Finally, it is through a resolution of the UN General Assembly, in 2010 that the human right to water (and sanitation) acquires full recognition: through Resolution A/RES/64/292 of July 28, 2010, the United Nations General Assembly explicitly recognized the human right to water and sanitation. This Resolution ratified that clean drinking water and sanitation are fundamental to the full enjoyment of life and all human rights. States and international organizations were called upon to provide all necessary economic support, training and technology transfer to assist States, especially underdeveloped countries, and especially to provide a healthy, clean, accessible and affordable drinking water supply and sanitation for the entire population.

In Mexico, the acceptance of the human right to water did not take long to arrive, and surprisingly for most specialists in the field, the CPEUM was modified on February 8, 2012 to include a paragraph in the article that explains the human right to water and sanitation.



## **The double characterization of water in Mexico, as a heritage asset and as a human right**

Based on what has been analyzed in the previous sections, it is evident that the legal regime of water in Mexico recognizes the undoubted, that water is a good, a tangible good that, due to its characteristics of essential for life and for all productive processes, requires a special normativity, in such a way that a wide catalog of national waters is created, which (directly) cannot be appropriated by individuals, but only through the figure of the administrative concession.

It is pertinent to refer to the provision of public drinking water and sewerage services (correlative to the human right to water and sanitation), which are the power of the municipal level, in respect of which there is no prohibition so that they can be transmitted (concessioned) to individuals; there are several current experiences in Mexico, which to date do not show arguments that justify privatization since the service is increasingly expensive, and there is no substantial improvement in the provision of it.

On the other hand, there is also an extensive set of waters that, if they can be appropriated by individuals, highlighting the waters of the subsoil (Garza, Carrillo, & Huizar, 2018).

Between these two categories, national waters and waters that can be freely appropriate, the full recognition of the human right to water and sanitation is inserted, which determines for the Mexican State, the duty to provide the vital resource for the satisfaction of human needs.

Thus, at present, in Mexico, water is at the same time susceptible to being considered (legally) as a commodity (Veraza, 2018), at the same time that it is a fundamental human right.

## Conclusions

With this research work, the complexity and dispersion of the legal regime of water is evident (Brañez, 2004), it is broad and lacks a required systematization. In turn, there is an unconstitutionality by legislative omission since 2013, for not having issued since then the General Water Law.

From what has been investigated, it is confirmed that in Mexico water has a double normative nature, it is at the same time a good susceptible to private appropriation (directly by individuals, in the case of subsoil waters), as well as through the concession, when it comes to national waters.

The commercialization of water in Mexico is not prohibited; but, on the other hand, since 2012 there has been full recognition of the human right to water and sanitation, which determines the duty of the State to provide water in sufficient quantity and quality to meet human needs, exacerbating the contradiction.

It is urgent to issue the General Water Law to determine the scope, content and execution of the human right to water and sanitation, which clarifies what is the turn of each level of government, as well as the

correlative general human duty for the care and preservation of the vital resource, and added to this, a coherent and rational systematization, of the entire legal regime of water that prioritizes the human right to water and sanitation, over mercantilist concerns.

At this moment the debate on whether water is a right or a commodity in Mexico, would be resolved with a Solomonic decision, there is the full and constitutional recognition of the human right to water, but at the same time, it is a good that can be freely marketed, both in the sale as bottled water, and in the transmission of public water networks to individuals, which denotes in the background a contradiction that must be resolved as soon as possible. Prevailing the human right to water and understanding this good as a good outside commerce for its essential characteristics for life and society.

The future of Mexico, like that of the world in general, is inextricably linked to the way in which humanity (the population, society) is linked to the natural environment, or in other words, the way in which the processes of appropriation of natural satisfiers are carried out, water occupies the most important place in that area, that is why a vision of the future is required, which meets current needs, but does not ignore the future, which combines obligations and rights for all members of society (Graizbord & Arroyo, 2004).

In fact, there is a surrealism around water in Mexico, on the one hand, a set of constitutional principles: human right to water and sanitation plus the construct of national waters, plus the state duty to provide drinking water and sewerage services, and on the other hand: a promotion of the sale of drinking water, facilities to give away national

waters to large companies (concessions) and a disdain to comply from the public sphere with constitutional mandates.

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