

Water conflicts caused by the industry of **ultra-processed** beverages and food



Case study: Postobón company



Colectivo de Abogados
José Alvear Restrepo

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**Colectivo de Abogados
José Alvear Restrepo - CAJAR**

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Colectivo de Abogados
José Alvear Restrepo

Corporación Colectivo de Abogados

José Alvear Restrepo

Calle 16 No. 6-66 of. 2506 Bogotá, Colombia

Teléfono: 7421313

www.colectivodeabogados.org

Written by:

Viviana Tacha Gutiérrez

English translation:

Ethical Method Language Solutions

Editorial Board:

Yessika Hoyos Morales

Alejandro Mantilla Quijano

César Perilla Marín

Editing and proofreading:

María Victoria Duque López – Senior Editor

Valentina Dupont – Junior Editor

Editorial production:

Communitas Colombia SAS*

Calle 65 N.º 9 – 53 oficina 201

Phone numbers: 601 9231530 – 3108151122

communitas@communitascolombia.com

www.communitascolombia.com

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Presentation

The Colectivo de Abogados José Alvear Restrepo (José Alvear Restrepo Lawyers Collective, Cajar) is a non-governmental organization that has been working in Colombia since 1978 for the advocacy of human rights and the construction of peace with social and environmental justice. It has consultative status with the UN, is accredited by the OAS, and affiliated with the International Federation of Human Rights (FIDH) and the World Organisation Against Torture (OMCT). The effort made to document and denounce the various practices of industry interference is part of CAJAR's commitment to defend a comprehensive conception of human rights, democracy, and the public interest.

This document responds to the need to talk about issues of general interest, which is usually uncomfortable for the large industries of sweetened beverages and ultra-processed food. If we want to reduce the discomfort so we can build an informed and respectful dialogue, it is necessary to generate knowledge and put the topic at the center of the public agenda; it should be a dialogue where industries speak from their interests and we, society in general, from a comprehensive perspective of our rights and the public interest. This is a step in that direction.

Water conflicts caused by the industry of beverages and ultra-processed food. Case

*study: Postobón company would have been an impossible task had we not received the generosity of Global Health Advocacy Incubator, to whom we thank for their permanent commitment to the public interest in our country. Nor would it be in your hands were it not for the knowledge and work of its author, **Viviana Tacha Gutiérrez**, lawyer and specialist in constitutional law at the National University of Colombia, and *summa cum laude* Master of legal sociology from the International Institute of Legal Sociology of Oñati (Basque Country). She has worked as a lawyer, researcher, and advisor in various non-governmental human rights organisations.*

Introduction

We are aware of the importance of water for our lives and its centrality in the ecosystems that surround us. As a society, however, we ask ourselves few questions about the multiple conflicts that exist over water, many of which are caused by its excessive use and its appropriation by actors— like large corporations—who define water policy today. We do not usually wonder, for example, where the water we consume in the ultra-processed beverages and ultra-processed food (hereinafter UPF) that we buy in supermarkets comes from, and these have become consumption habits for many people. How much water do the companies that produce this type of products use? Where does the water they demand for their production come from? Where are the production plants of these companies located? What consequences has the installation of these plants generated in the municipalities where they are located? What is the impact that the use of water in this industry has on inequality?

This document seeks to answer these questions based on the following assumption: the industry of sweetened beverages generates conflicts over water that are made invisible and excluded from the country's socio-environmental agendas. They are made invisible, in the first place, by not considering that there is a problem. Therefore, one of the objectives of the text is to delineate this problem and affirm its existence. Secondly, the veiling of these conflicts over water happens because of the lack of information available in this regard. As will be seen throughout this report, there are no accurate official figures or analyses that allow us to measure the magnitude of the problem we face. Therefore, another objective of the text is to provide, from a case study and with the available information, qualitative analyses that allow us to understand some of the specific problems that exist around the conflicts over water caused by this industry. The ultimate objective

of the text is to warn about the importance of mapping these conflicts, investigating them, analyzing them, and drawing up action paths for their solution.

Considering the objectives mentioned, the document is divided into four sections. In the first, we delimit and expose the water problem associated with the industry of ultra-processed beverages and UPF and offer an analytical framework that allows us to understand the conflicts over water caused by this industry. To do this, we will take the approach of political ecology as a reference with the purpose of understanding how these conflicts are located in global disputes over water, impacting the unequal distribution of water in specific territories, its hoarding and privatization, and how these conflicts are intertwined with dominant discourses about water scarcity and efficient and corporate water management.

In the second section we complement the analytical framework of water conflicts from a legal perspective. Thus, this chapter focuses on mapping the different conceptions of and approaches to regulation that have occurred with respect to water, which allow us to explain how the appropriation of water by certain agents occurs, who are guaranteed rights with respect to water, and what are the possible fields of legal dispute that are possible to resolve conflicts over water and what they are like, with their limits and potentialities. After the general overview of water, in the third section we present an overview of the current state of water in Colombia, which includes the way in which water regulation trends set out in the second section have

landed in the country. This third part seeks to contextualize the case analysis to be presented in the next section. The fourth and last section starts from the case analysis of one of the most recognized beverage companies in the country (Postobón) and two of its production plants, to expose the particularities of the conflicts over water caused by this industry, analyze them, and understand them. From this understanding and from an open debate on this problem, we hope that transformation agendas may emerge in the face of conflicts that, as will be exposed, have perverse effects on inequality, disproportionately affecting nature and the access to water of rural communities.

1. Water conflicts generated by the industry of ultra-processed beverages and food

Our daily lives are marked by bottled drinks. We have become accustomed to drinking ready-to-drink liquids. Soft drinks and teas of different flavors, sodas, fruit-flavored drinks, hydrating and energizing drinks, beers, and even flavored waters are part of the diet of millions of people today. We can buy all these products in stores and supermarkets at prices that, though varying depending on the brand, are not far from the reach of a significant percentage of people. Even water has been bottled and put up for sale, and we have normalized that having drinkable water and hydrating, something essential for health and life, is part of a business that corporations in the powerful sector of the sweetened beverage and UPF industry profit from.¹

¹ According to Oxfam GB (2013), in 2013 there were 10 “Big” corporations in the food and beverage industry: Associated British Foods (ABF), Coca-Cola, Danone, General Mills, Kellogg, Mars, Mondelez International, Nestlé, PepsiCo, and Unilever. Overall, according to the report, the revenues of these companies are above USD 1.1 billion a day (Oxfam GB, 2013, p. 2).



It is a sector that, far from promoting a natural and healthy diet, produces, promotes, and markets ultra-processed food, that is products that are ready to drink or eat, either because they can be ingested directly or because they must be heated for only a short time to be ready. Therefore, in addition to the soft drinks and beverages already listed, among the ultra-processed products these producers offer snacks, cereals, confectionery, and others² (Cediel, 2021). In addition to promoting a corporate diet, which compromises health, this type of beverages and food constitutes a threat to a vital substance for our existence and for all forms of life on the planet: water.

There is little transparency and clarity about the consumption of water by corporations—a problem in itself—but as it is the main ‘raw material’ for the elaboration of their products, it is not difficult to foresee that this productive sector is a source of multiple and diverse conflicts over water. Water is the essential basis for the preparation of all the UPF mentioned, or at least for some essential elements for their production, such as sugar or palm oil. In other words, without water in large quantities these products could not be processed and brought into trade for our consumption. The corporations of sweetened beverages know this and that is why they have sought different strategies to take control of water, hoarding and privatizing it.

This has generated socio-environmental conflicts at various levels, which have, however, been largely made invisible. The industry of ultra-processed beverages and food is responsible for generating conflicts over water without this having been the

subject of public attention and debate, which can be explained by different factors.

On the one hand, the central debates on water have been related to the impacts caused by extractive industries and the privatization of water provision as a public service. Not without reason, as a society we have discussed the socio-environmental conflicts caused by the industry of mining and conventional and unconventional deposits, by dams, agribusiness, and large infrastructure works such as roads, dams, and ports because they generate an intensive exploitation of the territories and they highly impact ecosystems and the water sources they profit from. Also, thanks to the rise of a discourse of ‘global water crisis,’ and in order to take advantage of the business opportunity represented by a scenario of scarcity, corporations began to take control of the public water service in several countries of the world, reorienting water policy towards the logic of the market and profit (Kay and Franco, 2012). This deprivation of access to water has also been a matter of public debate and concern. On the other hand, other sectors such as that of the industrial production of UPF have had less weight when it comes to analyzing and understanding conflicts over water.

Although the corporate sector of the extractive industries has multiple defenders, it is no less true that it is the object of multiple articulated social resistances, and that the image of this sector (a very important factor for every company) has waned precisely because of the socio-environmental conflicts that it causes and the resistance

2 Ultra-processed food “are industrial formulations that usually have five or more ingredients with little to no natural food. Such ingredients often include those used in processed foods such as salt, sugar, oils, fats, antioxidants, preservatives, stabilizers, but there are also ingredients found only in UEDs whose purpose is to mimic the sensory qualities of natural or minimally processed foods and culinary preparations, or hide undesirable qualities of the final product.” Cediel (2021, p. 197).

that has been developed to face them. The same does not happen with the UPF industries, surely because of the advertising they display, aimed not only at increasing our appetite for their products but also at evading the debate about their effects on our health, and because of the relocation of their production. The positioning of ultra-processed beverages and food builds from the idea of a rapid consumption governed by criteria of time efficiency (using less time to prepare the food we consume), which disconnects us from everything that entails producing and preparing food and also generates unequal relationships with nature and with the communities that inhabit the territories that these industries appropriate to make their business viable. Also, the UPF industry reinforces labor and union conflicts.

On the other hand, the act of making conflicts over water less visible, done by the industry of ultra-processed beverages and food can also be explained by the critical approach aimed especially, though not exclusively, at demonstrating the impacts that these corporations have on public health and our nutritional model by causing multiple diseases and deepening an unfair food system. Even when addressing the environmental impact of this industry, the focus is usually on the amount of waste it generates. The bottled water industry is, for example, one of the most polluting, as plastic bottles are produced with chemicals and fossil fuels, added to the energy required for their transport around the world. According to some estimates, bottled water generates 18.2 tons of carbon dioxide emissions, while less than 5 % of bottles are recycled (Barlow, 2008). Water, again, is often excluded from the analyses on the impacts

of this industry.

Thus, as already mentioned, there is no clarity as to the amount of water used by corporations to make ultra-processed beverages and food. However, it is known that in 2015 Coca-Cola used 300 billion liters of water for its products (Bartz, 2018, p. 16). In Colombia, according to a report by the newspaper *La República* (2017), Postobón, one of the country's largest companies in the beverage industry, used 11.4 million cubic meters of water in its 21 production plants. Without being global figures of the entire sector at a global or national level, the data show the magnitude of the water expenditure incurred by these corporations, while we still don't understand the magnitude of the socio-environmental impact they cause on the water cycle.

Neither is there absolute transparency about the amount of sugar these companies use to process their products. According to an Oxfam report, sugarcane cultivation occupies about 31 million hectares worldwide, leading to land conflicts due to large-scale land acquisitions³ but also to conflicts over the intensive use of water required by this crop on those lands. It has also been established that 51 % of the world's sugar production is used for ultra-processed beverages and food, and Coca-Cola, which controls 25 % of the global soft drink market, is the largest buyer of sugar followed by PepsiCo (Oxfam, 2013, p. 4). Thus, it can be said that these industries cause conflicts over water both directly and indirectly, since they require it as a central element for their production while also taking advantage of the water demanded by the other products that make

3 According to the Oxfam report, 20 years ago the crops of cane sugar, soybeans, and palm oil occupied about 150 million hectares worldwide, and were accounted for by about 380 large-scale land acquisitions (Oxfam, 2013, p. 4).

up the beverages and food that are ready to be acquired in the market.

But how do we understand these conflicts over the water caused by the industry of ultra-processed beverages and food? Where does the water used by these corporations come from? Who is harmed and in what way? Companies today often make all kinds of efforts to position themselves as environmentally responsible and sustainable, and show with figures how they are reducing the use of water in their operations in an approach that is known as “more crop per drop” (Key and Franco, 2012). Postobón, for

example, emphasizes in its sustainability reports the ‘goal’ of reducing water consumption from 3.11 liters to 2.1 liters per beverage produced (Postobón, 2018, p. 17).

This approach reduces water conflicts to an efficiency issue, thereby negating issues of social and environmental injustice that lie behind the uses of water by corporations in the sector of ultra-processed beverages and food. Therefore, it is essential to have a broad understanding of both water and the conflicts caused by those who want to take control of it, as will be set forth below.

1.1 The political ecology of water

The hoarding, depletion, and pollution of water are phenomena that are part of the socio-environmental crisis that the planet faces (Romero and Ulloa, 2018). Water hoarding is a particularly useful concept for understanding conflicts over water, as it reveals something that goes beyond its appropriation and consumption. It involves stakeholders in unequal positions of power where one stakeholder hoards and another is deprived (Pedroza, 2020). This concept puts a highlight on the imbalance of power existing in the relationships drawn around water, in reference to those situations in which stakeholders with economic, political, or social power manage to take control of water for their own benefit, to the detriment of the ecological and community relations that other stakeholders with less power have built—or require building—with water.

At highlighting the existing power imbalance around water, the concept of hoarding alludes to the political, legal, and economic mechanisms used for its control, such as the

inequitable allocation of water, its privatization, its commodification, the processes of speculation, and the cultural appropriation of its meanings. In this sense, water hoarding shares with other hoardings, like that of land, dispossessing of what is understood to be common.

Water hoarding can have multiple expressions ranging from its control for use in extractive industries, through its damming for energy generation, to the privatization of water as a public service, inserting it into the logic of accumulation, foreign trade, and investment (Kay and Franco, 2012). The control of water that companies in the sector of ultra-processed beverages and food currently hold is another of these expressions of hoarding, because, as we will see in future sections, the problems caused by this sector are not exclusively about the inefficiency of water use. They fall, on the contrary, on the different conceptions that exist around water and on the distributive conflicts that this opposition of visions fosters.

The complexity woven behind water hoarding can be better understood from the perspective of political water ecology, referring to

the policies and power relations that shape knowledge and human intervention in the world of water, which leads to ways of governing nature and people, simultaneously and at different scales, to produce a particular hydro-social order. (Boelens, 2015, p. 8)

This hydro-social order means a highlight on the way in which water policies have a constitutive effect on society by creating specific landscapes, territories, and social orders.

Let's keep in mind that the management, control, and distribution of water played a central role in shaping society. As Romero and Ulloa aver, "the aqueducts, canals, and irrigation systems, and the built cities of the ancient world still remain as testimony to a civilizational leap that forever transformed humanity's relationship with the environment." (2018 p. 21)⁴ Thus, to use another concept of political ecology,

it can be said that water is central to the "metabolism of cities," because through the establishment of flows, networks, and discourses established with water and about water, unequal power relations are generated that worsen the situation of certain social groups while also deteriorating ecosystems and the possibility of life itself on the planet (Romero and Ulloa, 2018).

Therefore, when analyzing the management of water and the decisions we make about its use and destination, it is important to take into account how the "hydro-social cycle" that shapes the spaces we inhabit is constituted; it is determined by the relations between society and nature, and by the social and economic cycles that generate inequalities in control, access, and use of water (Linton and Budds, 2014). In addition, it is important to consider the existing intersections between distributive, cultural, and political injustices that are reinforced to generate scenarios of exclusion in terms of water. This also helps us understand that access to and control of water goes beyond water itself, and that "water governance" is also the "governance of people through water." (Boelens, 2015)

1.1 The political ecology of water scarcity

The ideas previously presented are very important for understanding the prevailing discourses that circulate today on water scarcity. That "we are running out of water," positioned as a catastrophic image, is

perceived as a growing problem, where scarcity refers to the insufficiency of resources to meet the demand for water. Thus, the idea that there is scarcity due to the absence of enough water sources to

4 In its 2006 human development report, UNDP insisted, albeit from a progress and development approach, that the provision of clean water and the capacity of States to harness water have historically been synonymous with human progress. Whatever the approach, the truth is that the lack of drinking water and sanitation has been the cause of multiple diseases, so the provision of drinking water has transformed the public health landscape. Thus, at the beginning of the nineteenth century, diseases such as diarrhea, dysentery, or typhoid fever were threats to public health. But even today, in the twenty-first century and according to that report, despite global advances in the field, about 2 million deaths of children related to lack of water and sanitation were reported (UNDP, 2006, p. 5).

meet the global demand for water has been positioned as a crisis (UNDP, 2006). Figures such as the one presented by the United Nations in 2010, when they declared that water is a human right, warn in this regard: 1 billion people did not have access to drinking water, while 2.6 billion people did not have access to basic sanitation (United Nations General Assembly, 2010).

It is estimated that of the 1 billion people who did not have access to drinking water in 2006, most had access to just five liters, while it is considered that a person requires at least 20 liters of water per day to lead a dignified life (UNDP, 2006). However, as the same report acknowledges, “the world is not running out of water,” though “several million of its most vulnerable inhabitants live in areas exposed to increasing water stress.” (UNDP, 2006, p. 6) These are not two contradictory ideas. Although it is true that rivers are drying up, that ecosystems are degrading, that water table levels are decreasing, that the melting of snow-capped mountains is accelerating, among other phenomena that affect the water cycle and the ecological dynamics of water, the reasons for this crisis do not lie in a lack of physical availability of water occurring naturally and unpredictably.

The crisis has its origin in inequality, in the political decisions that are taken about water, and in who is making those decisions. In other words, like wealth, water is unevenly distributed globally. UNDP states that:

[...] the underlying cause of scarcity in the large majority of cases is institutional and political, not a physical deficiency of su-

pplies. In many countries scarcity is the product of public policies that have encouraged overuse of water. (UNDP, 2006, p. 2)

It adds that “Most countries have enough water to meet household, industrial, agricultural and environmental needs. The problem is management.” (UNDP, 2006, p. 133)⁵ As will be seen later, the problem is also one of how we understand water and the views that are in dispute about it.

In this sense, water scarcity must be analyzed by understanding the different uses—and abuses—we make of it. It is clear, for example, that large-scale agribusiness is a sector that requires large amounts of water, and that food and food sovereignty are a priority. These are, then, legitimate and justified uses. The question arises because of the dominant agro-industrial production model and the abuses that the corporate sector makes of water, not to guarantee our right to adequate food, but to pursue the accumulation of capital from the promotion of certain types of crops and certain types of beverages and food, as with ultra-processed products. The following quote from the UNDP report is illustrative:

Sometimes it is assumed that water scarcity is about not having enough water to meet domestic needs or the demands of cities. While some cities face problems of water stress, it is agriculture that will face the real challenge. Basic arithmetic explains the problem. People have a minimum basic water requirement of 20–50 liters each day. Compare this with the 3,500 liters to produce enough food for a daily minimum of 3,000

5 UNDP States: “Planet Earth’s hydrological system pumps and transfers about 44,000 cubic kilometres of water to the land each year, equivalent to 6,900 cubic metres for everyone on the planet. A large part of this flow is accounted for by uncontrollable floodwaters, or water too remote for effective human use. Even so, the world has far more water than the amount needed to grow food, support industries and maintain the environment” (UNDP, p.134).

calories (producing food for a family of four takes the amount of water in an Olympic-size swimming pool). In other words, it takes roughly 70 times more water to produce food than people use for domestic purposes. Growing a single kilo of rice takes 2,000–5,000 liters of water. **But some foods are thirstier than others. It takes eight times more water to grow a ton of sugar than a ton of wheat, for example. Producing a single hamburger takes about 11,000 liters**—roughly the daily amount available to 500 people living in an urban slum without a household water connection. (UNDP, 2006, p. 137, bold added)

But if the problem is not only that of physical availability but of the production model that is promoted, of how ecosystems degrade as a result of that production system, and of how water is distributed inequitably according to it, we face a political problem. The problem is not that agriculture demands high amounts of water; it is what type of agriculture and—consequently—what type of nourishment is promoted and how the different uses of and relationships with water are contemplated, even by the sectors that make legitimate use of it. The problem is also who promotes these models.

Bakker (2003) has alluded to the “end of the paradigm of the hydraulic state” to refer to the change in the understanding of the role of the State as an organizer of water. This role, protected under a “hydro-social contract,” granted legitimacy to the State for the management of water resources and made it responsible for issues of sanitation, provision of drinking water and protection of the environment, all of which went alongside the understanding of water as a public service. This idea was destabilized by taking advantage of the discourse of the ‘crisis’ of ‘scarcity,’ addressed as a natural and unpredictable thing attributable to States,

to position the discourse of efficiency and the stakeholder that would make it possible: the private sector and the large corporations. This broke the “hydro-social contract” to give way to the logic of business, crossed by the logic of consumers and consumption, tariff systems, and the establishment of a legal system that guarantees and protects private rights over water.

But the privatization of water goes beyond the idea of transferring public resources to private hands; it includes other practices of dispossession that ignore water cycles and community relations with water. Therefore, the privatization of water is not limited to its management—which is the classic vision in which this phenomenon is analyzed—but also includes the privatization of water sources and their community-based management. In turn, this privatization is not limited to the appropriation of water, but to other phenomena caused by corporations, such as water pollution (Martínez, 2016). Therefore, the privatization of water does not exclusively impact public resources or water sources, but the very possibility of proposing alternatives. Positioning the rationality of efficiency, planning, and corporatization of water not only displaces the State, but also discards the proposals that have been built in community for water management and for us to relate to water from other paradigms (Boelens, Duarte *et al.*, 2015).

In summary, the discourse of scarcity dissolves from the perspective of the political ecology of water, since it shows that its availability is not related to a real scarcity on a global scale but to its unequal use, distribution, and exploitation, with the abuses and predation of water sources and ecosystems, and with the discourses of power that revolve around water supply, which seek to destroy the public and community-based

organization of water and replace it with a private and individualized form of market-based management.

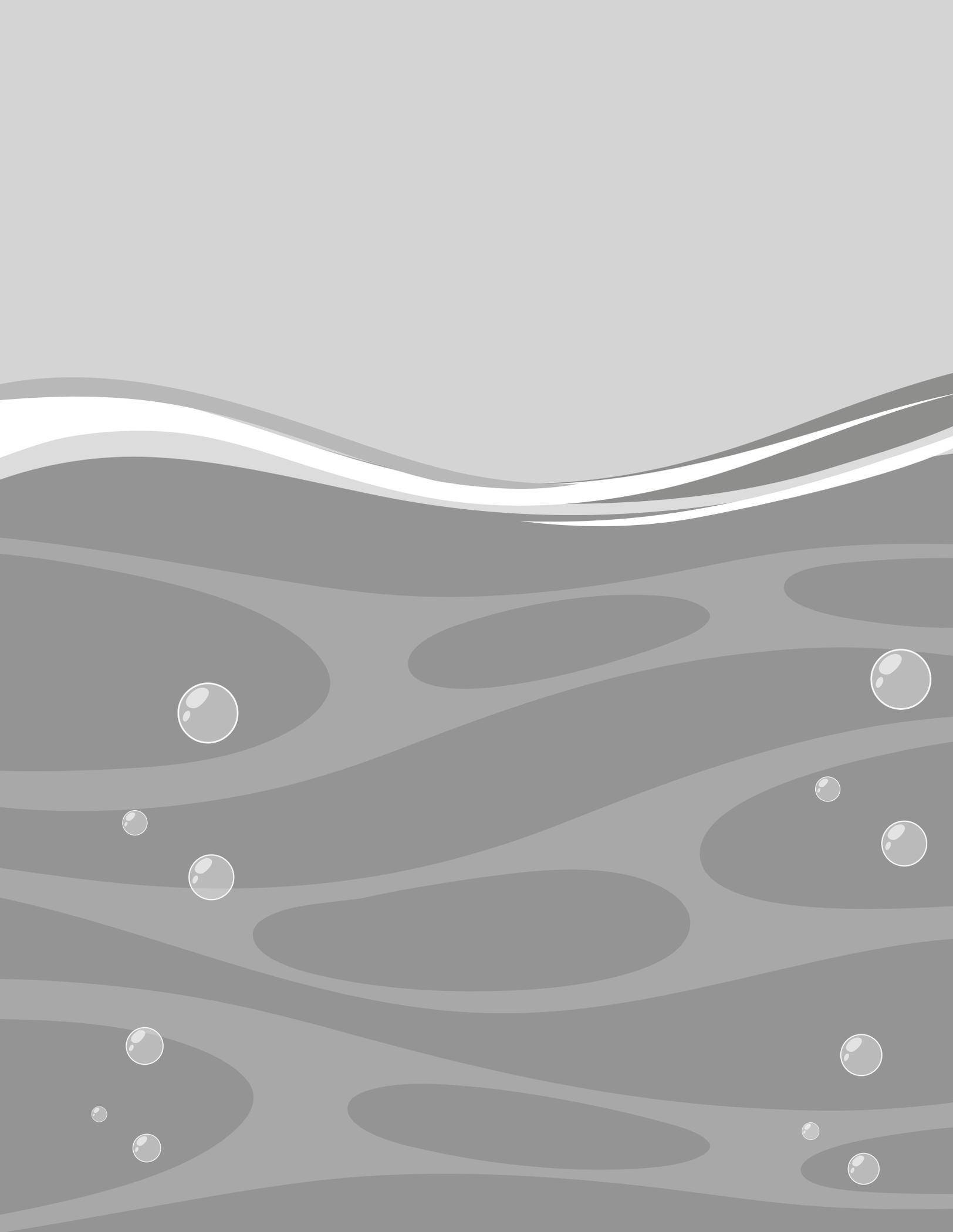
Although water scarcity may be real in certain regions of the world, this is not due, then, to natural issues unrelated to our

model of social organization. This model also has tools that allow its materialization, within which the law is central to grant or dispute legitimacy and legality, based on the different visions about water that are in conflict. We will now turn to that debate.



2. Water from the law: conflicting visions of regulation

Water cannot be replaced. It is essential to our lives and performs multiple functions. However, there are different conceptions on water that affect political decisions. In turn, these diverse visions are reflected in the way water is regulated from the legal point of view, which has an impact on the socio-environmental struggles that exist around water and on the way of conflicts generated by industries can be resolved, such as that of ultra-processed beverages and food that make intensive use of water.



Although water has an ecological component related to the ecosystems that make it possible, a cultural component related to the meanings we give to water and the relationships we establish with it, and a political component related to the distribution of water in society (Romero and Ulloa, 2018), each can be understood from different perspectives, reflecting tensions that are expressed in the legal field of water.

This field is just one of the areas in conflict, but a very important one if the legitimacy and legality that the law grants to the political decisions that are made on water are considered. Thus, in this text we will discuss three types of relevant visions to understand the conflicts over water raised by the industry of ultra-processed beverages and food; these three are the main types and those that allow us to explain the current state of this problem, in particular because they allow us to understand why these industries can access water, under what conditions they do it, and to whose detriment.

On the one hand, we have a vision of ***water as a resource***, from which other more specific, and in some cases contradictory, visions emerge, such as those that understand it as a public resource and those that understand it as a private resource. The role of law in both cases has been focused, from all public, environmental, and private law, on providing legal instruments to organize water resources, creating a series of rights over water that determine its ownership, use, and distribution.

On the other hand, we have a vision of ***water as a right***, from which other particular views also emerge, among which three stand out: the anthropocentric approach, which starts from recognizing water as a human right, the eco-centric approach, which advocates the protection of ecosystems and water, and the biocentric approach, which addresses the intrinsic relationship that exists between water as a living entity and as a subject of rights, and the social and cultural practices that are connected to water. The role of law in these cases has been aimed at building the contents, instruments, and legal mechanisms to make each of these views on water enforceable.

Finally, we have the vision of ***water as a common good***, which seeks to subvert the idea that water is a resource and a service, to understand it as part of the community, and whose purpose is that there be water for nature and for all living beings. Consequently, it seeks to transform the monopoly of water management that States and corporations have today to advocate for their community-based management. The role of law in these cases is related to the legal recognition of these ways of management to make them possible, and to promote a profound change in the way water is represented normatively.

We move on to discussing these visions, among which there are tensions and complementarities. They will serve as a framework of analysis for the diagnosis of the use of water by the industry of ultra-processed beverages and food and the conflicts it has caused, which will be done in the fourth section.

2.1 Water as a resource and rights *over* water

Under this conception, water is a resource considered strategic, either because it helped in the modernization of society and the State or because efficient management of it was required, which introduced it into the logic of the market, as noted in the first section. Both visions promote a representation of water that disconnects it from its vital sources, local knowledge, and socio-cultural meanings. This conception, in its two versions, promotes a compartmentalization of the environment and the territory, since it conceives water not as part of ecosystems or complex territories, but as something that can be divided, channeled, transported, accumulated, and—the subject matter of this text—bottled (Romero and Ulloa, 2018).

Legally, this vision of water has been preponderant. The free use of water based on the Roman model of *res communes* that conceived it as a good for the use of all was replaced—in the process of modernization of the State—by an ownership regime in which the role of law was to establish a normative body to address the rights over water. This change from common to private was based in turn on the economic paradigm of water, which gives a preponderant place to the economic side of water in legislation, conceiving it as a central input in the processes of production of goods and services (Martín and Bautista, 2015). According to ECLAC in one of its reports on water conflicts in Latin America and the Caribbean, this paradigm “framed the design of water legislation in many countries of the region during the nineteenth century and much of the twentieth century.” (Martín and Bautista, 2015, p. 22) The approach of such legislation was on dominance and use, both attributes of ownership.

Conceiving water as a property, legislation recognized private rights over water (*private waters*), or guaranteed permits for the use of water or exploitation of natural resources, understanding it as a property of the State and creating an administrative system of water rights (*public waters*) (Martín and Bautista, 2015). In both cases, someone owns the water—either private owners or the State—and in both cases the State has a role, either as guarantor of private rights or as manager of the rights of use, which in general is implemented through concessions, permits, or licenses. It is an administrative authorization that is usually temporary and that entails a consideration, normally a fee. These types of permits or authorizations are supervised by public entities created to regulate water and manage the exploitation rights granted over the water resource.

This approach of production and property rights that has governed water legislation advocates an individualistic logic of water. The center around which water legislation and policy revolve is the ‘subject of law,’ i.e., the owner or the concessionaire. It does not revolve, as it should, around water itself, much less around the relationships with water that we establish as a society beyond production. Therefore, the purpose of water legislation is usually to provide legal certainty to those who have rights over it. This is also recognized by ECLAC: “the assurance of these rights was, if not the main one, one of the most important objectives that the nineteenth-century water laws and the most important theoretical categories and constructions of that regime had in mind.” (Martín and Bautista, 2015, p. 23.)

Since the system of water concessions is usually the preponderant one (it is the system

that Colombia adopted, as will be seen in the third section), we tend to normalize it as a good form of water management, especially when compared to legal regimes that directly grant private property rights over the water resource. Indeed, the water concession system is often positioned as a means of achieving progress and social development, especially when concessions are granted to large industries. In this way, this legal approach to water is also legitimized in the discourse. However, the water concession system is problematic and a source of conflict. That is, law is not something independent of the power dynamics that exist around water. On the contrary, it plays a constitutive role in the generation, development, and outcome of conflicts over it, and hence it is paramount to analyze it from this perspective to pursue agendas of legal transformation. Here are some problems that the water concession system generally promotes:⁶

- *Concession generates dominance over water in practice:* although the concessionaire is not the ‘owner’ and is supervised by the State, it enjoys a very strong legal protection that, in practice, provides it with ownership effects on the water in concession. By granting it the use of the water flow in a specific amount and for a specific period, the State transfers its ownership of the water in concession, even if it is not legally recognized in this way.
- *The concession excludes other subjects that are not within the State–concessionaire–user relationship:* since the subjects in the concession are the concessionaire and the State, other subjects encounter obstacles for demanding consideration or legitimization in the administrative procedures that generate rights over water. If they do not resort to the fundamental rights approach, these other subjects hardly find a legal space to validate their voice.⁷ Thus, the system of concessionaires and users is very limited, since it allows the participation in the water management system of only those who have a formal legal title over water, leaving out customary uses of water and informal rights around water sources.
- *Legislations on concessions are disconnected from environmental, social, and fundamental rights legislation:* the laws regulating concessions are not harmoniously connected with environmental and fundamental water rights legislation. This, added to the dispersion and regulatory technicality that usually regulates water concessions, becomes a form of exclusion for the dispute of rights of those who are left out of the legal mechanisms of water allocation and other visions on the management of water sources. Although water concessions, which are based on the understanding of water as a natural resource, usually observe environmental considerations of conservation and care,

6 The following section will provide elements to understand the particularities of the water concession system in Colombia and the specific conflicts it causes; this will be done from specific cases of water hoarding by the industry of ultra-processed beverage and food. For now, this section seeks to locate the problems of origin caused by a legal system based on the concession of water as a mechanism for managing water sources.

7 ECLAC’s report recognizes that this is a regional problem: “One of the most relevant problems in the face of administrative inertia or inadequate decision-making is that in general the members of the public have problems proving their legitimacy in processes associated with water management” (Martín and Bautista, 2015, p. 34).

they are still far from new approaches and understandings of the environment.

- *The concession divides water systems:* the water concessions do not respond to the fluidity of the water cycle, which generates compartmentalized rights over 'sections' of the water sources, without attending to the impact that this can generate in another geographical place of the same body of water. This view can generate effects, for example, that the rights granted upstream of a river affect its middle and lower valleys, without this situation being foreseen by the concession right. As the valley is the unit that usually determines the supply of water, the allocation of rights over parts, without addressing those impacts resulting from the very nature of water, seems not to be the best option.
- *The concession does not address the unequal power relationship that exists between different water users:* although in principle domestic water use is usually given legal priority, many of the conflicts over water tend to be caused by its uses, since there is competition between domestic, agricultural, and industrial uses. The losers in this competition are usually communities and users in rural areas, who see their possibilities of making domestic and small-scale agricultural use of water diminished, due to the intensive use demanded by other productive sectors. Because of their power, and of the fact that concessions are 'technically' granted in a 'neutral' way, according to the request made by any subject regardless of whether

they have significant economic power or not, large corporations are the ones that manage to prioritize their concession rights, since States refuse to adopt differential measures to actually prioritize the domestic use of water.

This legal system of water that prioritizes it as a resource and as property resisted in part the processes of the neo-liberalization of nature. Although a legal reformulation emerged that let water management, through institutions and regulations, increasingly be under the control of the private sector, the system of private or public ownership of water sources has been maintained, with the difference that its corporate control has been deepened. Thus, beyond privatization, the arrival of neoliberalism caused a corporate governance of water that allows companies not only to manage the resource but to make political decisions on its management.

It is not a minor leap, for it is not only about the less prominent role of the State in water management as a public service, but in the space that is left for the 'efficient' stakeholders of the market to have a place in the decision-making spaces (Friends of the Earth, 2018). This view deepened the private and individualized way of managing water, and introduced it even more into the logic of the market, with the preponderance of the corporate sector over the State. It is a vision promoted by multilateral institutions such as the World Bank and the International Monetary Fund for whom the creation of private water markets is a rational and efficient response to water scarcity (Kay and Franco, 2012).⁸

8 As will be seen below, there are other approaches that advocate community control of water and call for a rights-based approach. This does not thwart, however, the agenda of social movements from promoting anti-privatisation agendas to return control of water to the States. Thus, the Alternative World Water Forum highlighted the tendency towards re-municipalisation, understood as the recovery of water services from private companies to public companies, as one of the demands around water. According to Friends of the Earth, in 2018 and in a span of 16 years after the impact of the privatisation and neoliberal model, 235 cities in 37 countries around the world had re-municipalised their water service (2018, p. 15).

This representation of water as property, whether public or private, and its growing corporatization, has been in dispute due to environmental visions in which principles such as prevention, precaution, or sustainability have played an important role in destabilizing this restrictive view of

water. In addition, the language of rights became part of the legal understanding of water—in particular with the recognition of the human right to water and sanitation—in order to undermine the paradigm of water rights that has predominated in water legislation.

2.2. Water as a human right

Unlike the previous approach, this vision does not start from claiming rights *over* water but from claiming the right *to* water. The paradigm on which this approach is based is that of rights and not necessarily that of the market, and it advocates a social dimension of water. That is, a dimension that responds to the impacts in the deepening of inequality produced by the management of water resources today, affecting the possibility that all people access water in quality conditions.

In line with the ever-dynamic understandings of rights, this view has also been overtaken by a broader view that recognizes the ecological dimension of water, and consequently the need to protect ecosystems and water sources regardless of their human use, as well as by another view that recognizes the biocultural dimension of water and, as a corollary, the deep socio-cultural relations that human groups establish with water.

However, the predominant vision so far, at least from the institutional point of view, is that which recognizes water as a human right, and this recognition was given late. The International Covenant on Economic,

Social and Cultural Rights of 1966 did not explicitly recognize water as a right, and it was not until 2010 that the United Nations General Assembly recognized it, through Resolution No. 64 of 2010, as a human right, introducing important variations to the legal debate of water that today expand the possibilities of dispute in national water regulatory frameworks.⁹

Earlier, in 2002, the Committee on Economic, Social and Cultural Rights had already adopted General Comment No. 15, which had recognized water as a human right because of its link to the right to an adequate standard of living and as a central condition for survival.¹⁰ It was an important document in international human rights law, as it charted the path for formal recognition by the General Assembly, outlined its contents, and established the obligations of States. For example, five key factors can be extracted from this document to understand how the right to water should be guaranteed,¹¹ which at the same time are elements of analysis to understand whether, as discussed in this document, industries such as UPF are a source of violation of the

9 Later, in Resolution N° 70/169 of February 17, 2015, the United Nations General Assembly recognized the human right to drinking water and the human right to sanitation as two different rights. It assumed that their characteristics made them deserve a differentiated treatment.

10 In particular, in that Comment, the CESCR considered water to be a human right protected by article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights.

11 As will be seen below, these factors have been embraced by the Colombian Constitutional Court as elements that constitute the fundamental right to water.

right to water (Committee on Economic, Social and Cultural Rights, 2003).

- *Availability*: Refers to the amount of water that must be available to each person, and that this provision must be continuous and sufficient for personal and household uses, which include consumption, sanitation, food preparation, and personal and domestic hygiene.
- *Quality*: Refers to the fact that the water necessary for personal and household uses must be clean, that is, it must not contain substances that may constitute a threat to human health. It must have an acceptable color, smell, and taste for each personal or household use.
- *Accessibility*: Refers to the fact that water facilities and services must be accessible to all both in physical and economic terms; the costs associated with water supply must be affordable.
- *Non-discrimination*: Refers to the prohibition of imposing restrictions affecting the availability, quality, and accessibility of water based on any reason of class, race, gender, sexual orientation, religious beliefs, political affiliations, etc. To that end, measures should be taken to eliminate *de facto* discrimination based on any of those grounds.
- *Access to information*: Refers to the right to request, receive, and disseminate information on everything related to water.

In addition to these elements that must be considered when addressing the right to water, the rights framework implies that States have obligations to fulfill towards the international community. In this aspect, this view on water differs from the previous view, which is based on national legislation that was developed in a disconnected way from the debates on human rights, since its interest was the management of a resource, not a right. Thus, each State designed its legal system replicating other legislations, but not because it felt 'compelled' to direct its legislation in one direction or another.

International human rights law, on the other hand, imposes obligations on States, including the *obligation to respect* which, regarding water, demands States to refrain from interfering directly or indirectly with the execution of the right to water and with any practice or activity that denies or restricts equal access to water. There is also an *obligation to protect* which, regarding water, demands that States prevent third parties (such as companies) from undermining the enjoyment of the right to water through the adoption of legislative or other measures. The latter obligation is reinforced by the extraterritorial obligation¹² of States to ensure that their citizens (including legal persons) do not violate the right to water in other States.

Despite the importance of this recognition, the human right to water has not lacked criticism. One part of it is that water as a human right stems from a restrictive view, since it can also be perceived as a resource, no longer aimed at satisfying market demand as in the previous view, but at satisfying the

12 Extraterritorial Obligations (ETOs) are those that States have for their acts or omissions when they affect the guarantee of human rights in other States, that is, outside their own territorial limits.

basic needs of human beings. Although this change of approach is not minor, as it is useful to oppose the laws that regulate the rights of ownership or use over water to the rights of access to water of the population, it is true that it is limited, since it does not consider a more holistic perspective of water and our relations with it.

But if the concern is guaranteeing access to water, this criticism may imply that, from the rights approach, any stakeholder could fulfill this task (this is what happens, for example, with the privatization of the public water service). In this way, it is argued that the human right to water is fully compatible with a mercantilist view of water resources, since both the commercial and the human rights approaches would be based on economic and political individualism (Romero and Ulloa, 2018). A 2011 report on water financing and the role of the private sector in the human right to water, written by the Special Rapporteur on the human rights to drinking water and sanitation, would support these criticisms by stating that:

Human rights law is neutral with respect to economic models and affirms that States are the primary duty bearers, and as such, are responsible for the effective contracting and regulation of private stakeholders. (United Nations General Assembly, 2011, p. 15)

Although it is true that human rights have not prevented the advancement of the development model, the same Office of the Special Rapporteur for the human rights to drinking water and sanitation of the United Nations—headed by a person different from the one who wrote the aforementioned report—presented in 2019 a report on the impacts of megaprojects on the right to water. It is an important report because an international body gives an account of the impacts that large-scale projects

have on water. Although traditionally the projects of the extractive or infrastructure industries are conceived as ‘megaprojects,’ the Rapporteur’s observations are applicable to UPF industries, due to the intensive use of water they generate.

The Rapporteur presents the following findings: (i) megaprojects affect the availability of water, for although priority must be given to its domestic use, the owner companies impose their needs; additionally, in general, when granting a permit or license, the impact that a megaproject could have on the human rights to water and sanitation is not usually evaluated, and the companies are the ones that produce the information on these impacts, without reflecting a human rights perspective; (ii) megaprojects compromise the right to information with regard to water, as many of them are based on difficult-to-understand technical information and confidentiality barriers are often imposed to access it, all of which limit the participation rights of affected communities; (iii) licenses and permits for megaprojects are generally disclosed when communities can no longer influence the decisions, as they are not allowed to participate in tendering processes that have an impact on water; (iv) States do not have regulatory frameworks that impose obligations on the impact of megaprojects on the human right to water and sanitation, which is different from the environmental impact of megaprojects; in this regard, it is essential that environmental impact assessments examine the effects produced on the environment, affecting the drinking water of the communities involved; (v) it is necessary that States establish effective judicial remedies to allow communities to denounce violations of the right to water (and other rights) caused by megaprojects, and to obtain reparations (United Nations General Assembly, 2019).

Due to this variety of negative impacts that megaprojects have on the right to water, in that same report the Rapporteur stated that “it is necessary to evaluate the viability and necessity of such projects in relation to the human rights framework” (United Nations General Assembly, 2019, p. 26). In fact, it recognizes that megaprojects are a source of violations of the right to water:

Such projects are promoted through a narrative of contributing towards the enhancement of the livelihood of the people, but they often impede the enjoyment of the human rights to water and sanitation. (...) In the words of an anonymous commentator, “megaprojects are projects that often produce death instead of promoting life”. (United Nations General Assembly, 2019, p. 3)

In conclusion, it is true that the human rights perspective with respect to water is limited by its rationality centered on the individual (anthropocentric view). It is also true that this approach continues to leave water management to the State, since it is the one that citizens must approach to complain about a violation of the human right to

water, either because the management is in their hands or because it is in the hands of private agents (State-centric vision). But it is also true that the rights approach, in any of its derivations, has contributed to pressure for normative, political, and institutional changes that were not usually present in the debates on water. In fact, water legislation, environmental legislation, public health legislation, among others, often seek to protect other types of goods (e.g., the environment, water sources, health) but are not intended to provide guarantees to the population so that they can access clean and quality water under conditions of equality and can relate harmoniously to it.

Therefore, the important thing is to appropriate the meaning of the right to water to dispute these restrictive views about it, so that it is not understood as a mere right of access for human beings; at the same time, it must generate a tendency to take care of the water cycle and territories, and to be respectful of the autonomy of communities to decide on water. This is the approach that will be discussed below.

2.3. Water as a common good

Social movements have advocated a view of water as a common good, which is opposed to understanding it as a resource or mercantile object. It is a ‘global movement for water justice’ that includes urban and rural communities, community water management organizations, and social movement platforms fighting for the protection of water as a common good (Barlow, 2008). The demand for water as a common good involves taking it out of the logic of the State and the market, which has been prevailing in its management. The common goods have been described as:

The vast realm that lies outside the economic market and the institutionality of the State, and that is typically used by all of us without paying any canon or price. The atmosphere and the oceans, the languages and the culture, the reserves of knowledge and wisdom, the informal support systems of the community, the peace and tranquility we want, the generic building blocks of life—they are all aspects of the common areas. (Rowe, quoted in Barlow, 2008, p. 3)

This position was affirmed by social movements at the 2012 Alternative World

Water Forum, where it was pointed out that “water is a common good of humanity, vital for all living beings, and not a commodity.”¹³ Therefore, unlike the approach to water based on the human rights framework, this view aims to question the dominant model and identifies the commodification and hoarding of water as the central problem to be faced, which is why the representation of water as a common good is based on the idea of justice that a conception of common goods should correct: considering the inequalities of today’s world (Kay and Franco, 2012).

Understanding water as a common good, organizations and movements that demand water justice propose its collective and community management, for at least three reasons. In the first place, because it is necessary to recognize the intrinsic vitality of nature and water, understanding the latter as a non-human entity with agency (Romero and Ulloa, 2018). This is how they advocate the understanding of water as a fundamental (*non-human*) right starting from the right of water to flow freely, to return to watersheds, and to maintain the integrity of ecosystems. In summary, it is a right that does not objectify water according to human needs, but that tends to its care as something relevant in itself, and that is in harmony with human practices.

Secondly, because giving legitimacy to the wisdom that communities have about water is also unavoidable, as well as respecting the cultural dimensions and social practices associated with water, recognizing the ecological rationality that local communities

have regarding water, which translates into knowledge that must be considered for the reproduction of social life (Romero and Ulloa, 2018). None of this happens when water is in the hands of the State and the private sector.

Thirdly, this collective management of water is advocated because it is based on the idea that its conservation has a localized, non-abstract impact that concerns the populations living around the bodies of water, which is why it is essential that water management be community-based and not national (Romero and Ulloa, 2018).

Community-based water management does not start, then, from an ‘esoteric’ or unrealizable approach; on the contrary, by tending towards a local, more collective water management, its hoarding and predation can be prevented, considering that achieving this objective is necessary for our and the planet’s survival, since the Earth and humans depend on the good state of water and the health of ecosystems to exist; this will never be achieved if we continue to promote water management by States or corporations.

For all the above, unlike the first view that would answer to the question of *who owns the water* that it is either the States or the private sector, this approach would answer that no one owns the water, that the water belongs to the Earth and to all the living species of the planet. This vision does not accept that ownership of water resides in the State, since in the current context State interests do not coincide with public interests

13 The objective of the Alternative World Water Forum (AWWF) was to “build an alternative to the VI World Water Forum (WWF) organized by the World Water Council, the voice of transnational corporations, and the World Bank, which seek to appropriate global water governance.” Information available at: <http://www.fame2012.org/es/acerca-de/mision/>. It was promoted by a group of organizations that have promoted proposals and have developed actions to demand community water management.

and even less with community interests which are always more concrete and less abstract. Thus, common goods have, as a characteristic, that they have always been there—hence they differ from public goods, which have as a characteristic that they are part of a social construction and a State and administrative management. Hence the importance for this view of water to tend to a reinterpretation of the public and promote community organizations of water management. By 2018, across Latin America, these organizations amounted to more than eighty thousand, guaranteeing

water to nearly 70 million people across the region (Friends of the Earth, 2018).

The role of law from this point of view is to claim its own legal framework to protect these ‘community water economies’ and their local management, as well as to guarantee that the idea that water is a common good be the purpose of regulations, since the fact that no one owns water implies preserving this common good through the law, but also, and above all, protecting community and daily practices around water.

3. Water in Colombia: context for understanding the conflicts over water caused by the industries of ultra- processed beverages and food

Colombia has considerable water wealth. This abundance is expressed in a complex network of rivers, lagoons, lakes, wetlands, moors, snow-capped mountains, wet jungles, groundwater, and abundant rainfall that acts as a regulator of the water cycle. In turn, this water network has been divided into five hydrographic areas: the Magdalena-Cauca area, the Caribbean area, the Pacific area, the Orinoco area, and the Amazonas area (Martínez, 2016). The country has a varied rainfall regime, and some places in the Pacific have precipitation values that are among the highest in the world. Similarly, Colombia has a water flow three times greater than the average for South America and six times greater than the average worldwide (ECLAC, 2000, p. 7). Perhaps this abundance is one of the factors that explains why it has been difficult to generate a collective awareness about the conflicts that exist over water in the country, as well as about the scenarios of scarcity that we face, since they are perceived as unreal in this context of abundance, or as natural phenomena instead of as political phenomena.



But the problem is real. In its different National Studies on Water (ENA, from their Spanish acronym),¹⁴ the Institute of Hydrology, Meteorology and Environmental Studies (Ideam, from its Spanish acronym)¹⁵ has been warning about the critical state of water in Colombia. Since the nineties, Ideam pointed out that “worrying symptoms” were already evident about the country’s water supply—despite not having the critical indices that other countries in the world had—and called on the authorities to adopt policies to manage water in an adequate way (cited in ECLAC, 2000, p. 17). Years later, in its 2014 study, Ideam presented a water balance with a projection from 2015 to 2025, determining the future state of the water resource; they concluded that we would face a worrying panorama:

Many of the water systems that currently supply the Colombian population show a high vulnerability in maintaining their water availability. According to general estimates for average hydrological conditions, about 50% of the population of municipal urban areas is exposed to water supply problems due to the conditions of availability, regulation, and pressure that exist on the water systems that serve them. This situation becomes even more critical under the conditions of a dry year, a period during which this figure can reach up to 80%. (Ideam, 2015, p. 38)

In the same sense, Ideam identified in its forecasts that, although at present a large part of the municipalities have an adequate water supply,

it is considered that in the future this picture could change considerably and rapidly, especially in those areas that are most

densely populated. In the coming years, not only will the demand for water for human and economic uses continue to increase, but (and this is the most serious issue) the usable supply of the resource may be reduced should current trends of deforestation and the almost total absence of wastewater treatment continue. (Ideam, 2015, p. 27)

As a whole, these figures warn about the existence of a problem that requires multiple solutions because of its several edges. One of them, water demand, is particularly relevant to this document; it consists of the sum of the volume of water used for different purposes such as domestic, utilities, agricultural, livestock, recreational, industrial, energy, infrastructure, etc. Knowing the water demand of the country is relevant for understanding what water is used in and the pressures exerted on water sources and on the availability of surface and groundwater. All this provides indicators on its vulnerability (Ideam, 2015, p. 156).

According to the 2018 ENA, the country’s water demand was 37,308 million cubic meters, an increase of 5 % compared to the demand reported in the 2014 ENA (ENA, 2018, p. 168). Of this total, the agricultural sector continued to be preponderant with 43 %, followed by the energy sector with 24 %, the livestock sector with 8 %, the fish sector with 8 %, the domestic sector with 7 %, the industrial sector with 2.8 %, the mining sector with 1.7 %, the hydrocarbons sector with 1.5 %, the services sector with 1.5 %, and the construction sector with approximately 1.1 % (Ideam, 2019, p. 171).

However, as relevant as it is to understand the distribution of water use and which

14 The National Studies on Water (ENA) are carried out as part of the systematic and constant monitoring made by Ideam, and they aim to provide information and knowledge on the supply, demand, quality, and water footprint of different activities. They are presented every four years and the first was held in 1998.

15 The Ideam is the highest hydrological authority in Colombia.

sectors demand more water than others, these figures do not reveal sufficient information regarding the water demanded by the industrial sector of ultra-processed beverages and food, because in fact it is not even one of the subsectors analyzed within the industrial sector.

For example, within the agricultural sector, in its last two reports, Ideam has taken into account 41 crops between transient and permanent in planting, harvesting, and post-harvest; in the livestock sector, it has taken into account the bovine, pig, poultry, and aquaculture subsectors; within the services sector, it has taken into account trade, institutions, and offices; within domestic use, it has taken into account urban and rural use; and in the industrial sector, it has taken into account large, medium, and small industries. The 2018 report paid special attention to the manufacturing industry, while in its ENA Ideam usually carries out analyses of the mining, hydrocarbon, and energy industries

independently. Thus, although the UPF must be within the 'industry,' it has not deserved a particular focus, which makes it difficult to understand its overall impact.

In summary, we have an overall picture of scarcity. We have an identification, also general, of the uses of water demanded by certain sectors, but we are not certain about the magnitude of water required by certain industries such as that of ultra-processed beverages and food, and even less do we have certainty about the territorial impact that this represents and that translates into conflicts over water that cause inequalities of a different order. This sector is overshadowed by others such as mining, hydrocarbons, energy, and even manufacturing. Therefore, after presenting the legal landscape of water in Colombia, we will present a case study to understand what the water conflicts associated with the industry of ultra-processed beverages and food translate into.

3.1 In Colombia, water is a public good in concession

Water is considered a public good and a natural resource in Colombia.¹⁶ This is contemplated by the National Code of Renewable Natural Resources when establishing that “waters are in the public domain, inalienable and imprescriptible.”¹⁷ Consequently, water is administered by the

State, which assigns particular rights over water through the concession mechanism, subject to the availability of the resource and the needs of the objective for which the water is destined.¹⁸ In theory, concessions only confer the exploitation of water, that is, the faculty to use it,¹⁹ all of which is subject to the

16 Those waters that sprout naturally within a private property and that disappear by infiltration or evaporation within the same property are exceptionally considered waters of private property (art. 6, Decree 1541 of 1978).

17 National Code of Natural Resources, art. 80. Likewise, article 5 of Decree 1541 of 1978 establishes as waters for public use rivers and all waters that run through natural channels, permanently or not; waters running through artificial channels that have been derived from a natural channel; lakes, lagoons, marshes, and swamps; water in the atmosphere; and rainwater.

18 Like surface water, groundwater, “hidden beneath the surface of the ground or seabed that sprout naturally” enjoys protection and its use must be authorized by concession, although the owner, possessor or holder of a land will have preferential right in the use of surface waters that exist within it. National Code of Natural Resources, arts. 149 to 151.

19 National Code of Natural Resources, art. 89; Decree 1541 of 1978, arts. 28 and 44.

payment of remuneration fees consisting of a payment made to the State. This payment is calculated based on the use of each cubic meter collected from a water source.²⁰ The concession of water is subject to special conditions, since in principle it is intended to “defend the water,” achieve its convenient use, and fulfill the purpose of public utility and social interest inherent in its use.²¹

For granting of concessions, the law establishes a priority of uses that should be respected. In the first place is water for human, collective, or community consumption, whether urban or rural, then water for use for individual domestic needs, water for community and individual agricultural uses, including aquaculture and fisheries, water for hydroelectric power generation, water for industrial and manufacturing uses, water for mining uses, and water for community and individual recreational uses.²² In accordance with this prioritization, the law provides special protection for water intended for human domestic consumption and food production.²³

Being water a public good, the State must assume a series of obligations aimed at ensuring its protection. Among them is to guarantee the quality of water for human consumption and for other activities in which its use is necessary²⁴ and to exercise control over natural and legal persons, public or private, so that they comply with the conditions under which the use of water is

granted. For this function, the law delegated to the Regional Autonomous Corporations (CAR, from the Spanish acronym) the function of granting concessions for the use of surface and groundwater and exercising functions of evaluation, control, and environmental monitoring of water uses.²⁵

This mechanism for assigning water rights has been the subject of several criticisms, which are related to the very figure of the concession, to the implementation and operation of the concessions, and to questions about the role of the State in monitoring water concessions.

The first criticisms point out that concessions are not a good mechanism for assigning rights over water because they generate inequality in its distribution. Based on a study of water concessions granted in Colombia, Roa and Brown (2015) concluded that water is unevenly distributed in the country. This would be fostered, to a large extent, by the mechanism of water allocation through concessions, which reflects that a large part of the flow of water under concession is in the hands of few users. Thus, of the 27876 concessions that were analyzed in this study, 1.1% have 6.6% of the volume of water under concession.

In fact, the study is alarming because it indicates that the Gini coefficient²⁶ is higher for the distribution of water than for the distribution of land in Colombia, since the

20 Law 99 of 1993, articles 42 and 43; Decree 155 of 2004.

21 National Code of Natural Resources, art. 92.

22 Decree 1541 of 1978, art. 41.

23 National Code of Natural Resources, art. 137.

24 National Code of Natural Resources, art. 134.

25 Law 99 of 1993, art. 31.

26 The Gini coefficient is a measure of inequality used to measure income inequality within a country, but it is also used to measure any form of unequal distribution. The scale goes from 0 to 1, where 0 is minimum inequality and 1 is maximum inequality.

first was 0.90 while that of the land (already alarming) corresponded to 0.88. This allows us to conclude that water concessions are an exclusion mechanism for small users, who either access low-volume concessions always in competition with large users or do not access any concession and are informal water users with community rights that, not being recognized, are outside the scope of legal protection (Roa and Brown, 2015).

The second group of criticisms aims to show the problems that arise in the execution of concessions and the distance that exists between what the law establishes and what reality indicates. A criticism in this regard points out that, in practice, there is no prioritization of water uses, which is due to several factors. On the one hand, although the law establishes some prioritizations, water is not distributed equitably as several of the uses contemplated in the law compete for access to the same source, especially when one of the competing activities demands high amounts of water (as does the industry of ultra-processed beverages and food) while the other demands small quantities.

Ultimately, these criticisms point out that natural or legal persons with great economic power 'win' the allocation of rights over water precisely because they have greater technical capacity to request the concession, because they have greater capacity to assert the rights that derive from the concession at the time of a dispute, and because they are not subject to the same strict control that determines whether they use more water than allowed. Thus, they are granted the allocation of water, leaving small users relegated and without enough water for their activities. It is also relevant to pay attention to the number of procedures required to obtain a water concession, which vary depending on each CAR in the country and, in general,

are easily accessible to companies with great economic power and technical knowledge, while they are extremely difficult for small users (Corrales, 2015). Thus, it is estimated that 70 % of small users do not have a water concession due to the significant number of requirements (Roa and Brown, 2015). Within this group of criticisms are also those that point out the little transparency that exists about water concessions, the lack of information, and the scarce participation to ensure that small users make relevant decisions about water (Corrales, 2015).

To close, there are criticisms that aim to question the State and its regulatory function. On the one hand, it is argued that there is too much regulatory dispersion about water and that the CARs usually apply each norm at their discretion; for example, and taking up a previous criticism, detractors point out that it is the CARs that grant concession requests by 'order of arrival' or by 'order of application,' regardless of the use for which it is demanded, i.e. without attending to the prioritization criteria of uses and without considering the greater importance that one use could have over another (domestic over industrial, for example) or the impact that the granting of a concession that demands a high volume of water could have on a concession to small users (Corrales, 2015).

On the other hand, it is pointed out that the CAR do not have procedures to resolve socio-environmental conflicts because their work is not assumed from that perspective. This prevents the State from providing effective solutions to the distributive conflicts that arise over water. In addition, the CARs have low availability of resources and an average level of institutional capacity, all of which generates weakness in the control function they should carry out. In an audit carried out by the Comptroller's Office to

the CARs in 2015, weaknesses were detected in several corporations in their tasks of follow-up and monitoring of environmental licenses, particularly in the case of water and discharge permits (Office of the Comptroller General of the Republic, 2016).

The approach of rights over water has made it possible to address some of the problems caused by rights over water. How the view of water as a right has entered the Colombian legal system will be explained below.

3.2 From water as a fundamental right to rivers as subject of rights

There is no express recognition of the existence of the right to water in the Colombian political constitution. However, as of today there is recognition in our regulatory system due to the developments that the Constitutional Court has made in this regard. Therefore, at present it can be said that water is a fundamental right in the country. To get to this point, though, and even to broaden the regulatory views on water, the Court has gone through different stages on the understanding of water.

A first stage or view of water, initiated since the early years of the Constitutional Court, and as happened with other social, economic, cultural, and environmental rights in relation to the theory of connection. According to this theory, a right acquires the character of fundamental only if, when violated, another right that is already recognised as fundamental is threatened: that is, if there is a connection between water and another right established in the political charter.²⁷ It is a restrictive view, because it does not understand the importance of water in itself, and because it allows its allegation in the judicial stands only upon its threatening or violation.

A second stage or vision on water, emerged when the Court admitted the autonomy of the right to water under the assumption that it is indispensable to guarantee other rights.²⁸ The Court recognised that water has a subjective scope, which implies that the right can be claimed before judicial instances in case of violation, both individually and collectively, but, in addition, it acknowledged that the State has obligations of respect and guarantee that allow not only the activation of judicial mechanisms in breaching scenarios, but the demand for public policies aimed at guaranteeing the active enjoyment of the right.²⁹ In this sense, the Court adopted the criteria of General Comment No. 15 of the United Nations CESCR already exposed, determining that the availability, accessibility, quality, and non-discrimination in its distribution are minimum guarantees of the right to water.

For the purposes of this document, we would like to highlight the description on non-discrimination:

As for the guarantee of non-discrimination in distribution, it is a question of protecting

27 This perspective can be seen in the following judgments of the Constitutional Court: T-578 of 1992, M.P. Alejandro Martínez Caballero; T-232 of 1993, M.P. Alejandro Martínez Caballero; T-523 of 1994, M.P. Alejandro Martínez Caballero; T-179 of 2013, M.P. Gabriel Eduardo Mendoza, among others.

28 See, in this regard, Constitutional Court, judgments T-270 of 2007, M.P. Jaime Araújo Rentería; T-279 of 2011, M.P. Luis Ernesto Vargas; T-348 of 2013, M.P. Luis Ernesto Vargas Silva; T-577 of 2019, M.P. Diana Fajardo Rivera.

29 Constitutional Court, judgment T-733 of 2015, María Victoria Calle.

the access of all people to sufficient quantities of water, without the interference of unacceptable differential criteria for its supply. Accordingly, the Court has said that no source of water can be used in such a way it can be available only to some and leave others without provision. (Constitutional Court, 2013)³⁰

In this same sense, the Court has ruled on subjects who are particularly discriminated, such as rural inhabitants, and has established that “people who live in the rural sector and have limited economic resources have the right to be specially protected with ensured access to drinking water.”³¹

As a fundamental right and for human consumption, the Court has established that the right to water must be guaranteed through the provision of a public utility, and that as such it has an aspect of provision and its guarantee is progressive³². For this reason, the Court has paid attention to the claims of the right to water regarding the provision of the public water service³³, either because this service is claimed for human consumption or because the absence of its provision affects rights to health and dignity; it has also recognized that water must be protected when the provision of the service is intermittent or sporadic, when water quality is poor, or when there are situations of discrimination in access to water.³⁴

The understanding of water as a fundamental right when it is intended for human consumption, though preponderant until

now, was complemented by a broader view of water from the T-622 judgment of 2016. In this ruling, the Court issued the highest constitutional relevance to the protection of rivers as living entities beyond their value to human life, related to the integrity of ecosystems. The Court reached this conclusion after analysing the pollution conditions of the Atrato River, located in the department of Chocó, taking as a reference the Ecological Constitution (the provisions of the political charter dedicated to the protection of the environment) and the Cultural Constitution (the provisions of the political charter dedicated to the protection of ethnic communities).

In this judgment, the Court argued that nature has a higher interest in our Constitution, and advocated the overcoming of the anthropocentric view to assume biocentric and eco-centric approaches, so that “nature is not conceived only as the environment and surrounding of human beings, but also as a subject with its own rights which must then be protected and guaranteed.”³⁵ The Court then indicated that one of the greatest challenges of current constitutionalism in environmental matters is to safeguard nature and the cultures and ways of life associated with it, not in terms of their usefulness for the human being but because they are “individualizable subjects” that require protection in themselves. Hence, in this judgment, the Court declared that the Atrato River is subject to rights that imply its protection, conservation, maintenance, and restoration.

30 See, in this regard, Constitutional Court, judgments T-348 2013 M.P. Luis Ernesto Vargas Silva; T-244 of 1994, M.P. Hernando Herrera.

31 Constitutional Court, judgment T-733 of 2015, María Victoria Calle.

32 Ibid.

33 See, in this regard, Constitutional Court, judgments T-418 of 2010, M.P. T- 279 2011.

34 Constitutional Court, judgment T-418 of 2010, M.P. María Victoria Calle Correa.

35 Constitutional Court, judgment T 622 of 2016, M.P. Jaime Araújo Rentería.

3.3 Water as a common good in Colombia

Community aqueducts are the expression of the understanding of water as a common good in Colombia. These are organizations that, advocating for community water management, guarantee access to water to mainly rural populations and to protect water sources. They are based on democratic and participatory models of self-management that make water care a community and complex issue by being part of territorial planning and the care of the natural environment. By 2018, the Superintendency of Household Public Services stated that there were 15,000 community aqueducts in Colombia (Censat Agua Viva, 2018).

Today, community aqueducts are organized in the National Network of Community Aqueducts of Colombia, which originated in part from the mobilization “referendum for water,” a process that took place between 2005 and 2010 and that articulated local, regional, and national proposals on water care, with the aim of constitutionalizing the right to water and recognizing the right to its community self-management.³⁶ The referendum process also aimed to generate spaces for articulation, advocacy, and organizational strengthening of community aqueducts and other organizations that worked for water as a common good (Martínez, 2016).

Despite the service they provide and the important shift in approach they propose for

water management, community aqueducts face multiple problems, within which there are legal requirements that prevent them from operating properly; just like the large private companies providing public services, they are governed by Law 142 of 1994 (Public Services Law), requiring them to comply with the same rules, which has facilitated the expansion of the provision of public services by private companies, limiting the participation of community organizations to those places where the private sector is not interested in reaching because the water supply is not profitable.

Moreover, they encounter an obstacle related to the conception, quite settled, according to which community-based economies—among which is the community water economy—are backward because they are based on local values and because they are not inserted in the logics of the market (Roa, Brown and Roa, 2015a). Indeed, these organizations question the commodification of water and advocate an approach as a common good; they have managed to mobilize demands for water justice, for the defence of water and for its recognition as a fundamental right.

Considering this national panorama, we will argue using a case study, the conflicts over water caused by the industries of ultra-processed beverages and food in the country.

36 Indeed, this referendum advocated the recognition of water as a fundamental right through demanding the guarantee of a free vital minimum subsidized by the State, the management of water exclusively in the hands of the State and organized communities, and the special protection of the essential ecosystems that regulate the hydrological cycle (Martínez, 2016).



4. The conflicts over water caused by the industry of ultra-processed beverages and food: Postobón case³⁷

Conflicts over water related to the industry of ultra-processed beverages and food have been veiled during this text. Though it is known for its intensive consumption of water—because it is the essential raw material for its business—we do not have real understanding about the impact that this industry is having in the ecosystems that regulate the water cycle and in our right to water. As has also been mentioned, the existing figures are not enough to understand the problem, so we hope that, from the case study of one of the most known companies in the beverage industry in Colombia (Postobón), we can better illustrate how these companies operate and what conflicts over water underlie this millionaire industry. Based on general and public data of the company and the problems faced by two rural communities in whose territories Postobón operates, we will offer a qualitative understanding of the issue and some elements of analysis that allow us to further explore this problem, which is relegated from the socio-environmental agendas of the country.



4.1 Postobón: drink your life³⁸... hoarding water

Postobón is one of the leading companies in the beverage industry in Colombia, with 117 years of existence. According to the DANE (National Administrative Department of Statistics), this industry has a weight of 5.5 % in the gross production of the country, concentrates 2.6 % of jobs and generates 9.9 % of industrial value added. The distribution network of this company reaches 90 % of the national territory and has 71 work centres, of which 19 are production plants and the rest are distribution centres. It also participates in foreign markets in 26 countries, due to direct exports and production agreements (Postobón, 2020). They have different products and brands available in the market. In fact, it has positioned brands with which most Colombians are familiar because they flood all the shops and supermarkets in urban and rural areas of the country.³⁹

This company has positioned products such as bottled water with the Agua Cristal brand, the company's leader in that category; the Breña brand, leader in sodas; or the H2OH! brand, leader in flavoured waters. Likewise, among the so-called 'drinks with fruit,' it has positioned the Hit and Tutti Frutti brands; within the category of ready-to-drink teas it has positioned the Mr. Tea drink and distributes Lipton Ice Tea; within the category of hydrating drinks it has positioned the Gatorade and Squash brands; among the energy drinks they have the Speed Max brand and distribute Red Bull, world-leading brand in that category. Finally, and not less

importantly, within the soft drinks it has such well-known and representative brands for that market as Pepsi and the nationals Colombiana, Uva Postobón, Naranja Postobón, Manzana Postobón, among others (Postobón, 2018).

Postobón even sought to consolidate a 'multi-category company' as part of its corporate strategy, which involved expanding into the beer business. This business was managed from the Central Cervecería de Colombia in a strategic alliance generated with CCU of Chile (Postobón, 2018). The company expected to start boosting its revenues with this new beverage market in 2019 when the beer production plant that was built in the municipality of Sesquilé (Cundinamarca) started operations. With this, they have formed a portfolio of beers with brands such as Heineken, Miller, and the national brand Andina, among others.

With its business campaign, "Drink your life!", Postobón reflects very well the hoarding of the beverage market to which it aims and its intention to fill every need to ingest liquids that we may have, both with essential drinks for life, such as water, and with others that are totally dispensable such as soft drinks and fruit-flavoured drinks. As the company itself puts it: "we are insistent: we want Colombia to drink [or seize] life" (Postobón, 2018). At what cost do we drink those beverages? Where does the water with which Postobón insists that we take⁴⁰ its extensive portfolio

38 Originally "Tómate la vida," this is an untranslatable slogan of Postobón using the Spanish verb "tomar," which in this context can mean both "drink" and "seize." (Translator's Note).

39 The company asserts that it is ranked No. 16 on a scale developed by Monitor Mercor among the companies with the best reputation in the country (Postobón, 2020).

40 This is yet another word game with the multiple meanings of the verb "tomar" in Spanish (T. N.).

of drinks come from? Who is ceasing to drink water, vital for their life, so that we can buy

it bottled and in different categories and presentations?



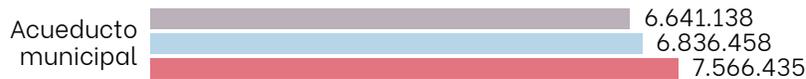
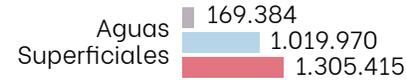
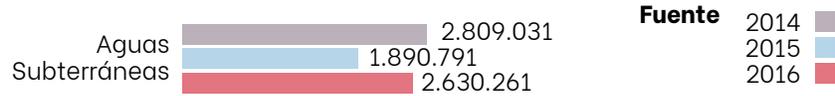
Source: image taken from the Postobón sustainability report (2018).

According to a report published in 2017 by the newspaper *La República*, Postobón used 11.4 million cubic meters of water in the 21 production plants nationwide that it had at that time. This water came from different sources: groundwater, surface water and municipal aqueducts. According to this report, as for 2016, the rate of water consumption per litre of beverage was 3.21 litres, with an increase compared to 2015, when 3.09 litres of water were consumed on average per litre of beverage produced. The same newspaper states that in 2016 the average number of discharges of the company was 2.16 litres of water per litre of drink (*La República*, 2017).

The main source of water used by Postobón for its production process are the municipal aqueducts: in 2016, 7.5 million cubic metres of water were consumed from these sources, representing an increase compared to 2015, when 6.8 cubic metres were consumed. Regarding groundwater, the second source of water collection, in 2016 Postobón had a water consumption of 2.6 million cubic meters, with an increase compared to 2015, when 1.8 cubic metres were consumed. In 2016, Postobón used 1.3 Cubic metres of surface water, 300 thousand more than in 2015 (*La República*).⁴¹

41 This same report, which took two other companies as a reference (Coca Cola Femsa and Bavaria), says that Postobón was the one that used water the most. Thus, Coca-Cola, which has seven production plants nationwide, has a consumption of 1.72 litres of water per litre of beverage produced, well below the 3.21 litres of Postobón. Meanwhile, Bavaria's total water consumption for 2015 was 8.3 million cubic meters, mostly from surface water, which represents a lower figure than that of Postobón (*La República*, 2017).

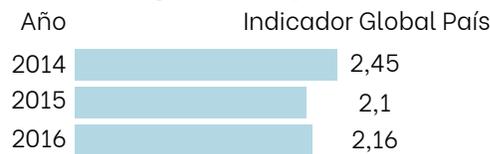
Consumo total de agua en metros cúbicos
(valor consolidado y discriminado)



Índice de consumo de agua por Lt de bebida



Índice de Lt agua vertida por Lt de bebida



Fuente: Postobón, Bavaria, Femsa

Gráfico: LA/ GR



Source: La República (2017).

In 2020 these figures varied. Postobón’s sources of water supply continued to be groundwater, surface water and municipal aqueducts. During that year, the total water consumption by the company, from these three sources, was 5 208 109 cubic meters of water, of which 1 615 657 corresponded to groundwater, 404 213 to surface water and 3 188 239 to municipal aqueducts, the latter being its main source of collection (Postobón, 2020, p. 57). To understand this expenditure, which indeed decreased with respect to that reported in 2017, it can be indicated that the global figure of water use of Postobón during 2020 is equivalent to the

water with which 1 543 Olympic swimming pools would be filled. They continue to use water in large proportions.

But according to the company’s sustainability reports, water consumption fell in 2020 to 2.26 litres of water per litre of beverage. In fact, they are insistent, like most companies in the sector, in ensuring that their sustainability strategy contemplates the reduction of water consumption in their operations. In particular, they insist on reducing the water consumed for each litre of beverage produced. They call it an ‘eco-efficiency’ approach that (in the words of the company itself) seeks the

rational use of raw materials “so that [the business] operates profitably.” (Postobón, 2018, p. 73)

In this sense, the company adhered to the CEO Water Mandate⁴² in 2014, designing a strategy to ‘optimize’ water

use, preserve watersheds, and provide water to communities neighbouring its operations. According to figures provided by the company, this has been the variation in terms of water use, based on the ‘water used per litre produced’ approach:

| | 2016 | 2017 | 2018 | 2019 | 2020 |
|--|-----------------|----------------|------------------|----------------|----------------|
| Index of water consumption per liter of beverage produced. | 3, 21 Liters | 3,11 Liters | 2, 58, Liters | 2,31 Liters | 2,26 Liters |

Source: own elaboration based on the information provided in the company’s sustainability reports in the years 2018, 2019 and 2020.

Although Postobón reports having undertaken some actions to “achieve universal and equitable access to drinking water for the neighbouring communities [from its operations],” the truth is that the economic and efficiency paradigm is the one that reigns in the business. In this way, although they can report a reduction in the use of water, this does not mean a reduction in the conflicts over water generated with the communities, because, as seen in previous sections, this approach avoids understanding water from a broad and integral perspective of the territories and omits to understand it as a fundamental right. And it could not be otherwise, because its business is to sell water, be it drinking water that we should be able to access through the tap without distrusting its quality, or water in its multiple

flavoured and treated categories, which represents serious public health and food problems.

But the level of questioning these companies receive is very low. People do not question the deception to which we are subjected, which occurs at different levels. On the one hand, we are paying the companies for the water that we already pay for—to the aqueducts—when we buy bottled drinking water. Companies like Postobón present themselves as promoters of “water consumption as an option within the habits of well-being,” (Postobón, 2018, p. 120) omitting to point out that bottled water is a business that we could do without—or that at least could be reduced—if we had quality aqueducts available in all parts of the country that gave us enough confidence

47 The CEO Water Mandate is a business initiative that groups 198 corporations around the world around corporate water management. The companies sponsoring the mandate are committed to acting in different areas and to reporting on the progress achieved, with the aim of “reducing water stress by 2050.” It is a non-binding corporate responsibility strategy that starts from the idea of “self-regulation,” which is quite questioned from a human rights responsibility approach. The water approach specifically promoted by the mandate is that of “corporate water management,” and seeks to “manage business risks,” “strengthen companies’ brands and reputations,” and “reduce costs through water use efficiency.” As can be seen, a completely different approach from water as a fundamental right and as a common good. In this regard, consult: <https://ceowatermandate.org/>

to drink clean water just by opening the tap. In this way we would have healthy habits without enriching the powerful companies in the sector.⁴³ With such a broad portfolio of soft drinks and fruit-flavoured beverages, it is also hard to believe that Postobón is interested in promoting such habits as it proclaims.

On the other hand, the deception occurs through disconnection, as when ingesting drinks that are totally dispensable for our eating habits, such as soda, we avoid asking ourselves where the water with which these drinks are produced comes from. Discussing the existence and preponderance in our diet of certain drinks that are not natural and that harm us is essential to question the companies' concern about 'eco-efficiency.' Reducing the rate of litres of water per drink produced would be of little importance in the discussion about this type of artificial beverages, as the discussion should focus on its existence and excessive promotion. In other words, the discussion should not be about reducing the litres of water per soda produced, but about the number of sodas that are produced.

Artifice also occurs at the level of the actor selling these products. In their eagerness to position their brands as sustainable, corporations replace the role that the State should exercise, returning to us the water that they themselves contribute to exhaust, but in the form of charity. Thus, for example, Postobón has a portfolio of social programs that seek to contribute "to the progress of communities," which is

developed through "programs that contribute to the solution of social, environmental, and economic problems, thus contributing to the construction of human capital, and to overcome poverty and inequality." (Postobón, p. 49)

Among these programs is, for example, the so-called "*Litros que ayudan*" ("Litres that help"), which seeks to bring drinking water to places where there is a shortage of water through "water donations," so that Colombians "can make their solidarity effective." As part of the program, in 2018, 65 640 litres of water were delivered to 70 520 people. There is also the program "*Fondo Fuente de Vida de Malambo*" ("Malambo Source of Life Fund"), which is established in Malambo, a municipality in the department of Atlántico where one of the main production centres of Postobón is located and where, despite having important water sources such as the Magdalena River and the Malambo marsh, the inhabitants do not have access to the aqueduct. Therefore, the company created this fund to "facilitate access to drinking water for households in strata 1, 2, and 3, delivering household connections to residential customers under a subsidy and financing scheme." (Postobón, 2018, p. 67)

They also have environmental compensation projects such as the "*Más Bosques*" ("More Forests") initiative, which works with the BancO2 scheme (payment mechanism for environmental services) and with land properties managed by environmental authorities for the protection of the valleys; this is the case of a 1 176-hectare

43 Another case that illustrates this situation is that of the peasant communities of the village Los Pinos in the municipality of La Calera, in the department of Cundinamarca. It is a village where there are conflicts over water associated with the installation of a plant of the Coca Cola – Femsá company for the production of Spring Water and with the Chingaza project that supplies water to the capital of the country. The conflicts emerged because while the water that flows from the mountains of the territory is destined for bottling and sale by a multinational and the supply of drinking water for the capital of the country, the rural communities of La Calera do not have access to water or have it in poor quality. For more information on this case, see Castelblanco (2018).

property in Sesquilé, managed by the CAR Cundinamarca, which they include in this initiative as part of their obligations derived from the beer plant installed in that municipality.⁴⁴

These types of programs promote a corporate image of social responsibility that hides the unequal relationships for water that are behind the need for the very creation of these programs, because if these industries did not require intensive uses of water and did not hoard it generating an imbalance of power with the communities, the social programs they design would have no reason to exist. Now we move to present the two cases that illustrate this deeper problem over water caused by Postobón in two different territories.

- Conflicts over water in Sesquilé, Cundinamarca: inequalities caused by a brewery

The first case that highlights the conflicts over water caused by the company Postobón takes place in the municipality of Sesquilé, in the department of Cundinamarca, 58 kilometres northwest of Bogotá. The name of the municipality means “hot water, canyon of the valley,” surely because of its great environmental and water wealth; this was recognized by the Basic Plan of Territorial Planning of the municipality in 2008, which catalogued it as a Green Municipality (Mhuysqa Community of Sesquilé, 2012).

Sesquilé is part of the province of Almeidas, or Sabana Norte, which includes municipalities of Cundinamarca that make up the Hydrological Region of the Bogota River. It is located amid three major hydrographic valleys: the Sisga valley, the Siecha valley, and the Bogota River valley, and is made up of the villages Boitá, Boitiva, Chaleche, El Hato, Espigas, Gobernador, Nescuata, Ranchera, Salinas, San José, and Terra Negra.

Among its economic activities are agriculture, cattle ranching, swine, poultry farming, mining, and salt exploitation. Part of its population works as employees in large agricultural companies in the vegetable and floriculture sector. However, there is a tradition of peasant culture in the territory along with an indigenous tradition, fruit of the presence of the Mhuysqa⁴⁵ and Kichwa⁴⁶ indigenous communities in the municipality. Sesquilé has approximately 10 000 inhabitants, of which 76 % live in rural areas and 24 % in urban areas, in a municipality that has an area of 141 km² (Mhuysqa Community of Sesquilé, 2012).

The organizations of the indigenous communities are present in the area of the municipality, with 16 Community Action Boards and community groups such as the Asociación Municipal de Usuarios Campesinos (Municipal Association of Peasant Users), the Grupo Artesanal Chaleche (Chaleche Artisan Group), the Cooperativa de Lecheros Coagroles

44 Payments for environmental services are a policy that starts from a corporate and mercantilist vision of nature, which contemplates a payment to the communities and people who take care of the common goods; under this conception, the latter are considered as ‘services’ that nature provides to human beings, so that they may be preserved and may, in this way, continue ‘providing’ services to humanity.

45 In the census carried out to the Muisca Community of Sesquilé by INCODER in 2011, it was established that the number of households is 33 with a total of 121 people living in the villages Boitiva (61) and Gobernador (19). They also inhabit the urban area of Sesquilé (12), Nescuata (6) and La Villa (5), among others (Mhuysqa Community of Sesquilé, 2012).

46 According to the Council population census of 2017, the Kichwa population of Sesquilé is 82 people, of which 45 are women and 37 are men. The population is distributed in 26 family groups that inhabit the villages Boitiva, Boitá and Gobernador (Kichwa Community of Sesquilé, 2018).

(Cooperative of Milkmen Coagrroles), and the Asociaciones Comunales para el Manejo de los Acueductos (Communal Associations for the Management of Aqueducts) Aspacodi, Amuses, and Mulises (Mhuysqa Community of Sesquilé, 2012).

In this territory, in 2019, Postobón inaugurated one of the most modern beer and malt production plants in the continent in the beverage industry, with an investment of nearly US\$ 400 million. The plant occupies a space of 51.6 hectares in the municipality and functions as a centre for the production and distribution of beers. The production capacity of 3 million hectolitres of beer per year will allow Postobón to cover 13 % of the national market for this product (*La República*, 2019). But, also, it will allow them to demand and use about 15 million hectolitres of water per year, if we consider that, on average, it is necessary to use 5 litres of water for each litre of beer. Among the beers that the plant will produce are the Andina brand (the company's own) and the international beer brands Heineken, Tecate, CoorsLight, Miller Lite and Sol.

This beer plant has been promoted within the discourse of development because it is sold as a plant that is at the level of the best in the world, while the advantages it represents in terms of job creation are exalted. At its inauguration in May 2019, President Iván Duque exalted this fact:

This factory has been launched because we thought big, and it will reach a consumer market that transcends the borders of Colombia. The country celebrates a positive event, a factory that will change the lives of 1 000 people directly. (The Republic, 2019a)

In addition to this, the beer plant is presented as an environmentally sustainable project under Postobón's focus of eco-efficiency,

presented previously. The president of the Central Cervecera company expressed in this way how the company understands sustainability with respect to water:

At Central Cervecera we go beyond. We develop our work under sustainability criteria in line with the best practices in the industry worldwide, and we seek to contribute to the Sustainable Development Goals (SDGs). For example, in terms of the use of water resources, our plant is a pioneer in the implementation of membrane water filtration technology, which does not generate waste. In addition, we have a lower water consumption per litre produced compared to the standard of the beer industry, thanks to the recovery system by collection that we have implemented. (The Republic, 2019a)

As can be seen, and in coherence with Postobón's sustainability policy, the company is concerned about what happens to water in the beer production process, both in waste management and in the consumption of water per litre produced, but not about the conflicts over water that occur outside their factory, which emerged or deepened precisely from their operation. While Sesquilé provides its soil and water for the production of this important beer plant, its inhabitants have no access to quality water.

Tap water in Sesquilé is not drinkable and the municipality does not have a water treatment plant. According to a report by the journalistic portal Vorágine on this case, "in most of the urban area and on the periphery of the municipality people drink the worst possible water" because, in the words of an inhabitant of the community, "there is no decent treatment plant" and "the water arrives quite turbid to homes and is not suitable for consumption." (Guarnizo and Abu Shihab, 2021)

Inequality is conspicuous. A large plant for the production of beer authorized by the State, and a deficit of a plant for the provision of a public service and for the guarantee of a fundamental right. These are not disconnected facts, since both things, the action to promote a business and the omission generated by the violation of a right, have as a common denominator a joint action between the State and the company to generate inequalities with respect to access to water. Not surprisingly, President Duque attends the inauguration of the plant while keeping the community of Sesquilé in oblivion:

I want to pay tribute to the founder of the group, Dr. Carlos Ardila Lülle, a man full of drive, merits, desire for creativity, passion, as we Colombians are, who began many years ago the dream of building companies dynamically and making them a factor for the social transformation of the country. (The Republic, 2019a)

But this fiction of the drive and the merits of the entrepreneurs hides the reality of the 'drive' that the State gives to businessmen like Ardila Lülle and the back that it turns on the citizens who have the right to drinking water. In the tribute, President Duque did not reveal that the Sesquilé beer plant can operate thanks to the declaration of the Ministry of Commerce, Industry and Tourism, through Resolution 0542 of 2017, of a free trade zone for a period of thirty years, which implies a series of tax, customs, and financial advantages for the companies benefited,⁴⁷ which shows few individual merits of the entrepreneur against many incentives from the State.

For the declaration of the free zone, the company presented the project as a beverage and food cluster, with the beer production company as the anchor around which companies that are part of the beverage and food production chain would be located.⁴⁸ In the technical feasibility study that was submitted for the request for declaration of the free trade zone, it is indicated that the project will be developed in the village of Boitá in Sesquilé as a "development pole for the region," being the "first permanent free trade zone to be developed in this municipality, *availing the great advantage of the region*, indispensable for the development of the cluster, *that is the abundant and quality supply of water resources*".⁴⁹

The declaration of the free trade zone could only proceed after the company was certified a series of requirements within which there are two of relevance. One is that the free trade zone exist in accordance with the municipal development plan, which requires the competent authority to issue a certification. Indeed, the company submitted this application, issued by the Planning Secretariat of the Mayor's Office of the municipality of Sesquilé, on August 27, 2015. But this permit was obtained not because the land uses of Sesquilé were compatible with the high-impact industrial activities that a free trade zone embeds. It was achieved because the land use was modified to guarantee the operation of the plant, which is why, in 2012, the land use was changed to the category of "high-impact industrial suburban land," and it was so included in the Basic Plan of Territorial Planning (Guarnizo and Abu Shihab, 2021).

47 Some of these benefits are as follows: (i) decrease in income tax to 20%, while companies located in the rest of the national territory pay 34 %; (ii) imports exempt from VAT and duties; (iii) raw materials sold from any part of the national territory to users of VAT-exempt free trade zones; (iv) companies established in free trade zones may carry out operations without a customs declaration; (v) goods sold from free trade zones to any part of the national territory only pay the VAT corresponding to imported inputs.

48 Ministry of Commerce, Industry and Tourism Resolution 0542 of 2017.

49 Ministry of Commerce, Industry and Tourism Resolution 0542 of 2017.

The other consists in the certification, issued by the competent authority, which certifies that the free zone can be equipped with public household services. This certification was issued by the Empresa de Servicios Públicos Domiciliarios de Sesquilé S.A. (Company of Household Public Services of Sesquilé) AcuaSes regarding drinking water and toilet services in 2015. Likewise, in the feasibility study presented by the company for the declaration of the free trade zone, it is indicated that the company has resources to make the investment for an amount of 40 billion pesos and resources to access a loan with the Bank of Bogotá for up to 50 billion pesos. In addition, it was assured that the income resulting from sales is around \$ 265 576 000 000 Colombian pesos⁵⁰ and that exports worth US\$ 678 million are projected in 15 years. As can be seen, this is a project of great financial dimension, which contrasts with the lack of investment in the municipality in terms of basic infrastructure to guarantee drinking water.

Another contrast is added to this one, for while the company has a guaranteed access to water to supply the public service to the entire free trade zone and to produce the beer with which they are generating a millionaire business, the community does not have access to water or receives a poor quality of it. As for access, the figures indicate that Sesquilé only has sewerage coverage in 38.8 % and aqueduct in 77.2 %; moreover, the public services company of Sesquilé often presents damages that force to close the valves and to cut the water service. As for the quality, and according to the National Report on the Quality of Water for Human Consumption of 2017, the quality of the liquid consumed by the inhabitants of Sesquilé has a risk of 17.1 %, a percentage that corresponds

to the risk to which the community is exposed of contracting diseases since the water does not meet the quality standards (Guarnizo and Abu Shihab, 2021).

The water used by the Postobón free zone comes from the upper valley of the Bogota River, which has a flow of 10 cubic meters per second (10 000 litres). Since this valley already has a high pollution, according to the report of Vorágine that consulted environmental experts, it is not possible to continue with the establishment of companies of this level, due to the degradation of the ecosystem that makes up the valley (Guarnizo and Abu Shihab, 2021). However, the State did not see it this way and handed over to Postobón rights over water in Sesquilé through a water concession, a groundwater prospecting permit, and a dumping permit.

Thus, through Resolution 1670 of 2015 issued by the Regional Autonomous Corporation CAR, the company Gaseosas Lux was granted *the concession of surface water* for industrial use, with an extraction flow of 140 litres per second derived from the water source for public use (Bogota River) for a 10-year validity term. The information about the year and the flow granted is important, because it is not understood why the company has a concession since 2015 if the plant came into operation four years later, in 2019, and why the flow granted exceeds the need for water for the estimated production. As mentioned, the company will require about 15 million hectolitres per year, but has a concession for about 44 million when considering that 140 litres per second are equivalent to 4 415 040 m³ per year, or 44 150 400 hectolitres per year. The concession imposes on the company the obligation to pay the water use fee and,

among others, compensation obligation consisting of the purchase and ecological rehabilitation of land properties for at least 1 060 hectares.

On the other hand, resolution 086 of 2015 granted the *permit for prospecting and exploration of groundwater* for three wells located in the properties called Lote Sanilia and Los Pinos, located in the village of Boitá in the municipality of Sesquilé, acquired by the company. This groundwater exploration had to be carried out up to a depth of 150 meters for a period not exceeding 18 months starting from the issuance of the resolution. The resolution requires the submission of technical reports within three months following the end of the exploration of the wells that communicate the state of the wells once the prospecting design has been dismantled. It is not known whether these reports were submitted, or what their contents may be.

Resolution 2559 of 2017, issued by the CAR, granted a *dumping permit* to the company Gaseosas Lux S.A., destined for the Central Cervecera de Colombia (CCC) for 3 million hectolitres per year on the body of water for public use Bogota River, located in the village Boitá in the municipality of Sesquilé. The permit is valid for 10 years and grants the company the faculty to discharge treated dumps from the plant with domestic and non-domestic characteristics. The resolution also grants permission to carry out works in the riverbed, and defines the deadlines and technical parameters for the construction of a wastewater treatment plant and the physical parameters allowed regarding the waters discharged into the river. The resolution imposes the obligation to submit periodic technical reports aimed at monitoring and controlling what was established, and the payment of a remuneration fee. There is no

information on the status of these obligations.

As can be seen, we are facing a case that causes obvious distributional problems related to water, socio-environmental conflicts where the eco-efficiency approach is of little importance, and a series of water rights guaranteed to the company to the detriment of the right to water and the protection of rivers and valleys. We move on to present the second case, and then make a joint analysis of both situations.

- Conflicts over water in Caloto, Cauca: inequalities caused by a production plant of beverages commercialised by Postobón

The second case that highlights the conflicts over the water caused by the company Postobón takes place in the municipality of Caloto, in the department of Cauca, 81 km from Popayán, the capital of the department. Caloto is located on the foothills of the Central Cordillera and the Cauca-Patía depression and is part of the Alto Cauca hydrographic basin, integrated by the sub-basins of the Palo River (the most important affluent of the Cauca River), by the La Quebrada River, the La Tabla River and the Quinamayo River (Municipal Mayor's Office of Caloto, 2020, p. 38).

The municipality has around 30 000 inhabitants and its population is composed of Afro-Colombian, indigenous and peasant communities. Its jurisdiction contains three indigenous reservations: the López Adentro Reservation, the Toez Reservation, and the Huellas Reservation; there are also six community councils: Bodega Council, Guali Council, Santafró Council, Yarumito Council, Quitacalzón Council, Pandao Council, and Río Palo Quintero Council; in addition, there is a peasant reserve area in the village of

Huasano. 67 Community Action Boards and about 35 rooted organizations dedicated to agricultural, social, and cultural activities operate in the municipality (Mayor's Office of Caloto, 2020).

The territory of Caloto is mostly dedicated to high-impact monocultures, and agribusiness is the main line of the municipality's economy. This is due to the diverse geography of Caloto, which varies between high mountain and plain, as well as to its great water wealth. Due to these conditions, the sugarcane agroindustry has developed in the region in a process of continuous expansion since the fifties of the twentieth century (Observatory of Ethnic and Peasant Territories, 2019). Due to the presence of sugar mills, 46 % of the territory is dedicated to crops (mostly permanent), followed by 29 % destined for other dynamics of use, and 25 % of forests.

According to information from the municipal agriculture office, of the 46 % dedicated to crops, the majority corresponds to sugar cane. The same report warns about the growth of 7.4 % in cane cultivation to the detriment of transient crops. According to the Mayor's Office:

This difficulty has also caused that villages such as Alto el Palo, El Guasimo, San Nicolás, La Quebrada, and Bodega Arriba, located in the flat part of the municipality, have abandoned the traditional crops either absorbed by the mills, or because of cultural and economic issues, leaving aside the traditional farm as a means of subsistence for self-consumption, but also for

income generation. (Mayor's Office of Caloto, 2020, p. 51)

Therefore, Caloto and other surrounding municipalities such as Puerto Tejada and Guachené are settling place to sugar mills, which were established with greater force due to the approval of the so-called Páez Law, the origin of what today is the Zona Franca del Cauca (Free Trade Zone of the Cauca). This law also attracted other types of chemical companies and the UPF industry to the territory. Indeed, in 1995 Law 218, known as the Páez Law, was issued after the avalanche of the Páez River that occurred on June 6, 1994, with the aim of economically reactivating the region by generating economic incentives, for a period of ten years, to the companies that were established in the affected area, which included 17 municipalities in Cauca and 13 in the department of Huila. This law promoted the development of industrial and commercial parks in Cauca. After the Páez Law expired in 2008, the declaration and start of operation of the Cauca Free Trade Zone took place in December 2009, and it continues to operate today.⁵¹

In the Free Trade Zone of Cauca, which is promoted under the slogan "creating value for regional development," there are at present several companies including Postobón and the Empresa Colombiana de Bebidas y Envasados S.A. Colbesa S.A. The latter is a company of non-alcoholic beverages, mineral water, and bottled water, founded in 1996, it installed a plant in the Caloto industrial park, in the vicinity of the Palo River, which came into operation in

51 In 2009, the benefits of the Páez Law were transferred to the new generation of free trade zones by virtue of Decree 1197 of April 3, 2009, which establishes conditions and requirements for the declaration of the existence of special permanent free trade zones in the departments of Putumayo, Nariño, Huila, Caquetá, and Cauca. In this way, in recent years, municipalities such as Caloto have positioned themselves as a strategic sector for industrial development because they are strategically located very close to cities such as Cali and Popayán (Portafolio, 2009).

1998. This plant produces the beverages known as Gatorade and Lipton Ice Tea, leaders in hydrating and tea drinks, whose rights in Colombia used to be held by the company Pepsi Cola Colombia Ltda. However, this company transferred to Postobón the franchise contracts of these two beverages in 2014 as a result of a business integration operation. This includes exclusivity agreements, brand licensing, and exclusive bottling.

This was the second time Postobón had sought such integration. In 2008 Postobón had already tried and had lost the battle, because the Superintendence of Industry and Commerce (SIC) denied it such integration arguing that it increased its participation in the market of hydrating beverages, thus restricting free competition. This administrative decision was confirmed by the Council of State, after a litigation initiated by Postobón that lasted eight years (El Tiempo, 2014).

Later, the request for integration was reactivated, to what the SIC assured that, on this occasion and given the breadth of the beverage market, this operation did not grant market power. Therefore, the request was authorized by Resolution No. 79716 of 2015, “by means of which an integration operation is conditioned,” subject to conditions such as: Postobón can sell the products that are part of its portfolio only unpacked or isolated; it must implement a “program of compliance with the rules of competition”; and it can only commercialise the product, that is, deliver it to the points of sale (Postobón, 2015). Since then, the franchise of Lipton Ice Tea and Gatorade is integrated with Postobón, so that, as stated in the SIC Resolution:

Pepsi offers GATORADE and LIPTON to the Colombian market through two independent processes with the support of two strategic allies: COLBESA with the manufacture of the finished product and POSTOBÓN with the distribution and sale of the finished products in all their presentations and flavours. (Semana Magazine, 2017)⁵²

All this happened even though, as noted in a press release at the time, “the national company would have increased its share in the market for hydrating drinks to about 95 percent, generating a high concentration” (El Tiempo, 2015). That transfer did raise questions about the monopoly of beverages on the market, considering that Postobón already produced and commercialised the brand of hydrating drinks Squash (direct competition of Gatorade) and the brand of teas Mr. Tea (direct competition of Lipton Tea).

Returning to Colbesa, which produces the drinks so that PepsiCo and now Postobón can put them on the market, it is important to highlight that it has *groundwater concessions* to make use of the water pumped from an underground well, located on the property owned by Colbesa S.A. The concessions were granted by the Regional Autonomous Corporation of Cauca (CRC) through Resolution 0870 of November 27, 1997, which was granted for the lifespan of the well, and through Resolution 0452 of 2009. It also applied for a dumping permit, granted through Resolution 0050 of 2009.

The Colbesa plant has a well 184 meters deep shared with the company Alpina S.A. The water obtained through the well that is used for the production of beverages is

52 In summary, Colbesa produces the drinks that Postobón sells. Grupo de Lima, an investor of Colbesa, recalls the merger in this way: “until 6 months ago we manufactured the brands Gatorade and Lipton Tea directly for Pepsi, but they made a contract that we accepted and so, instead of manufacturing for Pepsi, now we manufacture for Postobón: they come, pick up the product and commercialise it” (Semana Magazine, 2017).

subjected to a purification process and an osmosis treatment and then used for washing bottles, for boilers, and for the production of the drinks. The water is also used for different processes of supporting equipment and systems of the plant. According to figures from 2011, an average of 29 501 m³ per month was extracted from this well, which would correspond to 84.96 % of the extraction limit given by the permit. Wastewater is also treated in a plant shared with the other companies that use the well. These waters are treated and finally discharged into the Palo River (Chaves, 2011).

But the water in Caloto is not healthy. There are multiple conflicts over water due to the pressure generated by both the cane crops and the chemical, beverage, and ultra-processed food industries established in the municipality as a result of the Páez Law. This is how the NGO Grupo Semillas describes it:

The dynamics of water use in the region have affected its supply and quality, due to the intake for irrigation of crops and the pollution associated with conventional agricultural activity (herbicides, fertilizers, spills), the pollution of industrial parks, and because of domestic sources. This has caused various environmental and social conflicts to the sugarcane sector, as a major polluter and user, over the control of water and about the lack of regulation on the uses of this vital element. (Grupo Semillas, 2016, p. 4)

The imbalances in the demand and supply of water caused by this industry are reflected in the flows of the surrounding rivers, which tend to show imbalances in the winter or summer seasons. The affected municipalities are the ones in the flat part that do not have a constant supply of water. There are, in addition, complaints about the lack of management by the Regional Autonomous

Corporation of Cauca (CRC) at regulating access to water as a fundamental good for the population (Grupo Semillas, 2016). The community is especially concerned by the pollution of the Palo River derived from both domestic and industrial use of water. It is alleged that the progressive increase in the population, the use of detergents, and the mismanagement of industrial waste and garbage have strongly affected water quality in this important valley. Likewise, pollution in river areas and in affluents such as Güengue and La Paila represent risk factors (Proclama del Cauca, 2016).

In fact, the Diagnosis of Water Resources carried out by the Mayor's Office of Caloto, which is integrated into the Basic Plan of Territorial Planning, mentions that among the polluting factors of the Palo River is pollution by industrial waste, in particular by the surplus water of the industries located in the Industrial Park, such as Quimicauca, Sulfoquímica, Ingenio La Cabaña, Propal II, and Colbesa, although, in the case of Colbesa, they have a waste water treatment plant that controls the quantity and quality of the discharges (Alcaldía Municipal de Caloto, 2001, p. 88–89).

The deteriorating situation of the sub-valley of the Palo River is directly related to the serious situation that the communities of Caloto face regarding water. Adequate access to safe drinking water and sewerage has been a permanent necessity for communities in northern Cauca. In particular, the difficulties about access are intensified by problems in the management and sustainability of water coming from the sugarcane industry located in the region.

According to the Municipal Development Plan 2020–2023, the ““aqueduct master plan” in the urban area is only 45 % complete, and

of the 37 water pumping systems only four have a treatment plant in operation. And of these plants, none carries out monitoring or measurements to establish water quality: “the identified treatment plants do not carry out monitoring or measurements to establish water quality and some of them present failures in operation, technical deficiencies that hinder the optimization of the service” (Mayor’s Office of Caloto, 2020, p. 39). To aggravate the situation, the community denounces that there is no continuity in the water service, even worse in the rural area, where it is intermittent. In addition to the lack of access, the water that arrives is of poor quality:

Regarding water quality, 105 samples were taken, and the Water Quality Risk Index (IRCA) showed that 74 % of the systems deliver water with high risk; of the 25 educational institutions studied, 72% are at the same level and the rest at medium risk. (Mayor of Caloto, 2020, p. 38)

It is surprising that despite the diagnosis, the proposals of the development plan are aimed at working on the problem of aqueduct and sanitation, but not at attacking the causes of pollution and lack of access to water. Nothing is mentioned in the current municipal development plan about the structural causes of these problems associated with water, nor are actions taken to address the evident inequalities that exist with respect to water between the industries of sugar cane and beverages and the communities of Caloto. The development plan ignores the water conflicts that exist in the municipality, won by sugar mills and companies such as Colbesa and Postobón to enrich themselves at the expense of the life of a river and the decent life of the communities. As can be seen, this is another case that highlights the inequalities caused by the beverage industry with respect to water. Now we move on to jointly analyse the situation of Sesquilé and Caloto.

4.2 Postobón: a company that causes conflicts over water

The industry of ultra-processed beverages and food causes conflicts over water, and Postobón’s case study corroborates this. Although there are no official figures on the use of water demanded by this industry, or studies that provide an understanding of the socio-environmental impacts they cause throughout the country, the cases of Sesquilé and Caloto show that we are facing conflicts over water that have a dramatic impact on inequality, causing concrete and complex

effects on the life of the communities that inhabit the territories where Postobón’s production plants operate, as well as on the water cycle that this company profits from. These are, therefore, cases that illustrate a problem that is surely broader (only we don’t have more quantitative and qualitative information); but for now they give us elements to propose an analysis of the conflicts over water caused by this industry, as we proceed to expose.

4.2.1 Scarcity and poor quality of water faced by the communities of the municipalities where Postobón operates is closely related to its operation

As noted, Postobón has made a great effort to position itself in the beverage market to the point of monopolizing it. Their concern for sustainability is limited to efficiency in the use of water resources. The “more crop per drop” approach they apply in their operations creates a disconnection between what happens inside their production plants and what happens outside of them. Therefore, Postobón makes an effort in its sustainability reports to show the achievements and progress it obtains year after year towards the goal of reducing the use of water for each drink produced, but makes no reference to the situation of pollution of the water sources it uses, as is the case with the Palo River in the municipality of Caloto, nor to the precarious situation regarding water that the communities of Sesquilé and Caloto face.

These communities’ lack of quality drinking water, well-functioning aqueducts, and water treatment plants is closely related to Postobón’s appropriation of water. This relationship is semi-direct, because, although it cannot be said that the communities of these municipalities would have guaranteed their fundamental right to water without the operation of Postobón, it can be assured that there is an inequality in access to water that is inadmissible and that was originated and is deepened by the control that Postobón has over water in these municipalities. And although it is a legal control (in the sense that it is allowed by the State), it is granted to them due to the political and economic power that a

company like Postobón and a businessman like Carlos Ardila Lülle have, in contrast to the position of devaluation and discrimination in which the State has put the peasant and ethnic communities of the country. All this is reflected in the legal aspect, that is, in the rights that are guaranteed to each one. Thus, while Postobón has rights over water guaranteed, the communities of Sesquilé and Caloto have their right to water permanently violated.

The power of businessmen such as Ardila Lülle, who was honoured by the president of the country in an act of installation of one of his plants, is what allows companies like Postobón to delimit territories where exceptional rules apply that do not exist in other parts of the country, as is the case with the free trade zones. A common denominator of both cases is that the territories in which the beer and Colbesa production plants operate are corporate territories, especially designed for the promotion of the country’s industries.

Within these corporate territories, different rules operate in fiscal, tax, and customs terms, while other rules—such as those of water—are interpreted in favour of companies to allow the operation in these zones. Meanwhile, other norms operate outside these territories, or they are interpreted and applied in a way that is unfavourable for the communities, originating situations of inequality rather localized and territorialized. The free trade zones function, in this sense, as spaces of inclusion and exclusion, and the

law has a determining role in guaranteeing this situation, which is protected by the discourse of development that enables this normative configuration.

With several years of difference in their creation, the free trade zones of Cauca and Sesquilé were promoted under the promise of development and generation of industry, employment, and well-being, but this well-being is not reflected today in the regions where they were installed. Outside of them, the situation regarding water is one of absolute marginalization. From the cases presented, it is clear that those who are inside the free zones have water in abundance (the companies), and those who are outside do not have water or have it of poor quality (the communities).

This is evident when observing that all the water concessions and discharge permits necessary for the companies of the free zone to operate have been granted, and they are provided with basic public services such as water, while outside these zones the communities do not have aqueducts or water treatment plants because water is not prioritized for domestic use, as mandated by law. Thus, the State's agile decision-making to launch the free trade zones of Cauca and Sesquilé contrasts markedly with its carelessness to solve basic issues such as the setting in motion of aqueducts and

treatment plants in these municipalities. In the case of Sesquilé, the government even altered the use of the land through a regulatory modification to the zoning plan of the municipality to allow the operation of the Postobón plant.

To assert that companies like Postobón monopolise water is therefore not an exaggeration. Their having water concessions to produce beverages that are expendable, such as soft drinks or fruit-flavoured beverages, or of beverages for which we should not pay, such as bottled water, while there is a shortage of water in the communities where their operations are located, generates an ethical and political problem that can't be solved with the reduction of water per drink produced.

The solution to this problem would require a public debate on the uses we give to water, some of which are a waste and an attack against the ecosystems that regulate the water cycle, as is the case with the excessive use of water by Postobón. It also involves undertaking a critical approach to the industry of ultra-processed beverages and food, and unveiling the problems caused by these companies when they install their production plants in specific territories, altering landscapes, land uses, dynamics of the water cycle, community relations with water, and access to water itself.

4.2.2 Water regulation is part of the environmental conflicts caused by Postobón

Law is a constitutive factor of the disputes over water caused by the industry of ultra-processed beverages and food. It cannot be analysed independently from the political problem of water, since the way

water is regulated and rights over it are built is decisive for the configuration and understanding of these conflicts. This text has presented several criticisms about the regulation of water through the concession

mechanism, which are corroborated in the case of Postobón and raise the need to rethink this legal mechanism and to look for alternatives. This is justified in several reasons that will now be exposed.

- Concessions have prevented neither excessive use of water nor its unequal distribution

The water concessions to Colbesa and Postobón were granted because they were applied for. Although there are procedures and documents required by the CAR to evaluate the viability of a concession application, the analysis made by these entities is clearly about the application itself (objective compliance with requirements) and not about a set of factors for making decisions of such relevance as those related to the use we give to water.

This type of factors, forgotten in the process of a concession application, include not only the water source that the concession will guarantee—which, in principle, is indeed assessed in the process but also substantial social issues such as the water supply situation of the communities surrounding the water source on which the concession is requested, the social and community relations that exist with these sources, the other industrial demand that exist on the source (in the case of Caloto, for example, the enormous demand on water exerted by the sugarcane industry since several decades ago is relevant), and the very appropriateness of the concession and its proportion.

Postobón may require a concession of 15 million hectolitres per year and the State may grant it one of 44 million per year, as occurred in the Sesquilé Plant. The question is whether the State should grant a concession of this magnitude on a water source that

could supply a municipality that has not guaranteed access to water to its own community, especially when considering that the concession is demanded for a use that does not constitute a basic need.

In summary, the concession mechanism allows a technical and objective evaluation of requirements, but does not allow the formulation of questions that are relevant to an analysis of admissibility. Therefore, as long as the application falls within the categories authorized by the law, that is, “domestic use,” “industrial use,” etc., the concession is granted, regardless of whether unnecessary and excessive uses of water are being authorized within these items, or if the concession affects water equality. In this sense, although the law contemplates a prioritization of water uses, this is in practice clearly not applied, as shown by the cases of Sesquilé and Caloto. It cannot be otherwise explained that the priority for the water sources that supply Postobón in both municipalities is not guaranteeing domestic use to their communities.

- Concessions are not a mechanism that allows the State to fulfil its obligation to guarantee the availability, quality, accessibility, and non-discrimination that are part of the right to water

Since concession applications are not evaluated (in practice) in relation to the *availability* of water for the populations neighbouring the water sources that the concession requests, they are not an ideal mechanism to ensure a continuous and sufficient provision of water for personal uses (consumption, sanitation, food preparation and personal and domestic hygiene) that may guarantee communities a life in conditions of dignity. This occurs because concessions are granted to whoever

requests them, without considering the context of water availability for neighbouring communities. Were this an essential factor for evaluating concessions, those given to Postobón and Colbesa would not have been granted, or would be revoked given the current scenario, since they are clearly affecting the availability of water for Sesquilé and Caloto.

Concessions also do not seem to be a mechanism that addresses the conditions of water *accessibility*. The CAR evaluate the concessionaire's infrastructure to capture the water and use it, but they do not analyse the existence of water facilities and services for those who are not concessionaires. Ultimately, as previously indicated, concessions prevent a comprehensive view at the broader situation of water; it focuses on assessing the entity that requests the use of water, which becomes a concessionaire, and not on assessing the situation of other subjects that may be affected. The fact that Postobón and Colbesa have concessions on water and the infrastructure to capture and treat it, while the communities of Sesquilé and Caloto do not have aqueducts or treatment plants is therefore highly compatible with the concession mechanism. These are issues that the State addresses independently, and so the CAR can disregard them without breaching their obligations or their institutional mission.

This same analysis is applicable to water *quality*; although the environmental authorities do exert control over the treatment and discharge of water, the concessions on water and the discharge permits assess the quality of the water in concession and the water discharged (when the entities fulfil their work), but they don't undertake any comparative analysis of the water that, in contrast, reaches the

surrounding communities. These are, then, two independently evaluated issues for which the concession and other administrative permits do not provide an approach mechanism allowing to relate these problems and propose integral solutions to them.

Therefore, the authorities analyse the poor quality of the water reaching the communities of Sesquilé and Caloto—to the point of high contamination risk, as in the case of Caloto—in isolation from the cause of the problem. Hence, for example, not only that the CAR have not taken measures in this regard, but that Caloto's Mayor's Office does not contemplate structural solutions that attack the cause of contamination. As noted above, although the current municipal development plan diagnoses the serious problem of water pollution in Caloto, there is not a single action aimed at attacking its causes, which are largely found in the industries operating in the area. Actions are contemplated to execute infrastructure works for water treatment, which is necessary, but insufficient in the face of a more complex problem.

More dramatically, the cases of Sesquilé and Caloto show that concessions not only do not prevent *discrimination* with respect to water, but are its source. Companies with great economic and political power having rights over water guaranteed while rural communities do not shows that there is a *de facto* discrimination determining who is granted a concession and who is not. In this sense, the message sent when the President of the Republic attends the inauguration of a beer plant of one of the richest businessmen in the country, while there is no water treatment plant in the municipality where that plant was installed, is the one that has already been mentioned: there exist easy

conditions for large companies to emerge, and little or no will to comply with basic obligations such as guaranteeing drinking water to rural communities.

- Concessions do not consider mechanisms for the resolution of socio-environmental conflicts

Water concessions are a State permit regulated by administrative law that ensures rights over the concessionaire and imposes obligations on it. In this sense, it is a mechanism focused on the State-concessionaire relationship, leaving out multiple subjects interested in the destination of the water in concession. As an administrative procedure, it contemplates the basic participation mechanisms of any procedure of this nature and the traditional mechanisms of judicial dispute to resolve administrative controversies. As a result, the concession mechanism is absolutely insufficient to address water conflicts.

On the one hand, it thwarts a participatory and integral decision-making on the territory and on the water cycle, since the entity that studies, grants, and controls a concession is only interested in the parties strictly involved in the relationship given by the concession, leaving out a set of subjects like communities, community organizations, and territorial entities that should take an active part in deciding about the destination of water, its uses, its users, and its management. This is why the communities of Sesquilé and Caloto did not participate in transcendental decisions for the fate of their municipalities, such as the delimitation of the territories for free trade zones or the granting of water concessions and discharge permits on the water sources that are part of their territories and with which they have cultural, social, and economic relations. In short, the concession

process took place behind the community's back, which had no part in the decision taken by the State.

On the other hand, concessions are not a mechanism that allows the resolution of conflicts over water. To assert their rights, the communities of Sesquilé and Caloto could resort to public actions such as legal protection or popular action, but they should always need to demonstrate the link between the violation of fundamental or collective rights and the concessions; the regulatory separation between the water concessions for industrial uses, on the one hand, and the guarantee of fundamental and collective rights, on the other, makes the routes of legal enforcement more difficult. It would be even more difficult to activate administrative mechanisms such as the annulment of the concessions, since such actions would oblige the judges to verify the procedure of the concession, but—unless they are progressive judges—they would less likely analyse the concessions in a broader context of inequality with respect to water and environmental degradation.

In summary, concessions are the instrument through which violations of the right to water are promoted or consolidated. Without a doubt, the companies that request the concessions and the State that guarantees them are the entities responsible for the violations of rights that may derive from them; but it is the legal instrument of the concession itself which, by its nature, facilitates or promotes an approach to water completely distant from environmental concerns and fundamental rights. Water concessions, after all, aim to provide legal security to the concessionaire, placing it at the centre of the relationship. Postobón, in this case, and not the communities or the water sources themselves, is the subject that

is important for the State when analysing a concession application or a dispute over water related to a concession.

It is therefore crucial to transform this view and find legal mechanisms that place water and the communities related to it at the

centre, as well as the citizens who have the right to access water in conditions of dignity, and to promote, from the law, a view of regulation that embraces diverse, harmonic, and water-guaranteeing legal perspectives.

4.2.3 Conclusion

The veiling of the conflicts over water caused by the industry of ultra-processed beverages and food (on which this document has so much insisted) stems from the strong position of the brands in the market, which makes it difficult for society to develop a critical look at them. Consequently, we do not know or understand the production process of what we consume, nor do we understand the multiple conflicts that this production process can cause or the violations of rights that it can entail.

The socio-environmental conflict over water caused by the UPF industries is veiled because they direct their environmental discourse to the effectiveness of their self-regulation and the compliance with the legal requirements established in the water management policy in force in Colombia; in other words, they have complied with the necessary requirements to be beneficiaries of the environmental permits for water concession and waste dumping granted by the CAR.

This discourse conceals, in the first place, that their industrial model also causes environmental damage that directly affects the communities surrounding their

production plants, and, in the second place, that the water management policy in Colombia through the concession permit serves the appropriation of this valuable element of the environment by these corporations to the detriment of alternative models that seek to ensure access to water for these communities.

This document was intended to open this debate, and we hope to have contributed to raising concerns about an urgent issue to be discussed. Without a doubt, this is a subject with still many questions and information gaps that need to be filled. Therefore, it is important to contemplate an agenda of research and action to broaden the panorama presented in this document, to deepen the understanding of the socio-environmental impacts caused by the installation of production plants for products that are part of the diet of millions of people in Colombia, and to demand the Colombian State to change the water management policy. The panorama offered in this document shows that water in Colombia has owners, and hence it is necessary to reverse this situation so that water returns to its flow and its management returns to the communities.

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Water conflicts caused by the industry of **ultra-processed** beverages and food

The Colectivo de Abogados José Alvear Restrepo (José Alvear Restrepo Lawyers Collective, Cajar) is a non-governmental organization that has been working in Colombia since 1978 for the advocacy of human rights and the construction of peace with social and environmental justice. It has consultative status with the UN, is accredited by the OAS, and affiliated with the International Federation of Human Rights (FIDH) and the World Organisation Against Torture (OMCT). The effort made to document and denounce the various practices of industry interference is part of CAJAR's commitment to defend a comprehensive conception of human rights, democracy, and the public interest.

This document responds to the need to talk about issues of general interest, which is usually uncomfortable for the large industries of sweetened beverages and ultra-processed food. If we want to reduce the discomfort so we can build an informed and respectful dialogue, it is necessary to generate knowledge and put the topic at the center of the public agenda; it should be a dialogue where industries speak from their interests and we, society in general, from a comprehensive perspective of our rights and the public interest.

