

Taking Stock of the Human Right to Water

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Abstract

The concept of the human right to water and sanitation (HRtWS) has received increasing attention at the policy level in the form of national constitutional guarantees and UN actions, in the work of development organizations, NGOs, network actors and private sector actors. In this article, we explore how the discourse on the HRtWS from key actors in global water governance has evolved over time. Understanding the various discourses around the HRtWS can provide insights into how the HRtWS fits within larger governance trends, including development strategies and practices. We find that despite initial resistance to human rights framing among many of the actors involved in global water governance, there is a convergence on the existence of the HRtWS. Yet, contestation among actors increasingly focuses on what the right means in practice and how to implement a rights-based approach to water services. This contestation is particularly visible around what a legal HRtWS means for questions of financing, providers and oversight. We argue that the HRtWS brings a political dimension to a relatively technical driven discourse by calling attention to issues of discrimination, power differentials, justice, equity and democratic principles of citizen participation in water management.

Keywords: human right to water and sanitation, discourse, global water, contestation, actors, development, governance

1. Introduction

In December 2015, the United Nations (UN) General Assembly adopted a new resolution recognizing the human right to sanitation as a distinct right from the human right to water (A/RES/70/169). This is but one of the latest developments regarding the discourse over the recognition and implementation of the Human Right to Water and Sanitation (HRtWS). Earlier in the year, in September 2015, following intense pressure by water activists, the HRtWS was included in the UN's approach to sustainable development, which will guide development practices over the next 15 years (United Nations General Assembly [UNGA], 2015). These developments build from earlier UN resolutions recognizing access to water and sanitation as human rights. Collectively, these developments reflect a convergence by different actors that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.

However, this convergence occurs in an environment of governance that is increasingly multi-level, fragmented and contested (Conca, 2006; Gupta, Ahlers, & Ahmed, 2010; Hoff, 2009; Pahl-Wostl, Gupta, & Petry, 2008). Actor constellations in water governance range from purely public to hybrid and exclusively private (Pattberg & Stripple, 2008, p. 373). A broad mix of public and private motivations is at work developing norms and shaping solutions in governance (Dellas, Pattberg, & Betsill, 2011, p. 91). No single set of actors alone is responsible for realizing human rights goals related to water and sanitation access (Carter & Danert, 2003, p. 1067).

Given this broad convergence on the HRtWS¹ and in light of the increased fragmentation and contestation in global water governance, this article asks: How have the diverse actors in global water governance framed the HRtWS and proposed related actions to achieve the right? How has the narrative around the HRtWS changed over time? Understanding the discourse around the HRtWS can provide insights into water governance. For instance, how actors frame the HRtWS and propose particular actions around the right allows us to see how the HRtWS fits within larger governance trends and practices; examining the power dynamics behind the recognition of the HRtWS sheds light on the current diversity of approaches to fulfilling the HRtWS. We can better ascertain, for example, if the HRtWS is shaped by or shapes privatization or development objectives. If the HRtWS highlights specific obligations on states and other actors, how are they reconciled with more market-based approaches that de-emphasize the role of government? What exactly does the HRtWS bring to governance debates and issues?

Overall, although we find movement toward broad acceptance of human rights framing for water policy across a diverse constellation of actors who shape and influence water governance, we uncover contestation among actors on what the right means in practice and how to implement a rights-based approach to water services. This contestation is particularly visible around what a legal HRtWS means for questions of financing, providers and oversight. We

¹We adopt the more inclusive HRtWS throughout our article, as opposed to HRtW, although we recognize that water politics publications and research have been historically dissociated from sanitation politics and research until the 2010 UNGA and UN HRC recognition.

argue that a human rights frame brings a political dimension to a relatively technical water governance discourse. Although the HRtWS constitutes a key landmark in and of itself, it also constitutes the beginning and continuation of a dynamic and vivid interplay among actors and their narratives and practices where the HRtWS has different meanings, distinct implementation understandings and, consequently, raises various issues of discrimination, power differentials, justice, equity and democratic principles of citizen participation in water management.

We begin by outlining our methods and approach. We focus on the major types of actors engaged in water governance and examine how they contribute to the framing and actions around the HRtWS. We argue that examining discourse and framings around the HRtWS by actor type helps to provide a more complete view of the scope and extent of the discourse. It aims to go beyond the more diffuse scholarship on the HRtWS that narrowly examines the adoption and evolution of the HRtWS in a particular nation (e.g. Boyd, 2011), around an individual development organization or UN actor (e.g. Baer & Gerlak, 2015; Russell, 2010), or for a single set of actors (Nelson, 2009). We look over the past two decades to trace how the HRtWS is framed by (a) advocacy NGOs; (b) intergovernmental development organizations; (c) national governments; (d) global knowledge networks; and (e) private sector actors. Although we seek to broadly engage in how this diverse constellation of actors frame the HRtWS to better understand the path and momentum that facilitated the HRtWS recognition, we purposefully do not engage to the same extent with the opposing voices. We seek to determine areas of convergence and divergence within the actors that are pushing for the HRtWS, recognizing that variation exists within each actor type. Not all NGOs are the same in supporting the recognition of a HRtWS just as not all national governments can be treated with a single brushstroke. Rather we use these broad categories to offer insights into how the HRtWS fits within larger water governance trends, including development strategies and practices. Next, we provide some background and context for the rise of the HRtWS.

2. Identifying Actors and Discourses around the HRtWS

In this article, we draw on discourses to analyze how the language and practices surrounding the HRtWS are problematized and produced (Muller, 2008; Neumann, 2002). Discourse rests on “assumptions, judgment, and contentions that provide the basic terms for analysis, debates, agreements, and disagreements” (Dryzek, 1997, p. 8). Discourse helps to constitute the arenas for action and may endow certain actors with particular privileges and prerogatives, or may serve to legitimate certain practices (Feindt & Oels, 2005, p. 163; Hajer, 1995, p. 42). It may also shape what is thought of as policy options, and can delimit the range of policy actions and actors (Hajer & Versteeg, 2005, p. 178; Litfin, 1994, p. 37).

Considering the representation of ideas through discourse often includes a study of frames, narratives, myths, stories and more (e.g., Hajer, 2003; Roe, 1994). Here, we use the term “frame” to refer to a definition of an issue or problem, which emphasizes some aspects at the expense of others (Dewulf, Brugnach, Termeer, & Ingram, 2013; Schön & Rein, 1994; Snow, Rochford, Worden, & Benford, 1986). Research on the social construction of societal

problems suggests that the way in which an issue is framed has important implications for the policy solutions that are subsequently devised (Stone, 1989).

To identify a set of key policy actors engaged in the discourse around the HRTWS, we draw from earlier classifications and identifications of actors in global water governance (Carter & Danert, 2003; Conca, 2006; Goldman, 2007; Gupta, 2009; Jiménez & Pérez-Foguet, 2009; Ottaway, 2001; Pahl-Wostl, Gupta, & Petry, 2008; Rodda, 2007; Ünver, 2008). We identify the constellation of actors who formulate and implement policy and frame the HRtWS at multiple and interrelated scales. We focus on several sets of actors with agency – or agents – to prescribe behavior and to change the course of events or the outcome of processes (Biermann et al., 2010, p. 283; Partzsch & Ziegler, 2011; Pattberg & Stripple, 2008, pp. 273–274). In water governance and human rights arenas, these actors include (a) advocacy NGOs; (b) intergovernmental development organizations; (c) national governments; (d) global knowledge networks; and (e) private sector actors.

Each type of agent studied here plays its own unique role in water governance and has its own set of constituents to answer to and satisfy. There are notable asymmetries in power, influence and resources across our broad constellation of actors. Donors and international financial institutions wield disproportionate power (Carter & Danert, 2003, p. 1070). So too do transnational corporations (Robbins, 2003) that also participate in global networks. A human rights' framing for water has faced resistance from some states and private sector actors (Mehta, 2014; Sultana & Loftus, 2011), stalling the process of recognition of the right to water in contrast to other rights like the right to food (High Level Panel of Experts on Food Security and Nutrition, 2015, p. 101). Different actors rely on different arguments and strategies to frame the HRtWS and to propose actions associated with the right. Non-state actors, for example, have been known to appeal to moral arguments, expertise, participation or problem-solving abilities (Avant, Finnemore, & Sell, 2010; Hall & Biersteker, 2002).

We look historically over time and across diverse sets of actors to examine how actors construct discourse around the HRtWS and how these constructions converge and diverge around the recognition and implementation of the HRtWS. We ask: How is the HRtWS framed? Which actors are identified as playing a role in constructing the HRtWS narrative? In terms of proposed actions, we ask: How do actors articulate realization of the HRtWS? While we are not comprehensive in our analysis, we are purposive in our selection of key actors and related documents. For NGOs, we focus on advocacy organizations that mobilize and pressure actors to adopt a human rights frame for water policy. We looked at a cross-section of organizations across time, geographic scale (local, regional and transnational organizations), and region (Africa, Latin America, Europe and North America). Sources include websites, articles, flyers and promotional materials from relevant organizations. For our investigation of development community discourses, we relied primarily on development websites and reports of UN agencies. The national government section was based on national legislation, scientific articles and the righttowater.info website. For global knowledge networks, we analyzed primary documents including the official programs, summaries and syntheses published by the World Water Council for each World Water Forum, Ministerial Declarations, some secondary sources on the meetings, news articles and one author's attendance

and participation in the 2009 WWF in Istanbul. Finally, for private sector actors we relied on company websites and reports. We examined these actors' discourses over the past two decades, from the mid-1990s to 2015, relying mostly on their own documents, language, and frames.

3. The Rise of the Human Right to Water and Sanitation

The 1990s ushered in a period of increased attention to water policy at the global level, due in part to the growing awareness of water scarcity and the rise of (and local reactions to) neoliberal reforms such as privatization of water utilities (Bakker, 2010). The World Bank began promoting the claim that applying market principles to the water sector, including privatizing water utilities, was the solution to ineffective, cash-poor state-run water and sanitation services (World Bank, 1993, 2004). But water privatization² proved to be an unpopular policy in much of the developing world when it failed to deliver on promises of improved water access. Local protests throughout the developing world sparked a global campaign aimed at banning the sale of water utilities to private companies and for including water in the list of internationally protected human rights. Successful anti-privatization campaigns by social movements in Latin America and Africa, including Cochabamba, Bolivia in 2000 and Ghana in 2001, called for respect for the HRtWS at the local level.

These anti-privatization struggles were part of a broader shift in the late-1990s and early-2000s toward using human rights framing for social and economic justice issues. Although many countries have signed the International Covenant on Economic, Social and Cultural Rights (ICESCR), socioeconomic rights are considered to be second-order rights to civil/political rights (Plant, 1998; Goldewijk & de Gaay Fortman, 1999; Eide, 2000; Merali & Oosterveld, 2001; Puta-Chekwe & Flood, 2001; Scott, 2001). States face the difficult task of realizing development goals that are in line with human rights standards, which requires a balancing of markets and rights along with democratic ideals (Donnelly, 1999). Debates in the policy world over whether policies like privatization are compatible with human rights are mirrored in the academic literature. Privatization has been found to be detrimental for human rights when it reduces the ability of governments to proactively realize socioeconomic rights (Donnelly, 2003; Stiglitz, 2002). Privatization of state-owned enterprises can negatively exacerbate economic inequality (Abouharb & Cingranelli, 2007; Branco, 2009; Felice, 2003; Franklin, 1997; Keith & Poe, 2000; Vreeland, 2003) and restrict governments' economic policy choices (McCorquodale & Fairbrother, 1999; Nelson & Dorsey, 2008).

In part as a response to the dominant neoliberal development paradigm that stressed privatization, the human rights community began to persuade the development community to adopt a human rights dimension in their activities (Udombama, 2000). A rights-based approach to development emerged that integrates norms and principles of the human rights

²“Water privatization” is a term used to describe a variety of models of private sector involvement in water services ranging from the smallest scale, such as contracting out the installation of water meters, to full divestiture, where the entire water business and infrastructure are transferred from the government to a private company through the sale of shares in the company.

system into development practices and processes and introduces principles of participation, empowerment and accountability into development discourse (Cornwall & Nyamu-Musembi, 2004; Sarelin, 2007).

Support for defining water as a legal human right grew in the late-1990s as countries adopted constitutional provisions and passed national laws guaranteeing access to clean water. In 2000, the UN adopted the Millennium Development Goals (MDGs), placing drinking water and basic sanitation firmly among the development objectives and representing a growing recognition by the world community that water plays a critical proactive role in human development (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2009, p. 3). Although the Millennium Declaration, from which the MDGs were drawn, made substantial reference to human rights, human rights did not play a significant role in supporting or influencing MDG-based development planning (United Nations Office of the High Commissioner of Human Rights [UN OHCHR], 2008, 2010).

Increased attention and activism around the HRtWS in the 1990s and early-2000s helped mobilize support for an official UN recognition of water as a human right (Nelson, 2009). The UN Committee on Economic, Social, and Cultural Rights (UNCESCR) issued General Comment 15 (GC15) declaring the human right to water in 2002. The right to water was interpreted from the 1966 ICESCR, which includes a right to an adequate standard of living, and the right to health.³ GC15 was the first international document to provide a clear definition of the HRtWS and to establish guidelines for states regarding their obligations.⁴

GC15 is a key part of the evolution of the right to water within public international law (Salman & McInerney-Lankford, 2004). It “broke new ground” by unambiguously stating that the ICESCR Articles 11 and 12 implicitly contained a reference to a HRtWS (Bulto, 2011, p. 3). The Comment inspired a wave of advocacy on the HRtWS at the international level (Nelson, 2009, p. 131). Multiple international NGOs and organizations adopted a human rights approach to their work on water following the issue of GC15 (Nelson, 2009, p. 138). The issue of GC15 also provided momentum for efforts to translate the HRtWS into enforceable national legislation (Salman & McInerney-Lankford, 2004).

GC15 rapidly became an international reference for national legislation and domestic judicial decisions. After 2002, the number of countries recognizing the human right to water increased drastically by declaring it a constitutional right, through national legislation, and by

³General Comments are not legally binding. They intend to assist states parties, providing a clarification as to the intent, meaning and content of the respective treaties. Although General Comments do not create new rights or obligations, they do constitute authoritative interpretations and as such carry considerable persuasive force (de Albuquerque, 2009).

⁴GC15 reads: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.” This right is a prerequisite for the fulfilment of other human rights and for a life with dignity (General Comment 15, 2000, paragraphs 1, 2). States are obligated to respect, protect and fulfil the human right to water, and to work progressively toward its realization (General Comment 15: Part III). These obligations include preventing third parties, such as corporations, from interfering with the enjoyment of the human right to water (General Comment 15: paragraphs 21, 23, 24). As a result of GC15, when state parties to the ICESCR report to the UNCESCR they must address the issue of access to water and show progression on ensuring access without discrimination.

national court rulings.⁵ A flood of activity to study, define and clarify the HRtWS and its implications by UN agencies, development organizations, water policy networks and NGOs followed.

When Catarina de Albuquerque was appointed by the Human Rights Council (HRC) as Special Rapporteur on the human right to safe drinking water and sanitation in 2008, the movement for the legal recognition of the HRtWS gained momentum. Albuquerque prepared a compendium of best practices in consultation with all relevant stakeholders (A/HRC/RES/7/22: 2.a). She urged states to assess their good practices regarding the realization of the HRtWS “from a human rights perspective, using five normative criteria (availability, quality/safety, acceptability, accessibility and affordability) and five cross-cutting criteria (nondiscrimination, participation, accountability, impact and sustainability) (A/HRC/15/31/Add.1; de Albuquerque, 2012, pp. 34–35).

In 2010, the UNGA recognized the HRtWS (A/RES/64/292) and the HRC adopted Resolution 15/9 affirming “that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity” (A/HRC/RES/15/9, p. 3). The HRC Resolution reaffirmed “that states have the primary responsibility to ensure the full realization of all human rights, and that the delegation of the delivery of safe drinking water and/or sanitation services to a third party does not exempt the state from its human rights obligations” (A/HRC/RES/15/9, p. 6).

In December 2015, the UN General Assembly adopted Resolution 70/169 recognizing the distinction between the human right to water and the human right to sanitation. This was good news to Amnesty International, Human Rights Watch and WASH United who advocated for the additional clarification of states’ obligations (<https://www.hrw.org/news/2015/12/17/joint-statement-amnesty-international-human-rights-watch-and-wash-united-un-general>). This has been particularly timely as UN Member states were preparing plans for the implementation of the Agenda 2030 for Sustainable Development, including the new water Goal 6, which civil society groups fought hard for inclusion in the new Sustainable Development Goals (SDGs) (Barlow, 2015). The new development goals reflect the growing recognition of failures associated with the early goals in terms of a lack of investment and planning in water, hygiene and sanitation.

The most recent UN resolution further reflects the growing recognition that sanitation was one of the most neglected and off-track targets of development agenda under the MDGs. The new Special Rapporteur on the HRtWS, Léo Heller, has continued work reaffirming the legal obligation states have in the progressive realization of the HRtWS, and has focused, so far, on analyzing affordability (A/HRC/30/39) and clarifying the human rights framework for water, sanitation and hygiene (A/70/203) as important elements when discussing the realization of the HRtWS.

⁵For example, in a number of countries there is no explicit constitutional right to water, including Argentina, Belgium, Brazil, Costa Rica, Colombia, India, Indonesia, Nepal and Pakistan, but courts have held that the HRtW is an implicit but enforceable constitutional right that is linked to the rights to life and a healthy environment (Boyd, 2011). Additionally, several countries explicitly recognize the HRtW in national legislation or policy (Smets, 2006; Langford et al, 2004).

4. Tracing HRtWS Discourses

4.1 Advocacy NGOs

Thousands of NGOs worldwide work in the water policy realm, focusing on topics ranging from environmental issues, local service delivery, gender concerns and sanitation issues, among others. As this article is primarily concerned with how the discourse around the HRtWS has emerged and changed, we focus here on those advocacy NGOs that have advocated for a definition of water as a human right, and how that advocacy has changed over time. Many of the advocacy NGOs working to build acceptance for the HRtWS are loosely connected in a global “water justice” network that includes organizations seeking to influence local water policy, regional networks working to link these local struggles and Northern NGOs pushing for legal recognition of the HRtWS within the UN system and other global venues. In the 1990s, campaigns against water privatization began to incorporate human rights into their framing, including campaigns to oppose pre-paid water meters (South Africa), to prevent the proposed privatization of water utilities (e.g., Ghana), and to revoke existing privatization contracts (e.g., Bolivia, Uruguay).

NGO campaigns for the HRtWS share a common narrative across geographic regions that focuses on principles of equity, non-exclusion, non-discrimination and democratic participation in local water governance. NGOs that champion the human rights frame often oppose the commodification of water, highlight the scarcity of the resource and call for citizen involvement in water services to ensure equity and democratic management. For example, the Cochabamba Declaration issued by *La Coordinadora*, a coalition of neighborhood associations, labor unions and NGOs that formed to oppose water privatization in Cochabamba, Bolivia in 2000, states: water is sacred and belongs to the earth; “water is a fundamental human right and a public trust to be guarded by all levels of government, therefore, it should not be commodified, privatized or traded for commercial purpose;” water services should be locally provided with participation of citizens (Cochabamba Declaration, 2000).⁶

NGOs that advocate for the HRtWS use multiple other frames in conjunction with the human rights discourse, and they frequently link the HRtWS to a broader set of issues beyond water services. US-based NGO Food & Water Watch (FWW) describes water as a human right, a public good and a part of the global commons. Many NGOs working on the HRtWS link the water issue to opposition to corporate-led globalization and critiques of the role of international financial institutions in the developing world (Nelson, 2009).

There are several observable shifts in the actions proposed by NGOs advocating for the HRtWS over time. First, local anti-water privatization campaigns began to incorporate the human rights frame in their policy work, which attracted the attention and support of transnational NGOs working on environmental, development and consumer issues (Bakker, 2007, p. 438). GC15 strengthened the legitimacy of local water claims and inspired more advocacy on the HRtWS at the international level (Nelson, 2009, p. 131). A second shift

⁶The Ghanaian National Coalition against the Privatization of Water makes similar claims (See Accra Declaration, 2001).

occurred following GC15, as NGOs began to pressure for constitutional amendments legalizing the HRtWS. The Latin American network *Red VIDA* (the Inter-American Network for the Defense and Right to Water) is working on reforming constitutions to define water as a legal human right and to ban privatization in Colombia, Peru, Costa Rica and El Salvador. The European Public Water Network, created in 2008, calls for the inclusion of access to water as a universal human right in the constitutions of all member countries (European Public Water Network, 2008).⁷ Several international NGOs, including the Geneva-based human rights organization Centre on Housing Rights and Evictions (COHRE), adopted the HRtWS discourse, expanding its definition of adequate housing to include access to safe water and basic sanitation facilities.

A third shift in policy goals occurred as NGOs began to pressure for action at the global level to formalize the HRtWS. International NGOs such as FWW and Blue Planet Project (BPP) pressured the international financial institutions on private sector participation in water services, opposed trade agreements that call for privatization, and worked to gain recognition of the HRtWS within the UN. For example, BPP spearheaded a campaign to include the HRtWS in the Sustainable Development Goals (SDGs) that guide the UN's approach to development from 2015-2030. The original proposal and early drafts of the SDG framework document did not include human rights language for water and sanitation; in fact, human rights language was marginalized within the policy discussions on a number of SDGs. BPP worked with other civil society organizations and with member states⁸ to push for inclusion of the HRtWS in the SDGs language. BPP organizer Meera Karunanathan advocated for the inclusion of the HRtWS in several Open Working Groups on the SDGs, including presenting letters signed by hundreds of organizations calling for the HRtWS to be included. One particular area of focus for BPP and their allies was the language around financing for water and sanitation. The SDGs are expected to require between \$3.3 trillion-4.5 trillion, with an estimated \$114 billion USD required per year between now and 2030 to meet the water goals. BPP argued that this funding must be met through public financing rather than private, citing the poor record of privatizing water services as a way to fund the water sector (Dearn & Karunanathan, 2015; <https://water.org/financing-sdg6/>).

While some member states worked alongside BPP to include the HRtWS, other member states opposed this language. Karunanathan reports that the UK actively worked to challenge the inclusion of the HRtWS in the text of the goals (water justice listserv July 21, 2015). In the final hours of the negotiations, the US attempted to dilute the draft language from "the human right to safe drinking water" to "human rights *related to* drinking water and sanitation" (emphasis added), however the final document signed by all member states included the language on HRtWS put forward by NGOs like BPP and then-Special Rapporteur Catarina de Albuquerque (water justice listserv August 2, 2015). The SDG framework

⁷ A European Citizens Initiative to declare water as a human right and a public service among European Union member governments has collected over 1 million signatures from EU citizens (<http://www.right2water.eu/news/one-million-signatures-water-human-right>).

⁸ States included Sweden, Hungary, Ireland, Croatia, Bulgaria, Bolivia, Argentina, Montenegro, Romania, El Salvador, Brazil, Spain, Switzerland, Germany, and Italy among other countries (Patterson, 2014).

document presents a vision of: “a world where we reaffirm our commitments regarding the human right to safe drinking water and sanitation and where there is improved hygiene.” This campaign to include the HRtWS in the SDGs reflects how NGOs interact with states, non-state actors, and inter-governmental organizations to shape how water is defined in the global arena. They face resistance from powerful actors, and there is ongoing contestation over how to frame the right to water and over issues of financing.

Mainstream human rights NGOs including Amnesty International and Human Rights Watch have recently added their support for the HRtWS after decades of reluctance to actively campaign on socioeconomic rights issues. Amnesty International publicly voiced its support for the Human Rights Council resolution under consideration in 2010, and shamed states that were attempting to derail or dilute the resolution (Amnesty International, 2010a, 2010b). Human Rights Watch launched a four-year project in 2014, which aims to increase collaboration with NGOs in the water justice movement and with the Special Rapporteur on water and sanitation, and to produce research on these issues as a stand-alone issue.

While many NGO campaigns for the HRtWS oppose any form of private sector participation in water utilities, some NGOs and charities, such as WaterAid and COHRE, advocate for increases in funding for the water and sanitation sector from all sources, including the private sector. Many NGOs now work to provide guidance for implementation of the HRtWS at the local level. For example, the Council of Canadians and the German religious development organization Bread for the World have published detailed implementation guides that provide support for local communities in identifying violations of the HRtWS and for seeking redress by linking up with regional and global actors such as the CESCR and UN Special Rapporteurs on water and sanitation. (Barlow, n.d.; Gorsboth & Wolf, 2008).

4.2 *Intergovernmental development organizations*

Beginning in the mid-1990s, many intergovernmental development organizations adopted a rights-based approach to development, with the United Nations Development Programme (UNDP) and the World Health Organization (WHO) at the forefront. Many more have come to support the HRtWS, albeit at different moments, but some have stood out in their role and efforts to promote the international recognition of the HRtWS. In its seminal 2006 Human Development Report, UNDP stated: “Access to water is not just a fundamental human right and an intrinsically important indicator for human progress. It also gives substance to other human rights and is a condition for attaining wider human development goals” (UNDP, 2006, p. 27). The WHO framed the HRtWS in the context of health-related human rights and the MDGs, calling special attention to the poor, women, children and indigenous peoples, embracing a rights-based approach based on the principles of participation, empowerment, non-discrimination, accountability, transparency, the rule of law and justiciability (WHO, 2002).

Following the issue of GC15 in 2002, UN-HABITAT launched the Water and Sanitation Trust Fund to help governments meet their commitment to the water target of the MDGs by creating smarter water policies and increasing investment in water and sanitation for the

urban poor. In 2009, the United Nations Educational, Scientific and Cultural Organization (UNESCO) stood in full support of the HRtWS, stating that non-discriminatory access to water and sanitation is a pre-requisite for the realization of other human rights and calling on international financial institutions and private donors who can all prioritize investments in basic drinking water and sanitation services by applying a human rights-based approach (UNESCO, 2009).

Collaborative reports and partnerships across intergovernmental development organizations around the HRtWS have grown significantly over the past decade. For example, in collaboration with the Centre on Housing rights and Evictions (COHRE), the American Association for the Advancement of Science (AAAS), and the Swiss Agency for Development and Cooperation (SDC), UN-HABITAT (2007) produced the *Manual on the Right to Water and Sanitation* to assist policy makers and practitioners in implementing the right to water and sanitation by offering practical reforms that can make the water and sanitation sector operate in a more pro-poor, accountable and inclusive manner. In a joint report for the Rio+ 20 meeting, the United Nations Office of the High Commissioner of Human Rights (UN OHCHR) and the United Nations Environment Programme (UNEP) (2012) address how human rights and the environment can play an “integral, indivisible role in achieving sustainable development and equality of access” to basic needs such as access to water.

Yet, some intergovernmental development organizations have been hesitant to formally support a HRtWS. For example, although the United Nations Children’s Fund (UNICEF) reported that it was working to meet a second target of ensuring that all schools have adequate child-friendly water and sanitation facilities and hygiene education programs (UNICEF, 2013), it was slow to engage in HRtWS discourse. In their partnership with the WHO on a Joint Monitoring Programme for Water Supply and Sanitation, UNICEF did not formally mention the HRtWS, even though it reported on the progress of achieving the MDGs related to water supply and sanitation (WHO and UNICEF, 2010). Then in 2014, UNICEF publicly recognized the HRtWS, arguing for an equity-based approach and calling for governments to play a leading role in realizing the HRtWS (UNICEF, 2014).

So too has the World Bank joined the HRtWS discourse more reluctantly. As one of the most important development organizations in terms of its scope and investment in water-related activities, the Bank has historically not engaged in human rights. Russell (2010, p. 10) places the Bank on the “rights resistant” end of the spectrum, arguing that the specific language of human rights has not historically been part of the Bank’s official discourse. In 2005, then-President Wolfensohn summarized the Bank’s view on human rights and development this way: “[T]he very mention of the words human rights is inflammatory. It’s getting into areas of politics, and into areas about which [our shareholders] are very concerned. We decided just to go around it and we talk the language of economics and social development” (World Bank, 2005, pp. 19, 21). The Bank notes that the right to water can more accurately be characterized as a “need” or an entitlement, embodied as a right (Salman & McInerney-Lankford, 2004). In 2016, in an FAQ, the Bank acknowledged recognition of the HRtWS. They note: “The World Bank helps to support countries striving to meet their obligations under all such environmental and social conventions and agreements

- including rights-based ones - that they have signed up to through the full range of World Bank Group instruments.”⁹ (World Bank, 2016).

4.3 National governments

This analysis cannot overlook the role of national governments in this worldwide process. Some countries have stood out in recognizing a HRtWS at the domestic level even before its international recognition, others have followed up on the GC15 and later on the 2010 UNGA declaration impetus. Others have actually linked their domestic understanding of the HRtWS to the international dynamics that unfolded, pushing for - and sometimes against - the recognition of such a right. Others still have participated in the international processes via the UN but have yet to incorporate domestically the international accomplishments on this topic.

Countries such as Mauritania as early as 1991, Uganda in 1995, Gambia, South Africa¹⁰ and Zambia in 1996, and Ecuador and Ethiopia in 1998 created constitutional provisions guaranteeing access to clean water. Other countries recognized the HRtWS in specific national water legislation, such as Tanzania in 1993, Guinea Equatorial in 1994, South Africa in 1997 and Burkina Faso in 2001. Additionally, two court rulings by the Belgium Constitutional Court in 1998 and the Indian Supreme Court in 1999 confirmed that the HRtWS was a constitutional right. Successful anti-privatization campaigns by social movements in Latin America and Africa, including Bolivia in 2000 and Ghana in 2001, called for respect for the HRtWS at the local level. All these pressures led to GC15 in 2002, as explained above.

After 2002, the number of countries legally recognizing the HRtWS increased drastically. Uruguay in 2004, Nicaragua in 2005, the Democratic Republic of Congo in 2006, Maldives and Ecuador in 2008, and Bolivia in 2009 all included the HRtWS as a constitutional right since GC15 was issued. Around twenty other countries in Latin America, Africa and Asia (Langford, Khalfan, Fairstein, & Jones, 2004; Smets, 2006) recognized the HRtWS after 2002 through national legislation, as well as Canada, Peru, Pakistan and India in 2009. In various other countries, courts have held that the HRtWS is an implicit but enforceable constitutional right that is linked to the rights to life and to a healthy environment (Boyd, 2011). In 2010, when the HRtWS was officially recognized in the UNGA and the UN HRC, Kenya, Niger and Nicaragua included the HRtWS in their constitutions. Various countries

⁹ The Bank immediately follows this up by posing and answering the following question: “*Does the human right to water and sanitation mean that water and sanitation services should be free for everyone?*” No, rather it implies that water and sanitation must be affordable for all and nobody to be deprived of access because of an inability to pay. As such, the human rights framework does not provide for a right to free water. Accordingly, the costs of service provision should not prevent anyone from accessing these services and should not compromise their ability to enjoy access to water and sanitation services alongside other human rights, such as the rights to food, education, adequate housing or health.”

¹⁰ For a discussion on the impact of the recognition of the HRtW in South Africa see Mehta, 2006 and McDonald & Ruiters, 2005.

have followed to include the HRtWS in their national legislation, and others have continued to argue that the HRtWS is implicit in existing legal frameworks and therefore enforceable.

2010 was a crucial year regarding the adoption and consolidation of an international discourse on the HRtWS, with parallel initiatives or *démarches* taking place at the UNGA and the UN HRC, with different countries leading each process. The proposal that reached the UNGA was presented by Bolivia, having almost forty co-sponsors in all five continents. No country voted against, but forty-one countries abstained. Most of them stated they were not against a HRtWS, but did not agree with the dynamics that unfolded, i.e. calling a vote for a proposal that had been (and was still being) discussed in the UN HRC. Several representatives, such as the US, Japan, Turkey and New Zealand, among others, felt this pre-empted the efforts developed at the UN HRC; others, such as Canada, Botswana and Australia, argued that deciding on a new right should be based on a consensus; and others, such as the United Kingdom argued that there was still no evidence that the HRtWS was a freestanding right (UNGA, 2010). Despite opposition by powerful states including the US, UK and Canada, both the UNGA and the UN HRC resolutions on the HRtWS were adopted with a wide co-sponsorship as a basis (Amnesty International and WASH United, 2015; Baer, 2017), although it was acknowledged by many that the European Union was leading the process (UNGA, 2010).

4.4 *Global knowledge networks – The World Water Forum*

Global knowledge networks on water policy include multiple actors and forums for policy debate, including the Global Water Partnership, Stockholm Water Week, World Water Congress and International Water Association events, as well as multiple academic conferences and journals devoted to water policy. The World Water Forum (WWF) is the largest international conference devoted to water governance, bringing together multiple stakeholders. We focus on the WWF in detail here to highlight one key space where there has been a shift in the discourse on the HRtWS over time at the global level and where states, private companies, intergovernmental organizations and some NGOs regularly participate. Moreover, the Ministerial Declaration that results from each WWF constitutes an important official statement regarding water governance principles and approaches. The dominant discourse at WWF conferences is that water is an economic good and water services are a human need. Until recently there was strong resistance to the use of the human rights frame in WWF documents, as a topic of panel sessions, and in the Ministerial Declarations signed by participating governments.

When the HRtWS first appeared at the WWF, it was often as the topic of “side events” organized by civil society groups and in parallel activist-led forums taking place outside the official conference. Despite pressure by activists and a handful of government representatives, official WWF documents from the 2000 WWF in The Hague do not mention the HRtWS (WWC, 2000a). Although activists disrupted the 2003 WWF conference in Kyoto to call for recognition of the HRtWS and opposition to privatization (Bakker, 2007), human rights language was again rejected in the final Ministerial Declaration. The HRtWS begins to appear in official WWF documents in 2006 at the Mexico City meeting. In addition to

side events, the HRtWS was the topic of three official WWF sessions.¹¹ In the opening speeches to the conference, Mexican President Vicente Fox stated: “Water is above all a human right which no one can renounce” and WWC President Loïc Fauchon said: “The right to water is an indispensable element of human dignity” (Martinez & van Hofwegen, 2006, p. 87). In clear contrast to the exclusion and rejection of human rights language in previous WWF meetings, the summary describes the 2006 Forum as an opportunity for all participants to discuss and clarify the HRtWS as a concept and what it means in practice (Martinez & van Hofwegen, 2006, pp. 87–91). Government representatives again rejected the inclusion of the HRtWS in the Ministerial Declaration despite attempts by the Bolivian representative and others to mobilize support for its inclusion.

There was some backtracking on the human rights discourse at the 2009 Istanbul WWF compared to the relatively open acknowledgement of the HRtWS in Mexico. Although there were three official sessions and multiple side events addressing the HRtWS, participants cautioned against arguing over words (e.g. rights versus needs) as a distraction from the more practical, technical matter of providing water services (WWC, 2009a, p. 55). The final Ministerial Declaration references the debate over the HRtWS while rejecting the language: “We acknowledge the discussion within the UN system regarding human rights and access to safe drinking water and sanitation. We recognize that access to safe drinking water and sanitation is a basic human need” (WWC, 2009b).

There was a surge in attention to the HRtWS at the 2012 WWF in Marseilles. The term “human right” appears on the Forum website over 2,000 times. The World Water Council, which convenes the WWF, hosted its own “high level panel” called “Making rights to safe water and sanitation a reality for all.” The Ministerial Declaration acknowledges recent UN action on the HRtWS (GC15 and the UNGA Resolution) and states: “we commit to accelerate the full implementation of the human rights obligations relating to access to safe and clean drinking water and sanitation” (WWC, 2012). Critics charged that this language stops short of a full recognition of the HRtWS and leaves openings for states to avoid the obligations that the HRtWS entails (Provost, 2012).

At the 7th WWF in South Korea in April 2015, panels and discussions on the HRtWS were mostly relegated to side events like the Citizen’s Forum, an event that aimed to raise awareness amongst local citizens on water issues. However, the final Ministerial Declaration referenced the UNGA and Human Rights Council resolutions on the HRtWS and cited a “commitment to the human right to safe drinking water and sanitation and ensuring progressive access to water and sanitation for all” (WWF, 2015). The WWC website now includes the heading: “The right to drinking water and sanitation, a recognized human right,” and provides a FAQ section to the HRtWS that focuses primarily on the content of GC15.

¹¹ These include: “Securing the Right to Water: from the Local to the Global, Civil Society Perspectives,” “The Right to Water: What Does It Mean and How to Implement It,” and “Human Right to Water.” One of the authors of this article attended the WWF and reflects on an apparent openness to the topic. She reflects that the beginning of a new approach by the WWC to this issue was the fact that Danielle Mitterand, from the World Water Manifest was an invited speaker to session ‘Securing the Right to water’ convened by Blue Planet Project. The mere fact that BPP had convened a session was considered a great step forward.

4.5 Private sector actors

Private sector actors are the actors whose role is most visible and most contested when it comes to water governance and specifically the fight for the recognition of a HRtWS. In fact, the movement initiated by development activists was linked from the first moment to the wider participation of private sector actors in water governance in developing countries, either by development aid conditionality and/or by governmental adoption of neoliberal economic policies. Consequently, a significant part of the efforts towards defining a HRtWS has been, and still is, intrinsically connected with anti-privatization demands. As one can understand, private companies are not in the business of promoting, fulfilling or guaranteeing human rights, but they do operate in a legal-institutional-social-economic environment framed by national and international principles and norms, which include human rights.

In the 1990s, most transnational private water companies were not involved in the HRtWS debate, assuming that its main purpose was to exclude them from the water sector, as for instance occurred in Uruguay in 2004.¹² In fact, only after the GC15 did some of the companies initiate their participation in the debate, but most only acknowledged a HRtWS after the 2010 UNGA decision. For instance, when analyzing the public position and press releases of the two largest water companies in the world in terms of revenue for 2014 and 2015 – Veolia and Suez, both French – regarding water supply and their role in this process, we find that they both shared a development framework connected to the MDGs, and only later adopted the HRtWS discourse. In 2007, Veolia’s reply to the UN OHCHR stated “No one can deny that the right to water is a basic human right,” although clarifying that “the right to water has a cost” and that “someone has to take responsibility for paying when customers cannot cover the entire cost” (2007, p. 2). Suez adopted a clearer position on some of the most pertinent issues associated with this debate, addressing water as a commodity and the HRtWS directly even before the 2010 UNGA decision, although only after the GC15 (Suez, 2007, p. 1). Currently, both Veolia and Suez affirm their role to help states in fulfilling the HRtWS. Historically, French water companies were created within a French national concept of water supply as a public service to be guaranteed even when private actors were responsible, so this language and position fits within a larger national water discourse. It should be noted, however, that these are the companies’ official discourses and positions, and that we continue to witness massive HRtWS violations across the world in cases where these companies are involved.

This is in sharp contrast to the world’s third largest water company in terms of revenue – American Xylem Inc. (ITT Corporation until 2011) – which does not address the issue of HRtWS *per se*. The fourth largest water company – American Water Works Corporation Inc. – also does not elaborate on the HRtWS, but it does state in its website that it complies

¹²Uruguay held a constitutional referendum in 2004, resulting in the constitutional recognition of the HRtWS and the restriction of the water sector to public actors. This last decision was applied retroactively, determining that private water companies legally operating in Uruguay in 2004 “were no longer legally authorized to do business in the country” (Moshman, 2005, p. 65).

with the human right to water and sanitation (AmWater, n.d.). In these two cases, the HRtWS terminology is mentioned but there is no engagement with the debate.

Another group of private actors working in the water sector are those whose core business is bottled water, an industry whose activity also impacts the fulfillment, protection and promotion of the HRtWS. The four biggest multinational bottled water companies in 2015 – Nestlé, Danone, Coca-Cola Co. and PepsiCo – have addressed the issue of the HRtWS in somewhat different ways, from a direct engagement with the HRtWS to a clear omission of the topic. Nestlé, Coca-Cola Co. and PepsiCo have directly recognized the HRtWS (Coca-Cola Co., n.d.; Nestlé, 2010, p. 12; PepsiCo, n.d.-a, p. 3). PepsiCo was one of the first companies of its size to recognize the HRtWS (PepsiCo, n.d.-a, p. 3). Since 2006, PepsiCo and its Foundation have worked with different partners to provide 16 million people around the world with access to safe water, as of the end of 2017, in a clear contribution to the MDG 7 and SDG 6 (PepsiCo, n.d.-b). Their projects met this goal by 2012, and they have subsequently continued to work to increase the number of people with access to clean drinking water, directly contributing to the implementation of the HRtWS. In 2015, Coca-Cola Co. signed a joint statement with World Wildlife Fund (WWF) and WaterAid supporting a dedicated WASH Sustainable Development Goal (Coca-Cola Co., n.d.).¹³ Nestlé has addressed the issue of the HRtWS by incorporating its recognition and respect into their Corporate Business Principles since 2010 (Nestlé, 2010, p. 12). In its Commitment on Water Stewardship, the company makes a commitment to support the HRtWS by guaranteeing that right in all facilities to its employees (Nestlé, 2014, p. 2), and also by, on the one hand, “ensuring that [its] operations do not compromise the right to water of local communities” (Nestlé, 2014, pp. 1–2) and, on the other hand, assisting “the provision of clear water and improved sanitation to priority communities adjacent to selected factories and locations where Nestlé is sourcing agricultural commodities” (Nestlé, 2014, p. 2). Danone is the only one of the four companies that does not address the HRtWS directly. Through its Danone Communities Fund, it does finance projects focusing on improving access to clean drinking water, namely in Cambodia, India and Mexico (Danone, n.d.), but always framed as a health issue hand-in-hand with nutrition. All these commitments exist despite severe critiques regarding these companies’ activities in India (Coca-Cola Co. and PepsiCo), Pakistan (Nestlé), Indonesia (Danone), and other countries, where claims regarding the violation of the HRtWS have been recurrently made against them.

5. Convergence, yet Contestation

In our study of the constellation of actors active in water governance around the HRtWS, we observe a notable shift toward convergence around the recognition of a HRtWS. Our findings suggest that at the global level, there are actors in all major sets of actors in water

¹³ Coca-Cola Co. is the only one of these companies which has endorsed the WASH Sustainability Charter, committing “to collaboratively promote the delivery of safe water, sanitation, and hygiene services” across the world (WASH, n.d.).

governance that publicly acknowledge a HRtWS. This convergence likely came with a cost: the appropriation of the HRtWS language by actors that initially were not a part of this movement, resulting in a cooptation of the term as a banner that lost meaning and cohesion, providing a false sense of consensus that actually does not exist. Although we find broad global consensus that a fundamental HRtWS exists among the above analyzed actors, we uncover contestation in the discourse across our sets of actors around the proposed actions associated with implementing the HRtWS. Contestation among these and other actors now focuses on the difficult issue of how to implement a rights-based approach to water services, and what a legal human right to water means for questions of financing, providers and oversight. Efforts by the US and the UK, among others, to remove or dilute human rights language in the SDGs on water suggest that some state actors continue to oppose the inclusion of the HRtWS in global initiatives. Given the fragmentation and diversity of actors in water governance today, this contestation challenges implementation strategies and realization of the HRtWS.

5.1 Framing the HRtWS and linking action

In the 1990s and early-2000s, the legitimacy of framing water as a human right was contested among major actors in global water governance. The international legal community and voices within the UN were relatively silent on the right. The World Bank and WWF participants simultaneously defined water as an “economic good” and a “human need” and explicitly opposed the use of a human rights frame for water issues. Among actors arguing for a HRtWS, some intergovernmental development organizations more narrowly embraced a rights-based approach to development and several NGOs were framing water as a human right in their protests against market-based approaches to water management at the local level and within regional networks.

These protests put pressure on national governments and prompted the UN to issue GC15 in 2002. In doing so, the UN emerged as an influential actor in the HRtWS discourse. GC15 served to provide a key reference point for NGOs and built momentum at the international level for further solidifying the HRtWS. Some intergovernmental development organizations moved beyond a rights-based approach to specifically discuss and outline the HRtWS in their work. In a post-2002 environment, some intergovernmental development organizations framed the HRtWS to address the more marginalized, including women, children and indigenous peoples. Through forums like the WWF, where states, private companies, intergovernmental organizations and some NGOs are invited to participate, a shift in the discourse on the HRtWS resulted. Some sets of actors who had previously rejected the human rights discourse began to adopt this language and conceptualization of the HRtWS, such as private water companies.

Our tracing of the framing of the HRtWS across a diverse set of actors reveals broad trends and patterns in the interaction of the sets of actors. NGO actors link to intergovernmental development actors and, at the same time, put pressure on individual governments. A second swirl of interactions leads to reaching a momentum with dynamics between and among individual governments and intergovernmental organizations, namely within the

United Nations, where NGOs maintain the pressure, leading to the GC15 and eight years later to the UNGA and UN HRC recognition of the HRtWS. Private companies, under pressure from governments and NGOs, started slowly engaging with the debate on the HRtWS. In fact, it is only after 2010 that the WWF, as a reflection of the dynamics including private actors and in order to enhance its legitimacy, appropriated the language adopted by countries in national constitutions and legislation and by NGOs exerting pressure. Currently, after this third swirl of interactions, the discourse regarding the HRtWS converges but this resulted from dynamics developed by different types of actors, in different arenas and with different timings (See Figure 1).

Despite this broad convergence on the existence of the HRtWS, our findings suggest variation within and among actors on the broader definition of the HRtWS. Some NGOs refer to mining, large dam projects and industry pollution as violations of the HRtWS. Other NGOs nest the HRtWS within a broader critique of market-driven approaches to water management and development, while others still argue that the HRtWS does not preclude private sector participation. Generally, NGO interpretations of the HRtWS emphasize equity, non-discrimination and democratic principles regarding the need for citizen

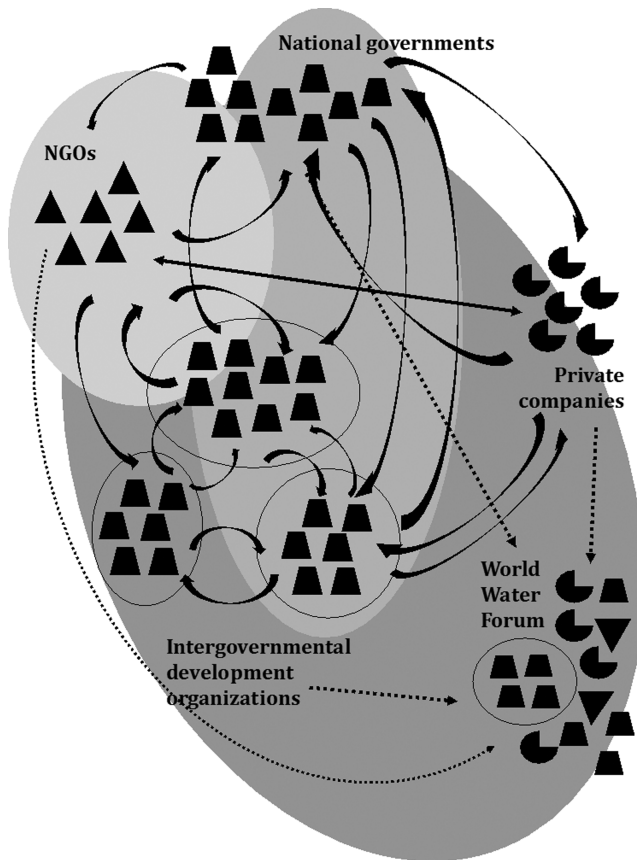


Figure 1. Actor interactions towards a HRtWS

participation in water governance, while global knowledge networks, like the WWF, tend to focus on the logistical and pragmatic aspects of water delivery in their framing of the HRtWS. The international legal community converges on the understanding that a HRtWS implies citizen participation, accountability mechanisms and non-discriminatory practices, beyond its respect, protect and fulfill elements. Still, they highlight that its implementation is dependent on each state's capability and consequently follows the principle of progressive realization. Some residual voices still claim one cannot pursue a legal action based on the violation of a HRtWS, since there is no legal grounding for such a right. Almost all private actors currently publicly recognize the HRtWS, although several have been accused of violating this right, despite their public statements and endorsements of the right. As seen in the campaign to include the HRtWS in the SDGs, some states continue to push back against the use of human rights language with reference to water and sanitation, even in non-binding international documents.

The variation on the HRtWS definition becomes more striking when it comes to its implementation. There is no consensus nor convergence on what 'sufficient', 'safe', 'acceptable', 'accessible' and 'affordable' mean. For instance, the amount of water needed for a dignified life varies based on climate, availability, culture, and technology, among others. Having water 'physically accessible' does not imply that citizens will automatically benefit from that water, since they may not have the economic resources to pay for its access. 'Affordable' is yet another aspect with different readings and various studies pointing in different directions, including some that argue that up to a certain amount of water should be free. The analysis provided above suggests that convergence is possible under certain circumstances and dynamics, but that the water governance field on the HRtWS remains fragmented and contested.

The role of various water sector actors in realizing the HRtWS is another area where we observe both convergence and contestation. The diverse constellation of actors studied here are in relative agreement that governments are the primary responsible parties for HRtWS fulfillment. Some intergovernmental development organizations outline roles for broad sets of actors, including intergovernmental development organizations, NGOs and global knowledge networks. The former UN Special Rapporteur Catarina de Albuquerque acknowledged the importance of private actors in fulfilling the HRtWS, without exempting states from their obligations. She further identified three areas in which challenges can arise from private sector participation: decision-making, operations of services and accountability and enforcement (A/HRC/15/31). Earlier research suggests that the discourse detected from the former Special Rapporteur fits within the dominant framework of a state-centered, market-friendly approach to water management, and does not fully address barriers to fulfilment of the right, like state corruption and the needs of peri-urban residents (Baer & Gerlak, 2015). Still, there is a more mixed approach for private sector actors, with less agreement on what their role should be in practice. While activists use the HRtWS to challenge privatization, the HRtWS under current international law does not preclude private sector participation. Although there are tensions between the HRtWS and private sector participation, they may not necessarily be incompatible when paired with strong regulation and oversight (Murthy, 2013).

Regarding proposed actions, we observe broad convergence across actors that important next steps must address implementation of the HRtWS. The focus of both national governments and international organizations is now on the implementation of the HRtWS, with close monitoring by the UN Special Rapporteur for the HRtW, first Ms. Catarina Albuquerque and now Mr. Léo Heller. Toward that end, many actors are publishing guides to assist policy makers and practitioners in implementing the right to water and sanitation beyond legal approaches. Constitutional amendments are called for both in global knowledge network documents and by NGOs as a useful action to solidify a government's commitment to the HRtWS. In the international legal community, probably the most important development has been the 2012 UN Special Rapporteur book "On the right track: good practices in realising the rights to water and sanitation."

Yet, we also uncover serious areas of contestation over proposed actions relating to issues of financing (sources and amount), pricing (criteria for access), mode of delivery (role of governments and private companies) and regulation (level of state regulation and citizen oversight). This is in line with earlier research that highlights the privileging of economic aspects as opposed to cultural or public good aspects of water as part of the wider contestation over policy approaches to solving the gap in access to water supply and sanitation (Nicol, Mehta, & Allouche, 2012, pp. 4–5). Contestation clusters around the role of the private sector in water services. Some NGOs see the private sector as violators of HRtWS through exploitative pricing of water services, lack of investment to bring water services to poor and marginalized communities, pollution of water resources associated with mining and industry and anti-democratic practices in all areas of water management. Other actors argue that the private sector has a positive role to play by providing investment and technical expertise to help governments fulfill the HRtWS obligations. These actors include WWC/WWF, the World Bank and some NGOs like COHRE and WaterAid. We also find variation within our sets of actors on frames and actions; some NGOs oppose all forms of private sector participation in water management, other NGOs encourage investment from the private sector. These contested issues are not insignificant. Rather they are at the heart of fundamental differences around ownership of water that are likely to challenge implementation of the HRtWS.

5.2 *HRtWS and water governance*

We find increased attention to the HRtWS in the discourse of actors in global water governance in the mid-late 1990s. Importantly, this overlaps with several key trends in global water policy: the growth of rights-based approaches to development, the increase in private sector participation in water utilities in the developing world, protests against water privatization in several countries and the MDGs in 2000. We see promotion of the HRtWS at a variety of scales; from local communities, national policy and legislation (e.g. constitutional amendments), regional networks (EU declaration) and at the global level of international financial institutions (IFIs), the UN, global private sector commitments and intergovernmental development organizations.

Our findings also speak to the relative power, influence and resources across our constellation of actors involved in global water governance. While the human rights frame was a dominant frame for social movement activism around water since the late-1990s, global actors with the most power and resources in water governance were resistant to the rights frame, insisting on defining water as an economic good or economic need rather than a right. Despite this initial resistance, these powerful actors now acknowledge and use the HRtWS in their work. We observe that the less powerful actors in water governance, including the NGO community and some intergovernmental development organizations (namely, UNDP) have changed the discourse on water in this regard. Although lacking in both resources and influence at the highest levels of governance, advocates for the HRtWS have achieved many of their goals for proposed actions, such as the appointment of a UN Special Rapporteur on the HRtWS, the 2010 UNGA and UN HRC Resolutions and the wave of constitutional amendments aimed at institutionalizing the HRtWS at the local level.

The areas of contestation over the HRtWS identified above map onto these two sets of powerful actors; for example, rejection of private sector participation in water management comes from the less powerful actors while the more powerful actors continue to push for private sector involvement in the water sector. Further, private water business has also been linked to knowledge networks as a way to advance the discourse that may benefit their interests. The 2005 Commission on Financing Water for All, commonly referred to as the Camdessus Report, argued that the way to finance “water for all” is to expand and facilitate corporate management of water and sanitation systems (Winpenney, 2005). It relied heavily on the MDG target to demonstrate the need for public measures to facilitate, insure and reward private investment (World Bank, 2003).

Indeed, a HRtWS alone cannot solve the governance challenges associated with ensuring universal access to clean and affordable water. Further, for those actors who “talk” a good deal about the HRtWS, as presented here, questions remain about how well the HRtWS has been fully embraced in practice. Some earlier studies have suggested that incorporating human rights terminology into development discourse is a “rhetorical gesture” that does not necessarily change how policies are adopted and promoted or projects identified, financed or evaluated (Unver, 2002, pp. 1–2). Similarly, in her research of the HRtWS in the development community, Russell (2010, p. 16) pointed out the danger of using the simplified language of rights-based approaches that are then “too frequently decoupled from the international human rights regime in the course of translation into development cooperation.” Although our contribution here is limited to studying the evolution of the discourse, we suggest that research is needed to better understand the gap between rights talk and rights practice, especially amongst powerful players like the World Bank and corporations, who now embrace the HRtWS.

The human rights frame invokes contestation in part because it introduces an overtly political orientation to what some consider a technical endeavor, namely bringing clean water and sanitation services to people. The HRtWS discourse draws attention to political issues of equity and justice, discrimination and inequality. It invokes political ideas like democratic decision-making to water management, and in some cases – especially for some

NGO discourse—is infused with anti-corporate sentiment. In this way, it has potential to bring the political and ethical back into an otherwise increasingly depoliticized environment of water governance (Mukhtarov & Gerlak, 2013; Swyngedouw, 2013). We must now turn our attention to the implementation of the HRtWS to better determine to what extent this potential is realized.

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