

Human Right to Water: Contemporary challenges and contours of a global debate

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SUMMARY

In recent years, significant debate has taken place around the concept of the “human right to water”. In this paper, we seek to respond to recent critiques and clarify the terms of the debate by presenting an in-depth exploration of the human right to water. We explore several critiques of the concept, situate it in the context of the current neoliberalization of water provision and in relation to contemporary water challenges, and present some examples of how it has been deployed to further the cause of access to water for vulnerable populations in varied contexts. We conclude that, rather than abandoning the concept as critics have suggested, the human right to water maintains importance as a discourse and strategy in the contemporary moment.

Keywords: human rights, water, social movements, privatization

I. INTRODUCTION: THE HUMAN RIGHT TO WATER AND THE GLOBAL WATER MOVEMENT

It was after 9pm, but not yet the end of another long day full of activities in both the official and the alternative World Water Forums in Istanbul. The room in the basement of the Crystal Hotel where members of the Global Water Movement¹ had been holding their daily meetings was full of tired faces. Yet, as every other night during that rainy mid-March week in 2009, all the activists in the room were alert and undivided in their attention to the update on the negotiations of the official Forum provided by the representatives of the Venezuelan and Bolivian delegations. As had been the case three years earlier in Mexico City, the key issue was whether the official Forum declaration would include a clause stating that water is a fundamental human right. The heated reactions from the audience gave clear signs of the issue's importance for those representing different water justice movements—disapproval when it was announced that some countries refused to accept any formulation of the human right to water, and applause when there was news of bringing another group of countries to support the idea.

These meetings, alongside other developments such as the approval of a resolution by the United Nations in support of the human right to water in the summer of 2010, capture the importance as well as the complex nature of this concept in the contemporary moment. Clearly, the human right to water (hereafter HRW) remains a key issue for water policy and politics, even as it has been subject to intensified critique, particularly in academic discussions. Our aim in this paper is to tease out these complexities more fully in order to better understand the limits and opportunities associated with the HRW.

We do so by first considering critiques of the HRW in section II and situating them against a summary discussion of current water issues and governance challenges. In section III, we offer a broadened conceptual framework for evaluating the HRW that includes a focus on issues of provision, responsibility, and goal orientation. Finally, in section IV we review how the HRW has been strategically deployed by NGOs and activist movements in various contexts in order to query the potential of the approach.

We conclude that while we see reason for critical reflection and caution regarding the HRW, we nevertheless consider that its focus on goals related to water access and provision, attention to vulnerable populations and equity concerns, and insistence on basic human needs, make it relevant and timely. This is particularly the case given the context of neoliberalized water governance of the past several decades and the continuing challenges associated with extending access to underserved populations. A linked conclusion that we draw is that different concepts and approaches, such as the HRW or water as commons, need not be thought of as competing, either-or, options. Instead, they might be thought of as elements in a portfolio of approaches needed to highlight different hydro-social issues and challenges that emerge in particular times and places. We make these arguments both through theoretical discussion and empirical illustration.

II. QUESTIONING AND SITUATING THE HRW APPROACH

Key Critiques of the HRW

Several thinkers have raised important concerns with the HRW as a concept and political strategy. Mehta (2000) raises a number of unanswered questions, from who is responsible for the delivery of the right to water to how it could be enforced, while Sangameswaran (2007:9) characterizes the “international human rights regime as a relatively strong promotional regime [and] a relatively weak implementation regime” with no real enforcement capacity. Anand (2007) also attends to the empirical realities of the concept. Analyzing four countries that have formal legal recognition of water as a human right,ⁱⁱ he suggests that only Uganda has demonstrated a significant increase in the proportion of the population with access to water (South Africa has shown only minimal progress in this regard). In other countries where significant progress has been made, no formal legal recognition of the right to water exists. He concludes that good governance, particularly voice and accountability, are likely to be most important for improved access.

Similar concerns are highlighted by Bakker (2007, 2010), who has argued forcefully that the HRW is a limited strategy to meet progressive goals and is particularly ill-suited to resist ongoing water privatization.ⁱⁱⁱ To make this point, Bakker highlights the analytical imprecision associated with HRW campaigns, which often confuse property rights and service delivery models. Further, she argues that the HRW is (potentially) compatible with privatization schemes—making it fundamentally flawed to deal with water challenges related to ongoing processes of neoliberalization (more below). Bakker’s critique also shares a more general concern with the individualistic, Western, state-centric, anthropocentric, and universalistic bases of ‘rights talk’ (see also Parmar 2008; Redgwell 1996), leading to a questioning of the appropriateness of this approach to deal with critical ecological challenges or issues faced by marginalized, indigenous, and non-Western populations. As Parmar concludes drawing from the case of resistance to a Coca-Cola plant in Southern India, mainstream discussions related to the right to water fail to contest exclusions and limitations of the dominant human rights discourse, and as such are subject to being co-opted by the very forces they seek to challenge.^{iv} Given these challenges, several alternatives to the HRW have been proposed, including water as commons (Bakker 2010), rights as freedom (Parmar 2008), alter-globalization, capabilities (Sangameswaran 2007:18), and non-Western approaches, yet it is acknowledged that each of these also carry their own difficulties and weaknesses.^v

Even if we accept some the problems presented by the HRW approach, we argue that calls to abandon it as a strategy are premature, a conclusion that we develop throughout the remainder of the paper.

Contemporary Water Challenges and Governance Shifts in Historical Perspective

To identify the limits and opportunities of diverse water concepts and strategies, it is necessary to briefly consider existing hydro-social challenges, as well as how water governance has shifted over the past several decades (see Biswas 2004, Mehta with Miroso 2004, Allan 2003). We are not able to provide a comprehensive discussion here, yet there are several trends worth noting. In the 1970s, a focus on basic needs from international development organizations and a growing interest in environmental issues resulted in the emergence of water access as a major concern for the international community (witness the 1977 UN Water Conference in Mar del Plata, Argentina with a strong focus on equitable water access, particularly in developing countries). The 1980s were declared the *International Decade for Drinking Water Supply and Sanitation*, ushering in unprecedented investments in water infrastructure. However, it soon became evident that infrastructure alone would be unable to improve water access—it would also be necessary to take into account the ‘human side’ of provision, including management and maintenance (Mehta with Miroso 2004).

An intensified focus on water governance, together with a growing perception of water scarcity and the broader political economic context of neoliberalization (Bakker 2010)^{vi} led to still other water governance shifts and hydro-social challenges from the mid 1980s onwards. One of the most influential events took place in 1992 in Dublin, Ireland, in a meeting to address water issues in preparation for the Rio Earth Summit. From the meeting, four principles for water management were advanced—the ‘Dublin Principles’. The most famous and contentious of the principles was the last one, establishing that water should be managed as an ‘economic good.’^{vii} This principle has been often interpreted to mean that water should be provided by private companies and that consumers should pay the full cost of water provision (full-cost recovery), signaling a radical shift from the subsidized public provision of water that had previously been the norm in many parts of the world (Goldman 2007).^{viii} The increasing privatization of water, combined with a focus on devolved, participatory and commodified water management promoted by entities such as the World Bank and the World Water Council have been discussed as examples of increasingly ‘neoliberalized water governance,’ part and parcel of the increasing neoliberalization of resources more generally (ibid; Bakker 2005; Harris 2009). There have also been many visible examples of resistance to these shifts, most notably large-scale protests against water privatization (see Bennett, Dávila-Poblete and Rico 2005 for Latin American cases, and McDonald and Ruiters 2005 for African examples).

Despite considerable interest and attention over the past few decades to improving water quality and access, particularly for the world’s poor, there has been little aggregate progress towards this end. An estimated 884 million people remain without access to a safe and sustainable water supply for basic needs, and an estimated 2.6 billion people are estimated to be without access to improved sanitation (WHO and UNICEF 2010). Further, an estimated 3.575 million people a year die from

water-borne diseases (Prüss-Üstün et al 2008). Although one can find instances of improved access in particular contexts (see the discussion in Anand 2007), on the whole, there are continuing, even if differentiated, hydro-social and water governance challenges, some of which appear to be worsening (see also UNDP 2006).

Other hydro-social challenges that can be added to the list include ecological needs for water; increasing water demand for energy generation, irrigation, or other uses; and key uncertainties related to future availability linked to climate change, pollution, population change and other issues. It is against these water challenges and policy and governance shifts that contemporary strategies and politics related to water must be understood and assessed. It is also in this context that the HRW has emerged as a key strategy to bring increased attention to the issue of clean and safe water for all, particularly for those unable to pay under full-cost recovery or privatization schemes. Indeed the concept has gained traction over the past decade, as the World Water Forum debates and the growing number of NGOs and websites dedicated to the concept testify.^{ix} We now present a broadened framework for the evaluation of the HRW before turning to the case studies to explore how it has been engaged in practice.

III. TOWARDS A BROADENED CONCEPTUALIZATION OF WATER GOVERNANCE DEBATES

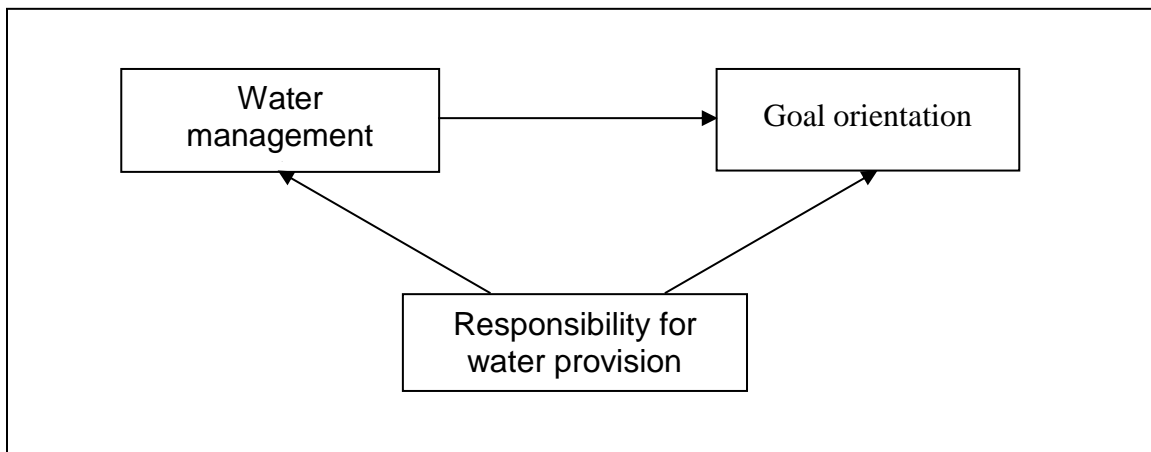


Figure 1: Key elements of water governance

For any water governance approach, it is imperative to specify challenges and opportunities with respect to at least three linked elements: provision, end goals, and responsibility (or

accountability). For the HRW approach, considering these elements makes it evident that the HRW is potentially strong on some elements of the tripartite, whereas other strategies may be stronger on other axes. Specifically, although the HRW is somewhat agnostic with respect to water provision and who is responsible for it (as Bakker 2007 highlights, it can be consistent with state *or* private provision, serving as a key basis for her critique), it is abundantly clear with respect to its goal orientation. The HRW gives clear priority to the goal of universal access of every individual to a sufficient amount of clean and safe water to live a healthy life, regardless of ability to pay (see Langford 2005 for a discussion of different approaches to water governance and their respective foci).^x As expressed by Anand (2007:517): “A human right to water means giving priority to drinking water supply, particularly to those who do not have access to the basic level of service.”^{xi} The language of rights also suggests some level of responsibility for the attainment of goals, typically to the state even as other entities may also play a role.^{xii} As another example to consider the broadened framework, ‘water as commons’ approaches are somewhat prescriptive with respect to provision and responsibility (in aiming to counter top-down and centralizing tendencies associated with state approaches, or to counter ‘externally’ driven private provision, Bakker 2010), but remain somewhat fuzzy with respect to end goals. Similarly, anti-privatization strategies (a dominant focus of water activism in recent years) are certain with respect to the type of provision (i.e. by non-private actors), but remain somewhat unclear with respect to the goals to be achieved and about who is responsible for meeting those goals (even if they are often motivated by their opposition to full-cost recovery or profitability as end goals).

The focus of the HRW on end goals is particularly crucial given that much of the recent debate on water governance has been heavily focused on provision (i.e. dominated by public versus private discussions), effectively sidelining any meaningful discussion of end goals. For instance, at times, efficiency is invoked as an end goal, yet it is left entirely open as to whether the benefits of ‘efficiency’ will accrue to people, companies, or states, or whether ‘efficiency’ will translate into reduced costs of provision, improved quality, or any other benefit. With respect to privatization, the focus on efficiency often obscures the fact that private firms have profit as their end goal, and the implications of such, particularly for end users, are often left unexamined (although some water activists base their critique on the fundamental incompatibility of ‘profit’ with water needed for life and well-being, Brennan et al 2004). Additionally, one of the curious things about privatization schemes is the way that diverse (even inconsistent) goals are often implicitly promoted, yet rarely examined in terms of their outcomes, or compatibility (efficiency, profitability, sustainability, national fiscal solvency, improved infrastructure, and so forth). Mapping strategies against the broadened conceptual framework in Figure 1 serves to underscore some of these tensions.^{xiii}

Our framework thus allows us to point out that different approaches focus on different elements, and as such respond to particular policy shifts or hydro-social challenges, each with associated strengths and weaknesses. It is problematic to compare these strategies without taking into consideration all the elements of the tripartite and what issues different strategies seek to address. In thinking through these issues, it also becomes possible to consider that, rather than competing

with each other, different approaches can be viewed as complementary in terms of focusing on different elements. For instance, we can understand that there are compatibilities between the HRW and anti-privatization struggles, in terms of their relative focus on different elements of the tripartite. Indeed, the focus of the HRW on vulnerable populations and universal access regardless of ability to pay is precisely what is frequently left out as privatization schemes are aggressively pursued in many contexts (with goal orientation unclearly focused on efficiency, cost recovery, or profitability). As such, the HRW can be viewed as helping to offer a corrective to an over-focus on provision issues in policy discussions, while also serving to augment attention to end goals that have commonly been under-examined in neoliberalized water governance schemes. When we also consider reduced and restructured state roles that have accompanied neoliberalization shifts, the HRW again can be understood as providing some response by invoking a sense of continuing state responsibility to meet those goals.

As such, it is precisely the context of increasing neoliberalization that leads us to argue that the HRW remains an important and timely approach, *especially now*. We draw this conclusion even with an appreciation of important concerns with the concept, whether that be its inattention to ecological needs, difficulties with respect to marginalized populations or the confusion associated with the adoption of the approach by private entities. These realities certainly raise important challenges. Yet, endorsements of the HRW by private entities might also be taken to suggest that this is precisely the moment to push forward with this approach politically and to clarify it analytically. Doing so could illuminate what the endorsement of this concept might mean, increasing the potential to hold diverse actors accountable to a specific set of goals. While we make this claim in a general sense, we take seriously the importance of context specificity to conditioning the variable limits and opportunities associated with any strategy or concept, as our exploration of three distinct case studies in the following section testifies.^{xiv}

IV. STRATEGIC DEPLOYMENTS AND FURTHER CONTEXT SPECIFICITIES OF THE HRW

The examples offered here show how the HRW has been used as a tool in particular policy realms, bringing in empirical insights to complement the theoretical bases discussed. The first example details how social movements in South Africa have used constitutional references to the human right to access water to force policy change through judicial action. The second example shows how the Latin American Water Tribunal has used a human rights approach to advance the cause of water access for impoverished populations in Peru. Finally, the last example illustrates the role that the human rights approach played for those involved with international water movements gathered in the Istanbul World Water Forum. All are suggestive of the political currency of the HRW and lend weight to the idea that the time may be ripe to engage more fully with the concept and its associated movements.

South Africa

In 1994, South Africa entered a new era with the end of apartheid and the rise to power of a democratically elected coalition led by the African National Congress. The new policies of the ANC focused largely on redressing inequalities, with the clear social policy orientation of the new government evident in the 1994 Reconstruction and Development Programme (RDP). The RDP stated that “The first priority is to begin to meet the basic needs of people – jobs, land, housing, water, electricity, telecommunications, transport, a clean and healthy environment, nutrition, health care and social welfare.” In 1996, a similar approach guided the country’s new constitution, using the language of human rights extensively and devoting the entire second chapter to a ‘bill of rights.’ Section 27 stipulates that “(1) Everyone has the right to have access to ... (b) sufficient food and water.” Sub-section (2) adds that “[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.”

However, the social goals of the RDP and the provisions of the new Constitution were not the only determinants of the new government’s policies. Even before the end of apartheid, South Africa joined many other countries in adopting neoliberal policies, including the privatization of water provision in some instances. Neoliberal reforms were further reinforced following the monetary crisis and currency devaluation of 1996 (implemented in the Growth, Employment and Redistribution (GEAR) strategy which prioritized an open economy, economic growth, and privatization of social policies). Several analysts have pointed to key tensions that resulted from the co-existence of ‘social’ and ‘neoliberal’ policy approaches (Mehta 2006).

This context is crucial to understand the constitutional right to water. The wording does not endorse the concept in an absolute sense, but makes clear that the state’s pursuit of the right to water has to be done “within its available resources” and through the “progressive realisation” of the right. These qualifications parallel some of the language in the UN General Comment 15 (see endnote 11), foregrounding ways that such a right is often circumscribed by financial affordability or other factors (see Van Rensburg and Naudé 2007).

Although South Africa’s Department of Water Affairs and Forestry claims that it has extended access to water and sanitation across the country (e.g. Muller 2006 suggests that half the water supply backlog, which affected 12 million people in 1991, had been addressed by 2002, while Anand 2007 assesses progress in this regard as only partial), several local movements, including the Coalition Against Water Privatization (CAWP), have argued that specific policies have prevented the fulfillment of the constitutional right to water (specifically private sector participation, full-cost recovery, and pre-paid water meters – CAWP 2004, Bond and Dugard 2008). At the core of the debate is whether the existence of a right to water implies that water should be provided free of cost or heavily subsidized, particularly for those who cannot afford it.

Some actors suggest that the wording of the constitutional right to water in terms of ‘access’ means that the state only has to make water available through infrastructure (i.e. pipes, contracts or other efforts), but need not take steps to ensure universal access, nor to provide that water at no cost (personal communication, interview, 2008). Other questions remain, such as whether the right to water in the constitution has implications in terms of specific provision mechanisms, resulting in ongoing debate among activists, municipalities, and legal scholars (see Bond and Dugard 2008, Muller 2007, 2008, Mehta 2006, Narsiah 2008). Another important factor is that even as the right is advanced in the national constitution, water provision in South Africa is decentralized to ‘water service authorities’ (often coinciding with municipalities). The result is a differentiated patchwork of water governance, provision, and institutions that further complicates these questions. With considerable leeway for municipalities, outsourcing to private entities has been pursued in some locales, even as there is a legal provision that to do so requires evidence that the public sector is unable to do the same job at the same level of effectiveness.

In the middle of this complex context, a cholera epidemic broke out in August of 2000 in the province of KwaZulu-Natal, sickening more than 80,000 people and killing 171 individuals (Mugero and Hoque 2001). Critics attributed the outbreak to the installation of pre-paid meters that forced those who could not afford to pay for the service to use contaminated water from rivers (Pauw 2003). Although the government rejected such explanations, during the ensuing municipal elections the ANC promised a policy of free basic water to ensure that poor households would have access to a minimum amount of water. Consistent with other national policies, poor households were identified as those with a monthly income below 800 Rand, and the free water amount was set at a minimum of 6,000 liters per household per month (based on the assumption that an average household size is eight people and each person requires 25 liters per day). The specifics of implementation were left to each water service authority—resulting in considerable variation. In Pretoria, the policy was applied so that all households would get 6,000 liters at no cost, whereas in Johannesburg it was established that only poor households would get the free water.

The implementation of these policies has been conflictual, with social movements challenging the outcomes through South Africa’s court system. For instance, members of the Coalition Against Water Privatization argued that despite the free basic water allocation, Johannesburg Water (the new, publicly owned but independent corporation in charge of water provision for the city) had effectively denied the HRW to impoverished citizens. Specifically, they argued that the 6,000 liters per household per month was insufficient, particularly for poorer households where the number of household members may be greater than the assumed eight. Moreover, the Coalition argued that the forced installation of pre-paid meters in poor neighborhoods, while customers in more affluent parts of the city were more likely to have conventional meters that did not automatically disconnect service, resulted in a clear pattern of discrimination. In sum, many impoverished residents faced water cut-offs after the free 6,000-liter allocation unless further payment was made.

An interesting development in this case was not only that the argument was presented in the

language of human rights, but that the presence of a right to water in the constitution facilitated legal action against Johannesburg Water. Following the same logic of earlier actions that had forced policy changes with respect to AIDS treatment and had expanded access to anti-retrovirals for underserved populations, several Soweto residents with the support of the Centre for Applied Legal Studies (CALS) of the University of the Witwatersrand, brought the case to the Johannesburg High Court to challenge both the amount of basic water provided at no cost, and the targeted installation of pre-paid meters that disconnect service in poor neighborhoods. After an initial 2008 appeals ruling where it was determined that the forcible installation of pre-paid meters was unconstitutional, and that free basic water allocation should be 50 liters per person per day, the case was eventually taken up by South Africa's highest court. The final ruling in October 2009 resolved that the meters and other aspects of Johannesburg Water policies fall within the bound of reasonableness and do not conflict with the constitutional right to water.^{xv}

Despite the disappointing outcome of the case for the water-related social movements, it must be noted that it was precisely because of the inclusion of the right to water in the constitution that the case came to be ruled by the country's highest court. Moreover, the process itself encouraged Johannesburg Water to voluntarily adopt some policy changes, including the expansion of the free basic allocation from 6,000 to 10,000 liters per month for indigent households. As Danchin (2010) argues:

the case provides an interesting case study of (a) how [economic, social, and cultural] rights can be claimed, contested and progressively realized if only indirectly as evidenced by the City's continual review and adjustment of its water policies in response to ongoing public interest litigation; (b) how government itself and specific aspects of public policy can be held accountable via a constitutional culture of justification; and (c) how participatory and deliberative democracy is ultimately deepened by the constitutional contestation of economic and social rights.

We thus take this as evidence that the presence of the HRW in South Africa's constitution has been successfully used to promote access to water, especially for impoverished and vulnerable populations, even as others have taken the final court ruling as evidence of the failure of the HRW. In particular, the policy changes can be taken as evidence to support the argument that the legal encoding of a HRW in the constitution served as a driver for water policy in a form that remains rare throughout the world: a free basic water allocation. The example also shows that the right to water does not operate in a vacuum, and that its practical implications and implementation are necessarily situated in a complex political, economic, social, and legal terrain. The case study also illustrates that it is through a continual process of social, legal, and political negotiation that the HRW becomes practically defined. Whether or not it is a useful strategy and tactic to pursue universal access or other progressive goals is necessarily context dependent. In this example,

certain elements of a progressive water policy were advanced, even if circumscribed by other factors and considerations.

Latin American Water Tribunal

In contrast to the South Africa case, the study of the Latin American Water Tribunal shows that even without formal legal sanction the discourse of the HRW can be used to publicize and structure claims for water access by vulnerable populations. It also shows how, in the absence of national avenues to channel these claims, the universal character of the human rights language is useful in mobilizing regional and global forces to pressure on national authorities (cf. Keck and Sikkink 1998).

The Tribunal was originally established in Costa Rica in 1998 to deal with water issues in Central America. However, its success and the demands it received to deal with cases from all over the region led it to expand its reach to all of Latin America in 2005. The Tribunal follows in the tradition of ‘ethical tribunals’ which by-pass the state legal system by providing a forum in which people can bring up contentious issues and have a multidisciplinary panel of reputable experts study the case, hold public hearings, and make a ruling based on ethical and moral considerations. Albeit without sanctioning legal power, the rulings of these tribunals have an important role in publicizing cases outside of the formal judicial system, and also in providing plaintiffs with an expert ruling on the issues that they can use in their negotiations with other parties.

The foundational document of the Latin American Water Tribunal is the Latin American Declaration of Water. The first article of the declaration reads: “The right to water is a fundamental right, inherent to life and human dignity. The Latin American population is the beneficiary of the fundamental right to water in adequate quantity and quality.” The HRW is therefore the cornerstone of the ethical and legal edifice upon which the rulings of the Tribunal are based, as several of its rulings make clear.

In the public hearings of the Tribunal that took place in Guadalajara, Mexico, in October of 2007, one of the cases presented was that of the indigenous community of Carhuancho, Peru, against the regional government of Huancavelica and the national government of Peru. The case revolved around the transfer of water from several lagoons in the poorest region of the country to other areas, planned without prior consultation or compensation for affected indigenous communities. The diversions resulted in reduced river flows and degradation of the wetlands important for local livelihoods.

In its appraisal of the case, the first ‘consideration’ brought up by the Tribunal was: “The universal recognition of the human right to water in adequate quantity and quality, as a fundamental human right whose fulfillment needs to be protected by the States.” The second ‘consideration’ reads: “As a social right, the right to water cannot be exercised in the detriment of those who reside closer to

the water sources.” These considerations provided the basis for a ruling against the Peruvian governmental authorities and a recommendation to reverse the water diversion project. In this case, the idea of the HRW is used to justify a resolution that defends access to water for a vulnerable group that otherwise did not have a mechanism to have its demands heard by the departmental or national government. Although the unofficial status of the tribunal meant that no direct action could be imposed to reverse the situation, the fact that the community went to the Tribunal and that the ruling used human rights language provides evidence of the perceived usefulness of the concept by these vulnerable populations and those who work on their behalf. Following the ruling, this case found some amplification in the media (Álvarez 2007), and on October 6th, 2008, the regional presidents of Huancavelica (where Carhuancho is located) and Ica (where the water is to be transferred) reached an agreement about the project with the stated goal of ensuring its social and environmental sustainability. The agreement included plans for a visit to Carhuancho by several provincial authorities to communicate with the community and obtain their approval for the project (Sur Noticias 2008).

In this case, we find again that the language of human rights has advanced claims related to water access. Even when there is no direct legal system with the power to enforce the right to water, the concept may be imbued with a quasi-legal quality that enhances claims of vulnerable groups, and can be effectively used to put pressure on politicians to redress inequalities in water access. This example also speaks to concerns related to the relationship between the HRW and vulnerable and indigenous populations, demonstrating that there may be some potential in addressing these types of equity concerns (see footnote 14).

World Water Forum in Istanbul (2009)

As suggested by the introduction, social movements related to global water issues have had a very strong presence at international meetings, including the 2009 Istanbul World Water Forum. Hundreds of activists from all over the world travelled to the meetings, both to influence the official Forum and to participate in two separate alternate Water Forums that were organized based on different principles from those underlying the official event.^{xvi} Given the diversity of water issues across locales, differences in national and regional contexts, and in legal and policy environments, and so forth, it is relevant to focus attention on the extent to which activists managed to relate to each other. In this sense, the idea and language of the HRW played a central role in discussions and negotiations—in both the official and alternative water forums.

At the Istanbul meetings, there were several instances that made it evident that many members of the global water movement viewed the HRW as the key goal. For instance, one of the few sessions organized by the social movements as a side event in the official forum was titled “Implementing the Right to Water: Democratization and Public-Public Partnerships.” The alternative forum organized by the Turkish and global water movements also had several sessions with the HRW in their titles and the concept was frequently invoked as shorthand to indicate the need to ensure that

even the most vulnerable populations with less economic capacity are able to access the water necessary (in quantity and quality) for their survival (personal observation).

More telling evidence in this respect came from the evening meetings at the Crystal Hotel. One of the highlights was the nightly update from the Bolivian, Venezuelan, and other delegations on how the official Forum's negotiations were unfolding. There were two issues that the social movements, with the help of several governmental delegations were particularly interested in promoting. The clear priority that was most forcefully pursued was the introduction of a clause in the official declaration stating that water is a human right. This was a continuation of similar failed efforts from previous World Water Forums (Smets 2006a). The second demand had to do with what social movements referred to as the 'illegitimacy' of the World Water Council, as a private entity with a perceived corporate bias, as organizer of the World Water Forum. They insisted that the United Nations should coordinate the next Forum.xvii

The nightly discussions made it evident that the HRW was the main concept that activists coming from diverse contexts understood and used in common, providing a shared basis on which discussions and articulation of the ensuing platform took place. Other concepts were also invoked in the meetings, including the 'new culture of water' from Spanish activists (used to call for a more rational use of water and to oppose big transfers to irrigate golf courses and tourist villas in the arid South-East of Spain), as well as the notion of 'water as a common good' employed by Bolivian groups and others who sought to emphasize the water needs of indigenous peoples, non-human actors and the environment as a whole (Olivera and Gómez 2006). However, only the HRW appeared to be familiar or compelling enough to attract a large cross-section of activists and governmental representations, serving as the *lingua franca* that everyone understood and used, even if activists likely had different understandings of the term.

It can be argued that it is perhaps precisely because the term focuses on goals, because it points at minimum levels of service for all people, and because it uses the familiar, legal and authoritative language of human rights that it is able to resonate for very diverse actors. Even as we argue that there was an important shared understanding related to the HRW at these meanings, we recognize that the HRW necessarily operates in a complex context with other discourses (including neoliberal ones). As such, even as we identify the HRW as an important discourse with shared meanings and associations, its boundaries and specific implications are also necessarily constantly in flux, as well as the object of political contestation.

Looking at our three case studies together, it is possible to identify several lessons and suggestions that help us understand better the HRW and its consequences: (1) the HRW is invoked and used to pursue social goals in water provision in a range of contexts and forms and by diverse actors; (2) the HRW has legal and moral authority (even when it is not part of an officially-sanctioned legal system) to be able to mobilize action and affect policy; (3) the HRW does not act in a vacuum: it is an element in a complex environment in which other policy approaches to water management are also being pursued and negotiated, which also suggests that (4) the HRW has to be understood

as part of a complex social and political process where power dynamics are necessarily at play. Further (5) the specific implications of the HRW are not universal, and thus different standards and minimum levels can be determined in different contexts. Indeed, the HRW is given meaning only in relation to the social and political mobilization and negotiations in which it is invoked. Finally, (6) the HRW is a powerful tool in the pursuit of social goals in water provision, but it is not, and it likely should not, be the only one. As we suggested earlier, different approaches might be better thought of as dealing with different hydro-social issues and challenges, and might be best understood as complimentary to the extent that each has different limits and opportunities.

V. CONCLUSIONS

Our aim has been to review and assess the possibilities associated with the HRW. While we hope that elements of the discussion illumine the broader debates related to water politics and governance, we have not been able to provide a review of all associated concepts and strategies in a comprehensive sense. For the HRW, we have considered several concerns and critiques, and we have explored its relevance through several case study examples. We take the contextual issues related to current hydro-social challenges, as well as the theoretical and empirical examples mentioned, to be suggestive that depending on the context and mix of factors at play, the notion of a HRW may indeed remain a useful language and mechanism to push forward goals related to water access and equity. We consider this to be the case even as the HRW does not address *all* important hydro-social challenges, particularly environmental issues (see Bakker 2010, Gupta and Van Der Zaag 2009).

We would like to conclude by reinforcing the point that the HRW appears to be useful *especially* now, given both the grave situation of access to water and quality concerns, and also given the ongoing neoliberalization of water governance, with new forms of privatization, marketization and commercialization often being simplistically pushed forward without regard for their consequences in many parts of the world (Goldman 2007; Bakker 2005). This context leads us to conclude that it remains imperative to push the HRW discussion forward, particularly as linked concepts of equity, access, vulnerability, and universality appear to be precisely the issues that have otherwise been lost in the water governance debates and policies of the contemporary moment (with the debate often dominated by public versus private provision, and with aggressive policy pursuit of privatization without due consideration of end goals or implications). The HRW potentially serves to challenge some of the simplistic bases of rapid neoliberalization shifts, and also serves to highlight several critical issues that are sidelined in the push forward with market approaches (Vandenhoud and Wielders 2008). As such, we see considerable potential for the HRW to counter these tendencies and to reprioritize emphases of water governance debates.

While we have argued that it is important to work towards greater clarity with respect to the HRW, we also think it is important to keep in mind that, in essence, many concepts present a certain degree of ambiguity, as meaning often shifts, and concepts may take on new associations in

different times and places. As such, it is necessary to work towards conceptual clarity, yet always keep in mind that malleability is important, particularly to be able to attend to contextual considerations. Our case studies in particular show the diverse ways that concepts such as the HRW can be interpreted and reinterpreted through different legal, social and cultural mechanisms—at times allowing it to work in productive ways. Bearing this in mind, we consider that the momentum associated with the HRW in legal and activist realms, and the values and goals associated with the approach might provide key opportunities to move water governance forward, bring diverse actors together around goals of extending access to vulnerable populations, and holding governments and companies accountable to specific ends.

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ⁱ We use the term 'Global Water Movement' to refer to an emergent coalition of activists and groups concerned with equity and access issues related to water. Activists use this term as well as 'Global Movement for Water Justice.'

Organizations associated with this movement include the Council of Canadians, Food and Water Watch, the Transnational Institute, and regional organizations such as Red Vida in Latin America and the African Water Network. More information is available from The Peoples Water Forum: <http://peopleswaterforum.org/>

ii The ‘right to water’ refers to the formal legal recognition of a person’s or population’s right to water, somewhat distinct from the ‘human right to water,’ which refers more to the idea that all people, regardless of citizenship, location, or ability to pay should be assured access to water needed for life, basic needs, and human dignity. These concepts should not be confused with ‘water rights’, which refers to property rights or other specific mechanisms that secure water access. If one considers ‘water rights’, particularly as linked to property, it is easy to imagine ways that ‘water rights’ often work against securing a ‘right to water,’ particularly for marginalized, poor, and vulnerable populations (Sangameswaran 2007:15-6; Khadka 2010:40-1).

iii With respect to this critique, we argue that it might be more useful not to assume *a priori* the compatibility or incompatibility of the HRW and privatization. Yet, The HRW might serve to establish guidelines through which *a posteriori* linkages between management systems and goals can be evaluated. Doing so might expose that there are theoretical and practical reasons why the for-profit provision of water has not resulted (or perhaps cannot result) in the achievement of goals established by the HRW. Only once clear goals are established can we have a meaningful discussion regarding the means to achieve them, and to evaluate why diverse practices (public or private) have failed to get us to those ends.

iv To these concerns, Sangameswaran (2007:11) adds “differences ... such as class and gender are ignored ... from the point of view of human rights.” Although the issue of exclusions is important to keep in mind, we do not accept the conclusion that a human rights framework should be rejected on this basis. Instead, we consider that histories and tendencies for exclusions proceed with most, if not all, political movements (witness environmental justice debates related to mainstream environmentalist movements as one key example). Further, *vis-à-vis* other water governance strategies and policies, we feel potential to deal with exclusions and marginalization to be relatively strong in the HRW realm.

v See (Bakker 2010) for a more comprehensive discussion.

vi Neoliberalization refers to policies and practices that promote market-oriented strategies. These policies have been increasingly taken up in many contexts, resulting in fundamental shifts in state functions and policies, including increasing marketization, commodification, privatization and devolution of resource governance.

vii Principle No.4 states “Water has an economic value in all its competing uses and should be recognized as an economic good.” The follow-on statement reads “Within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price. Past failure to recognize the economic value of water has led to wasteful and environmentally damaging uses of the resource. Managing water as an economic good is an important way of achieving efficient and equitable use, and of encouraging conservation and protection of water resources.” There is a great deal of controversy related to how this principle has been interpreted, with some suggesting that the extended description has been largely ignored in favor a narrow interpretation construing privatization as necessary (Ahlers 2005).

viii Among other common misconceptions related to the HRW is the idea that a rights-based approach implies that water should be provided free of cost, yet there is nothing inherent to the concept to support this suggestion (Dubreuil 2006). Ensuring access to sufficient water for everybody in contexts of extreme poverty almost inevitably involves some level of subsidization, but such a subsidy can take very different forms (e.g. Chile’s program to provide cash transfers to families to pay for water, a system that is preferred by some because it does not send the message that water provision is without cost). The assumption that acknowledging a right to water requires that states provide water

at no cost is a key reason why some powerful countries (including the United States) have repeatedly opposed the adoption of the HRW (see endnote 10). This common misreading likely stems in part from a long history of publicly provided and subsidized water in a number of contexts, including the United States. As a point of contrast, it is interesting to note that food has been considered a human right since the adoption of the Universal Declaration in 1948, yet it is not commonly interpreted as requiring that food be provided at no cost. This is likely due to the fact that there is no historical precedent related to subsidization of food consumption at the scale of which it has traditionally taken place in the water sector.

^{ix} Several examples of NGO websites dealing with the HRW are: <http://www.righttowater.info>,
<http://www.righttowater.net>, <http://www.cohre.org/water>,
http://www.who.int/water_sanitation_health/rightowater/en/

^x The recently adopted Article 31 to the UN Universal Declaration of Human Rights states: “Everyone has the right to clean and accessible water, adequate for the health and well-being of the individual and family, and no one shall be deprived of such access or quality of water due to individual economic circumstance.” See <http://article31.org/> (last accessed 15 July 2009). In August 2010, the UN General Assembly passed Resolution A/RES/64/292, which recognizes access to clean water and sanitation as a human right. The resolution, introduced by Bolivia, was approved with 122 votes in favor, none against, and 41 abstentions (which included that of the United States).

^{xi} The HRW is not part of the main human rights documents issued by the United Nations, and thus it does not have a concrete and unequivocal meaning recognized by all actors. There are a number of international and national sources of the HRW - such as General Comment 15 of the UN Committee on Economic, Social and Cultural Rights, or the constitutions of different countries where the HRW is recognized. Smets (2006b:92) argues that if you consider official declarations and national laws there are over fifty states that explicitly support the right to water. These sources together contribute to generate and spread the idea of the HRW and to delineate its contours. See Langford et al (2003) for an overview of these sources, and United Nations (2003) for the details of the very influential General Comment 15 (Khadka 2010, Salman and McInerney-Lankford 2004, Sangameswaran 2007, Mehta 2000 and 2006, Bakker 2010, Woodhouse and Langford 2009, UNDP 2006, and Bluemel 2004 also thoroughly discuss different sources as well as the meaning and implementation challenges of the HRW).

^{xii} Rights discourse does invoke ideas of citizenship rights, and thus there is an implicit role for states. Yet, this should not be taken to mean that states should be the sole entities involved with water provision, agenda setting, or other key roles. Indeed, many HRW activists endorse a strong role for communities, local governance entities, or the United Nations, among others.

^{xiii} Another quality of this framework is that it illustrates that responsibility for provision and responsibility for the attainment of goals are not identical, and that different actors can play a role in each of them. In serving to promote precision in this way, the framework may help to overcome common conceptual confusions (see discussion in Bakker 2005, 2007).

^{xiv} Our assessments of which strategy might be suitable is likely to depend on conditions in particular times and places, whether they be political, in relation to relative scarcity or abundance of water (e.g. drought), or considering industrialized versus Southern contexts. For instance, some argue that the HRW is not useful in indigenous contexts, pointing to examples where formalized rights have worked against the interests of indigenous or marginalized populations (Bakker 2010; Boelens 2009; Parmar 2008; or Harris 2009 for a discussion of gender). This is a complex issue, as also suggested by the evidence presented in section IV related to the Latin American Water Tribunal.

^{xv} The ruling in South Africa contrasts with the policy on prepaid meters in the UK, where such devices were outlawed based on public health concerns through a judicial process in 1998 (see Downing and Richards 1998:27-8).

^{xvi} Most international activists participated in the so-called *Alternative Water Forum*, which took place on March 20-23 at Bilgi University, Istanbul, although another smaller-scale alternative forum also took place.

^{xvii} It is of interest that the statement from the President of the United Nations General Assembly Brockmann read at the forum also highlights concerns related to the structure of the World Water Forum. Specifically, he noted concern with "... the fact that both the president of the World Water Council and the alternate president are deeply involved with provision of private, for-profit, water services." He goes on to advocate a stronger role for the United Nations, both to insist for more clarity on the issue of commodification of water and also to "articulate, through a legally constituted process, a clear, comprehensive, framework for dealing with issues of access to water and sanitation." This issue shows, as with the South African case, that these debates are unfolding in a complex political economic terrain. In both cases, the strategies and responses of the activists only make sense with consideration of the broader terrain of neoliberalization. Here the perception that the World Water Council pursues neoliberal policies and is aligned with private interests led some to question the legitimacy of this organization.