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Implementing the human right to water and sanitation: a study of global and local discourses

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This article explores global and local discourses on how to implement the newly recognised human right to water and sanitation (HRtWS). We analyse the potential limitations of the human rights frame in the context of critiques that human rights are a liberal, Western discourse that does not reflect the lived experiences of non-Western countries. Through two case studies we find that there are two discourses emerging on how to implement the HRtWS. At the global level, as seen in the work of the UN Special Rapporteur on the HRtWS, we find a hegemonic discourse that is state-centric and market-friendly. In Bolivia, a country currently implementing a human rights-based approach to water services, we find a counter-hegemonic discourse on implementation. We argue that the hegemonic discourse is incomplete and does not fully address barriers to fulfilment of the right, such as state corruption and the needs of peri-urban residents.

Keywords: human right to water; water policy; human rights; hegemonic discourse; Bolivia; UN Special Rapporteur

The United Nations General Assembly (UNGA) overwhelmingly voted to adopt a resolution recognising access to water and sanitation as a human right in 2010. Along with the UN's 2002 General Comment 15 and the 2010 Human Rights Council (HRC) Resolution declaring the human right to water, the UNGA resolution reflects a growing global consensus on the existence of a legal human right to water and sanitation (HRtWS). This global consensus can be traced to earlier local campaigns that emerged in the developing world to legalise the right to water. While there is a growing consensus among key water governance actors that the HRtWS exists and that states are the primary responsible parties for fulfilling the right, there is contestation over strategies for implementation of the right at the national level.¹ This contestation centres mainly on the appropriate role for states and for the private sector in water

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services. This article explores the evolving discourse on the HRtWS in this current implementation phase.

Campaigns for the legalisation of the HRtWS are part of broader trend toward reframing social and economic grievances as human rights. This process is contested on multiple fronts, including by scholars who critique the human rights discourse as a fundamentally liberal, Western discourse that does not reflect the lived experiences or needs of postcolonial and developing countries.² In this article we explore the content and potential limitations of the human rights frame as currently promoted by global water governance in the context of these critiques.

We address the following questions in our research. First, what messages can be detected at the global level regarding how to implement the HRtWS, and what are the implications of this formulation for people on the ground in need of improved services? Second, what lessons can be taken from countries already implementing a human rights-based approach to water services, and how can these lessons inform the global discourse on HRtWS implementation?

To answer the first question, we focus on the work of the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque. De Albuquerque is tasked with providing clarification of the HRtWS and guidance for states on implementation, and she is the primary global actor on the HRtWS. We are keenly interested in how the Special Rapporteur frames HRtWS implementation and proposes specific actions at the national level. Turning to the second question, we analyse recent developments in the case of Bolivia, the most well-known case of a local battle for the HRtWS and a country that is now implementing a human rights-based approach to water services.

We find that two discourses are emerging regarding implementation of the HRtWS. The Special Rapporteur is promoting what we call a 'hegemonic' discourse on implementing the HRtWS, while citizens and organised groups in Bolivia promote a 'counter-hegemonic' discourse to implementing the right to water. We argue that the hegemonic discourse is incomplete and does not fully address barriers to fulfilment of the right, such as state corruption and the needs of peri-urban residents.

We proceed as follows. First, we briefly define the HRtWS and clarify what we mean by hegemonic and counter-hegemonic discourses. Next, we discuss how human rights, including the HRtWS, can be viewed as a hegemonic discourse. After outlining our methods and approach, we turn to our two cases: the UN Special Rapporteur and Bolivia. Our analysis explores the two discourses on HRtWS implementation that we find in our cases and discusses the implications of a hegemonic versus a counter-hegemonic approach to implementing the HRtWS.

Implementation of the HRtWS: defining hegemonic and counter-hegemonic discourses

Water is not listed as a core human right in the founding human rights documents, although it does appear in various other international conventions and documents.³ The movement to legalise the HRtWS emerged in the late 1990s

and early 2000s, when groups of organised citizens in the developing world began protesting against water privatisation. These actions led to the issue of General Comment 15 (GC15), the first international document to provide a clear definition of the HRtWS and to establish guidelines for states regarding their obligations.⁴ It reads: 'The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use'.⁵ States are obligated to respect, protect and fulfil the human right to water, and to work progressively towards realising the human right to water.⁶

GC15 inspired a wave of new advocacy on the HRtWS at the international level, as many NGOs and organisations began to adopt a human rights approach to their work on water.⁷ After 2002 several countries adopted specific constitutional language guaranteeing the HRtWS, including Uruguay in 2004, Nicaragua in 2005, the Democratic Republic of Congo in 2006, Bolivia in 2009 and Kenya and the Dominican Republic in 2010. The HRtWS is now recognised by courts or through national legislation in dozens of countries.

Yet GC15 does not provide specifics regarding the content of the right,⁸ leaving its implementation open to interpretation. For example, the HRtWS can be interpreted narrowly to refer to the fulfilment of basic needs, an interpretation reflected in policy strategies such as the basic water requirement in South Africa.⁹ Another interpretation focuses on the freedoms and entitlements of citizens contained in GC15, such as freedom from arbitrary disconnection and contamination of water sources.¹⁰ Although GC15 was issued in part as a result of increased resistance to privatisation of water utilities, the Comment does not take a stand on private sector participation, leaving the door open to privatisation and other market-driven policies.

The 2010 UNGA and HRC Resolutions on the HRtWS are similarly vague and lacking in specific guidelines for implementation. The Resolutions can be viewed as 'moral statements' which call for prioritising water for life, highlighting the role of the state and critiquing the definition of water as a commodity.¹¹ Like GC15, the UNGA and HRC Resolutions stop short of speaking against private sector participation in water utilities.¹²

It is in this grey area, between setting moral standards and implementation on the ground, that we distinguish a difference between a hegemonic and counter-hegemonic discourse on the HRtWS. We use 'hegemony' in the Gramscian sense, meaning the production and reproduction of consent by the population, including subordinate groups, to a social order created by dominant groups in society.¹³ We are particularly interested in how the discourse and framing around the HRtWS can serve a hegemonic (or counter-hegemonic) function.

A discourse is hegemonic when it serves to reproduce existing unequal power structures, rather than radically altering them. Rajagopal argues that human rights are part of a set of hegemonic, Western discourses that may alienate citizens of the developing world who do not share the same history.¹⁴ A counter-hegemonic discourse is one that challenges the dominant hegemonic ideas and seeks to replace them. For example, counter-hegemonic human rights principles 'challenge the status quo, either by undermining the political economic foundations of liberal democracies and/or the principles of national sovereignty'.¹⁵

Human rights as a hegemonic discourse

The language of human rights is one of voice, empowerment and individual agency. Along with democracy and development, human rights have become hegemonic ideas in the international system.¹⁶ The human rights regime is described as the ‘global embodiment of the liberal project’, which aims to transform the world into one consistent with liberal values.¹⁷ Human rights research illuminates this transformative process by focusing on how rights-violating states are socialised by NGOs, human rights activists, and rights-promoting states to adopt and internalise human rights norms.¹⁸ By adopting these norms, formerly rights-violating states signal that they are modern and ‘civilised’ nations.

Postcolonial and critical legal studies scholars critique this modernising/civilising aspect of human rights, charging that human rights are rooted in Western, liberal values and ideology and do not necessarily represent a universal morality.¹⁹ While acknowledging that human rights represent the ‘pre-eminent global moral discourse of our time’, Rajagopal asserts that the human rights discourse is ‘a core part of hegemonic international law, reinforcing pre-existing imperial tendencies in world politics’.²⁰ This is similar to what Chandler calls ‘the paradox of human rights’; human rights can be used to challenge abuse by the powerful, but human rights claims can also be a tool to further empower the powerful,²¹ such as when human rights are used to justify military interventions and other coercive actions in the postcolonial world.²²

Along with critical scholars such as Upendra Baxi, Rajagopal calls for finding the transformative potential in the liberal, Western orientation of the human rights discourse by shifting towards considering the perspective of historically oppressed groups.²³ A counter-hegemonic approach to human rights is one that challenges existing power structures. This would include the attempts by countries in the global South to lobby for the direction of globalisation to be more rooted in social and economic justice.²⁴

In the era of globalisation human rights are increasingly invoked to refer to social and economic issues. The case for legalising the HRtWS in global and state-level venues is an example of this reframing of socioeconomic grievances as human rights claims. However, the human rights discourse provides a ‘limited shield’ for social movements seeking to challenge the effects of globalisation on the developing world.²⁵ This is in part a result of the focus on civil and political rights and the neglect of social and economic rights within the human rights regime. The emphasis on civil and political rights is rooted in the notion, particularly in the West, that human rights should be understood only as ‘natural rights’ – meaning safeguarding the individual from the state.²⁶ International human rights law on economic, social, and cultural rights has not yet proven to be a strong tool in confronting issues of economic injustice, such as unequal access to water.

The HRtWS and hegemonic discourse

The campaigns for the HRtWS in countries like Bolivia and Uruguay emerged to challenge the neoliberal policy of privatisation, a policy imposed largely from outside by Western financial institutions. Activists opposed the market-oriented view of water management, claiming instead that water resources and services

were too precious and vital to be privately owned. However, not all water activists agree that defining access to water as a human right is the solution to the threat of privatisation. Critics charge that the human rights framework is too state-centric, too individualised (as opposed to focusing on collective rights), too anthropocentric (focusing on human needs versus non-human needs and the environment), and subordinate to the logic of neoliberalism and capitalism.²⁷ The HRtWS, as defined in GC15 and the UNGA and HRC Resolutions, is narrow and does not fully reflect the lived experiences of communities struggling against pollution of their water sources by industry and corporate control of water resources.²⁸

The human rights frame does not necessarily challenge the dominant knowledge about the merits of marketisation of water that is at the core of neoliberal water policy.²⁹ The HRtWS is not even necessarily incompatible with private sector participation in water services, particularly in the presence of strong regulation and a universality requirement.³⁰ Water can be considered both a human right and an economic good.³¹ For example, the HRtWS can be used to justify full-cost recovery pricing (where users pay a price for water that reflects the total cost of providing the service, including operation and maintenance costs), even though full-cost recovery pricing can exclude those least able to pay for services.

The human rights frame can serve to reproduce a public/private binary, providing two choices: state or market control, both of which can be exclusionary and undemocratic.³² The poor and marginalised are in danger of being excluded from both state-run public and private systems.³³ While citizen participation in water management is a potential solution to this marginalisation, there are problems associated with participation as well. For example, powerful groups within communities can dominate the process, community groups can be co-opted or manipulated into pursuing a predetermined programme from above, and there are often barriers to participation by women and other groups who might lack the resources and time to participate effectively.³⁴

Given these limitations and critiques of the mainstream formulation of the HRtWS, is it possible to identify a counter-hegemonic version of the HRtWS? The HRtWS framework has the potential to be transformative if it provides an avenue for marginalised communities to enter elite decision-making processes.³⁵ Furthermore, campaigns for water justice that engage with human rights discourse can be a vehicle for deepening democracy and rethinking the relationship between humans and the environment.³⁶

Methods and cases

To better understand the discourse on the HRtWS in the implementation phase, we conduct two interrelated case studies. First, we analyse the UN Special Rapporteur's work that aims to inform states on implementation of the HRtWS. Since 2009 Special Rapporteur Catarina de Albuquerque has made a number of statements before the Human Rights Council and the UNGA, and has undertaken country missions with the aim of examining the situation of water and sanitation at national and local levels and helping to identify good practices and recommendations to improve access and ensure protection of human rights

associated with water and sanitation. In light of the vagueness of both the GC15 and the UNGA Resolution, the Special Rapporteur's work is crucial in advancing more specific implementation recommendations.

Next we turn to Bolivia, the most well-known case of a local battle for the HRtWS. During the 'water war' in Cochabamba in 2000 a movement of citizens called *La Coordinadora* protested the privatisation of their municipal water utility and ultimately succeeded in forcing the government to cancel the contract with the private company and return the water services to public management. Organised groups of citizens later overturned another water privatisation contract with Suez in the capital city of La Paz and the neighboring city of El Alto and won the inclusion of the human right to water in the new Bolivian Constitution approved in 2009. Since taking office in 2006 President Evo Morales has devoted significant resources toward implementing the HRtWS in Bolivia. For these reasons Bolivia represents a crucial case study, most likely to exhibit the outcome of HRtWS implementation at the national level.³⁷

In examining our cases we are interested in identifying where the discourse on implementing the HRtWS serves a hegemonic or counter-hegemonic function.³⁸ Our case studies draw on a variety of data sources. Our analysis of the Special Rapporteur relies on primary documents and reports from her office, including press releases, annual reports, special reports and online discussion forums, as well as testimony before the UNGA and HRC, and her responses to their queries. The Bolivia case draws on interviews with water policy makers, government officials, members of NGOs, World Bank staff and water policy analysts. Primary documents used for this research include annual water utility reports, annual reports by government regulators, newspaper accounts, materials from NGOs, unpublished reports by water analysts, and secondary reports on the Bolivian water sector.

Case 1: the UN Special Rapporteur on implementing the HRtWS

According to UN Resolution 7/22, the Special Rapporteur is charged to identify, promote, and exchange views on best practices related to access to safe drinking water and sanitation, and to undertake a study on the further clarification of the content of human rights obligations in relation to access to safe drinking water and sanitation.³⁹ The Special Rapporteur is shaping the discourse on implementation of the HRtWS through her country missions aimed at assessing the situation of water and sanitation at national and local levels, her reports and testimony before the Human Rights Council and the UNGA, and her work identifying best practices and recommendations to improve access and ensure protection of human rights associated with water and sanitation.

Country missions

Between 2009 and 2014 the Special Rapporteur participated in 15 country missions around the world.⁴⁰ Central to these missions were meetings with prime ministers, members of the judiciary and legislative branches, civil society organisations, officials from water and environment agencies at national and local levels, school children, representatives of relevant UN specialised agencies

and programmes, academic institutions and the private sector. In many cases de Albuquerque was the first human rights expert visiting the country.

From urban slums in Bangladesh to a migrant construction workers' camp in Thailand, a juvenile detention centre in Uruguay and informal settlements in Tuvalu, Kenya and Brazil, the Special Rapporteur reported on urban–rural disparities, challenges with affordability and access for disadvantaged groups.⁴¹ Generally the Special Rapporteur's reports provide an overview of the constitutional and national law, institutional structure and policy framework for water and sanitation in the country visited. The reports also highlight good practices and offer recommendations for areas of concern and improvement.

In her country missions she refers to state capacity challenges in many countries, such as corruption in Bangladesh, insufficient budgetary resources in Namibia and Senegal, and inadequate monitoring in Thailand and Slovenia. Public participation and access to information is a key theme across the country missions; de Albuquerque uncovered a need for greater access to information, transparency in decision making and public participation in many countries. For example, she argues for greater information access for local citizens and NGOs in Costa Rica, more public input into technology choices in Namibia, and greater public consultation and transparency in decision making in Senegal.⁴²

Reports and testimony

The Special Rapporteur frames the discourse on HRtWS implementation through her reports and testimony before the Human Rights Council and UNGA. She reports annually to the Human Rights Council on her missions and her progress around her specific tasks, and she often highlights one or two special issues related to the HRtWS to which she wishes to draw attention.⁴³ In these reports she calls attention to issues of state capacity, specifically around issues of political will, sustainable planning, financing and monitoring.⁴⁴ In a 2010 report for the Human Rights Council, the Special Rapporteur addresses the role of private sector actors in implementing the HRtWS. Recognising the vigorous debate between those advocating for water as a public good and those who argue that the private sector can bring much-needed efficiency, investment and technologies, she argues that human rights are neutral regarding economic models and models of service provision. Where full cost recovery is concerned, she writes:

There is an inherent tension between commercial viability and direct full cost recovery on the one hand and providing affordable services to the poor on the other hand. When utilities are not adequately and sustainably resourced, they cannot ensure operation and maintenance, let alone invest in the network. Yet, direct full cost recovery would render services unaffordable for many people. Regulatory oversight alone may not be sufficient to achieve the rights to sanitation and water for all, and special safeguards and supplementary social policies to ensure inclusiveness, such as safety nets and subsidies, may be necessary.⁴⁵

Ultimately she calls for a more 'nuanced debate' that recognises the various forms of private sector participation, the range of non-state actors involved as well as the role of state-owned companies.⁴⁶

Chronicling best practices and the implementation handbook

One of the Special Rapporteur's initial tasks was to collect best practices on the implementation of the rights to water and sanitation. In 2012 she released a report entitled, *On the Right Track: Good Practices in Realising the Rights to Water and Sanitation* that focuses primarily on legal and policy frameworks at the national level.⁴⁷ This includes the role of state actors in how constitutional and statutory provisions are operationalised, as well as national planning, programming, and budgeting and financing strategies to promote the realisation of the rights to water and sanitation. Currently, in response to requests from state officials, service providers, regulators and other stakeholders, the UN Special Rapporteur is developing a handbook and implementation guide to provide practical guidance to states and other stakeholders on how the rights to water and sanitation can be incorporated into law, policy, budgets and service provision. The handbook is designed to outline a relationship between international human rights law and national legal frameworks, recognising that states must work towards achieving universal access to water and sanitation, and prioritising those people most in need. Participation ensures better implementation, according to the report: 'All decision-making and actions that may affect the exercise of individual's rights to water and sanitation must provide for meaningful participation opportunities.'⁴⁸ Participation must be an integral part of any strategy, policy or approach to implementing the HRtWS. Barriers to participation may include inappropriate meeting times, lack of awareness by citizens of participation opportunities, barriers to internet access and illiteracy.

Summary

The UN Special Rapporteur provides global guidance on implementing the HRtWS through her country missions, reports and testimony, and the development of the Implementation Handbook. She calls on states to build political will and state capacity, address issues of discrimination and increase citizen participation in water management. On the contentious issue of the private sector's role, de Albuquerque asserts that the HRtWS does not preclude the involvement of private actors in water services. Although she expands upon the vague language of global instruments such as the GC15 and the UNGA Resolution, her discourse on implementation reflects a similar state-centric and market-friendly approach to water management as can be seen in earlier global documents on the HRtWS.

Case 2: implementing the HRtWS in Bolivia

The Bolivian government's approach to implementing the HRtWS is similar to the main proposals put forward by the UN Special Rapporteur regarding implementation described above. Beginning in 2006 the Morales administration began to strengthen the state's capacity to manage and invest in the Bolivian water sector, and it has made attempts to increase citizen participation in water management. However a close look at the local level, specifically the experience of Cochabamba, reveals both problems with this approach when put into practice on the ground and an alternative way of envisioning the provision of water services.

Building state capacity

After taking office in 2006, President Evo Morales announced his intention to rewrite the Bolivian Constitution to cement the rights of the indigenous majority to land and self-government, and to clarify the duties of the state to fulfil the rights of all Bolivians. The new constitution guarantees the HRtWS and defines the state's obligations to fulfil the right. Article 20, I states: 'Every person has the right to universal and equitable access to basic services of potable water [and] sanitation'.⁴⁹ Article 20, III clarifies that water services are to be public: 'access to water and sanitation constitute human rights, [and] are not to be the object of concession nor privatization'.⁵⁰

In 2009 the Morales government restructured the water sector by creating the Bolivian Ministry of Environment and Water (MMAyA). This Ministry oversees a national programme called *MiAgua*, which stands for *Más Inversión para el Agua* – More Investment for Water. The programme earmarks investment for water and irrigation projects in Bolivia, allotting some US\$300,000 for water and irrigation projects for each municipality. Investment in water, sanitation and irrigation has increased significantly, from \$72.4 million in 2005 to \$188.1 million in 2012.⁵¹ The Morales government credits the implementation of the *MiAgua* programme with enabling Bolivia's early compliance with the Millennium Development Goal for water access, and for Bolivia's progress toward implementing the HRtWS.⁵²

President Morales also changed the regulatory structure for water and sanitation services by dissolving the SISAB, the government regulatory body widely criticised for failing to effectively regulate private water companies operating in the country.⁵³ Morales replaced the SISAB with the Authority for Oversight and Social Control for Drinking Water and Basic Sanitation (AAPS). The AAPS is more closely tied to the government than its predecessor, and its mandate includes a commitment to participatory management and citizen oversight in regulatory matters.

Under the Morales administration potable water supply coverage had risen to 78.5% by 2011. According to the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation 2013 report, 88% of Bolivians have access to improved sources of water, with 83% of the population receiving piped water to their homes and 46% with access to sanitation facilities.⁵⁴ In rural areas access levels are significantly lower, with 57% of rural homes reporting access to water in 2011 and only 24% with access to improved sanitation facilities.⁵⁵

Although national access levels have risen, in the city of Cochabamba, the site of the 2000 water war, the public water company SEMAPA reports the lowest coverage of potable water in the country at 46% (60,852 connections) and the lowest percentage for sanitation at 50% (64,952 connections) in 2006.⁵⁶ As of 2012 SEMAPA covers roughly 50% of the demand for water services, focusing mainly on the middle and high-income neighbourhoods.⁵⁷ Community-run systems and private operators selling water from tanks and cisterns meet the remaining demand.⁵⁸ Water quality is low in Cochabamba, regardless of the water source. Water sold in cisterns is reported to have bugs, grass and dead fish floating in it.⁵⁹ The NGO Fundación Abril reports that 80% of drinking water goes untreated in Bolivia, and only 14% of residual water is treated before it is returned to the environment.⁶⁰ Bottled water purchased from street vendors is

very expensive and of poor quality.⁶¹ Although many residents of Cochabamba's Southern Zone who are not connected to the formal water network use less water than their wealthier neighbours in the northern part of Cochabamba, they pay more per cubic meter for the water they consume.⁶²

Introducing citizen participation

A key demand from the citizen protests in Cochabamba in 2000 was the creation of a new public water company with mechanisms for citizen decision making. SEMAPA was widely known to be corrupt and inefficient before privatisation.⁶³ Many citizens favoured deep structural changes to the public water utility, such as communal ownership and management and a form of social control that would formalise citizen participation in the technical, managerial and operational functions of the company. Ultimately social control took the form of the election of four 'citizen directors' to the nine-person SEMAPA Board of Directors.⁶⁴ These citizen directors are meant to represent the needs of the residents in the communities. However, there have been several obstacles to meaningful citizen participation.

First, voter turnout for elections for citizen directors has been low, partly because of restrictions in voting.⁶⁵ In the first elections in April 2002 only 2000 people voted out of a total population of 650,000.⁶⁶ The subsequent lifting of voting restrictions did not significantly raise voter turnout. It is possible that people did not participate in higher numbers because the inclusion of citizen directors on the Board was not the far-reaching reform that water activists and citizens had hoped for; simply electing board members was not the same as actively participating and making collective decisions.⁶⁷

Second, entrenched patterns of corruption that pre-date the reversal of privatisation prevent effective participation by citizen directors.⁶⁸ Corruption investigations called for by citizen directors have been blocked by union and political elites,⁶⁹ and improvements to service disproportionately occur in areas of political support for politicians with a role on the Board.⁷⁰ A 2007 audit of SEMAPA showed over 51 irregularities in 2006 by the management, costing the utility over \$600,000.⁷¹ The 'organizational culture of corruption' that existed before privatisation in 1999 seems to have survived the transition to a public company.⁷² Nepotism, lack of proper technical qualifications, lack of capacity to monitor the financial aspects of the company, and lack of training for citizen directors all pose obstacles to effective citizen oversight of the company.⁷³

Another form of direct citizen participation in water management in Cochabamba is found in the Southern Zone of the city, where local water committees have been organised into an Association of Community Water Systems of the South (ASICA-Sur). These water committees work to develop and manage independent water systems in the peri-urban areas outside the SEMAPA network. They work together to dig wells, pump water to tanks and repair their water systems.⁷⁴ Water committees practice a form of participatory democracy that includes collective decision making, communal ownership and elected leadership. This is a form of decentralised, direct public water management that is not mediated by the state.⁷⁵

However, increasing state control over water management under the Morales administration is leading to the erosion of the autonomy of these water committees in the Southern Zone. Citizens are increasingly critical of the lack of opportunities for meaningful citizen participation in national water management. Water activists claim that the Morales government is not working with civil society organisations to develop water policy.⁷⁶ For example, the group charged with studying the water resources and needs of each community in Cochabamba does not include representatives from the local water committees.⁷⁷

Further, local citizens claim to have no oversight of or participation in decision making about the specific projects funded by the \$300,000 allotted to each municipality for water projects.⁷⁸ For example, new irrigation projects funded by the MiAgua programme have not considered whether the communities receiving them have the capacity to follow through and administer them.⁷⁹ MiAgua funding for projects aimed at improving existing community water systems require the 'municipalisation' of these water systems, whereby the resources and management of the community-built system are turned over to the municipal water company.⁸⁰ Organised citizens view this as an attempt by the state to expropriate the water sources and networks of the communities.⁸¹

Summary

The Morales administration has expressed the political will to implement the HRtWS, and the government is making significant institutional and policy changes at the national level aimed at improving water services. These changes have significantly increased the state's capacity and role in the water services sector. While national averages for water and sanitation access are improving in Bolivia, low coverage levels for water and sanitation persist 13 years after the water war, particularly in Cochabamba's Southern Zone.

Implementing the HRtWS is not only about increasing the number of water connections; water quality, affordability and opportunities for citizen participation are also crucial elements of the HRtWS. Despite the Bolivian government's public commitment to the HRtWS, meaningful citizen participation in water management is still not occurring in Bolivia. In Cochabamba entrenched patterns of corruption, lack of technical capacity and skills building, lack of avenues for meaningful participation for users and community water groups, and disrespect for autonomous water committees by the government are hindering the fulfilment of the citizen participation mandate of the HRtWS.

Discussion: two discourses on implementing the HRtWS

At the outset of this article we posed several questions about the discourse on implementing the HRtWS: what is the message coming from the global level regarding how to implement the HRtWS, and what lessons can be taken from the discourse within a country already implementing a human rights-based approach to water services? Through our case analysis approach we find that there are hegemonic and counter-hegemonic discourses emerging on HRtWS implementation. The hegemonic discourse, put forward by the UN Special Rapporteur and rooted in the language of the UNGA and HRC Resolutions and

GC15, fits within the dominant discourse on water management that is state-centric and market-friendly. In contrast, the discourse on implementation of the HRtWS seen in the peri-urban areas of Cochabamba is rooted in notions of autonomy and rejection of the state-centric, individual-based formulation of the HRtWS proposed by global actors. This formulation of the HRtWS is a more transformative discourse than the one promoted at the global level.

In examining the discourse at the global level regarding how to implement the HRtWS, we find that the work of the Special Rapporteur goes far beyond the simple moral imperatives and vague guidelines of the UNGA and HRC Resolutions and GC15. She focuses on and advocates human rights principles for implementing the HRtWS, including non-discrimination and equality, access to information and transparency, participation and accountability. She argues that participation should transcend *ad hoc* and project-level participatory processes and that states must overcome barriers to participation, including low literacy levels, language constraints, cultural barriers and physical obstacles.⁸² While it raises some new issues and highlights need for citizen participation, particularly for the most marginalised groups, the discourse put forward by the Special Rapporteur does not advocate deeper structural transformations regarding the state–society relationship.

Rather, the discourse detected from the Special Rapporteur fits within the dominant framework of a state-centred, market-friendly approach to water management. On the question of whether the private sector should have a role in water services, she states that human rights are neutral toward models of services provision. However, as water scholar Ken Conca notes, water activists are trying to challenge the dominant or hegemonic knowledge about marketisation of water and many groups vehemently oppose private sector participation in water services as a key component of the HRtWS.⁸³

The Special Rapporteur discusses implementation predominantly in terms of the need to heighten state capacity through practical steps like legal frameworks, constitutional amendments, political commitment and will, national planning, monitoring and sustainable financing. This approach may be effective in getting states to recognise their crucial role in the water sector but it is not a transformative discourse that challenges old paradigms or power structures. In this way the Special Rapporteur's work reflects how the human rights frame for water is inadequate by itself. Building state capacity is a first and important step. In some cases rights are unfulfilled because of a lack of state will to prioritise the issue, or a lack of resources or capacity to make change.⁸⁴ But, as the Bolivia case shows, increasing the state role risks reproducing exclusionary policies in practice.

While the hegemonic discourse on the HRtWS presents a step in the right direction by focusing on the need for stronger state action on water and sanitation access, we argue that it does not address some key underlying causes of lack of access to water and sanitation in the developing world. The hegemonic approach to implementing the HRtWS does not adequately address the needs of people living outside urban systems, such as marginalised people in peri-urban settings. Nor does it address some of the main barriers to fulfilment of the HRtWS, such as state corruption and lack of capacity building for citizens to participate in water management.

In the Bolivia case the Morales administration's approach to implementing the HRtWS echoes the global discourse of the Special Rapporteur. The government is expressing the political will to implement the HRtWS, strengthening state capacity, engaging in national planning and devoting significant financial resources to improving services. The Morales administration highlights citizen participation as an important aspect of the national approach to implementing the HRtWS. This approach is not incompatible with the hegemonic discourse on implementation we identify at the global level.

At the local level in the peri-urban areas of Cochabamba, however, we see a version of the HRtWS discourse on water management that is counter-hegemonic. This counter-hegemonic discourse is rooted in notions of radical democracy and autonomy, and it rejects the state-centric, individual-based formulation of the HRtWS proposed by global actors like the UN Special Rapporteur. During the water war in Cochabamba, *La Coordinadora's* vision for community participation in water management was one of horizontal power rather than a hierarchical structure with the state in a position of control.⁸⁵ Many organised citizens in Cochabamba today, particularly those from the Southern Zone water committees, favour a system of self-management and autonomy rather than a system dominated by the central state.⁸⁶ The water committees reject both market- and state-led approaches to water management, seeking instead a more democratic alternative water management model that is connected to environmental stewardship and citizen participation. This approach to water management represents a more transformative discourse than the one promoted at the global level, and it is more transformative in practice than the approach of the Morales administration.

The Bolivia case also suggests that increasing state capacity in the water sector without increasing *citizen capacity* to participate in water management may exacerbate problems with accountability by allowing the state to centralise power and supplant local community systems of water distribution. Furthermore, legacies of state corruption make citizens wary of an increased state presence and role in their water utilities.

Some water activists in Bolivia reject the use of the human rights frame altogether. A human rights-based approach to water management calls for expanding the role of the state in the water sector by remaking old public institutions or creating new ones to manage water. For some, this expansion involves the destruction of the water commons that have been built by communities.⁸⁷ The human rights frame can also favour an urban perspective on water issues as individual rights versus a more collective notion of water rights that is prevalent among indigenous communities and peri-urban residents.⁸⁸

Implications: local lessons for global guidelines

While human rights has been an effective frame for campaigns against water privatisation and useful for getting Western intergovernmental organisations, NGOs and even large corporations to agree on the legitimacy of the HRtWS, there are limits to the utility of the rights frame at the implementation phase. Local water movements, such as those seen in the Southern Zone of Cochabamba, are pushing for a broader transformation to a more radical form of

democracy and alternative modes of water provision based on the common good and mutual aid that are not mediated by the state.⁸⁹ This view of water management embodies both a rejection of the market model and a distrust of the state. It is not surprising that this counter-hegemonic discourse comes from Bolivia, a country that has experienced both the negative outcomes of privatisation and a series of exclusionary and discriminatory governments.

It is important to distinguish between hegemonic and counter-hegemonic discourses on the HRtWS as states begin implementing the right to water. The hegemonic discourse on the HRtWS can potentially reinforce unequal power structures and place excessive emphasis on market and state solutions to water governance problems. As the Bolivia case shows, in some cases a radical change in water governance and the state–citizen relationship is needed. The more radical view of the HRtWS and the outright rejection of the human rights frame by some in Bolivia raise questions about whether human rights – the language of state violations and individual agency – can be effectively used to challenge structural economic inequality.

There are few specific guidelines for how states should implement socioeconomic human rights. This is particularly true for the HRtWS, in part because it is a newly defined human right without a long history of enforcement and implementation. While it is important that states develop their own path to fulfilling and implementing the HRtWS based on their own conditions and financial capabilities, global guidelines can highlight best practices and provide key support in overcoming some of the hurdles to effectively prioritising a rights-based approach to water services. These global guidelines are best developed in consultation with governments and local communities to establish a range of best (and worst) practices, which can be instructive for other countries attempting to implement the HRtWS.

Implementation guidelines for the HRtWS must address the specific challenges and needs of autonomous water communities in peri-urban areas, such as those found in the Southern Zone of Cochabamba. Self-managed community water systems arise to fill gaps in public and private services to their neighbourhoods. These are communities where citizens are already participating in their water management, often without significant support, regulation, financing or guidance from the central government. As states are encouraged to increase their capacity to manage water systems, it is essential that the pre-existing modes of citizen participation not be displaced or usurped, particularly in areas with legacies of corruption at all levels of government.

Overall our findings suggest that global actors working to guide states on implementation of the HRtWS must consider not only state actions and building state capacity to fulfil rights, but also how this increase in state capacity reverberates at the local level, where issues of corruption and state usurping of local water systems can be counter-productive to fulfilling rights. Otherwise, new approaches to water governance could end up reinforcing or reproducing top-down solutions to water service problems.

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Notes

1. Gerlak et al., "Unpacking Discourse"; and Gupta et al., "The Human Right to Water."
2. Rajagopal, *International Law from Below*; Mutua, *Human Rights*; and Baxi, *The Future of Human Rights*.
3. These include the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the UN General Assembly Declaration on the Right to Development (1986), the Convention on the Rights of the Child (1989), and the African Charter on the Rights and Welfare of the Child (1990).
4. General Comments are not legally binding. They intend to assist state parties, providing a clarification as to the intent, meaning and content of the respective treaties.
5. General Comment 15, paragraphs 1, 2.
6. *Ibid.*, Part III.
7. Nelson, "Local Claims," 131, 138.
8. Cahill, "The Human Right to Water."
9. Parmar, "Revisiting the Human Right to Water," 86–87.
10. *Ibid.*
11. Sultana and Loftus *The Right to Water*, 6.
12. *Ibid.*, 6.
13. Gramsci, *Selections from the Prison Notebooks*.
14. Rajagopal, "Counter-hegemonic International Law."
15. Basok, "Counter-hegemonic Human Rights Discourses," 184.
16. Donnelly, "Human Rights;" and Heinze, "Human Rights."
17. Charvet and Kaczynska-Nay, cited in Heinze, "Human Rights," 168.
18. See Keck and Sikkink, *Activists beyond Borders*; and Risse et al., *The Power of Human Rights*.
19. Rajagopal, *International Law from Below*; Mutua, *Human Rights*; and Baxi, *The Future of Human Rights*. This critique is rooted in a broader literature labelled 'Third World Approaches to International Law (TWAAIL)', which challenges the legitimacy of international law as Eurocentric. For overviews, see Mickelson, "Rhetoric and Rage"; and Mutua, "What is TWAAIL?"
20. Rajagopal, "Counter-hegemonic International Law," 772, 768.
21. Chandler, "Contemporary Critiques," 110.
22. Falk, "The Power of Rights"; Rajagopal, "Counter-hegemonic International Law"; Kennedy, *The Dark Sides of Virtue*; and Heinze, "Human Rights."
23. Baxi, *The Future of Human Rights*; and Rajagopal, "Counter-hegemonic International Law."
24. Falk, "The Power of Rights."
25. Rajagopal, "Counter-hegemonic International Law," 768.
26. Eide, "Economic and Social Rights," 110.
27. Perreault, "What Kind of Governance?"
28. Parmar, "Revisiting."
29. Conca, *Governing Water*; Bakker, "The 'Commons' versus the 'Commodity'"; and Vandenhole and Wielders, "Water."
30. Baer, "Private Water, Public Good;" Morgan, "The Regulatory Face"; and Bakker "The 'Commons' versus the 'Commodity'."
31. Vandenhole and Wielders, "Water," 420.
32. Bakker, "The 'Commons' versus the 'Commodity'."
33. Sultana and Loftus *The Right to Water*.
34. Clark, "The Centrality of Community Participation," 181–182.
35. Sultana and Loftus *The Right to Water*, 5.
36. *Ibid.*; and Linton, "The Human Right to What?"
37. Gerrig, *Case Study Research*, 89.

38. Hunt calls for examining discourses as conveyors of hegemonic ideas: 'The most significant state in the construction of counter-hegemony comes about with the putting into place of discourses, which whilst still building on the elements of hegemonic discourses, introduce elements which transcend that discourse'. Hunt, "Rights and Social Movements," 314.
39. UN Human Rights Council, *Human Rights and Access to Safe Drinking Water and Sanitation*. Resolution 7/22.
40. United Nations Human Rights, *Office of the High Commissioner of Human Rights*. ND. Country Visits at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/CountryVisits.aspx>.
41. See UN reports at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/CountryVisits.aspx>.
42. It is important to note that in our review of the work of the UN Special Rapporteur, we did not find any specific country reports or country visits to Bolivia.
43. See Annual Reports at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/AnnualReports.aspx>.
44. de Albuquerque, "Special Rapporteur"; de Albuquerque, "Statement by the Special Rapporteur"; and de Albuquerque, "Intervention by Ms. Catarina de Albuquerque."
45. de Albuquerque "Report of the Independent Expert," 18.
46. *Ibid.*, 7.
47. de Albuquerque and Roaf, *On the Right Track*.
48. <http://www.righttowater.info/handbook-introduction/>.
49. Congreso Nacional, *Nueva Constitución*.
50. *Ibid.*
51. "Bolivia Aims for 84% Potable Water."
52. MMayA, *Boletín Mensual*, Enero, 3.
53. Oporto, "Cuando la Política hace Aguas," 53.
54. WHO/UNICEF Joint Monitoring Programme, "Bolivia."
55. *Ibid.*
56. SISAB, *Memoria Anual*; and Salinas, "Reformas Institucionales," 104.
57. Jaldín, "A 12 Años."
58. Manzaneda, "El 25%."
59. Jaldín, "A 12 Años."
60. Fundación Abril, "Agua y Saneamiento."
61. Forero, "Who will Bring Water?"
62. Jaldín, "A 12 Años."
63. Driessen, "Beyond Water Wars."
64. The Board of SEMAPA is now composed of two seats for the mayor's office, one seat to the governor's office, one seat for the Ministry of Water, one seat for the College of Professionals, and four seats for the citizen directors.
65. Spronk, "Moving from Protest to Proposal," 21.
66. *Ibid.*
67. *Ibid.*
68. See Driessen et al, "Transparencia"; Driessen, "Collective Management Strategies"; and Driessen, "Beyond Water Wars."
69. Spronk, "Moving from Protest to Proposal."
70. T. Driessen, author interview, December 4, 2008.
71. Driessen, "Collective Management Strategies."
72. T. Driessen, author interview, December 4, 2008.
73. Oporto, "Cuando la Política hace Aguas"; and Driessen, "Beyond Water Wars."
74. Shultz, "The Cochabamba Water Revolt," 37.
75. Achtenberg, "From Water Wars to Water Scarcity"; and Spronk, "After the Water Wars."
76. Fundación Abril, "Agua y Saneamiento"; Crespo, "La Situación"; and Olivera, "Palabras contra el Olvido."
77. Fundación Abril, "Agua y Saneamiento," 3–4.
78. Olivera, "Palabras contra el Olvido," 86.
79. Fernández, "La Agenda del Agua."
80. Fundación Abril, "Agua y Saneamiento," 4–5.
81. Olivera, "Palabras contra el Olvido," 87.
82. de Albuquerque, "Statement by the Independent Expert."
83. Conca, *Governing Water*.
84. Mehta, "Do Human Rights make a Difference?," 63.
85. *Ibid.*, 78; and Fundación Abril, "Agua y Saneamiento," 2.
86. Olivera, "Palabras contra el Olvido."
87. Bustamante et al., "Seeing through the Concept of Water," 227.
88. *Ibid.*, 231.
89. *Ibid.*, 229.

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