**The Human Right to Water and Sanitation:**

**Champions and Challengers in the Fight for New Rights Acceptance**

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Access to clean water and adequate sanitation are undeniably key components of a healthy life with dignity and the fulfillment of multiple human rights. Yet it took over two decades of pressure from civil society groups for the United Nations to officially recognize water and sanitation as human rights. A transnational “water justice movement” successfully pushed for this recognition despite opposition from powerful adversaries. Representatives from Canada, the United States, and the United Kingdom used their power and influence within the global system to derail and dilute attempts to legalize the human right to water and sanitation at every turn. Despite these obstacles, by 2015 all UN member states have acknowledged the human right to water and sanitation as part of binding international law, either through their votes on resolutions or through their obligations under existing international treaties, and dozens of countries have amended their constitutions to include the human right to water and sanitation. How did the human right to water and sanitation come to be relatively accepted despite strong opposition by powerful global actors? What does the trajectory of the campaign to legalize the human right to water and sanitation tell us about new rights acceptance?

This chapter examines the process of establishing water and sanitation as new human rights, with particular attention to the actors who championed and challenged this acceptance. Extant theory on new rights highlights the role of human rights gatekeeper organizations as facilitators of new rights acceptance. Gatekeepers bring legitimacy and resources to a new rights issue, often by successfully linking new rights to established rights claims. I argue that the path toward acceptance of the human right to water and sanitation (HRtWS) does not fit this pattern; much of the work happening to legalize the HRtWS happens outside the human rights regime and without the direct support of traditional rights gatekeepers. The water justice movement’s success is linked to effective collaborations between non-human rights NGOs and states in the Global South to re-define water in the international system.

Following brief discussions of the HRtWS and new rights acceptance theories, this chapter examines four global platforms where the most significant advances are taking place in establishing the HRtWS: 1) The United Nations General Assembly; 2) the Human Rights Council; 3) the global water policy domain; and 4) the global development policy arena. I focus on the main outcomes of pressure in each of these platforms (See Table 1).

**Table 1.1 Advocacy Platforms and Outcomes**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Platforms** | United Nations General Assembly | Global Water Policy | Human Rights Council | Global Development Policy |
| **Outcomes** | *UNGA Resolutions* | *World Water Forum Meeting Agendas and Ministerial Documents* | *Human Rights Council Resolutions* | *Sustainable Development Goals 2015-2030* |

**The Human Right to Water and Sanitation**

Water and sanitation were not listed in the founding human rights documents, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[[1]](#endnote-1) In 2002 the Committee on Economic Social and Cultural Rights issued General Comment 15 stating that the human right to water is derived from the right to an adequate standard of living listed in Article 11 of the ICESCR. While General Comment 15 strengthened the profile of the HRtWS in the global system, General Comments are non-binding and non-enforceable.

In development and water policy circles for the past several decades water has been defined as an “economic good” or a “human need” that is best treated as a commodity subject to the rules of markets (Langford 2005; Finger & Allouche, 2002; Conca 2006). Campaigns to define water and sanitation as human rights emerged in Lain America, Asia and Africa in the late 1990s and early 2000s as a response to a wave of water privatization that left citizens unable to afford services. Claiming water services as a human right is often an attempt to put water resources and services outside the reach of profit making corporations and within the purview of states and communities.

While definitions of the HRtWS vary across time and actors, the language of General Comment 15, the 2010 United Nations General Assembly resolution and the 2010 Human Rights Council resolution on the HRtWS coalesce on the following criteria: availability (sufficient water supply for personal and domestic use), quality (safe for consumption and does not pose a threat to human health), acceptability (culturally acceptable sanitation facilities, including gender-specific facilities with privacy and dignity), accessibility (water and sanitation services must be accessible) and affordability (including for those in extreme poverty) (De Albuquerque and Winkler 2010). Civil society groups also frequently demand transparency, accountability, and citizen participation in water management as a key component of the HRtWS. States are obligated to respect, protect and fulfill the HRtWS through a comprehensive plan to realize these rights.[[2]](#endnote-2)

The absence of water and sanitation in the founding human rights documents, a long tradition of viewing water as an economic good, and the work of powerful opponents all posed significant obstacles to the acceptance of the water and sanitation as new human rights.

**New Rights Acceptance**

For aggrieved groups with minimal access to global systems of power, there is a strong incentive to reframe grievances as human rights claims in the hopes of gaining attention, resources, and access to remedy. Human rights have become a modern *lingua franca* – a frame that provides an “emancipatory script” that resonates with powerful global actors (Brysk 2013: 32). However there is also resistance to expanding the human rights repertoire, and particularly strong resistance to empowering and legitimizing economic, social and cultural rights claims in a human rights regime that focuses primarily on civil/political rights.

New rights claims have an advantage in the battle for recognition when they are framed in terms of pre-existing norms or values that are already widely supported (Finnemore and Sikkink 1998; Florini 1996). The role of human rights gatekeepers is crucial in this process of norm linkage and in placing new rights claims on the global agenda (Bob 2009). Cliff Bob’s theory of new rights acceptance posits that human rights gatekeepers, e.g. Amnesty International and Human Rights Watch, have the power to “certify” new rights as worthy of international response (Bob 2009: 4). Local aggrieved groups reach out to gatekeepers hoping their support will unlock access to international organizations, media attention, and increased political pressure from above on violators. While gatekeepers have the power to open doors for new rights claimants, powerful challengers also work to keep those doors firmly closed, thwarting attempts by new rights champions to legitimize their new rights claim. Analysis of new rights acceptance therefore must not only focus on new rights champions but also the challengers who oppose the expansion of the human rights repertoire (Bob 2009).

The HRtWS is an interesting case in light of these theories of norm change and new rights acceptance. Water is a new rights claim that is relatively successful in terms of gaining international recognition, even in the face of powerful opposition. Yet the human rights gatekeepers were largely absent from campaigns to legalize the HRtWS. Furthermore, although the right to water can be linked to pre-existing norms about the right to life, defining water as a human right directly contrasts with an already deeply entrenched definition of water as an economic good. Thus the campaign for the HRtWS potentially presents a new model of new rights acceptance.

The campaign for the HRtWS is a prime example of how human rights advocacy has changed with the onset of globalization. While human rights advocacy on civil/political rights focuses mainly on targeting violating states from above and below with the help of global actors to shame state offenders, a recent wave of “new rights advocacy” seeks to strengthen the role of the state to fulfill economic, social and cultural rights (Nelson & Dorsey, 2007). New rights advocacy often targets non-state actors in campaigns for new ESC rights, seeking to both highlight the responsibilities of states and bolster the ability of states to manage the economy in the face of pressure to implement neoliberal policies. This new rights advocacy emerged when civil society groups from the Global South began framing their social and economic grievances as human rights.

The mainstream human rights organizations have lagged behind this trend toward framing economic grievances as human rights. A reluctance to stray too far from traditional civil/political rights resulted in little work on socioeconomic rights until fairly recently. While Amnesty International and Human Rights Watch are beginning to address the glaring social and economic inequalities in the developing world, they are not the main actors pushing for acceptance of the HRtWS. The HRtWS champions are a loosely connected network of NGOs from the Global South and North that calls itself the water justice movement.

**The Champions**

The water justice movement is a network of hundreds of organizations including local NGOs battling water policies at the municipal and national level and regional networks such as The African Water Network and Red VIDA (the Inter-American Network for the Defense and Right to Water) that link these local struggles. Northern NGOs including the Blue Planet Project (an initiative of the Council of Canadians) and US-based Food & Water Watch[[3]](#endnote-3) work to support local movements against water privatization and to influence global water policy. Blue Planet Project was created specifically to coordinate global efforts to enshrine water was a human right, a public trust, and a part of the global commons. Its co-founder, Maude Barlow, is a Canadian author, activist, and former senior advisor to the United Nations on water. Barlow is a leader in the global movement for the HRtWS. The broader circle of actors working on the HRtWS includes the Special Rapporteur on water and sanitation and organizations such as WASH-United, WaterAid, and the Center on Housing Rights and Evictions (COHRE). These organizations periodically team up with the water justice movement for particular initiatives.

Two observations about the organizations listed above are relevant to the analysis presented here. First, human rights are not the primary focus of most of these organizations; in other words, the strongest champions for the HRtWS are not human rights organizations. Second, the vast majority of water justice movement organizations have an explicit anti-private sector participation stance (Davidson-Harden et al 2007). According to Barlow: “It is widely understood by the global water justice movement that these rights can only be realized within a system that recognizes water as a public trust and a public service” (Barlow 2015: 8). This puts the movement occasionally at odds with their more moderate partners, including the human rights gatekeepers Amnesty International and Human Rights Watch, as will be discussed below.

The following section examines the four main platforms where the HRtWS has been introduced, with particular attention to the champions and challengers of acceptance for water and sanitation as legal human rights.

1. **United Nations General Assembly**

On July 28, 2010 the United Nations General Assembly (UNGA) adopted Resolution 64/292 recognizing “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” The passage of this resolution signifies a major step toward acceptance of the HRtWS in the global system.

***Champions***

The Bolivian representative to the UN, Pablo Solón, introduced the measure to the General Assembly in June 2010. Solón’s bold and seemingly sudden proposal took some members of the water justice movement by surprise, and there was initial skepticism that the resolution would pass (Interview O’Callaghan 2015; Interview Naidoo). However Solón’s proposal was not initiated impulsively; rather it was the result of a multi-year collaboration between the water justice movement and the Bolivian government.

In 2008, Blue Planet Project’s Maude Barlow was the senior advisor on water issues to then-President of the UNGA, Miguel D’Escoto Brockmann. Upon taking office, Brockmann expressed his support for the idea of a UNGA resolution to address the impact of the global water crisis on the poor (Barlow 2013:27-8). Barlow first called for formal recognition of the HRtWS at a speech to the UNGA on April 22, 2009. This proposal for a water resolution was delayed due to opposition from UN members. Representatives from her own government (Canada) publicly signaled their opposition by physically leaving the room whenever she spoke about the HRtWS in various UN committees and panels (Barlow 2013: 28).[[4]](#endnote-4) Barlow found a strong ally for the idea of a UNGA resolution in Bolivian President Evo Morales, and she encouraged Morales and Solón to “lead the crusade” to introduce the resolution (Barlow 2013: 30).

Solón’s proposal in June 2010 and his steadfast support for the resolution quickly activated the water justice movement (Interview O’Callaghan 2015). The main organizer on the ground, Blue Planet Project’s Anil Naidoo, scrambled to reach out to as many UN missions in New York as possible to lobby for their support over the course of the 40 days leading up to the vote (Interview Naidoo). In addition to lobbying in New York, the movement activated a parallel strategy where the vast network of water activists all over the world lobbied in their home capitals for their governments to vote in favor of the resolution (Interview O’Callaghan).

Attempts to soften or weaken the language, such as one proposal to drop sanitation altogether, were met with an uncompromising stance from Solón. Solón refused to accept another proposal to replace the words “the human right to water and sanitation” with “the human right to *access to* water and sanitation,” citing the change as an attempt to allow states to transfer their obligations to private actors (Barlow 2013: 30-31). Solón preferred to lose the vote than to dilute the language, and he openly challenged states to vote against the HRtWS in the public forum of the General Assembly (Barlow 2013: 31; Interview Nadoo).

The vote took place July 28, 2010 with 122 countries voting in favor and no votes against. Countries with concerns and those in opposition to the resolution opted to abstain. These 41 abstentions included three countries that frequently oppose efforts to legalize the HRtWS: the US, the UK, and Canada.

***Challengers***

The US representative to the UNGA signaled its opposition by calling for the vote on the resolution.[[5]](#endnote-5) In public statements, the US argued that a UNGA resolution could harm the process occurring at that time in the Human Rights Council, which was also preparing to vote on a similar resolution on water and sanitation later that year. The US also cited the lack of a pre-existing right to water and sanitation in international law and claimed that the process of drafting the UNGA text was not “transparent” (UNGA 2010). Food & Water Watch interpreted these criticisms as “delay tactics” rather than a concern for the process at the Human Rights Council, and they viewed the US’s abstention as a political move to avoid voting against the resolution (Interview O’Callaghan 2015).

In the “explanation of the vote” section, the UK representative expressed opposition to both the “substance and procedure” of the resolution, claiming that no legal basis for declaring a human right to water or sanitation exists in the international system (UNGA 2010). The UK echoed the US’s concerns that a UNGA resolution would undermine the Human Rights Council’s work, which the UK representative described as proceeding in a more “careful and consensual” manner. Canada’s objections were similar, citing a lack a consensus among states on the HRtWS and the lack of sufficient grounding in international human rights law.

Barlow described the public commentary by abstaining countries as “angry,” yet she interprets their abstentions rather than “no” votes as “the best signal yet that the debate over these fundamental rights was finally winding down” (Barlow 2013: 32). Despite opposition and abstentions by the US, UK and Canada, the UNGA resolution passed and initiated a momentum toward increased recognition of the HRtWS in other international arenas including in the Human Rights Council.

**2. Human Rights Council**

In 2008 the Human Rights Council[[6]](#endnote-6) began a process to research and investigate the HRtWS by appointing an independent expert, Portugal’s Catarina de Albuquerque, to be the Special Rapporteur on the issue of human rights obligations related to access to safe drinking water and sanitation (hereafter Special Rapporteur). On September 15, 2010, several months after the UNGA resolution passed, de Albuquerque presented her first report to the Human Rights Council (De Albuquerque 2010). On September 30, 2010 the Human Rights Council adopted Resolution A/HRC/15/L.14, solidifying the HRtWS as a legally binding human right contained in the right to an adequate standard of living from Article 11 of the ICESCR. The right to water and sanitation was linked to several other already established human rights, as seen in Point 3: “…the human right to safe drinking water and sanitation is derived from the right to an *adequate standard of living* and inextricably related to the right to the *highest attainable standard of physical and mental health*, as well as the right to *life* and *human dignity*” (emphasis added). Therefore the HRtWS is present in existing human rights law through treaties that include these rights.

The 2010 draft resolution was introduced by Spain and Germany with 55 other nations as co-sponsors; 17 of the co-sponsors were countries that abstained from the UNGA resolution earlier that year. In contrast to the UNGA resolution, which had 41 abstentions, there was no call for a vote and the resolution passed unanimously. This could be interpreted as a sign of growing consensus on the legality of the HRtWS (Winkler 2012, p. 80).

***Champions***

There was minimal advocacy by the water justice movement on the Human Rights Council, in part because there was a sense that the resolution was going to pass (Interview O’Callaghan 2015). Furthermore, the Human Rights Council is based in Geneva, which was inaccessible to many movement actors, and there was less understanding of how that Human Rights Council process functioned (Interview Naidoo). While the water justice movement stepped back from this process, Amnesty International publicly voiced its support for the resolution and shamed states that were attempting to derail or dilute the resolution (Amnesty International 2010a; 2010b). Amnesty reported: “the USA, the UK and Canada, with some support from a small number of other States, have vocally and consistently attempted to block the affirmation of these rights in the present resolution” (Amnesty 2010b). Amnesty further accused the US, UK and Canada of attempting to control the definition and scope of these rights as presented in the resolution by limited the definition of water to “safe drinking water” – a definition that excludes water for washing clothes, preparing food, and personal and household sanitation and hygiene (Amnesty 2012).

***Challengers***

In the explanation of the vote, the UK dissociated itself from the consensus. The UK objected to the inclusion of the right to sanitation, which the UK representative claimed has no basis in international human rights law and no clear definition (Human Rights Council 2011). In a surprising turn, the US representative stated that while the US abstained from the UNGA resolution the US was “proud to join consensus” on the Human Rights Council resolution. In its explanation of the vote, the US representative emphasized that state parties to the ICESCR are responsible to realize the rights contained and derived from the covenant, including the HRtWS. The US is one of the few countries in the world that has not ratified the ICESCR; therefore the US is not legally bound by the ICESCR or by Human Rights Council resolutions, making the cost of supporting the resolution low for the US.

The UNGA and Human Rights Council resolutions contribute to both the legal scaffolding for the HRtWS and to the acceptance of a new definition of water and sanitation as human rights in the international system. Significant advances in establishing the HRtWS are also taking place in the global policy arena in the following two platforms: the World Water Forum and the process to establish the Sustainable Development Goals for 2015-2030.

**3. World Water Forum**

The World Water Forum (WWF) is the largest international conference devoted to water governance. Every three years multiple stakeholders including multinational water companies, government representatives, UN organizations, and international development organizationsmeet at the Forum to discuss water policy. The WWF is organized by the World Water Council, a think-tank comprised of over 300 private water corporations, investment banks, and water industry associations.

WWF documents since 1997 consistently define water as an economic good or a need, and stress the importance of private sector participation in water services (Baer, Gerlak and Lopes 2013; Barlow 2013). At the close of each WWF a Ministerial Declaration summarizing the main content of the Forum is signed by participating government representatives and released to the public. At every WWF since 2000, members of the water justice movement and a handful of government representatives have attempted to include the words “the human right to water and sanitation” in these declarations, and every time their efforts were rejected.

***Champions***

The global water justice movement attends every WWF with a multi-pronged strategy to work both inside and outside the Forum. They participate in the Forum as audience members and occasionally panelists on the official program, as organizers of Forum “side events” which are included in the WWF schedule but held outside of the official Forum, and they work with friendly government representatives to try to influence the discourse on the HRtWS from inside the Forum. Outside the Forum, they organize and collaborate with local activists to hold an Alternative Water Forum and to publicly protest against the Forum. These efforts are led by NGOs including Blue Planet Project and Food & Water Watch. Amnesty International and Human Rights Watch are not regular or visible participants in the WWF organizing or alternative water forums.

Activists from the water justice movement disrupted the 2003 Kyoto Forum expressing their clear opposition to privatization (Bakker 2007). Although the 2003 Kyoto Forum took place shortly after the issue of General Comment Number 15 on the HRtWS, attempts to include the HRtWS in the Ministerial Declaration were rejected. By the 2006 WWF in Mexico, the HRtWS begins to appear in the discourse of the Forum. Three official WWF sessions discussed the HRtWS[[7]](#endnote-7) and in the opening speeches to the Forum, then-President of Mexico Vicente Fox stated: “Water is above all a human right which no one can renounce,” and World Water Council President Loïc Fauchon said: “The right to water is an indispensable element of human dignity” (Martinez and van Hofwegen, 2006: 87). Although the official summary of the 2006 WWF reads: “There was a broad consensus about the existence of a human right to water” (Martinez and van Hofwegen, 2006: 89) at the Forum, government representatives once again rejected the inclusion of the HRtWS in the Ministerial Declaration despite attempts by the Bolivian representative and others to mobilize support for its inclusion.

At the 2009 WWF in Istanbul, Food & Water Watch, Blue Planet Project, Red VIDA and dozens of other groups held panels, workshops, debates and film screenings billed as “side events” to the official Forum.[[8]](#endnote-8) In several panels on water privatization, water justice movement activists dominated the question and answer period providing critiques and alternative data on the outcomes of privatization. This attendance and participation was part of a carefully planned strategy. Activists from dozens of organizations met each night in the basement of a local hotel to discuss plans for challenging and protesting the Forum. Activists reported back on the panels they attended that day and divided up the key panels for the following day to ensure the broadest possible presence.

Nightly meetings also included report-backs from official government delegates from several Latin American countries including Bolivia, Ecuador, and Venezuela. The government representatives reported on what was happening inside Forum meetings and strategized with activists about pushing for inclusion of the HRtWS in the Ministerial Declaration. Delegates from Venezuela and Uruguay reported that the US, Egypt and Brazil were blocking the inclusion of the HRtWS in the official Ministerial Declaration, instead promoting defining water as a “human need” as it had been defined in past declarations. The US delegates told Food & Water Watch staff that declaring a HRtWS was impossible for the US to support, as it would contradict the US Constitution (Interview O’Callaghan 2010). The final Ministerial Declaration references the debate over the HRtWS while rejecting the language: “We acknowledge the discussion within the UN system regarding human rights and access to safe drinking water and sanitation. We recognize that access to safe drinking water and sanitation is a basic human need” (WWC 2009). The water ministers of Bolivia, Ecuador, Uruguay and Venezuela created an alternative Ministerial Declaration that included a definition of water as a human right, and they called on other government representatives to not sign the official Ministerial Declaration. Twenty-five governments[[9]](#endnote-9) signed the alternative statement on the right to water, and sixteen[[10]](#endnote-10) signed both the right to water statement and a statement calling for future WWF meetings to be convened by the UN rather than the World Water Council.[[11]](#endnote-11)

The 2012 WWF in Marseilles, France, the first WWF after the UNGA and Human Rights Council resolutions, was the largest event thus far for the water justice movement. The Alternative Forum hosted thousands of attendants, with participation levels rivaling that of the official Forum (Interview O’Callaghan 2015). In contrast to previous WWF agendas and documents, the term “human right” appears on the Marseilles Forum website over 2000 times, and rather than relegating human rights themes to “side events,” there were several official sessions focused on the HRtWS. These included a panel led by then-UN Special Rapporteur Catarina de Albuquerque, a session on human rights-based governance led by the French water company Suez with several NGOs, and a session hosted by the World Bank on the implications of national policies on the HRtWS for practitioners.

The Ministerial Declaration, signed by 84 government ministers, acknowledges recent UN action on the HRtWS and states: “we commit to accelerate the full implementation of the human rights obligations relating to access to safe and clean drinking water and sanitation” (WWC 2012). While seemingly a victory for the water justice movement, critics charged that this language stops short of a full recognition of the HRtWS and leaves openings for states to avoid the obligations that the HRtWS entails (Provost 2012; Barlow 2013).

***Challengers***

The water justice movement views the WWF as a global meeting of HRtWS opponents (Barlow 2013; Interview O’Callaghan 2010; 2015). The consistent and adamant opposition by Canada, the US and the UK (among others) to including human rights language in the Ministerial Declaration - a non-binding document - displays the importance of controlling the discourse on water in the global policy space.

Despite strong resistance from WWF participants, human rights language is seeping into all areas of the Forum. This is attributable to the continued pressure by the water justice movement working together with a handful of state representatives from the Global South to place human rights on the agenda of the Forum. The water justice movement prioritizes the WWF as a site for their advocacy not because the WWF has the power to legalize the HRtWS, but because the Forum is a global arena where the discourse on water is shaped and reproduced. The process of establishing the Sustainable Development Goals for 2015-2030 is another strategic global policy space where the battle over human rights language is taking place.

**4. Sustainable Development Goals 2015-2030**

The Sustainable Development Goals (SDGs) are a set of targets listed in the document “Transforming Our World: the 2030 Agenda for Sustainable Development.” As the successor to the 2015 Millennium Development Goals, the SDGs put forward an agenda for the UN’s approach to development between 2015-2030. The first proposals for the Agenda and the SDGs did not include the HRtWS, which the water justice movement viewed as problematic given that this document will shape development policies for the next fifteen years.

***Champions***

Blue Planet Project began tracking and participating in the process to draft the language for the SDGs almost two years before the goals were finalized.

Blue Planet Project organizer Meera Karunananthan participated in the official working groups charged with discussing the goals, and quickly found that human rights language was marginalized within the discussions. The working groups discussed water in terms of “water efficiency” for industry use and avoided human rights language entirely. Karunananthan reported that beverage companies seeking access to water, including Coca Cola and Pepsi-co, and companies engaged in extractive industries such as mining and fracking were active participants in framing the language on water in the early stages (Karunananthan 2014).

During intergovernmental negotiations on the SDGs in 2014 and 2015, Karunananthan lobbied member states to include human rights-based goals for water and sanitation, and she mobilized hundreds of signatures for open letters to the working group. An open letter drafted by the Blue Planet Project and the Mining Working Group was signed by 87 civil society organizations and sent to the SDGs Open Working Group in April 2014. The letter states: “It is crucial that the SDG process guarantee the progressive realization of the human right to water and sanitation now and for future generations. Furthermore, given the central role of water within a number of different SDG areas, it is vital that the human right to water be seen as a central component of other focus areas including energy, food, gender and climate change” (Patterson 2014). A subsequent open letter gathered signatures from 621 organizations from 90 countries (Patterson 2015a).

Amnesty International and Human Rights Watch were not included in the list of organizational signatories and were absent from the lobbying inside the working groups. However Amnesty weighed in via public statements on the importance of including human rights in the SDGs to address the shortcomings of the Millennium Development Goals (Amnesty 2015). Both Amnesty and Human Rights Watch issued public statements and blog posts on the need for the SDGs to address water and sanitation as human rights. Human Rights Watch cited the connection between water and sanitation services, poverty, and violence against women and girls (Levine 2015).

After continuous lobbying and pressure from the water justice movement, drafts of the SDG documents began to include rights language. However the language was not satisfactory to the movement or the Special Rapporteur on water, Catarina de Albuquerque. For example a draft document on the SDGs called for: “a world where access to safe and affordable drinking water is a basic and a universal human right…where there is adequate and accessible sanitation.” De Albuquerque argued that this language frames the HRtWS as an aspiration rather than a legal human right that already exists and is recognized by the Human Rights Council and the UNGA. De Albuquerque suggested the following stronger language: “a world where the human right to water and sanitation is realized for all, and where hygiene is available to all” (De Albuquerque 2015).

Following intense negotiations, the final document was adopted at the UN Sustainable Development Summit September 25–27, 2015 in New York City. The United Nations member states pledged in paragraph 7 of the adopted text: "A world where we reaffirm our commitments regarding the human right to safe drinking water and sanitation and where there is improved hygiene…” (Transforming our World 2015). This final language was viewed as a major win for the water justice movement.[[12]](#endnote-12)

***Challengers***

Karunananthan reported that opposition to including the HRtWS in the SDGs was led by large corporations, the UK, and the US (Karunananthan 2015). In the final hours of the negotiations, the US attempted to change the draft language from “the human right to safe drinking water” to “human rights *related* *to* drinking water and sanitation” (emphasis added), which the movement viewed as a dilution of the text. On the morning of August 2nd in the final hours before the vote, Karunananthan and her colleagues were able to stop an attempt by the US to substitute the weaker language on the HRtWS.

**Human Rights Gatekeepers**

The NGOs leading the campaigns to gain acceptance for the HRtWS within the global system, such as Blue Planet Project and Food & Water Watch, are not human rights-focused organizations. Mainstream human rights organizations were reluctant to take on ESC rights issues for decades, and have only recently moved toward “partial acceptance” of these rights in their advocacy (Chong 2006). Amnesty began working on ESC rights in the early 2000s, although the work has focused somewhat narrowly on demanding that these rights be respected without discrimination (Khalfan and Byrne 2015). Amnesty’s advocacy on water increased significantly under the guidance of Dr. Ashfaq Khalfan, a human rights lawyer and former director of the Right to Water Programme at COHRE.[[13]](#endnote-13) While Amnesty’s public comments in support of the HRtWS provide credibility to the campaign, this support comes relatively late in the decades-long work to establish the HRtWS. Amnesty’s advocacy consists largely of public statements reminding states of their existing commitments under international law – commitments fought for and won by the water justice movement in many cases.

Human Rights Watch only recently joined the ranks of organizations working on the HRtWS. Although water is mentioned in various country reports as far back as 1999, it was not until late 2013 when Human Rights Watch began discussing ways to systematically work on the HRtWS (Interview Klasing). In 2014 Human Rights Watch launched a four-year project that focuses on increasing collaboration with the water justice movement and the Special Rapporteur on water as well as producing research on water and sanitation issues (Interview Klasing).[[14]](#endnote-14) This 4-year project aims to build the evidence base and expertise within the organization to push for more rights-based policies on water in the future.

Human Rights Watch has a more moderate stance on privatization than many water justice movement organizations, and Human Rights Watch researcher Amanda Klasing is upfront with movement groups that Human Rights Watch cannot be part of anti-privatization campaigning. This stance is due in part to their interpretation of international law on the HRtWS, which does not prohibit private sector participation in the water sector. Klasing explains that it is very important for the organization to “not get ahead of where the law is” when working on the HRtWS and other socioeconomic rights issues (Interview Klasing). Klasing notes that activist organizations working on the HRtWS often interpret the law in a more “aspirational” sense than Human Rights Watch interprets the law.

This more moderate stance on water policy sometimes puts human rights gatekeepers at odds with the water justice movement. For example Human Rights Watch, Amnesty, and WASH-United circulated a sign on letter to the water justice movement in December 2015 expressing support for a UNGA resolution recognizing water and sanitation as separate rights. While this proposal met with support from members of the movement, several organizations objected to the letter’s definition of the HRtWS as including “affordable” access to water. Activists from Indonesia, Italy, and the US responded that “affordability” has no place in the rights discussion, as it implies that states can avoid providing water services as a publicly financed service and instead finance water service improvements through user fees. The affordability language was a barrier to consensus on this initiative, even though groups agreed on the overall purpose of the letter. This exchange reflects the contested nature of the definition of the HRtWS itself even amongst various actors who support it.

**Discussion**

The water justice movement’s relative success in gaining acceptance for the HRtWS is linked to their effective collaborations with states in the Global South, particularly Bolivia, Venezuela, Ecuador, among others. Their strategy involves directly targeting actors within the global policy arena and inter-governmental organizations to accept their specific language on the HRtWS. By building the discursive and legal scaffolding for the HRtWS, they help provide domestic social movements with a legitimate reference point for their local struggles around water and sanitation. The water justice movement’s strategy of largely eschewing the mainstream human rights space is an example of how new rights advocacy works outside the traditional human rights regime – a regime that is still reluctant to accept ESC rights as mainstream human rights.

The HRtWS has achieved an enviable status for a new rights claim: all nations are now bound by at least one resolution or treaty that contains the right, countries across the globe are amending their constitutions to include the right, and even the fiercest opponents are forced to acknowledge that the HRtWS is now part of international law. The opposition to defining water and sanitation as human rights by the US, UK and Canada is curious given that these countries are not themselves major violators of the right; the US, UK and Canada all have high quality, almost universal coverage for safe drinking water and sanitation. Their opposition is rooted more in ideology – both a decades-ling commitment to the market-based vision for water services, and an aversion to legitimizing socioeconomic grievances as new human rights.

New rights claims are most likely to become accepted if they align with pre-existing norms and values and if human rights gatekeeper organizations become champions of the claim in the global system. However the HRtWS is gaining acceptance in the absence of both of these criteria. Water was already defined and accepted for decades as an economic good and a human need, not a right. The Human Rights Council resolution links the HRtWS to pre-existing rights such as the right to life, an adequate standard of living, and the highest attainable standard of physical and mental health. However these are socioeconomic rights, which occupy a secondary status within the human rights regime in terms of recognition and enforcement.

Much of the work happening to legalize the HRtWS is happening outside the human rights regime and without the direct support of traditional rights gatekeepers. The UNGA resolution was a state-led initiative led by a Global South country in conjunction with the water justice movement. The human rights gatekeepers were not active in these campaigns, nor are they active in the work to insert human rights language on water and sanitation at the World Water Forum and the SDGs process. Amnesty International and Human Rights Watch operate on the margins of the water justice movement. This suggests that while gatekeepers can play a significant role in assisting new rights claims acceptance, their adoption of a new rights claim is not a necessary condition for international acceptance.

The campaign for the HRtWS reveals that in the ever-shifting landscape of global politics, traditional human rights norms and gatekeepers are not necessarily on the cutting edge of attempts to revise and update the human rights lexicon. Leadership from the Global South and non-human rights focused NGOs is key to ensuring that the emancipatory script of human rights expands to address new forms of inequality and threats to human dignity.

**Notes**

1. The importance of clean water and/or sanitation is mentioned in other human rights conventions, such as the Convention on the Rights of the Child, the Conventional on the Elimination of all forms of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities, yet these conventions do not establish a binding human right to water or sanitation. [↑](#endnote-ref-1)
2. See Winkler 2012 for more details on the content of the right. [↑](#endnote-ref-2)
3. Food & Water Watch is a consumer rights organization focused on corporate and government accountability on water, food, and fishing. They provide advocacy, lobbying, and research that challenge private sector participation in the water sector. [↑](#endnote-ref-3)
4. According to Barlow, opposition from transnational water corporations with influence within the UN was also a major factor in delaying a resolution on the right to water at that time (Barlow 2013: 28). [↑](#endnote-ref-4)
5. When a country calls for a vote on a UNGA resolution it indicates that consensus could not be reached in the negotiations. [↑](#endnote-ref-5)
6. The Human Rights Council is an inter-governmental body comprised of 47 states elected by the General Assembly on a rotating basis. [↑](#endnote-ref-6)
7. These include: “Securing the Right to Water: form the Local to the Global, Civil Society Perspectives,” “The Right to Water: What Does It Mean and How to Implement It,” and “Human Right to Water.” [↑](#endnote-ref-7)
8. This section is based on fieldwork at the Istanbul World Water Forum in 2009 and subsequent interviews with members of the movement. [↑](#endnote-ref-8)
9. Bangladesh, Benin, Bolivia, Cameroon, Chad, Chile, Cuba, Ecuador, Ethiopia, Guatemala, Honduras, Morocco ,Namibia, Niger, Nigeria, Panama, Paraguay, Senegal, South Africa, Spain, Sri Lanka, United Arab Emirates, Uruguay, Venezuela. [↑](#endnote-ref-9)
10. Benin, Bolivia, Cameroon, Chad, Chile, Cuba, Ecuador, Ethiopia, Honduras, Nigeria, Panama, Paraguay, Senegal, Sri Lanka, United Arab Emirates, Venezuela. [↑](#endnote-ref-10)
11. Switzerland and Norway indicated that they would support the right to water statement, but had to obtain official approval after the Forum. [↑](#endnote-ref-11)
12. In spite of the victory, Blue Planet Project organizers expressed concern about the lack of clarity on the role of the private sector and references to expanding ‘modern energy’ which could include fracking and large dams that hurt watersheds (Patterson 2015b). [↑](#endnote-ref-12)
13. Amnesty’s work on water is part of their “Demand Dignity Campaign,” a campaign dedicated to addressing poverty and ESC rights. [↑](#endnote-ref-13)
14. Research and advocacy in year one of the project focuses on sanitation in schools in Haiti, led poisoning in an ethnic Karen community in Thailand and discriminatory access to water and sanitation.

    **Interviews**

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