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Shields and Swords:

Legal Tools for Public Water

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ABOUT THE PROJECT

The Municipal Services Project (MSP) is a research project that explores alternatives to the privatization and commercialization of service provision in electricity, health, water and sanitation in Africa, Asia and Latin America. It is composed of academics, labour unions, non-governmental organizations, social movements and activists from around the globe who are committed to analyzing successful alternative service delivery models to understand the conditions required for their sustainability and reproducibility.

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EXECUTIVE SUMMARY

The privatization of water services over the past 30 years has generated a counter-wave of popular resistance, with activists at times invoking rights or using litigation to reverse private deals and fight for public provision.

How effective have these legal strategies been? The answer is mixed, with some legal actions managing to get the right to water written into law or banning private water provision altogether, while others have met with partial success. This paper looks at six case studies where referenda or litigation have been at the centre of campaigns for public water, and highlights comparative lessons.

Uruguay was the first country to hold a large-scale referendum to reverse water privatization, in 2004. The National Commission in Defence of Water and Life's campaign led to a popular vote that introduced a constitutional amendment recognizing the right to water and entrenching the principle of public ownership and management. Foreign private water companies were effectively ousted, but a public-private partnership was subsequently created to run the country's water services, contravening the amendment. The campaign continues to fight commercialization and to mobilize for greater public participation in water management.

Inspired by the Uruguayan struggle, **Colombia's** anti-privatization movement has attempted to reverse water privatization in that country. In 2008, Ecofondo called for a referendum on a constitutional amendment to enshrine a right to water, a minimum amount of water per person, and public management of water services. However, the initiative was undone by Congress in May 2010 when it dismissed the draft referendum bill. Ecofondo has nevertheless raised public awareness of high water tariffs and continues to campaign against privatization.

In February 2011, residents of **Berlin** (Germany) voted by a margin of 98.2 per cent to pass a draft bill to force the municipal administration to disclose secret agreements on the partial privatization of the city's water services. This marked a victory for the Berlin Water Table campaign as the legal change created a precedent for transparency in all public administration dealings in the city. Activists ultimately hope to see their water services remunicipalized and may need to find new avenues for engagement.

In an equally strong referendum in **Italy**, citizens rejected the proposed privatization of the country's water supply by 96 per cent in June 2011. It was the result of a campaign mounted by the Italian Forum of Water Movements against a law introduced in 2009 by Silvio Berlusconi's government that sought to privatize all public services of 'economic importance' across the country. Because the favourable vote did not outlaw private water services per se, the Forum continues to mobilize against privatization.

In short, referenda have proven to be an effective way to tap into widespread public opposition to reverse or challenge privatization and, as a counter-strategy, appear to be growing in popularity around the world. Where referenda have been less successful is in defining alternative models of public water services.

Our second set of case studies looks at the use of litigation – legal proceedings to determine or enforce rights via formal court action or law suit. Litigation varies according to legal codes and practices, but the process of formal court action is what differentiates it from other anti-privatization tactics and allows for some degree of comparison. The cases in this paper focus on municipal and national litigation, and as with our referenda cases, draw connections to larger efforts to embed the ‘right to water’ at an international level.

In France, the city of **Grenoble**’s water services were remunicipalized in March 2000 as a result of a public campaign centred on the legality of the privatized contract. After several court cases spanning a decade, judges declared the privatization illegal due to corruption and false information, and water was returned to public ownership. Remunicipalization has led to the stabilization of water prices and has increased public participation and oversight of water services.

In **Indonesia**, a group of legal aid foundations and NGOs lodged a request in 2004-2005 for a judicial review of the parliamentary approval of a new Water Resources Law widely seen as advancing water privatization. Although the Constitutional Court rejected the petition, declaring the law “conditionally constitutional,” the litigation did establish various regulatory safeguards and conditions under which water services must be provided, thus creating some space for future judicial review.

These cases demonstrate that privatization can be challenged on its own legal terms, exposing it to closer public scrutiny. Litigation tends to have open-ended outcomes, however, requiring close follow-up action and monitoring.

Overall, there are several general lessons to be drawn from our findings:

- Using or creating a new law is only the first step in what must be a longer political struggle to provide genuinely democratic forms of public water provision. As such, legal campaigns must also strive toward building frameworks for regulating, maintaining and monitoring progressive management of services after they become public.
- Dedicated and committed activism is more critical to the success of campaigns than the legal tools themselves.
- Whether or not ‘rights’ frameworks are invoked, pro-public activists derive authority, legitimacy and solidarity in their legal campaigns from the recent international recognition of a right to water.

Introduction

Since the 1980s development agencies and international financial institutions have promoted private sector ownership and management of water services and infrastructure, assuming this would promote greater investment, transparency and efficiency in an overwhelmingly public sector. However, these expectations have not been fulfilled, due in part to strong opposition from civil society around the world. According to one survey, privatization “remains widely and increasingly unpopular, largely because of the perception that it is fundamentally unfair, both in conception and execution” (Birdsall and Nellis 2002, i).

Opposition to privatization has taken the form of popular protest, political campaigns and government terminations of private contracts. It has also involved legal tools – rights and litigation – which are the subject of this study.

At the international level there has been a long-standing campaign to secure a right to water and sanitation. In 2010 this right was formally recognized by the UN General Assembly (UNGA 2010) and the Human Rights Council (UN News Centre 2010).¹ Many regional and national human rights systems also contain some explicit or implicit recognition of the right to water. Thus, due to the layering of international and regional law on top of domestic law, the right to water is officially present in some form or other in almost every country in the world. In the context of a veritable “rights revolution” (Epp 1998), it is opportune to examine the extent and efficacy of such legal frameworks in challenging privatized water services and in making water public.

This paper seeks to document a range of case studies in which legal tools have been used as part of a broader struggle against privatized water services and in an effort to put back water in public hands. In doing so the paper touches on debates around the utility of rights and provides some tentative conclusions about the extent to which law can effectively be used to challenge water privatization and advance public water and social justice.

Scope of the study

For the purpose of this study we have defined privatization narrowly, excluding public forms of commercialization or corporatization and focusing on forms of legal activism to (re)claim a service from the private sector. We look at how activists have used rights or litigation as a means to resist privatization and ask how useful this tactic has been.

We discuss water struggles because they provide the most vibrant opposition to privatization. We have not attempted to survey all examples of legally oriented anti-privatization water movements, but ensured a geographic mix, covering Asia, Europe and the Americas. We did not find any examples from the Middle East, and strikingly absent is any case study from Africa. This is due in part

to the fact that there has been very little outright water privatization on that continent. While some long-term concessions are running in Côte d'Ivoire, Senegal, South Africa, Niger and Mozambique, no new concessions have been signed in the past 10 years (although the contract in Senegal has been extended) (Bayliss and Adam 2012, 324).

In Sub-Saharan Africa it is commercialization or corporatization of public water services that has prevailed. There has been some activism against this form of commodification but it has not typically involved the use of legal tools (one notable exception has been in South Africa, where rights granted in the post-apartheid Constitution, and in national legislation such as the 1997 Water Services Act, have been invoked to push for greater access and affordability). Africa's relatively weak civil society may help explain this paucity, with our research showing that civil society mobilization is a key component in the successful uptake and use of legal tools to defend public water services.

Our research activities were conducted primarily via internet and media surveys. Once we had identified compelling case studies, we corresponded via email and telephone to get input from relevant activists and some key campaigners. Considering how recent many of these cases are, it is difficult to fully evaluate how successful the legal campaigns have been or will be, but we hope our findings can stimulate further research. We are also mindful that as English-speakers writing about foreign-language jurisdictions, we run the risk of missing some information. We therefore welcome comments and corrections, which we will incorporate into future analysis.

Law and radical change

Rights concretized in domestic constitutions and legislation, as well as in international treaties, come to form part of the law. Hence, when we refer to 'the law' we are including rights, unless we want to specify human rights as a legal sub-set. In addition, we refer to the law or 'legal tools' as comprising litigation in courts, as an institutional mechanism to uphold and interpret the law.

From leftist perspectives there is much debate about whether this vision of law can ever be useful for radical social and economic change. Many activists and scholars argue that the law is ideologically biased toward the preservation of the status quo (Gabel and Kennedy 1984) and that judges tend to favour powerful economic interests; as such, legal tools are seen to be not only inadequate but potentially harmful to groups wishing to effect more radical change (such as reversing privatization). As critics point out, the law can reify inequity and transmute radical aspirations (Brown and Halley 2002), while legal tactics can be "detrimental to movement-building because they deflect resources and attention from protest action and other forms of collective grassroots action" (Madlingozi, forthcoming 2012). In any event, courts are institutionally incapable of effecting fundamental transformation and offer only "hollow hope" to activists (Rosenberg 2008). Such analysts would not hold out much hope for the law to resist or reverse privatization, given that it is framed to protect private interests. As Bakker (2007, 438) explains, "a human right to water does not foreclose

private sector management” and is “compatible with capitalised political economic systems.”

However, what Bakker and other critics neglect is the fact that activists can and do use legal avenues, including rights-claiming, to strategically advance struggles for social justice without necessarily believing in, or adhering to, neoliberal or rights-based frameworks. For example, in South Africa poor communities and social movements are increasingly using rights-based tactics, including litigation, to advance their broadly counter-hegemonic struggles while continuing to identify as ‘socialist’. In this way, *Abahlali baseMjondolo*, a Durban-based shack-dweller movement, campaigns for ‘housing rights for all’ and has used litigation tactically (Madlingozi, forthcoming 2012). Similarly, the only water rights case heard by the South African Constitutional Court was against the forcible installation of pre-paid water metres in Soweto and was supported by the Anti-Privatization Forum (APF), which explicitly acknowledged ‘rights’ as problematic but nonetheless saw an opportunity in the litigation, re-energizing the movement after protests were shut down through a police interdict (Dugard 2010, forthcoming 2012). Clearly such activists feel rights claims are useful as part of their political arsenal. There is no denying, however, that litigation can prove extremely costly and therefore largely inaccessible where legal systems do not provide subsidized representation.

Writing about the potential of rights and law as mobilizing agents, McCann (1994) urges critics to adopt a bottom-up lens with which to view the utility of law, to examine how social movements use rights strategies despite their limitations and to acknowledge how the tactical uptake of rights as part of broader strategies can help these movements. He argues that rights can be empowering and help frame and develop collective identity among oppressed and disadvantaged people regardless of whether there are actual material outcomes for the rights-claimers.

In this context, the right to water can be viewed as an enabling framework that, although potentially friendly to privatization, can be used along with other laws to build, mobilize and legitimize campaigns opposed to privatization. As pointed out by the UN special rapporteur on the human right to water and sanitation, Catarina de Albuquerque (2010, 10), when Uruguayans succeeded in 2004 in ruling out private sector participation in water services, they did so under a right to water rubric.

Legal tools and case studies

We have documented six cases of popular campaigns using different legal tools against water privatization. Three are in Europe (Berlin, Germany; Grenoble, France; and Italy); two in Latin America (Colombia; Uruguay); and one in Asia (Indonesia). We examine how each was framed and how it fared, before drawing out comparative evaluations and lessons in the concluding section. We assess outcomes beyond the initial legal success and try to understand their implications for public ownership and control of water services. The discussion is broken into a review of referenda cases first, followed by litigation.

Referenda

A referendum is a direct vote in which an electorate is asked to accept or reject a specific proposal. It is a form of direct democracy that is written into the legislative frameworks of many countries. A referendum typically deals with the adoption of a new constitution or amendment, a law or a recall of elected officials.

The Uruguayan referendum of 2004 appears to be the first example of this strategy being used to outlaw water privatization, in this case through a constitutional amendment. We explore the Uruguayan case below, along with referenda efforts in Colombia, Italy, and the city of Berlin (Germany). Each has its own successes and failures and each tells us something different about the value of referenda for securing public water.

Uruguay

In October 2004, Uruguayans voted 64 per cent in favour of a referendum that proposed a constitutional amendment on the right to water and water privatization. The reform was backed by the left-wing party *Frente Amplio* (Broad Front) led by Tabaré Vázquez, who became Uruguay's new president on this voting day. The amendment called for access to piped water and sanitation as a fundamental human right, social participation in water services as essential, and sustainability as a priority over economic considerations, stating that: "The public service of sewerage and the public service of water supplying for human consumption will be served exclusively and directly by state legal persons."²

The referendum was an historic victory in the use of the right to water and anti-privatization language within a legal framework. It also represented a vindication of the two-year grassroots campaign by the National Commission in Defence of Water and Life (*Comisión Nacional en Defensa del Agua y de la Vida*, CNDAV), which had proposed and advocated for the reform as part of its broader struggle against private water supply. The CNDAV had been inspired in part by the Bolivian *Coordinadora de Defensa del Agua y de la Vida* which had advanced an expanded notion of a right to public water in its own fight against privatization, especially by its demonstration of the need to build a wide coalition of supporters. In Bolivia, resistance against private water companies (*Aguas del Tunari*, a subsidiary of US-company Bechtel) brought together a broad-based group including business, labour, community organizations, water vendors and local farmers. However, whereas in the Bolivian case popular mobilization and protest formed the main part of the campaign, in Uruguay the struggle took a different, more formal form, stemming in large part from the fact that Uruguay is a strong welfare state with more formalized traditions of political interaction and contestation, including strong labour movements and a history of using law to effect change.

CNDAV was founded in 2002 out of rising dissatisfaction with the performance and behaviour of two privatized concessions. It was spearheaded by the federated trade unions representing water and sewerage workers, FFOSE (*Federación de Funcionarios de Obras Sanitarias del Estado*), and the

state water company OSE (*Obras Sanitarias del Estado*), along with several civil society organizations, including Friends of the Earth and the Sustainable Uruguay Program. After the organization was formed, it expanded to include Frente Amplio. Over the course of its campaign, CNDAV garnered substantial support from the international civil society water movement, which provided funding and resource materials.

In 1993 the region of Maldonado, where the capital city of Montevideo is located, had granted a private concession to *Aguas de la Costa*, a Uruguayan water engineering firm that later became majority-owned by *Aguas de Barcelona* (Spain), a subsidiary of the French water company Suez. In 2000, a second Maldonado concession was granted to URAGUA, a subsidiary of Spain's *Aguas de Bilbao*. Local residents began to mobilize against the negative impacts of the private concessions, and garnered broader popular support for public services. Quickly, what could have remained a localized issue became national, largely through the large alliances that were pulled into the coalition, particularly trade unions.

The private water concessions had led to a rapid deterioration of water services. Large sectors of the population were denied access because they could not afford the privatized service, with tariffs having increased tenfold from that of the public utility. The quality of water had also deteriorated so badly that inspectors notified people not to drink it as it did not comply with minimum standards. Not only did the companies neglect to do the work that was scheduled in contracts, they also refused to pay the fees originally agreed to and pushed for a number of revisions to the original contract. The companies' environmental records were no more encouraging, *Aguas de la Costa* being responsible for the drying up of Laguna Blanca, a lake used as a source for drinking water (Santos and Villarreal 2005).

It was these issues that drew together CNDAV, particularly in response to a letter of intent signed by the Uruguayan government and the International Monetary Fund whereby the government committed to further privatization of drinking water and sewerage services to satisfy loan conditionalities. In addition, further threats were arising from trade liberalization negotiations and investment agreements including those with the World Trade Organization (WTO) and the Free Trade Area of the Americas (FTAA), as well as ongoing negotiations around an EU-Mercosur agreement. Apart from equity considerations, the CNDAV campaign was also based on concern for the environment, including the exploitation of water resources and concern for the non-transparent management of OSE.

CNDAV decided to utilize a provision on referenda written into the Constitution, but which had only been used once in a campaign in 1989 by victims attempting to annul an amnesty for military and police responsible for human rights violations during the 1973-1985 dictatorial regime. Despite its failure, this precedent demonstrated to Uruguayans the potential of referenda to advance social justice issues.

To use a referendum CNDAV first had to demonstrate substantial support for reform. According to Article 331 of the Constitution, the founding document can only be amended through a process

requiring, first, the signatures of 10 per cent of the electorate and then, a 35 per cent quorum among those voting in the referendum, which is then voted on by the general electorate during legislative and presidential elections. In October 2003, CNDAV presented parliament with the 283,000 signatures required, which initiated the successful referendum a year later.

However, after championing the cause, the new Vázquez government (Frente Amplio) came under intense pressure from private water companies to uphold their contracts. In response, the government produced an executive resolution, less than a year after the amendment had been made, stating that private contracts signed before the referendum would be allowed to continue until they expired. This decree not only contravened the popular mandate behind the vote (which was explicit about reversing the two private concessions as well as resisting future concessions) but arguably also violated the amended Constitution (see Lobina and Hall 2007, 47).

Not surprisingly, the decree was extremely unpopular and, to save face with the electorate, the authorities stated that the continuation had nothing to do with the application of the amended Constitution but came about due to URAGUA's contractual non-compliance (Santos and Villarreal 2006, 3). In response to this side-step there was renewed popular mobilization and CNDAV issued their Maldonado Declaration to "reject and appeal against the presidential decree of Friday, May 20, 2005 and all government resolutions that counter the popular mandate" (Santos and Villarreal 2006, 3).

Following this resurgence of resistance the Uruguayan government cancelled the contract with URAGUA. However, URAGUA initiated legal action under the terms of the Bilateral Investment Treaty signed with Spain in 1992. While a complaint was lodged at the World Bank's International Centre for Settlement of Investment Disputes the government allowed Aguas de la Costa to continue delivering drinking water and sewerage services. A 'friendly' accord was finally reached with URAGUA to cancel the contract, including a payment to the company of US\$15 million, equivalent to the deposit they provided at the start of bidding. Services were then reclaimed by the state in October 2005, in a highly emotional and symbolic act.

Concerned by these moves, Suez exited the country in September 2006, but not before the Uruguayan government paid the company US\$3.4 million for its shares in Aguas de la Costa, which became 60 per cent public. This purchase contradicted article 47 of the amended Constitution, however, which states that only "investments that have not been redeemed" should be paid as compensation. Nonetheless, by the end of the year both URAGUA and Suez had left Uruguay, to the joy of the unions and the general public who celebrated the fact that control of water management had been returned to the local company, Aguas de la Costa. Following the exit of Aguas de Bilbao the Uruguayan government bought the remaining Suez shares in Aguas de la Costa.

Once the multinationals had been bought out, the resulting public-private partnership (PPP) was, and remains, 60 per cent owned by the public company OSE, and 40 per cent owned by the national private engineering company Aguas de la Costa. This means that, although the organization

is technically a private company regulated by private law, it has a majority public shareholding and public directorship, as well as significant managerial and policy input from FFOSE. Management arrangements are particularly important as, at board level, Aguas de la Costa has the same directors as those on the board of OSE, giving the company a public face. This was a contributing factor in the friendly nature of negotiations regarding ownership after the constitutional amendment. Also, since the general public was mobilized by FFOSE leadership during the referendum, for the moment it seems that CNDAV is accepting the PPP despite the fact that the campaign was overtly opposing private ownership and did not anticipate a PPP outcome.

Outcomes and impact

One of the key outcomes of the referendum process was the harmonization of water tariffs across the country. OSE has been successful in rendering high quality water services and is financially sustainable according to the Andean Development Corporation (Lobina and Hall 2007, 47).

But while the Uruguayan referendum put an end to outright private concessions, the government's subsequent appeasement of private companies is problematic. While the right to water may be guaranteed, in practice it is easily trumped by legal tools that serve corporate interests, such as bilateral trade agreements. In addition, the public-private boundaries are blurred by the ongoing role played by Aguas de la Costa. This could set a precedent for future interpretation of the Constitution as one which allows PPPs – an issue that remains moot but could potentially be resolved through future litigation.

Nonetheless, the CNDAV campaign has been a success in many ways, especially when measured against its main aim, which was to remove multinational water companies. More broadly, the campaign and the reform have resulted in initiatives to increase access to water services through the government's Small Rural Communities Water Supply Program that seeks to raise rural water supply coverage from its current 87 per cent and sanitation coverage from 43 per cent (IDB 2010).

The challenge will be to ensure that the state promotes a public service ethos, pointing to the importance of sustaining civil society mobilization. The Uruguayan government began enforcing a mandate of popular participation in water services in December 2005 when, on the basis of article 331 of Law 17.903, a Counselling Commission for Water and Sewerage Management was created within the executive unit of the environmental ministry. Later, in 2006, the same law led to the creation of a National Directorate for Water and Sewerage (DINASA) to formulate policies that avoid the involvement and competitive role of multiple state actors and realize the participation of users. As an example, a new land and water law is being discussed in consultation with CNDAV that would reorganize resource management across the territories with the aim of improving access to water of more consistently good quality. While some progress has been made on accepting public participation in water management, concrete mechanisms for neighbourhood and community involvement are still lacking, representing an ongoing frontier of struggle (Santos and Villarreal 2006, 5).

Beyond domestic implementation, Uruguay's constitutional reform has had a ripple effect on water

campaigns throughout Latin America. The CNDAV victory was the first of its kind in the region and has spurred similar efforts to enshrine the right to water in constitutions, either through new legislation or amendments to existing supreme laws in Bolivia, Ecuador, El Salvador and Mexico. In some cases, such as Colombia, legal tools have also been used in an effort to oust private water interests.

Colombia

A similar campaign to Uruguay's has been underway in Colombia since 2007. The movement evolved in response to the privatization of water utilities, which was authorized by an amendment to article 364 of the Constitution in 1993, gradually creating systemic problems with access to quality drinking water. Today, of the country's 349 water companies, 141 are private and 24 are mixed (Martinez 2007). Between 2007 and 2010, *Ecofondo* – a network of 150 environment, human rights and indigenous groups – organized a campaign to hold a national referendum to introduce a constitutional right to water and to oppose water privatization. Yet, despite gathering more than the required number of signatures to hold a referendum, *Ecofondo*'s efforts were defeated by the Colombian Congress. As a result, *Ecofondo* no longer uses legal tools in its anti-privatization campaign.

One of the tactics *Ecofondo* employed was to propose a constitutional amendment that would legally enshrine the fundamental right to potable water, a minimum amount of free water, public management of the resource, and the special protection of ecosystems essential to the water cycle.³ This would have been the first referendum held in Colombia where direct democratic participation is a constitutional principle but where there is little history of using such opportunities. Public participation mechanisms are developed in different pieces of legislation, particularly Law 134/1994 that allows citizens and groups to propose regulatory instruments. The minimum requirements to promote a popular legislative initiative include collecting signatures of five per cent of the population (for a total of 1.5 million) before sending the proposal to Congress. This figure was surpassed in September 2008 when the authorities validated over two million signatures collected by *Ecofondo*, and a month later the draft referendum bill was introduced in Congress.

However, in May 2010, the Colombian Congress dismissed the draft referendum bill and rewrote the text, erasing the campaign demands and passing an amended version. In doing so, it argued that the text of the citizens' initiative was "idealistic and nonviable," that it was impossible for the state or private companies to assume the cost of providing households with a basic minimum of water free of charge, and that effecting this kind of constitutional change would impact long-term investment strategies. Commenting on the doctoring of a proposal signed by over two million people, *Ecofondo* coordinator Juan Mira stated that it is "typical" of the Colombian Congress to overwrite laws without fear of repercussion.⁴

Outcomes and impact

This rebuff dealt an enormous blow to the campaign and for all intents and purposes defeated the movement, dissolving what had become a large and diverse network of organizations across the

country. As Mira explains: “It was like a knockout punch in a boxing match. It was really hard for the movement – in our souls we never thought they’d be able to stop the referendum. It was our dream to be voting in that referendum.”⁵

To make matters worse, the watered-down policy proposed and implemented by Congress has been self-defeating, making the water management system extremely expensive to run and overwhelmed by bureaucracy.⁶ Ecofondo is therefore looking beyond the legislative process for ways to mobilize and revive the referendum and has launched discussion forums and peaceful street protests in support of a new policy. In mid-2011 the government acknowledged the failings of its water policy in the media, and plans are underway for a new strategy, although the details have not been shared with social movements.

One tangible result of Ecofondo’s work is that a municipal law in Bogotá was passed at the end of 2011 granting a subsidized water supply of 50 litres per person per day to the city’s poorest residents. But referendum advocates still argue that establishing a constitutional right to water is necessary to provide the legal foundation to entrench public management of water services and hold local governments accountable for water access. The experience in Colombia points to the fact that legal reform via referendum may also have to be coupled with the type of protests seen in Bolivia in 2000. This in itself would require a change of political culture to encourage people to assert their rights and to network with influential politicians to garner support for reform. Mira suggests that this was Ecofondo’s downfall, noting that in Colombia there is little appetite for aggressive mobilization but that reform may be possible if mass media and crucial factions of Congress are on board.⁷

Berlin, Germany

In 1999, partly in response to the financial stresses associated with Germany’s reunification and the withdrawal of financial support to Berlin, the *Berliner Wasserbetriebe* (Berlin Water Company) was partially privatized. In this deal 49.9 per cent was sold to Vivendi (later renamed Veolia), RWE Aqua and the insurance company Allianz (Fitch 2007, 599). At the time, the governing coalition in Berlin’s Senate – the executive body governing Berlin with the House of Representatives – chose to keep the privatization contract confidential.

In 2011, as part of a popular campaign organized by the *Berliner Wassertisch* (Berlin Water Table, BWT), 665,713 people – more than a quarter of the city’s voting population – cast ballots in a referendum demanding the disclosure of the contract details. The subsequent publication of the contract exposed serious governance-related problems that BWT hoped would galvanize a new campaign to remunicipalize water services and lead to the cancellation of the contract.⁸ However, at the time of writing the campaign had not progressed much further than getting access to the contracts and there are emerging divisions on whether to engage in an additional referendum or litigation.

Following the 1999 privatization deal, the Berlin Water Company retained its status as a tax-exempt

institution while management was taken over by private shareholders. In the first four years, the 'efficiency' savings brought about by privatization kept water prices frozen. In 2003, an amendment to the contract ensured that in the event of profit shortfalls the city's budget would guarantee returns. Thereafter, prices rose well above interest rates by 15 per cent and then 20 per cent, making Berlin water among Europe's most expensive. Additionally, nearly 2,000 workers out of a total workforce of 7,000 were retrenched, three water stations closed, and the failure to invest in infrastructure resulted in additional job cuts from companies maintaining the pipes. During the first 10 years of the contract, set to run until 2028, Veolia and RWE made 1.3 billion euros in profits.⁹

Against this backdrop, BWT orchestrated popular resistance. One of the central tactics of the campaign was to use a referendum. As a German city-state, Berlin has a constitution and enjoys partial sovereignty within the federal system, which translates into power to legislate over certain issues within state competency areas. Article 62(1) of the Constitution of Berlin creates the right to a referendum:

Petitions for a referendum may be aimed at making, amending or rescinding laws as long as the legislative competence lies with Land Berlin. They may also be aimed at passing other resolutions on policy issues affecting Berlin and under the jurisdiction of the House of Representatives.¹⁰

Dorothea Häerlin of BWT explains that the referendum bill they drafted was about disclosure of contracts.¹¹ The first and second paragraphs require that these contracts, including all decisions and side agreements, be published. The third paragraph of the bill states that "the existing contracts, decisions and side agreements require thorough public checks in public forum through parliament with participation of independent experts," and that all agreements and all further changes have to be agreed by parliament.¹² The last paragraph stated that any part of the contract or supplementary agreements relating to water management not revealed within a year shall be declared invalid. Häerlin confirmed that the BWT campaign sought democratic control not only in order to reduce the price of the city's water, but to gain public influence over water management and to bring decisions about working conditions, infrastructure and the quality of water under public control.

There was limited support within the Berlin Senate (SDP and Left Party coalition at the time) for BWT's call for a referendum, and the Senate attempted to derail what it deemed an unconstitutional proposal. Initially, senators argued that the issue fell outside Berlin's area of constitutional competency, declaring the demand inadmissible on the grounds that the campaign and the referendum violated property rights and thus undermined the Federal German Constitution.¹³ To settle the question, the BWT took the issue to the Berlin Constitutional Court. But the Court ruled on October 6, 2009 that the referendum fell within the bounds of Berlin's competency and the Senate had to adhere to this decision.

The Senate then published a fraction of the contract in order to declare redundant the call for a referendum. This response did not address the campaign's goal of entrenching a legal requirement for

full contract disclosure and transparency. For this reason, believing that the disclosure was not comprehensive (which was later proved when additional documents were published), the BWT stayed the course with the referendum to secure a legally binding decision, which would make it easier to enforce disclosure and to cancel all non-disclosed documents.

By October 2010, BWT had garnered the necessary support for the voting process by submitting more than 280,000 valid signatures (170,000 was the minimum). Still the Berlin Senate sought to disrupt the referendum voting process to the very end, for instance by imposing a media blackout on public radio as to the date of the vote, directing voters to the wrong polling stations, and not delivering voting material properly.¹⁴ Nonetheless, following the ruling by the Constitutional Court the referendum went ahead and, on February 13, 2011, an overwhelming 98.2 per cent of voters passed the draft bill. The adopted law is entitled the “Act for full disclosure of secret agreements on partial privatization of the Berlin Water Works,” and was published one month later in the Official Journal.

Outcomes and impact

Despite the apparent success of the referendum, it is difficult to assess whether full disclosure of contracts has taken place, in large part because it is difficult to know what has not been made available to the public. This uncertainty is alleviated somewhat by the government’s compliance with the act’s provision that a parliamentary committee be set up to investigate the contracts, with the committee having held its inaugural session in January 2012. This committee is headed by former SPD Member of Parliament Gerlinde Schermer, a founding member of BWT and one of the first to expose the profit guarantees linked to the 1999 privatization.

While it is unclear how to achieve full disclosure at this stage, BWT hopes that enough evidence will become available to challenge the constitutionality of the concessions, with a view to voiding the privatization contracts and securing municipal ownership of water. But such a court challenge would require a lawsuit to be filed by 25 per cent of deputies in Berlin’s House of Representatives.¹⁵ And although water activists see disclosure as the first step toward achieving municipal ownership the campaign itself seems to have reached an impasse. There is currently no consensus among activists on how to proceed while the contracts are being scrutinized. While some are focused solely on achieving a favourable cancellation of the contracts without punitive compensation costs, others are debating whether to mount a campaign around a second referendum on remunicipalization.¹⁶ At this stage, the future for Berlin’s water remains very much undecided and suggestions have been put forward for public-private ownership (a proposal favoured by the ruling SPD and Left Party coalition), some of which have met with strong objections from BWT which remains “strictly against any form of PPP” and is “working hard for public water to be in citizens’ hands.”¹⁷ The Senate has reportedly negotiated the buy-back of Berlin Water Works for 618 to 645 million euros, but it is still unclear how this will affect the future of water management in the city and water activists fear that a remunicipalization at such expense would lead to further price increases.¹⁸

Although democratic control of Berlin’s water services is not yet assured, the referendum has

nevertheless changed the law in relation to the existing contract with Veolia/RWE and created an important precedent for transparency in all dealings on public goods, potentially paving the way for a future remunicipalization of Berlin's water services.

Italy

In a national referendum held June 12-13, 2011, Italian voters turned out to reject by 96 per cent the proposed privatization of the country's water supply. The referendum was organized by the *Forum Italiano dei Movimenti per l'Acqua* (Italian Forum of Water Movements), a grassroots collective of local committees, environmental and catholic associations, trade unions, NGOs and individuals that had been organizing across the country since 2006 against a generalized push by the government to privatize public services.

As in many Western European jurisdictions, water in Italy is publicly owned, with Article 144 of the Italian Environmental Code (Law 152/2006) stating that "all surface and underground water are the property of the State." Since Roman times, water collection and distribution to end-users is ensured by means of public aqueducts constructed and managed directly by, or under the supervision of, a public authority. In 1996 the Italian Constitutional Court recognized that water has to be preserved from waste and pollution, taking into account its "character of fundamental right."¹⁹ Nevertheless, to date, Italian jurisprudence has mainly considered water as an environmental priority and commodity for the satisfaction of needs rather than as a human right.

Since 1994, the Italian government has also been furthering a 'new deal' for the privatization of water services, starting with the passage of Law 36 (also known as the Galli Law).²⁰ The Galli Law promoted entrepreneurial management of water, giving a more prominent role to private operators. Privatization was not compulsory, but it was progressively implemented and many local authorities decided to delegate water supply and sanitation services to private undertakings. In 2006, the Environmental Code²¹ repealed but largely confirmed the Galli Law, effectively guaranteeing a seven per cent return on private investment in water services regardless of its effectiveness.

On August 6, 2009, in line with its private sector-friendly thrust, Silvio Berlusconi's government enacted Article 23 of Law 133, mandating "the privatization of public services of economic importance." This so-called Ronchi decree accelerated privatization by guaranteeing "non-discrimination and equal treatment" to private companies that wished to participate in the water sector. It stipulated that 70 per cent of public water companies listed on the stock exchange had to be in the hands of private investors by January 2012.

The problems caused by this privatization were many. For example, drinking water tariffs increased by 20 per cent, compounding the problem of inconsistent billing among Italy's regions. The south of Italy was worst affected, with more than half its population deprived of sufficient drinking water for at least three months each year (Green Cross Italia 2006). More generally, despite rising tariffs,

investment in water services was reduced, with capital spending amounting to a third of the sum invested in the 1980s (Armeni 2008). Furthermore, the Italian trend toward water privatization was characterized by an absence of public participation in the definition of standards of service delivery, a dangerous formation of oligopolies in public services (not just water), and institutional weaknesses in the Italian regional regulating agencies (Triulzi 2004).

Italian civil society pushed back with a campaign around the right to water. In 2000, the Italian Committee for a World Water Contract was founded and in 2003 it issued the Declaration of Rome, with the aim of achieving constitutional status for the right to water. That same year the first Alternative World Water Forum was held in Florence and at the top of the agenda were the recognition of the right to water as a human right and of water as a common good, the implementation of collective financing to improve access to water, and the promotion of democratic management of water at all levels. The mobilization between 2000 and 2003 gave rise to a large number of associations and organizations working on water issues, the most active being Legambiente, Green Cross Italy, World Wildlife Fund Italy and Attac Italy, all grouped in the Italian Forum of Water Movements.

In January 2010, the network launched a campaign for a referendum specifically including the issue of privatization of public services. The Constitution of Italy establishes various avenues for direct democratic participation and Article 75 provides the basis for a referendum: "A general referendum may be held to repeal, in whole or in part, a law or a measure having the force of law, when so requested by five hundred thousand voters or five Regional Councils."²² For a referendum to stand, a quorum of 50 per cent-plus-one of Italian voters is required.

The campaign was so successful that, by July 2010 (and despite the lack of official funding or political support), the Forum had secured 1.5 million signatures and the call for a referendum was validated by the Constitutional Court. The nationwide vote took place a year later. There were four questions concerning public policy, with the first two dealing specifically with water, summarized as follows:

- Whether to repeal 12 paragraphs of Article 23 of Law 133/2008 on private water management (the Ronchi decree)
- Whether to repeal the paragraph of Article 154 of Legislative Decree 152/2006 (the Environmental code) that states that water tariffs should reflect "adequate return on invested capital"

The favourable vote was a resounding victory for the campaign and the results meant that public control of water services would be retained, that the transfer of publicly owned water into private hands was rejected, and that guaranteed profits were outlawed.

Outcomes and impact

While it is still too early to assess the full impact of the referendum, municipalities now enjoy a "responsible freedom" allowing them to choose the most appropriate form of organization of water

services, whether this is through public tender, municipal management under EU community law provisions, or a public-private partnership. The referendum, therefore, was not only a grassroots protest delivering legal repeal, it concretized far-reaching rights to common goods and their management by citizens.

Although the referendum has not outlawed private water services, per se, the Forum resolutely promotes an anti-privatization position. Moreover, the legal victory has spurred the Forum to propose a new law that lays down key principles of water management along the lines of public governance and the inalienable right of custody of the infrastructure and network management exclusively for public bodies.²³ As Dante Caserta of WWF Italy explains:

We were able to stop the Ronchi Decree, but the possibility of making profits on the water has not yet been erased. So the Italian Water Forum is planning a new campaign – *'Il mio voto va rispettato'* (My vote is to be respected) – to get the full respect of the vote of the majority of Italians. The Italian Water Forum has proposed a popular initiative law signed by 400,000 people (50,000 signatures were enough in this case), but as yet the political parties represented in Parliament have never discussed this popular law. We want water management to be public. We want to ensure the democratic participation of citizens. We want to draw attention to the need for environmental protection.²⁴

Litigation

Another legal option available to those wanting to challenge government decisions and laws is litigation. Although litigation has been criticized for the same reasons outlined earlier concerning rights – i.e. it individualizes collective struggles and does not generate deep structural change – water activists around the world are using litigation tactically, assessing its relative strengths and weaknesses. From our study, it is evident that there are many examples of successful use of litigation to challenge the privatization of water services in particular.

We have documented two such cases: the city of Grenoble, France, and a national campaign in Indonesia. They have been chosen to represent the vastly different context in which litigation can be applied, as well as the different outcomes they have provided.

Grenoble, France

Grenoble's water services were remunicipalized in March 2000 as a result of a public campaign including several court cases and, ultimately, a judicial decision declaring the initial privatization invalid due to corruption and false information. This decision came after 11 years of public opposition to the private operation of the city's water and sewerage systems by French multinational *Lyonnaise des Eaux* (now known as Suez). Dissent was coordinated through the civil society campaigns of ADES (Association for

Democracy, Ecology and Solidarity) and consumer association *Eau Secours* (Save Water).

Under the influence of Mayor Alain Carignon, and despite the protests of environmental, citizen and labour organizations who argued Grenoble had provided cheap and good quality public water for over a century while still managing to generate surplus, the city council decided on November 3, 1989 to privatize water and sanitation. The 1989 privatization assumed a typical French concession model, with the city and the *Compagnie de Gestion des Eaux du Sud-Est* (COGESE), a subsidiary of Suez, signing a 25-year concession contract.

The contract established that the infrastructure would remain publicly owned, while the private investor would operate it. Almost immediately, tariff increases and fraudulent invoicing methods generated enormous profits for COGESE. It was calculated that the cost of the contract to taxpayers would have surpassed one billion French francs over the 25-year contract had it run its course (approximately 153 million euros at the 1998 exchange rate) (Hall and Lobina 2001). Moreover, it was widely understood that the contract was part of a corrupt political deal. In 1989, ADES attempted to annul the contract by challenging it in court, but Grenoble's Administrative Tribunal rejected it on the grounds that the application was *ultra vires* (invalid).

Nevertheless, public discontent with the deal was rising, with residents keen to expose Mayor Carignon and Suez through further litigation. The story began to unravel after the 1995 municipal elections, firstly when a leftist and environmentalist majority took over city council and, secondly, once it was discovered in the course of ongoing litigation that Carignon had made a deal with Suez in return for financial support for his election campaign in the amount of 2.7 million euros (Godoy 2003). The litigation against Carignon was mounted by French magistrates on the basis of research published in a November 1995 report carried out by the Rhône-Alpes *Chambre Régionale des Comptes* (Grenoble's regional audit) with the support of independent documentation by ADES and Eau Secours (Lobina 2006, 10). Evidence included hidden taxation and unauthorized fund transfers designed to secure COGESE excess resources, and the municipality's dubious accounting methods. For instance, Eau Secours estimated that from 1990 to 1995, tariff increases brought Suez excess income of 70 million French francs (roughly 10.7 million euros) for water supply and 26 million French francs for sanitation while ADES estimated that total excess charges perceived by COGESE from 1989 to 1995 amounted to 82 million French francs (Lobina 2006, 11).

As a result, a case was brought against Mayor Carignon and Suez manager Jean-Jacques Prompsy, as well as the president of COGESE, Marc-Michel Merlin. It proceeded through the French judicial system until the final decision on October 27, 1997, when the French *Cour de Cassation* (court of highest appeal in France), ruled against the defendants. Carignon received a four-year prison sentence, while Prompsy and Merlin received one-year sentences. The court also ruled that the deal had gouged consumers via overpricing and allowed water users to claim compensation up to a total of 300,000 French francs (Hachfeld 2008).

The judgments against Carignon and Prompsy led to the renegotiation of the contracts, giving rise to a new public-private partnership between the City Council and Suez. The City Council decided to transform COGESE into the *Société des Eaux de Grenoble* (SEG), in which it held 51 per cent of shares and Suez held the remainder. Suez also secured veto rights for all key decisions. This arrangement generated even higher profits for Suez than under the previous arrangement. As Lobina (2006, 12) points out, “the new public-private partnership thus produced a result very similar to the 1989 privatised contracts.”

This state of affairs led to a strong call for remunicipalization by ADES and Eau Secours, and ADES rejuvenated the litigation it had launched in 1989. This time it won the case on October 1, 1997, with the French *Conseil d'État* annulling the original decision to delegate water services to COGESE because it was a corrupt deal.²⁵ Emboldened by this victory, ADES and Eau Secours pushed the litigation further and, on August 7, 1998, the Grenoble Administrative Tribunal reversed the city council's decision to transfer the water supply to the new public-private entity, as well as the associated water tariffs, on the grounds that the procedure was neither publicized nor competitive.²⁶ Similarly, on March 2, 1999, Grenoble's *Tribunal d'Instance* condemned COGESE's invoicing methods from 1989 to 1995, as the price charged for water was illegally increased after consumption. Further, on May 12, 1999, the Grenoble Administrative Tribunal declared the former tariffs put in place by COGESE to be illegal on the basis that they were indexed retrospectively as part of the original corrupt contract, which effectively allowed COGESE to charge 'entry fees' and thereby overcharge water users.²⁷

During this time, Eau Secours had increased its lobbying and advocacy work among the broader public and mounted pressure on city council, eventually leading to the remunicipalization of water services on March 20, 2000. The new *Régie des Eaux de Grenoble* was designed as a distinct entity from the municipality but wholly owned by it. This arrangement allowed for management flexibility, and simplified the absorption of the personnel who had worked for the former public-private venture.

Since remunicipalization, the Régie's status has facilitated monitoring and transparency, providing detailed annual reports on general activities and financial accounts, as well as price and quality of service. Further, the Régie allows for greater accountability by permitting elected municipal representatives to sit on its Board of Directors, and by promoting public participation in the form of co-decision making (a third of board members are qualified representatives of civil society appointed by the city council) and regular meetings of a consultative commission composed of consumer representatives and civil society organizations.

Outcomes and impact

In Grenoble, a lengthy and complex legal battle successfully secured the remunicipalization of water services. In turn, remunicipalization has led to the stabilization of water prices and a significant increase in investment – possible because profit is no longer the water company's operating principle and bringing services in-house is less costly than outsourcing. In addition, remunicipalization has increased public participation and oversight, access to information has greatly improved, and

regular consultations are held with the management committee.

Behind the success of this litigation campaign is the fact that it was advanced by a dedicated citizens' movement that, following various successes and failures in court, continued to mobilize and to rigorously track and monitor progress until a democratized, public water company was put in place. This dual approach of litigation and advocacy might serve as a model for other campaigns for remunicipalization.

Indonesia

Between June 2004 and February 2005, a group of legal aid foundations and NGOs acting on behalf of Indonesian civil society lodged a request for a judicial review on the adoption of a new Water Resources Law. This law was seen as an instrument to advance water privatization and as contravening the Indonesian Constitution, which establishes that the water sector shall be controlled by the state. Although the Constitutional Court ruled against the activists in its judgment of July 13, 2005, the litigation and the ruling has provided some scope for future action by civil society against private water companies.

Earlier in February 2004, the Indonesian Parliament had approved the Water Resources Law,²⁸ clearing the way for a long-delayed disbursement of the final US\$150 million tranche of the World Bank's Water Resources Sector Adjustment Loan. Legislators and government officials who sanctioned the law denied that it would open the door for privatization as the text specified that water use and exploitation rights cannot be leased or assigned, partially or entirely. However, the law did grant that exploitation rights can be given to individuals or enterprises pursuant to a permit from the government. It thus allowed private parties to manage water resources at every stage without any restriction or limitation.

Responding to the perceived threat of privatization of water supplies, civil society embarked on a litigation campaign to reverse the decision. In their petition the applicants requested that the Court annul the law in its entirety or, alternatively, that it review specific articles. Activists based their case on the Constitution, in which the right to water is not explicit but can be inferred from other human rights provisions. Water as a natural resource is regulated in the economic chapters of the Constitution, which mandates that the economy be structured "as a common endeavour based on familial principles."²⁹ The founding document in this vein holds that production sectors that are vital to people's livelihoods, such as oil, gas and water, are to be controlled by the state (Article 33[2]).

Notwithstanding this constitutional schema, the Court, with seven judges concurring and two dissenting, rejected the petition and declared the Water Resources Law "conditionally constitutional." According to Mohamad Mova Al'Afghani (2011), the court resorted to a new judicial mechanism that has been both praised for its pragmatism and criticized for undermining the sanctity of the

rule of law in Indonesia. In essence, the Court regarded the law as constitutional on the condition that it be interpreted or applied in a constitutionally compliant way, meaning that it was to incorporate an approach commensurate with Article 5 that guarantees “everyone’s right to obtain water for their minimum daily basic needs.”³⁰ In arguing that this safeguard was sufficient to protect human rights, the Court did, however, warn that if the implementation were different from what had been outlined in its decision, the Water Resources Law could be subject to a further judicial review.

Outcomes and impact

The Court’s decision has allowed a murky legal situation to persist, with the Water Resources Law partly regulating private participation but failing to protect community access to water sources (Al’Afghani 2006, 12). The decision was also silent on pre-existing private water concessions, which remains a vexed issue.

Additionally, the Court’s decision sanctioned full cost recovery, which dissenting Judge Mukhtie Fadjar termed “cloaked privatization” (Al’Afghani 2006, 10). Moreover, although the court states that the law was not meant to give a right to private extraction, given that water should not be privately owned by law, it can be argued that there is no safeguard against the sale of state shares in water companies to private parties. It should also be noted that the conditions for future judicial review are unclear; the court is silent with regard to the implementation parameters of the law, which could mean anything from implementing regulations, decrees or circulars. As Al’Afghani (2006, 11) points out, “it is not known, for example, whether a single cooperation contract between a regional government and a foreign investor could be used as a ground for judicial review.”

On the other hand, there are some positive aspects to the judgment. First, it highlights the role of local government: the Court stated that regionally owned waterworks companies shall be positioned as the state’s operational units and not as profit-oriented companies. Second, in terms of the government’s mandate to safeguard the constitutionality of the Water Resources Law’s implementation, it could be required to regulate shared ownership of water companies (i.e. to require that any change in water company ownership be validated by regional governments). Al’Afghani (2006, 17) argues that the Constitutional Court’s decision in declaring the Water Resources Law conditionally constitutional was “actually quite strategic,” as national and regional state agencies are now subjected to heavier scrutiny and must carefully observe the Court’s recommendations.

Any incompatibility with the Court’s recommendation can be regarded as evidence for a future judicial review. To this end, several NGOs are closely monitoring the implementing regulations and are prepared to submit another review. This may encourage the government to build on the protections inherent in the existing law, creating better implementing regulations in the future. One positive example is that the recent Regulation No. 20/2006 on irrigation encourages public participation in its development and management, which can be viewed as a progressive interpretation.

Conclusion

If there is a generalized lesson to be learned from these cases it is that legal tools can be an effective way to undo privatization and establish alternative public models of water service. Not every legal tool works in every place, and similar strategies can have very different outcomes due to diverging political cultures, institutional histories and public mobilizations. Moreover, deep structural change can be elusive in the short term, with legal actions constrained by powerful lobbies and neoliberal ideologies. Nevertheless, legal systems offer windows of opportunity for those struggling against privatization, and a careful strategic engagement can bring far-reaching results.

It is equally true, however, that legal strategies must be seen as part of a larger political struggle to provide genuinely democratic forms of public water provision. Where activists see legal reform as the end-goal, situations can easily slide back, and deeper goals of democratic public control over water services can fall by the wayside (such as in Uruguay). It is thus critical for campaigns to focus not only on entrenching public authority over water services, or ousting private contractors, but on building frameworks for regulating, maintaining and monitoring progressive public management (as in Grenoble). This is no simple task. As Spronk and Terhorst (2012, 149) warn, it is easier for movements to use law:

to generate procedural outcomes than it is to enforce substantive change... Social movements are more likely to be successful in a campaign to prevent a 'public bad' (for example, by preventing privatization), than in creating substantive movement outcomes that generate a new 'public good' (for example the reform of an ill-performing utility).

This reality holds for other forms of activism as well: it is easier to pull down a system than to build and maintain an alternative one. With this in mind, it is critical to have mobilized networks of civil society organizations behind any litigation or lobbying for legal reform (such as CNDAV in Uruguay, Forum of Water Movements in Italy, Ecofondo in Colombia, Berlin Water Table in Germany, ADES and Eau Secours in Grenoble, France, and a loose network of NGOs in Indonesia). The precise composition of these groupings does not seem to matter as much as their staying power. Not only are activists required at the grassroots level to monitor problems of privatized delivery and collate evidence to inform the campaign, they need to build the mass awareness and media attention that are generally critical to achieving reform.

And finally, a note of caution. One of the unanticipated results of campaigns against water privatization, including those engaging legal tools, has been the strategic policy shift in many parts of the world away from privatization and toward corporatization of public water, with the creation of publicly owned and operated water services run on private-sector operating principles (Magdahl 2012, 6). While this represents a significant retreat from outright privatization, it remains to be seen how popular campaigns tackle this new frontier of water commercialization and whether, and to what extent, legal tools might assist in such struggles.

Endnotes

- 1 A more explicit recognition of an international right to water had been significantly advanced years before. See UNCESCR. 2002. General comment no. 15. The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). Geneva: United Nations.
- 2 Translation by Hall, Lobina and de la Motte (2004).
- 3 Teleconference interview with Juan Camilo Mira, Coordinator of the Technical Unit at Ecofondo, Colombia, February 9, 2012.
- 4 *Idem.*
- 5 *Idem.*
- 6 *Idem.*
- 7 *Idem.*
- 8 Teleconference interview with Dorothea Häerlin, activist, Berliner Wassertisch, January 9, 2012.
- 9 The video "Wasser Unterm Hammer" is available at <http://kerntv.de/site/inhalte/wasser-unterm-hammer.html>.
- 10 Constitution of Berlin, 1995, section 5. <http://www.berlin.de/rbmskzl/verfassung/section5.html>.
- 11 Interview with Dorothea Häerlin, *op.cit.*
- 12 Translation by Markus Henn, activist, Berliner Wassertisch via teleconference interview, January 10, 2012.
- 13 Interview with Dorothea Häerlin, *op.cit.*
- 14 World Socialist Web Site. 2011. Referendum on privatisation of Berlin's water supply. Statement of the Socialist Equality Party (Germany). February 14. <http://wsws.org/articles/2011/feb2011/priv-f14.shtml>.
- 15 Berlin Constitutional Court Act 1951 (as amended), section 43(1). <http://gesetze.berlin.de/default.aspx?vpath=bibdata%2fges%2fBlnVerfGHG%2fcont%2fBlnVerfGHG.P43.htm>.
- 16 Interview with Markus Henn, activist, Berliner Wassertisch, January 10, 2012.
- 17 Interview with Dorothea Häerlin, *op.cit.*
- 18 Interview with Markus Henn, *op.cit.*
- 19 Corte Costituzionale, Judgment of July 10-19, 1996, no. 259, *Gazzetta Ufficiale della Repubblica Italiana* 31, July 31: para. 3.
- 20 Law No. 36 of May 5, 1994, "Disposizioni in materia di risorse idriche," *Gazzetta Ufficiale della Repubblica Italiana*, January 19.
- 21 Law No. 152/2006.
- 22 English translation: http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.
- 23 A draft law entitled: Principles for the protection, the government and the public management of water and provisions for water service.
- 24 Email correspondence with Dante Casserta, Consigliere nazionale WWF Italy, January 6, 2012.
- 25 Arrêt du Conseil d'État no. 133849, October 1, 1997.
- 26 Tribunal Administratif de Grenoble, August 7, 1998, no. 962133, 964778, 964779, 964780, 98481 and 98482.
- 27 Tribunal Administratif de Grenoble, May 12, 1999, no. 982087.
- 28 Law No. 7 of 2004 on Water Resources, Republic of Indonesia.
- 29 Constitution of the Republic of Indonesia, Chapter XIV, article 33(1).
- 30 Judicial Review of Law No. 7 of 2004 on Water Resources, Constitutional Court of the Republic of Indonesia, Judgment of July 13, 2005.

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