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From privatisation to the human right to water in Latin America: a closer look at Uruguay, Argentina and the plurinational state of Bolivia

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MASTER THESIS

FROM PRIVATISATION TO THE
HUMAN RIGHT TO WATER IN
LATIN AMERICA:

A closer look at Uruguay, Argentina
and the Plurinational State of
Bolivia

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Abstract

Following the many failed private-sector management contracts in Latin America, the anti-privatisation campaigns have gradually risen in numbers and shifted their attention towards the Human Right to Water. Even before the UN's resolution to make water a Human Right in 2010, some countries had already adopted it in their constitution. Uruguay, Bolivia and Argentina are just three examples of such countries that implemented the Human Right to Water with different approaches. Nonetheless, these approaches have not yet been able to provide clean water to everybody and high prices, mismanagement and inefficiency are still very common. It is however important to also see the positive outcomes that these countries show. This thesis argues that while the Human Right to Water represents an important step towards guaranteeing safe, affordable and sustainable water for all, it will in itself not be enough to achieve this goal. This thesis first gives some theoretical background on the subject and will then study the different approaches of the three countries Uruguay, Argentina and Bolivia with respect to Human Right to Water. An analysis of these case studies aims finally at discussing the implications of this fundamental Human Right.

Keywords

Water, privatisation, human right, Latin America, water access, private sector.

Table of Contents

ABSTRACT.....	3
1. INTRODUCTION	7
2. THE HUMAN RIGHT TO WATER AND ITS PRECEDENT.....	9
2.1. PRIVATISATION: KEY FACTORS AND RATIONALES	9
2.2. THE PRIVATISATION FIGHT	11
2.3. THE EMERGENCE OF THE HUMAN RIGHT TO WATER	12
2.4. DEBATING THE HUMAN RIGHT TO WATER	15
3. METHODOLOGY AND CASE STUDY PRESENTATION.....	16
4. FROM PRIVATISATION TO THE HUMAN RIGHT TO WATER: CASE STUDY OF URUGUAY, BOLIVIA AND ARGENTINA.....	18
4.1. URUGUAY.....	18
4.1.1. PRIVATISATION	18
4.1.2. CONSTITUTIONAL RIGHT TO WATER	19
4.1.3. ACCESS AND PRICING NOWADAYS	20
4.2. PLURINATIONAL STATE OF BOLIVIA	22
4.2.1. FROM PRIVATISATION TO “WATER WARS”	22
4.2.2. EVO MORALES AND THE NEW CONSTITUTION.....	24
4.2.3. WATER ACCESS AND PRIVATISATION IN RECENT YEARS	25
4.3. ARGENTINA.....	27
4.3.1. PRIVATISATION AND CONFLICTS.....	27
4.3.2. INDIRECT RIGHT TO WATER	29
4.3.3. WATER ACCESS AND LEGISLATIVE RIGHTS	30
5. DISCUSSION AND CONCLUSION.....	32
LIST OF FIGURES AND GRAPHS.....	36
GLOSSARY	37
BIBLIOGRAPHY	38

1. Introduction

“Water is above all a human right which no one can renounce. It is our moral and political obligation to ensure that nobody is denied his or her right to this vital liquid”
(President of Mexico Vicente Fox, Inaugural speech at the 4th World Water Council 2006)

There is nothing that we do, environmentally, industrially, economically, that in one way or another does not rely on water availability. As many have already said, “Water promises to be to the 21st century what oil was to the 20th century” (S. Tully, *Fortune Magazine*, 2000). While water scarcity is an important matter in the developed world, it is an everyday struggle for a lot of people in the global south. The causes can be numerous, from heavy droughts caused by climate change to high prices because of privatisation or international disputes over water sources. The approach of privatisation introduced by the World Bank, the International Monetary Fund (IMF) and other international economic institutions three decades ago led to multiple violent conflicts throughout the developing world and especially in Latin America.

Turning water into a commodity is a phenomenon that first rose to prominence in the late 1970s and early 1980s with the neoliberal policies of the Reagan and Thatcher administrations (Coleman, 2012, p.3). Privatisation became extremely important during the late 1980s (UK) and 1990s. These policies were later on adopted by the World Bank and other economic institutions. In their view, public utilities rarely perform well and private sector involvement improves efficiency, transparency, impartiality and cost-effectiveness (World Bank, 2004, p.19). In the same line of thought, best quality and access could be reached in a field of competition in the free market. Indeed, they proceeded to pressure Nations to adhere to their neoliberal philosophy to receive higher funding. This was done with the help of Structural Adjustment Programs (SAPs); loans provided to countries that are in an economic crisis in exchange for implementing certain policies (Oppong, 2013, p.27). They could come as internal changes in the form of privatisation and regulations or external changes mostly through reducing trade barriers. If countries failed to implement those policies, they could be subject to severe fiscal discipline (Public Citizen, n.d.). This way, many nations had no other choice but to agree, but these policies sometimes led to even bigger internal problems as will be seen in this thesis in the cases of Cochabamba, Buenos Aires and Montevideo.

Following these failed concessions, governments, human-rights organisations, anti-privatisation movements, NGOs and the United Nations (UN) decided to get more involved in the matter. Many believed that making water a human right would stop privatisation and ameliorate water availability, quality and efficiency. Many efforts were made, which led to some important constitutional changes in Latin America. Evo Morales, Bolivia's current president, was one of the leading figures on the advocacy of the right to water at the UN. On the 28 July 2010, "The United Nations General Assembly explicitly recognised the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights" (Resolution A/RES/64/292. *United Nations General Assembly*, July 2010). With this human right, the UN believes that it will enhance the efforts of governments and the international community towards the completion of the Millennium Development Goals (MDGs).

In the first part, this thesis will investigate the privatisation of water supply, a policy that has shaped the 1990s in Latin America. It will be discussed what brought that rationale up and why and how it has impacted upon water access. Key events will be analysed to show why exactly this privatisation of water has failed. Next, the arguments of the opposition will be discussed to understand how the privatisation fight has evolved into a fight for the Human Right to Water. This Thesis will then research the human right to water (HRW), how it came into existence and debate its positive and negative aspects. It will investigate its core definition adopted by the UN and the constitutions of Uruguay, Argentina and the Plurinational State of Bolivia to reveal what is to be achieved, who the accountable actors are and what measures will be taken to deliver the HRW in order to achieve amongst other things the MDGs. The research will be focused on Uruguay, Argentina and Bolivia and will demonstrate how the HRW has affected these countries in terms of accessibility and pricing of water, looking at the years before it was in place until today. Evo Morales said: "Water cannot be a private business because it converts it into a merchandise and thus violates human rights. Water is a resource and should be a public service" ¹. A critical glance will be thrown on this subject as this Thesis will demonstrate that there is still a certain amount of private sector involvement in the respective countries' water management, mainly through private participation in some public companies. This will show that thinking of water as a public service is the basis for increased development and accountability, but it will certainly not be enough to resolve all conflicts and provide safe and affordable water for everyone.

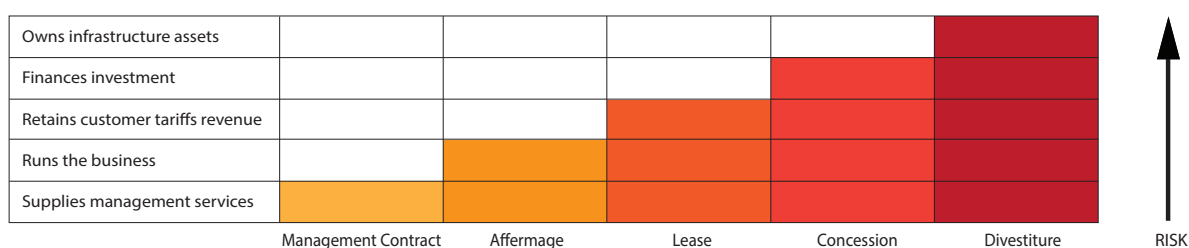
¹ Tihuanacu, January 21, 2006. Speech by Evo Morales in front of the Congress. Translated from Spanish. Original: <https://www.pagina12.com.ar/diario/especiales/18-62330-2006-01-30.html>. Translated: <https://www.revolvy.com/main/index.php?s=Water%20supply%20and%20sanitation%20in%20Bolivia>.

2. The Human Right to Water and its Precedent

2.1. Privatisation: Key Factors and Rationales

Before talking about the Human Right to Water, it is imperative to discuss privatisation since the former was created as a protest for the latter. Privatisation is a highly debatable term. It is rarely neutral since its definition always suggests an adherence to the concept or a lack thereof. The World Bank, which has been a great proponent for privatisation in the past, defines it as the “transfer of ownership of assets to the private sector” (Shirley, 1992, p.24). In their Toolkit for Private Participation in Water Services, the World Bank says private participation “changes the water sector by introducing an operator that is independent of the government and has a strong incentive to be profitable” (2006, p.3). In other words, they claim private companies will perform better than the government because their primary goal is profit and because they have competition. There are five different models of privatisation that can be found in Figure 1. As can be seen, the more control is left to a private company, the riskier it gets for that company in terms of liability. The most used type of privatisation has been the concession, where the company is in full control of the management and finances the investments but does not own any infrastructure assets. As will be seen later on in the case studies, concessions were used in all three countries that will be analysed and many led to heavy protests that forced a lot of them to be rejected before the end of their contract ².

Figure 1: Degrees of Privatisation
(source: author’s adaptation based on World Bank, 2006, p.9)



Governments have a slightly different definition of privatisation. The Norwegian Ministry of Foreign Affairs Conditionality Research, for example, explains it as “the partial or total transfer of property of responsibility from the public sector (government) to the private sector (business) or private persons” (2006, p.9). Where the World Bank sees resources as only profitable assets, the Norwegian Government points out that these resources come with great responsibility towards the people. Scholars do point

² See for example Cochabamba 2000, La Paz/El Alto 2002, Tucuman 1998, Maldonado 2001.

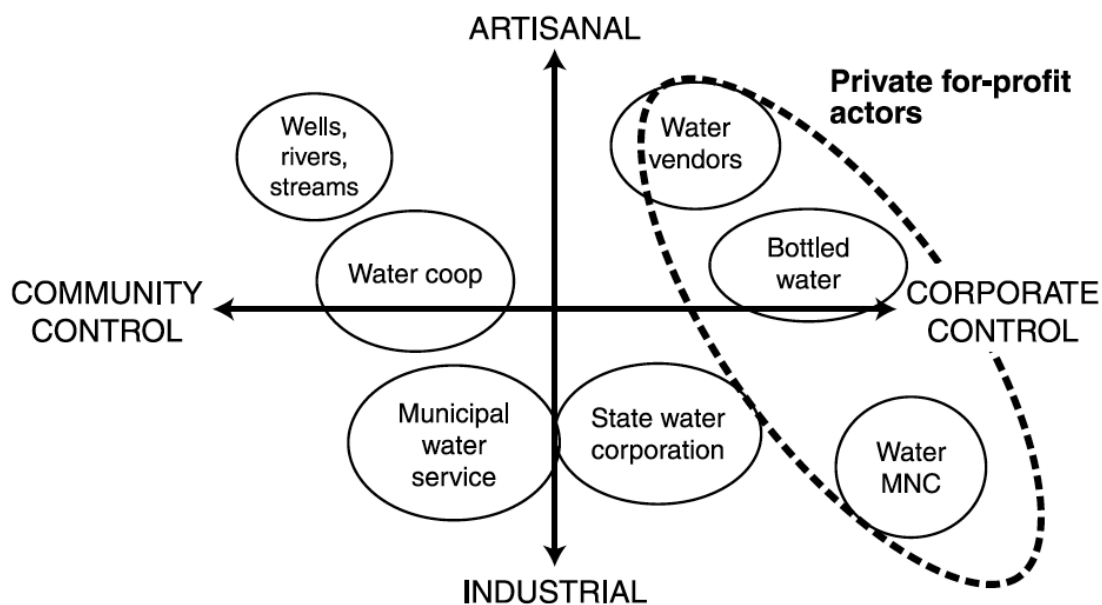
out the importance of differentiating the terms privatisation and private participation (March Corbella, 2010, p.155, Esteban Castro, 2009). Esteban Castro defines the first as creating private property rights over water and sanitation and the latter as decreasing state involvement. Bakker (2010) also includes the involvement of private companies in infrastructure for drinking water as private participation. For the purpose of this thesis, Bakker's definition for privatisation will be used: "the redistribution of governance to non state actors and the application of market-based norms, values and practices in management and regulation" (2010, xv). While acknowledging that concessions would fall into the category of private sector participation and not full privatisation, this thesis will use the broader term of privatisation as a measure of simplification.

When referring to water utilities, Pollitt (2002) describes that the privatisation process "reflected government's desire to shift in investment requirements to the private sector". Adding to this, the International Financial Institutions (IFIs) began to play a larger role in that process from the 1980s onward. Many cities like Jakarta, Indonesia; Manila, Philippines; Buenos Aires, Argentina and Cochabamba, Bolivia were pressured by IMF and the World Bank to privatise their water supply (Choudhury, 2012, p.159-160). To understand privatisation it is necessary to understand the difference in the modes of urban water supply in the Global North and South. Whereas water supply systems in the North are mostly clearly defined and reflect the different phases of industrialisation, cities in the South are more disconnected, ranging from Community-Controlled Artisanal Wells to Industrial and Corporate controlled systems (Figure 2). Bakker (2003, p.337) gives these complex systems the metaphor of "archipelagos" since all these different modes of water delivery are inter-connected, but spatially separated. As further seen in Figure 2, the private actors are introduced in the form of water vendors, bottled water and water Multinational Companies (MNCs). Privatisation, in the sense of a concession, occurs when the modes of production are industrial and the management transitions from community to corporate control, the output being water supplies managed by MNCs as seen in the cities mentioned above.

Another aspect to be considered is the nature of the resource in itself. While water is a renewable resource due to rainfall and rivers, certain areas experience droughts, salinisation and similar events. Many scholars and scientists also see climate change as an additional threat, as it causes additional droughts (UNESCO, 2009, p.2; Arnell, 1996, p.327; Kaczmarek, 1996, p.474). Bolivia, for example, has experienced the worst drought in over 25 years in 2016 that threatens the livelihood of 125,000 families ("Bolivia declares state of emergency", 2016). Climate Change and lowering

reservoirs can therefore also have an impact on price fluctuations, meaning that all factors should be considered when investigating water resource management.

Figure 2: Modes of urban water supply
(source: Bakker, 2003, p.337)



2.2. The Privatisation Fight

While privatisation has had positive outcomes in sectors like telecommunications, showing increased service availability, lower prices and higher productivity ³, the water and sewerage sector has had more difficulties. This is potentially due to two major factors, one being the limited competition in water and sewerage and the second being the controversy faced in that sector (Clarke, Kosec, Wallsten, 2004). The fact that approximately 66% of the water supply cost is related to the distribution network, which is noncompetitive, compared to only 40% in the electricity supply network (London Economics, 1998; Noll, 2002; Clarke et al., 2004) is a major factor for the lack of competition. Another factor is that, as March Corbella (2010) and Morgan (2006) point out, water is a “natural monopoly”. If one area is already covered by a water supplier, it is unrealistic for another supplier to come to that same area. This further pertains to the missing competition. It also adds significant threats to both the government and the inhabitants of the covered areas. Indeed, with

³ “Almost without exception, cross-county empirical research in both developed and developing countries has found that competition increases the number of telephone connections, improves productivity, and results in lower prices. The evidence on privatization is generally positive, although slightly less conclusive. Recent studies include Li and Xu (2002), Petrazzini (1996), Ros (1999), and Wallsten (2001)” (Clarke, Kosec, Wallsten, 2004).

that monopoly, companies can easily raise the prices of water to unreasonable extents (March Corbella, 2010, p.120). Profit in the water sector is often much lower than in other sectors. Electrical companies in Wales and England in 1997 for example have had double the yearly profits than the water sector in that same area (Webb, Ehrhardt, 1998, p.5). The controversy of the water sector arises largely because water is a natural resource essential to life which gives it grounds for many legal problems (Noll, 2002, p.51). The opponents of privatisation argue that the involvement of private companies in water services “invariably introduces a pernicious logic of the market into water management, which is incompatible with guaranteeing citizen’s basic right to water” (Bakker, 2007, p.437).

The World Bank, a known advocate of privatisation and Private Sector Participation (PSP) conducted a study in 2004 about the impact of PSP in water and sewerage coverage in Latin America (Clarke et al., 2004). Their results showed that while connections to the water supply did improve during PSP periods, it increased at about the same rate as in cities with public ownership. They also did not find any evidence suggesting that PSP was ignoring poorer areas of cities more than if the water supply was publicly owned (p.3). What the study is critically missing are data about tariffs. This would be important data since most anti-privatisation movements list increased prices as one of their primary source of dissatisfaction. As will be described later, Bolivia and Uruguay suffered high increases of water prices during privatisation despite not having ameliorated access or quality, resulting in many inhabitants having to pay more for water than for food (Walker, 2007). A study, done by analysing water rates from the 500 largest water systems of the US, showed that a household paying for privately owned water had to pay an average of 59% more than one that was publicly owned (Food & Water Watch, 2015).

2.3. The Emergence of the Human Right to Water

The international campaign for the Human Right to Water (HRW) grew immensely from the years 1997 to 2007 (Bakker, 2007, p.436). After years of fighting against privatisation, activists and opponents never managed to achieve what they were fighting for. Some attempts had been successful like the Cochabamba Water War in 2000 where the inhabitants of Bolivia successfully ended the concession of Cochabamba’s water supply after months of demonstrations (Schultz, 2009; Assies, 2003, Nickson, Vargas, 2002). Opponents of privatisation asserted “the effectiveness of democratic accountability to citizens when compared with corporate accountability to shareholders” (Bakker, 2007, p.436).

After some time, these movements turned towards the HRW to support their claims (Gleick, 1999; Trawick, 2003). The HRW argument lies on two fundamental points, the first being that water is essential to life and the second that many other Human Rights from the UN rely on the availability of water like the Human Right to Food. Many NGOs fighting against privatisation throughout the North and the South began incorporating the HRW in their arguments. Many of them were featured in declarations by activists like the Cochabamba Declaration and the group of Lisbon's Water Manifesto (Petrella, 2001). They have also focused on bringing the demonstrations to a national level, succeeding in some instances like Uruguay's referendum in 2004 which will be discussed more in detail later on. This campaign shift also attracted the approval from many INGOs (International Non-Governmental Organisations) like the World Health Organisation and the United Nations Development Programme (WHO, 2003; UNDP, 2006).

Very few people know that the first time a universal right to water was mentioned was as soon as 1979 at the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The Article 14, Section 2, Clause H declared that "Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, ... the right: ... to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply". Water has since then never truly been qualified as a Human Right. Nevertheless, it does have strong legal grounds and many relations towards other Human Rights like the Human Right to Life (Article 3 of the Universal Declaration of Human Rights, 1948). Furthermore, in the World Conference on Human Rights in 1993, nations explicitly stated: "human rights are universal, indivisible, inter-related and inter-dependent". Following Thomas Coleman's (2012, p.5) argumentation, if the Right to Water is given to women and Human Rights are universal and applicable to all human beings because men and women are equal (CEDAW), this would mean that everyone is entitled to that right.

Regarding the Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs), there are many links to be made with human rights. Seven of the eight MDGs directly tackle issues that can be related to the Human Right to Life and others (Articles 22, 25 and 26). The MDG 7 to ensure environmental sustainability has as its Target 10 the commitment to reduce by one-half the proportion of the population without access to improved water and sanitation. The allocation of water is also paramount to the realisation of a number of other MDGs. As a response to those goals and to the ever-rising fight against privatisation, the UN Economic and

Social Council (CESCR) released the General Comment 15 on January 20, 2003. This Comment is referred to as “the Right to Water” with its introduction ⁴.

This right comes with freedoms and entitlements: “the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water” (Article 10). In contrast to earlier versions of the right to water by other organisations, this Comment assumes several obligations from the state (Khoo, 2005). It gives governments the responsibility to act and provide water to everyone, regardless of their ability to pay. However, this right is not legally binding (Coleman, 2012, p.7).

Following these events, the UN Human Right Council adopted a new resolution in 2008 to reaffirm the obligations that Governments have upon access to water and sanitation, thus creating separate mechanisms to ensure the HRW. This event is celebrated by many advocates who see it as “necessary for several reasons, most notably the non-substitutability of drinking water, rendering this right essential to life” (Bakker, 2010). Finally, in July 2010, the United Nations General Assembly (UNGA) adopted a resolution to recognise the HRW (UNGA Resolution A/64/292, 2010). It “recognizes 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” (p.2). It also says that states and international organisations should be in charge of providing “safe, clean, accessible and affordable drinking water and sanitation for all” (p.3). The SDGs (2015) have in their turn tackled water. Goal 6 is to “Ensure availability and sustainable management of water and sanitation for all”. Its first target, “By 2030, achieve universal and equitable access to safe and affordable drinking water for all” (Target 6.1) directly relates to the Human Right to Water. Adding to this, many countries have adopted the Right to Water in their constitution, like South Africa (1996), Ethiopia (1994), Kenya (2002), Ecuador (1998), and the two countries that will be investigated further on Uruguay (2004) and Bolivia (2009) ⁵. Argentina does not have an explicit right to water in their constitution, but it has been enforced in recent years and will be explored later on.

⁴ “Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. [...] States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.” CESCR, General Comment 15, Introduction, 2003.

⁵ There are many other countries who display some form of the right to water in their constitution. A detailed list of each country and their national laws concerning water can be found at: <http://www.righttowater.info/progress-so-far/national-legislation-on-the-right-to-water/>.

2.4. Debating the Human Right to Water

The mentioned UN resolution is, nevertheless, not answering all the questions. Notably, does the HRW override other governance discourses? Who are the accountable parties? What are the challenges for its implementation? (Gupta, Ahlers, Ahmed, 2010). Also of major importance to this paper is how the HRW impacts privatisation of water supplies. Some critics say the HRW “belabours the obvious, and ignores what is difficult” (Brookes, 2008, p.19). Like Bakker (2010) argued, one of the most obvious problems of the HRW is that it does not tell what amount of water is deemed as “sufficient”. The WHO gives a minimum of twenty litres per person per day for survival and over seventy litres per person per day for long-term solutions (WHO, 2013). Yet water is still used in a multitude of activities that are necessary for production, like agriculture, basing the Right on shaky legal grounds to enforce it. Adding to this, as mentioned before, no-one is clearly named as accountable (Dennis, Stewart, 2004). Another issue faced by the HRW is pricing, as it is never mentioned outside of saying water should be “affordable”. What is seen by the UN as “affordable”? Some see water as a common good and claim it should be free (Agenda 21), others say it should be priced at full cost. Next, critics identify environmental issues as being potentially overlooked for the purpose of the Right. Governments could over-allocate water without considering the environment, further deteriorating it (Bluemel, 2004). While the SDGs do target sustainable and environment-friendly water use (Targets 6.4, 6.6, 6.A), it is still hard to identify the entities responsible for their completion. Some countries like Ecuador and Bolivia have implemented Rights of Nature to protect the environment, but not many countries are following that philosophy.

In many Concessions, like in Cochabamba, water from individual wells belonged to the private company and efforts were even made to include rainwater in the contract. Matters are unclear now as to what actually belongs to the public and what to the individual. Here is where property rights come into play. According to the Cambridge Dictionary, property rights are “the rights of people and companies to own and use land, capital, etc. and to receive a profit from it”. Now the question is which types of water apply to these rights, if there is a clear distinction and in what circumstances these rights could change?

Bakker (2007, p.439) also notes that there are some contradicting arguments anti-privatisation campaigns make when pursuing the HRW. Indeed, not distinguishing between property rights and human rights, and even more so failing to recognise the different property rights could have the consequence of failing to decrease private sector involvement. That is why Bakker opens up the “commons vs. commodity”

debate as an alternative to “only” seeing water as a human right. These “alter-globalisation” proposals would make water a public good instead of an economical one, get rid of market-based regulations and have as a primary goal the restitution of livelihoods instead of efficiency and profit (Bakker, 2007). She also notes the importance of community management of the water supply: “protection of ecological and public health will only occur if communities are mobilized and enabled to govern their own resources” (Bakker, 2007, p.441).

The HRW does, however, strengthen its grounds in international law (Bakker, 2010, p.147). This can be observed for example in Argentina, as will be explored later on. It also limits states activity with regard to privatisation. As Guipponi and Paz (2013, p.330) explain, three main questions remain to be answered at this point. First is the question of who will be in charge of implementing it. Next, in every case, one needs to know who is entitled to the HRW, who has to enforce it and on what legal grounds. Lastly, there is the question of responsibility. As many questions remain to be answered on the HRW, its implementation has to happen on a national level. That is why this paper is going to look at three countries that have previously gone through a period of privatisation of their water supply and have, in different ways, adopted the HRW in their respective constitution. Data on accessibility and affordability will be compared through time to establish the impacts of the HRW and determine its efficiency and its problems.

3. Methodology and Case Study Presentation

Latin America possesses 31% of the world’s fresh water supply (World Bank, 2013). However, the continent suffers from inequalities in water access, bad management and natural disasters like floods and droughts. Even though coverage has improved a lot in recent years, over 33 million people still lack access to improved water sources (WHO/UNICEF, 2015). Improved water sources include “piped water in a dwelling, piped water to yard/plot, public tap or standpipe, tub well or borehole, protected dug well, protected spring and rainwater” ⁶. With the growing urbanisation rate and the growing threat of climate change, Latin America is in desperate need to improve their management of water. It is speculated that the number of people living in a situation of water scarcity could reach up to 178 million by the year 2050 (IPCC, 2007). Issues like pricing inequality also become ever more relevant, as it was shown in 2000 that poor people pay up to 2.8 times more for water than others (World Water Council, 2004).

⁶ Definition by JMP, WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, retrieved from <https://www.wssinfo.org/definitions-methods/watsan-categories/>.

This is why this thesis focuses its attention on Latin America, where neoliberalism originated and was fully embraced. For water and sanitation services, this meant that in as little as 20 years, most of the largest Latin American cities had privatised their water supply. The results were far from desirable and after the Cochabamba Water Wars in 2000 (Public Citizen; Schulz, 2009; Nickson, Vargas, 2002), the Uruguayan Referendum in 2004 and similar events, many Latin American countries lost their faith in the neoliberal system (Spronk, Crespo, Olivera, 2012, p. 421). The struggle against privatisation developed into a plea for the human right to water, seeing water as a common good. Many private contracts were cancelled, notably in Uruguay, Bolivia and Argentina. By campaigning against neoliberalism, these three countries have since then tried to achieve the previously mentioned goal using different strategies; Uruguay with the referendum in 2004 that introduced the HRW in their Constitution (Moshman, 2005), Bolivia with the election of Evo Morales and the new Constitution in 2009 (Spronk, 2014) and Argentina with the indirect acknowledgement of the HRW and a strong justiciability in that regard (Picolotti, 2003). This paper will try to show the differences in their approaches and their effectiveness.

*Figure 3: Map of Uruguay, Bolivia and Argentina
(source: created by author using mapchart.net)*



The following sections will first of all detail the context of privatisation in Uruguay, Bolivia and Argentina (Figure 3). This will provide a better understanding of the circumstances that led to the HRW. Next, the constitution of the countries in question is analysed in regard to the right to water. The thesis closely examines their approach and the strategies they are using to achieve their goals. These are compared

to each other and to the human right to water formulated by the UN. An analysis of the three constitutions is then carried out, complemented with an analysis of the specific strategies and newspaper library research.

Next, data from each country is analysed to show how the right to water has affected the accessibility to water. Data from the years 1990 until 2015 is considered to have the most accurate results, showing the data from privately owned water supplies to “post-right to water” water management. The data provided illustrates improved water access of the different countries’ population; total, urban and rural. The data was collected from International Organisations, governments and local water suppliers. Next, the impact of the HRW is looked at in all three countries independently from each other, bearing in mind that each country has information related to their specific case. In Uruguay’s case, the water prices collected from water providers and the World Bank provide a better understanding of the situation surrounding drinking water in the country at the moment. Bolivia’s relationship with water has been shaped by the Water Wars in Cochabamba and to properly see the influence that the HRW had on the country the current situation of Cochabamba is analysed with different sources, including newspaper articles and academic papers. In Argentina’s case, it is imperative to understand how the legal system recognises the HRW in the country and how the poorer rural population can defend their case.

Finally, a research was done on how the different countries deal with private water supply in the context of the HRW to understand if they are forbidden or if there are still internal private entities that handle the water supply. Not to be forgotten are the private companies providing infrastructure funding for public water companies. Through those funds, private entities can still profit and retain some external influence on the management of those water supplies even in places where privatisation is now officially forbidden like it will be seen in Bolivia.

4. From Privatisation to the Human Right to Water: Case Study of Uruguay, Bolivia and Argentina

4.1. Uruguay

4.1.1. Privatisation

Uruguay is the smallest Spanish-speaking country in South America and has a population of almost 3.5 million people (Worldometers, as of May 2017). The country is characterised by an extremely high urban population that makes up 95.4% of the

population. Uruguay went through its first water concession in 1992 in Maldonado, which was attributed to Aguas de la Costa, an Aguas de Barcelona subsidiary. Inhabitants called it a “dreadful experience” (Hall, Lobina, 2002, p.21), as the tap water was undrinkable and the prices exorbitant. According to Pierri (2004), water rates in those areas were up to seven times higher than in the rest of the country. Adding to this, Aguas de la Costa was directly responsible for the drying of Laguna Blanca, which was primarily used as a source for drinking water (Santos, Villareal, 2005). Following this, inhabitants wanted to sue Aguas de la Costa for deteriorating the environment. Ignoring the protests, the Government went so far as to consider extending their service to the entire country.

The next concession was attributed to the private company URAGUA, a subsidiary of Aguas de Bilbao, in 2000 to cover the water supply and sanitation coverage in the south-east of Maldonado, Punta del Este and Piriàpolis. It served over 375,000 inhabitants (Hall, Lobina, 2002, p.22). Only 8 months after, it was plagued by an increasing amount of problems, ranging from increased prices to service interruptions. By that time, a report by PSI affiliate FFOSE (Federacion de Funcionarios de OSE, the trade union representing the employees of the national water agency OSE, Obras Sanitarias de lo Estado) also revealed that the company failed to deliver the monthly sample analysis. About one year later, in April 2002, the water delivered by URAGUA was closely examined and found to be contaminated by the coliform bacteria, after which OSE had to declare a public health emergency (Pierri, 2004). Some controversy came into play as the company claimed that the declarations from OSE were more connected to politics than to health and water. In May, the Minister for the environment had to intervene and revoked the emergency (Hall, Lobina, 2002).

4.1.2. Constitutional Right to Water

In 2002, the government of Uruguay sent a letter to the International Monetary Fund (IMF) in which they promised to continue the water and sewerage privatisation in the country. This letter was published in the media and public outrage ensued. Following this, the CNDAV (Comisión Nacional en Defensa del Agua y de la Vida) was created as a form of protest. One year later, they presented the required 283,000 signatures to parliament for a referendum (Santos, Villareal, 2005). On October 31st, 2004, the Constitution was changed to make water a Human Right. This vote was approved by 64.7% of the population. The amendment guaranteed public management of water services for Uruguay and that all current private water companies were no longer authorised to do business in the country (El Pais, 11 November 2004). This decision affected over twelve companies and put the provision of the water supply in

the hands of the OSE. The Article 47 of the Constitution established that: “Water is an essential natural resource for life. Access to drinking water and the sewerage system, constitute a fundamental human right”. It also advocates for a “sustainable, joint management of water resources” as well as a “territorial legislation, conservation, protection of the environment and the restoration of nature” (The Uruguayan Constitution, Article 47, 2004).

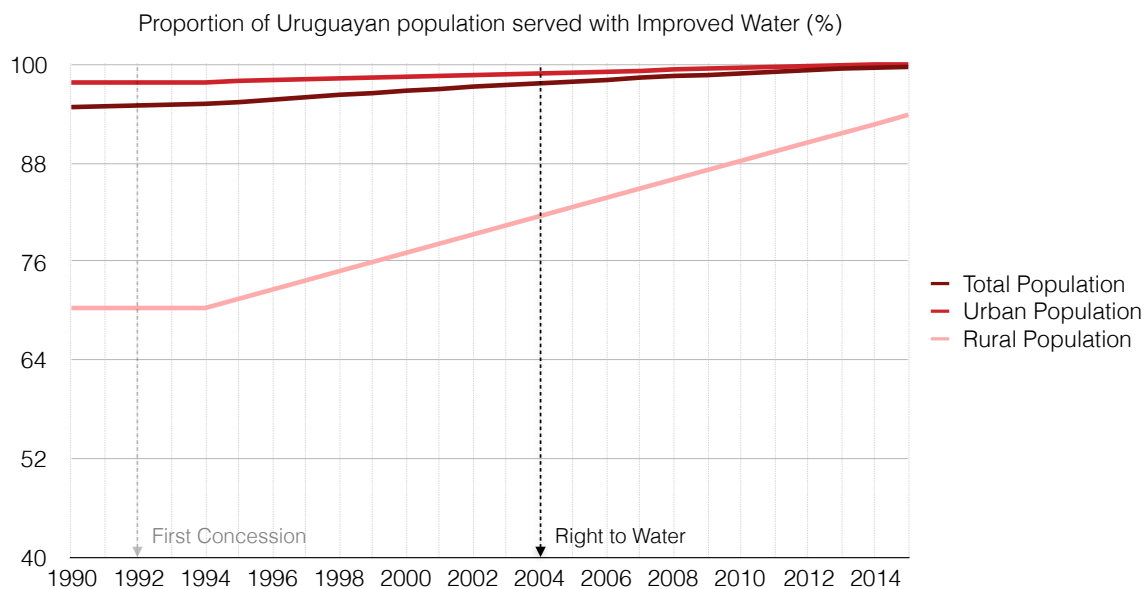
This constitutional change ultimately managed to stop the country from further privatising water supplies. What this change omitted to address were the contracts with private companies already in place. These were in fact still able to operate until the end of their respective contracts. This particular situation occurred to two companies in the region of Maldonado; Aguas de la Costa and URAGUA. Despite that, the government was still able to cancel the contract with the latter due to non-compliance of their contract where URAGUA failed to pay the agreed fees to the state and had severe work delays. Again, it is certain that this cancellation would not have happened without the repeated intervention from the CNDAV (Santos, Villareal, 2005). The government had more difficulties dealing with the case of Aguas de la Costa. Fearing a lawsuit, they ignored the popular will and the constitution and gave in to the threats from the multinational company. It is only after months of negotiations with both protesters and the company, that the state agreed to purchase all shares from the company that were held by Aguas de Barcelona which amounted to a total of US \$3.4 million. This amounted to only 60% of the total shares and created a mixed company with 60% public and 40% national private capitals. The CNDAV has since then largely expressed their disagreement, but this marked the exit of the last multinational company from Uruguay, still contradicting the Article 47 of the 2004 Constitution (Santos, Villarreal, 2005).

4.1.3. Access and Pricing nowadays

Looking at Uruguay’s access to improved drinking water source before and after the incorporation of the HRW (Graph 1), it is noticeable that the HRW had no negative effects. As can be observed, in the first two years following the introduction of privatisation, there was no noticeable impact on accessibility. It is only after that it began to improve. That improvement has been continuing after the HRW was introduced in Uruguay’s Constitution in 2004. One of the main arguments of the World Bank, IMF and multinationals for privatisation was that the competition brought by private enterprises would be far more efficient than seeing water as a public good. Uruguay is an excellent example to refute that statement. The country was even able to achieve 100% coverage in 2015 in urban areas and has in that matter already reached

its MDGs regarding water. It is a prime example for water access in Latin America and will probably soon reach total coverage for the entire country. Rural access to improved water has reached 93.86% in 2015 (WHO/UNICEF), but the rural population only represents 4.6% of the country's total population.

Graph 1: Proportion of Uruguayan population served with Improved Water (in %, 1990 to 2015, source: elaborated by author, data from UNSD, WHO, World Bank)



After the referendum of 2004 water management was divided by river basins and hydrographic regions. Yet, as Carmen Sosa, member of CNDAV explains, “the territorial legislation law is based on management by political boundaries, by regional department”⁷. The ensuing dispersed responsibility led to no-one feeling responsible and has in its turn, made the water management difficult. In her interview, Carmen Sosa explains that OSE has the goals of providing public water free from privatisation and having public participation in water management. She says the first goal has theoretically been achieved, yet many Uruguayans see the rising water pollution as a reminder that privatisation still exists; in the form of plantations, dairy farms and others that pollute the water basins. Also, the second goal was not yet realised. Participation in Uruguay’s water management is still under-utilised, yet CNDAV works to improve education, making the population understand the wider context of water management to let them be able to make the right decisions for their community.

What has been and still is a thorn in Uruguay’s side concerning water is its prices. While prices were constantly rising during privatisation, going from \$U 56 in 1995 to \$U 431 in 2003 for 20 m3 of water per month for a residential building (World

⁷ Interview with Carmen Sosa, Uruguay, (2015). Released by Rights4Water on the 06.08.2015. Retrieved from: <https://www.youtube.com/watch?v=2MEtb7sYMrM>.

Bank), it has kept on rising since to an impressive \$U 574 in 2008 for the same amount of water (Administración de las Obras Sanitarias del Estado) ⁸. The region of Maldonado has even surpassed that amount and residents had to pay \$U 781 for 20 m³ of water per month. Surprisingly, there have been no notable protests anymore since the HRW was added to the constitution. This shows that the people of Uruguay are in fact ready to pay more for water, now that they are directly involved in its management that is also sustainable and delivers on its promises. Still, those prices may not be affordable to everybody and the state still has a long way to go to deliver water to its citizens at a fair price to improve their livelihoods.

4.2. Plurinational State of Bolivia

4.2.1. From Privatisation to “Water Wars”

Bolivia has a population of 11 million people (Worldometers, as of May 2017) and is considered South America’s poorest country. In 2014, 45% of Bolivia’s population lived below the poverty line (less than \$2/day) (CIA World Facebook, 2015). The country is also characterised by a growing urban population that reached 71.3% in 2017 (Worldometers, 2017). Bolivia has had a long struggle with water scarcity, and with the privatisation of water in the 90s these struggles escalated dramatically. Indeed, the World Bank used Structural Adjustment Programs (SAPs) in Bolivia. What followed was a deal between Bolivia and the World Bank that stipulated that Bolivia would only get aid funds if they privatised La Paz-El Alto’s and Cochabamba’s water supply. In Cochabamba’s case, in February 1996, bank officials offered a 14 million dollar loan to the city for the extension of their water services in exchange for the privatisation. In June 1997, Bolivia’s president was offered additional 600 million dollars for the concession (Schulz, 2002). Bank officials denied the claims, but an internal report about that deal was found in 2002, five years after the deal was made (Schulz, 2009, p. 15). The privatisation policy put in place was documented in the so-called Enhanced Structural Adjustment Facility (ESAF) in 1998 for a three-year period between Bolivia, the World Bank and IMF. This document stated that the government committed to privatising all public enterprises ⁹.

⁸ The used currency is the Uruguayan Peso (\$U or UYU). The current rate to the US dollar (\$ or USD) is 1 USD = 28 UYU. Retrieved from <http://www.xe.com/de/currencyconverter/convert/?Amount=1&From=UYU&To=USD>. Accessed May 5, 2017.

⁹ Press Release No. 98/41: *IMF Approves Three-Year Arrangement Under the ESAF for Bolivia*. IMF, September 18, 1998. Retrieved from <http://www.imf.org/external/np/sec/pr/1998/pr9841.htm#12>.

The first concession happened in 1997 in La Paz-EI Alto. In 1999, Cochabamba's water company SEMAPA was bought by the new enterprise "Aguas del Tunari", a sub-entity from one of the largest corporations in the world, Bechtel Enterprises. The low-key contract gave Bechtel a forty year ownership of Cochabamba's water supply and a yearly profit of 16% (Schulz, 2009, p.16). Only weeks after this takeover, prices rose dramatically by an average of 35%. Bechtel defended themselves by saying the water rates for the poor only went up by 10% (Gail Apps, spokeswoman for Riley Bechtel, January 3, 2002). A study by the democracy centre ¹⁰ revealed that this was not nearly the truth. In fact, bills by poor residents in Cochabamba exposed that while some paid 25 Bolivianos (\$4.15) in December 1999, they had to pay 39.80 Bolivianos (\$6.63) per month for the same water amount in February 2000. This meant a 60% price hike and represented 10% of their monthly revenues ¹¹. Other reports even show a water bill amounting to 22% of the monthly revenue (Hall, Lobina, 2002).

During the last months of 1999, protests and blockades started throughout the city. The working class was soon followed by middle-class homeowners and large business owners, as their prices increased as well. Protests escalated and on February 4th, 2000, thousands of people were marching in protest and were met by police forces from Oruro and La Paz. Almost 200 demonstrators were arrested and many injured. In the first days of April, leaders of the demonstrators went to a meeting with the governor and were arrested. Soon after, protesters had most of the major highways in Bolivia barricaded. On April 8th, 2000, the state of emergency was declared by President Banzer. The following day, seven demonstrators died during clashes with the army and the police. A few days later, after another tragic death, the government gave in and turned the water supply over to the demonstrator's cooperative (Public Citizen; Schulz, 2009; Nickson, Vargas, 2002). The Water War became a symbol for national campaigns against neoliberal policies and for international anti-globalisation movements. It inspired many to fight for water rights where water is seen as a common good (Lopez, 2015).

¹⁰ The Democracy Centre is a NGO based in San Francisco and Cochabamba. The Organisation had a major impact in the water war in 2000, helping to report about it internationally, finding the link to Bechtel and campaigning against the lawsuit from Bechtel against the people of Cochabamba from 2001-2005 <https://democracyctr.org/about/>.

¹¹ The Democracy Centre. *Cochabamba's Water Bills from Bechtel*. Retrieved from <http://democracyctr.org/archive/the-water-revolt/cochabambas-water-bills-from-bechtel/>.

In 2002, La Paz-El Alto also experienced protests against their water provider, Aguas de Illimani. These were largely due to the price hikes of up to 35% and the discrimination towards poor areas like El Alto where connections were even more expensive and had poor quality ¹². On the 5th Anniversary of the Cochabamba water revolt in January 2005, inhabitants of La Paz and El Alto organised a three-day strike and blockades. To avoid the events from Cochabamba to happen again President Carlos Mesa felt obligated to terminate the Concession with Aguas de Illimani with the Decree 27973 ¹³. These two failed concessions largely contributed to Bolivia's negative opinion of privatisation and the later introduction of the Right to Water in their new Constitution.

4.2.2. Evo Morales and the new Constitution

Evo Morales was elected President in December 2005. Morales was always very clear in his stance towards water, declaring it could not be sold for profit and claiming it to be a Human Right. With a 61% “yes” vote, a new constitution was ratified in 2009 and, amongst other things, recognised water as a “basic Human Right” (Bolivia's Constitution of 2009, Articles 16, 20, 299, 309, 373-377). He and his Party, the Movement towards Socialism (Movimiento al Socialismo) gave a clear message that they wanted to end neoliberalism and the privatisation of water in Bolivia. Article 20, in particular, cites that access to water is “neither (...) the object of concession nor privatisation”. This dramatic political shift has impacted a lot on the countries' governance, notably in the water and sanitation sector. This new model sees “a renewed role for the state as *planner and provider* of public services” and a shift towards “post-neoliberalism” (Spronk, 2012, p. 2). Morales spoke at the UN Permanent Forum of Indigenous Issues in 2008, addressing the HRW in particular. Bolivia was also directly responsible for introducing the UN's resolution for the HRW, which was approved in July 2010.

The Morales administration created the Water Ministry in 2006, as an institutional framework responsible for the provision and management of water and sanitation services as well as environmental protection. One of its goals was to end water privatisation in Bolivia. The Water Ministry is still today extremely criticised, as it could not complete most of its goals, was frequently reorganised and often came in

¹² Cultural Survival. *Bolivian Protesters end Water Privatization in La Paz, El Alto*. Retrieved from <https://www.culturalsurvival.org/news/bolivian-protesters-end-water-privatization-la-paz-el-alto>.

¹³ Environmental Justice Atlas. *Privatisation of water in La Paz, Suez-Aguas del Illimani, Bolivia*. Retrieved from <https://ejatlas.org/conflict/privatisation-of-water-suez-aguas-del-illimani-bolivia>.

conflict with municipal governments since Bolivia is a plurinational state and therefore decentralised. The different departments are autonomous, even when considering the water sector (Achtenberg, 2013). The Water Ministry was also largely criticised for their handling of the 2016 drought which led to the resignation of the Environment and Water Minister Alexandra Moreira in January 2017 ¹⁴.

The 2009 Constitution also saw the introduction of “*Buen Vivir*” in Bolivia. What can only be translated as “good living” is a guiding principle from an indigenous philosophy that was also adopted by Ecuador one year earlier. *Buen Vivir* goes a long way to improving the indigenous discourses and practices. As Bressa Florentin explains it, “*Buen Vivir* is mainly related with the necessity to find harmony between humans, on the one hand, and between humans and nature, on the other” (2011, p.38). Some of the *Buen Vivir* principles include social and gender equity, dignity and social justice (Constitution of Bolivia). It also presents various rights of the “Pachamama”, the “Mother Earth” in Aymara and Quechua. As Evo Morales said at the Climate Change Conference (2010), “We have two paths: either Pachamama or death. We (...) are here for life, for humanity and for the rights of Mother Earth” ¹⁵. *Buen Vivir* also specifies the Right to Water and further affirms the countries stance against neoliberalism or the privatisation of public services and for equality in access to those services.

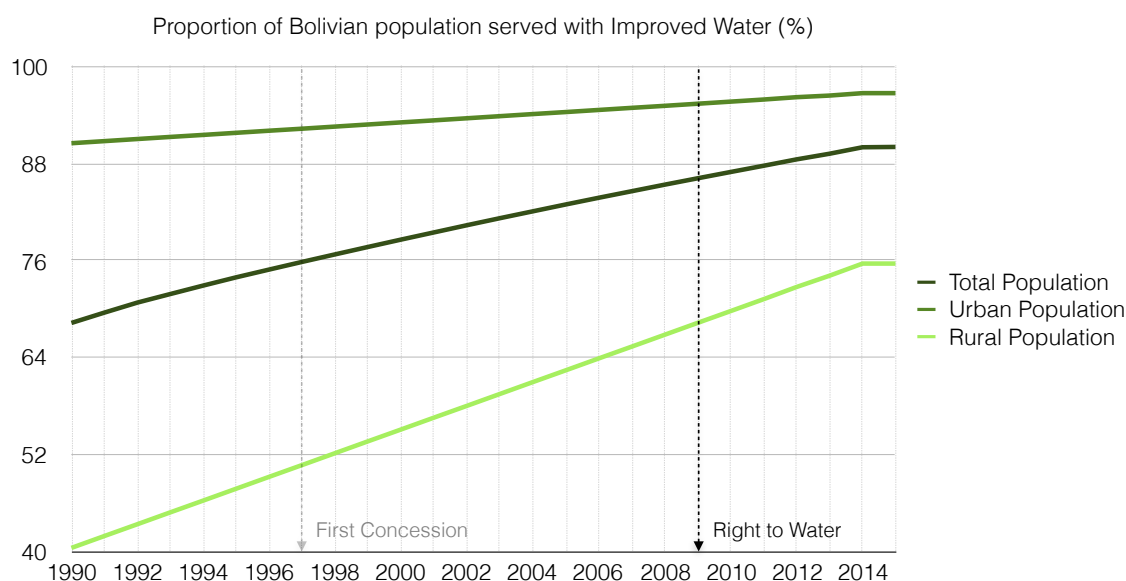
4.2.3. Water Access and Privatisation in recent years

Graph 2 shows that neither privatisation nor the Right to Water has had an impact upon water accessibility in Bolivia. Urban access to improved water reached 96.68% in 2015, which brings Bolivia closer to the water standards in other Latin American countries. As we will see in the case of Cochabamba, many urban water supplies start relying more on cooperatives than public sector alternatives and can maybe in this way reach even poor areas. In 1990, coverage only accounted for 40.40% of the rural population and 25 years later reached 35% more people. This change is certainly a positive one, but the rural areas however still lack major improvements. Bolivia is on track to complete the MDGs related to water but is still below the Latin American average in terms of accessibility to improved water.

¹⁴ *Morales' Environment Minister Resigns amid Bolivia Water Crisis*. Retrieved from <http://www.telesur.tv/english/news/Morales-Environment-Minister-Resigns-amid-Bolivia-Water-Crisis-20170119-0007.html>.

¹⁵ Transcript retrieved from https://www.democracynow.org/2010/4/21/evo_morales_opens_climate_change_conference.

Graph 2: Proportion of Bolivian population served with Improved Water (in %, 1990 to 2015, source: elaborated by author, data from UNSD, WHO, World Bank)



Cochabamba represents some interesting results. After the concession was rejected in 2000, SEMAPA was re-municipalised with the goal to create an efficient and transparent water provider. In 2015, water access in the city had tripled. Still, mostly in the southern region where the water war emerged, half of Cochabamba’s families didn’t have access to piped water (Lopez, 2015). The prices for trucked water that these inhabitants have to pay is up to 10 times higher than those who have access to piped water (Achtenberg, 2013). Even though the service is still today far from perfect, community members from the whole city now have representatives on SEMAPA’s board. The company is unfortunately still plagued by corruption and mismanagement (Achtenberg, 2013; Lopez, 2015). Many now turn away from the municipal company towards community-run wells and form cooperatives that manage their own distribution systems (Booth, 2016). This way they can save money, have a say in how the management works and know where the water is coming from since trucked water often has a bad quality.

Regarding water privatisation, Bolivia has made a significant improvement in their legislation. In Bolivia’s constitution, Article 20 describes “it is the responsibility of the State, at all levels of government, to provide basic services through public, mixed, cooperative or community entities”. Nevertheless, as Spronk (2012) noted, even though it seems like privatisation was successfully repelled in the constitution, the mentioned “mixed” entities refer at least partially to private companies. Bolivia has not notably changed the amount of public funding of water services under Morales, meaning that the funding of water services still have to come from foreign private donors (Spronk, 2012), this in its turn favouring private sector participation. Moreover, it

also seems that the Right to Water in Bolivia does not have the priority when considering mining and other industrial uses for water. As a researcher at CEDIB (Bolivian Centre for Documentation and Information) explains it: “Water, before being a common good or a human right as it is in the Constitution, in reality is unfortunately a commodity for extractive activities”¹⁶. This is done to the detriment of the population and the environment, as many water sources are being polluted. Mining and oil companies, often privatised, use as much water as they want. The San Cristobal mine, for example, uses as much as 43 million litres of water a day, which could supply 250,000 people, or half of Cochabamba’s population (Lopez, 2015).

The HRW in Bolivia has certainly helped towards the recognition of indigenous rights, the abolition of concessions and empowerment of communities, but problems like corruption that were already present before privatisation still prevail and the heavy droughts that plagued Bolivia last year certainly do not help their case. It seems that the country’s population has lost faith in the government again and is turning more towards neighbourhood projects (Booth, 2016) and cooperatives like SAGUAPAC in Santa Cruz de la Sierra. The cooperative is the largest of its kind in the world and is seen as a model throughout Latin America and could be the future of the country. As it was already created in 1979 it was affected by neither privatisation nor the HRW (*Another World exists*, 2014). Oscar Olivera, the leader of the Cochabamba protesters during the Water War, expressed the need to stand up again for the Water Rights of Bolivian people since the many promises made by the government have not yet shown satisfying results (Lopez, 2015).

4.3. Argentina

4.3.1. Privatisation and conflicts

Argentina is the second largest country in Latin America with a population of 44.2 million people (Worldometers, as of May 2017). The country also possesses the second largest economy in Latin America. Its urban population has been constant for the last seven years and represents 89.1% of the total population (Worldometers, 2017). Argentina and in particular Buenos Aires have long been a poster-child for public service privatisation for the World Bank and IMF. In the 1980s, about two-thirds of Argentina’s water supply and sanitation services were provided by local governments.

¹⁶ Extract from the reunion “15 years after the Water War”, April 9, 2015, CEDIB Cochabamba. Transcript retrieved from <http://www.fundacionabril.org/areas-de-trabajo/escuela-del-pueblo/memoria-del-encuentro-a-15-anos-de-la-guerra-del-agua/>. Translated from spanish by Sian Cowman.

Non-profit Cooperatives ¹⁷ were in charge of the last third. This changed dramatically in the 1990s when Argentina saw a real privatisation boom under President Carlos Menem (Loftus, McDonald, 2001). Indeed, in only a decade, 60% of the population was supplied by private companies (Galiani et al., 2005, p.89). The decision to privatise came from economic needs. Argentina had seen decades of economic decline and entered a period of hyperinflation. With the new Peronist government, a “state of economic emergency” was declared in 1989 and a new structural reform program was launched to finally help return the country to positive growth (Loftus, McDonald, 2001). One of the major points of this program was the privatisation of public services. In only a decade, 154 privatisation contracts were signed in the sectors of electricity, oil, telecommunications, natural gas, transportation, mail service and water services, although the latter only represented 3.5% of its total production (Galiani et al., 2005, p. 90). Since water services were provided by local municipalities and not the federal government, the resulting contracts with private companies were also local. This meant that only a small amount of contracts were actually put in place. This all changed when the Peronist government was reelected in 1995 and started pressuring municipalities to privatise (Galiani et al., 2005).

Aguas Argentinas was the front runner of water privatisation (Hall, Lobina, 2002, p.13). The 30-year concession for the city of Buenos Aires was given to the enterprise, a consortium of Vivendi, Suez, Aguas de Barcelona, Anglian Water and others, in 1993. At the start of the concession, Aguas Argentinas covered 1,170,000 connections which provided water to 6 million out of the 8.58 million people living in the served area (Loftus, McDonald, 2001). The original targets set for the first five years were extended to seven years due to a contract renegotiation in 1997. So in 1999, it could be observed that the network had expanded from 70% to 82.4% coverage and had therefore reached the target of 81% coverage. However, the sewerage targets were far from being met. Aguas Argentinas invested \$200 million dollars per year in infrastructure, which was a big change compared to the \$25 million dollars invested per year by the OSN (Obras Sanitarias de la Nación), the federal company in charge of the Buenos Aires water supply before privatisation (Galiani et al., 2005, p.108).

After some time, controversy about Aguas Argentinas grew stronger, as prices that were originally lowered by 26.9% increased again by 13.5% after only 13 months. If looked at more closely, even the original price decrease was, in fact, a “manufactured

¹⁷ Cooperatives structured as non-profits owned and run by individual community members, businesses and/or public entities. The process is democratic where every member has an equal part in the decision making process.

reduction” to reduce the opposition to the privatisation¹⁸. Adding to this, the company increased dramatically the connection fees, so that they were higher than a monthly revenue at the poverty line (Galiani et al., 2005, p.107). After protests, these fees dropped again significantly, but the many renegotiations only contributed to the criticism of Aguas Argentinas. Polls done by the “Centro de estudios unión para la nueva mayoría” in the Buenos Aires region concerning the public opinion of privatisation showed that, in 1989, only 16.4% of the opinions were negative as opposed to 59.4% positive. Not even a decade later, in 1997, support of privatisation had dropped to a staggering 18.1% and negative opinion had risen to 51.9% (Alcazar et al. 2000, p.13). The concession was finally revoked in 2006.

In 1995, a large conflict arose in Tucuman where water was privatised in a 30-year concession. Seeing rising prices of up to 300% and a worsening of the water quality, the inhabitants of Tucuman started protesting by refusing to pay for the water and demanding a right to sanitation and access to water at an affordable rate. They successfully managed to end the contract with Aguas del Aconquija shortly after in 1998. Other major concessions that were revoked in Argentina include the ones in Cordoba (1997-2006), Santa Fe (1995-2006) and Mendoza (1998-2004) (Banco Interamericano de Desarrollo, 2007). Today most of the water supply has moved back into public control, but a significant assessment of the remaining private sector participation is missing.

4.3.2. Indirect Right to Water

Compared to Uruguay and Bolivia, Argentina presents a different approach concerning the Right to Water. Argentina has had a close relationship with Human Rights in general since the end of the dictatorship in 1983. Indeed, it was one of the first countries in the world to prosecute military leaders for their Human Rights violations. This has led to the country being partly responsible for the Human Rights Movement in Latin America (Picolotti, 2003, p.4-5). In Argentina, the right to water is seen as implicitly written in the right to environmental protection. In the 1994 Argentine Constitution, Article 41 gives the “right to a healthy and balanced environment fit for human development”. This Article cites that the government is responsible for providing a healthy environment and also the resources needed for that healthy environment, such as water. This means that Argentine authorities are also responsible for providing safe and sustainable supplies of water (Picolotti, 2003, p.8). Article 75 gives international human rights the priority over the constitution. The HRW is not explicitly

¹⁸ See Loftus and McDonald, 2001, p.190 for a closer documentation of the “reduction”.

mentioned but is, nevertheless, enforced. The state and private companies have so far been held responsible for guaranteeing that right (Giupponi, Paz, 2014, p.335).

Additionally, there have been many cases brought to court in relation to the HRW in the past years (See Giupponi, Paz, p.337). This clearly shows that even though it is not explicitly mentioned in the Argentinian Constitution, it has some important legal grounds to protect the poorer population from water cuts and to protect the environment. Argentina is one of the few countries that has also declared a minimum amount of water required for every individual. In the final report of the Special Rapporteur El Hadji Guissé (UN Commission on Human Rights, 2004, p.12), it is mentioned that this amount is between 50 to 100 litres per person per day, without consideration of the ability to pay.

To illustrate how all this legislation comes into play in Argentina, this thesis looks at one of many cases where the HRW was enforced in court in recent years. The case “Quevedo Miguel Angel y Otros c/ Aguas Cordobesas S.A” concerns water disconnections in the city of Cordoba. In 2001, many families were cut off from the water supply as they could not afford the payment (Guipponi, Paz, 2015; Winkler, 2008). At the time, the water was supplied by the private company Aguas Cordobesas and the municipality, therefore, did not have the state obligations to protect the Right to Water. The court in its turn referenced a provincial law that stipulated the right to receive satisfactory public services, and the judge used it to make the state responsible for providing drinking water since it was part of the essential public services (Winkler, 2008, p.10). The court also augmented the amount required of 50 litres per family per day to 200 litres, saying it was not sufficient. That amount was to be provided regardless of the ability to pay off the families. The State was, therefore, responsible for compensating for the costs to Aguas Cordobesas. This case shows how Argentine court has been able to maintain the HRW in national law ¹⁹.

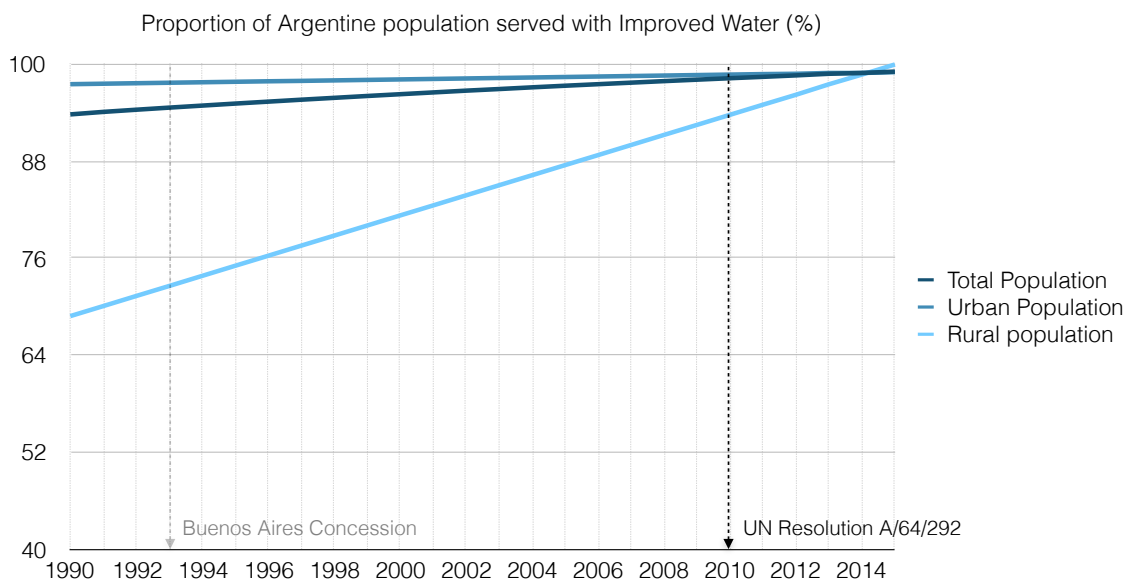
4.3.3. Water Access and Legislative Rights

The population served with improved water in Argentina can be seen in Graph 3. What can immediately be observed is the impressive increase in access to improved water in rural Argentina. With 99.95%, Argentina almost reached full accessibility in 2015 as rural accessibility even managed to surpass urban accessibility. The change in urban areas has been very slow in the past 25 years, increasing only by 1.5%. However, when considering the privatisation period and the UN resolution from 2010 to introduce the HRW, neither seems to have impacted upon urban access to improved

¹⁹ For additional cases see Giupponi, Paz, 2015; Winkler, 2008 and Picolotti, 2003.

water in Argentina. However, it does seem that the HRW talks have helped the rural population to get better access. It should be noted that it is not exactly clear when the HRW came into effect in Argentina due to the fact that water-related issues are being dealt with on a federal level. Argentina already reached the MDGs for water and will most certainly soon reach full access to improved water in the whole country.

Graph 3: Proportion of Argentine population served with Improved Water (in %, 1990 to 2015, source: elaborated by author, data from UNSD, WHO, World Bank)



Due to the fact that Argentina’s water supply is not dealt by a federal entity, but rather by its respective municipalities, it is very hard to compare and find data about quality, efficiency and prices of water on a national level. This decentralisation also means that every municipality has their legislations concerning water. Some municipalities also still operate under private companies and contracts are often changed. It is difficult to know if returning the responsibility of water and sanitation to the federal level would benefit the country. What is known is that most urban areas are served well with improved water sources, but the peripheries and rural areas tend to be ignored and their inhabitants do not know about their legislative rights (Arienza et al., 2011). Because even if the access to water has very much improved for the more vulnerable rural population, it does not mean that they can afford the prices. So although Argentina’s Right to Water has very strong legislative roots that allow all citizens, regardless of their means, to take action, not everyone is aware of that power and many are still suffering the consequences.

5. Discussion and Conclusion

This thesis documents how privatisation grew to become one of the defining traits of resource water management in the 1990s in Latin America with the help of international organisations such as the World Bank and IMF. It shows that the at the time very popular concessions could often not meet the desired goals and therefore could not reach the positive outcomes desired. This resulted in the growth of anti-privatisation campaigns that quickly evolved into campaigns for the Human Right to Water. This right had already been mentioned in a number of international committees, but was finally adopted as a UN resolution only in 2010. Many critics suggested that the HRW would not change much and only states the obvious. Important information about its characteristics like pricing, responsible entities of providing water, and the minimum essential quantity of water were not mentioned and make it therefore very hard to enforce. The case studies demonstrated different ways of enforceability of that right, but also showed many of its limitations. In the end, it is evident that the HRW has not lived up to the expectations of anti-privatisation campaigners. It remains “only” a step in the right direction, but is far from solving water issues in Latin America.

Privatisation of the water sector grew exponentially in the 1990s, mostly but not only in Latin America. This completely changed the face of water resource management in the affected areas. Unfortunately, the promised goals by the Multinationals and the IFIs could not be met and brought heavy protests. The water privatisation in Latin America failed due to a number of reasons, due partly to the lack of competition and controversiality of water services. Uruguay, Bolivia and Argentina provide three examples of countries where privatisation has failed and has led to strong policy changes.

In the end of the 90s, anti-privatisation campaigns grew in force and reoriented towards Human Right to Water campaigns. According to those, the HRW would ensure the end of privatisation and solve water resource management. Early versions of that Right include conventions by the CEDAW in 1979 and the CESC in 2003. Finally, the UN agreed on a resolution in 2010 to make water a Human Right. However, this Right raises many questions in terms of affordability, responsibility, quality and sustainability, none of which are answered explicitly. Another debate is important to mention; as Bakker’s “commons vs. commodity” claims, Human Rights are compatible with water privatisation and do not support new community economies. She, therefore, advocates for “alter-globalisation” proposals where water is seen as “common” resource as opposed to an economic good. To sum it up, the HRW as formulated by the UN

presents some arguments against privatisation, but still lacks many aspects to guarantee safe, sustainable and affordable water.

The case studies of Uruguay, Bolivia and Uruguay have shown what limited impact the HRW, in its different forms, has had upon water resource management. All three countries have gone through an unsuccessful process of privatisation. The concessions of Maldonado, Cochabamba and Buenos Aires showcase why privatisation of water has mainly failed in the Global South. Uruguay first introduced the HRW in their Constitution in 2004 on the basis of a social movement. Bolivia's president Evo Morales was the driving force of many HRW discussions all over the world and also successfully added it to Bolivia's new Constitution in 2009. Argentina on the other hand never explicitly added the HRW in their constitution, but has a high justiciability of the HRW from the UN. Uruguay's approach successfully stopped further privatisation, but encountered considerable difficulties stopping ongoing contracts, encouraging participation and stopping pollution. Bolivia's policies following the Constitutional change have had mixed results. The Water Ministry remains controversial but the "Buen Vivir" movement has provided improvements of the rights of indigenous people and the environment. Argentina has successfully managed to integrate the HRW in their justice system as many examples show how community members have managed to secure their water access even when they cannot pay for it.

In all three countries, the access to improved water showed no major increase or decrease compared to privatisation. It can, therefore, be said that accessibility to water is not dependant of either privatisation or the HRW. Yet, this accessibility needs to be reflected in water consume, as often water rates are too high for people to afford it. The only notable difference in accessibility can be noted in Argentina where rural access to improved water has reached higher levels than for the urban population in recent years. This could be due to Argentina's strong justiciability of the HRW. Still, it must be noted that access to water does not mean that people can pay for it. The case study of Uruguay revealed that prices have continued to rise after the implementation of the HRW. Also, accessibility statistics are never compared to the levels of consumption of water. This should be visible in any further researches. Bolivia's case demonstrated the HRW was not able to fully stop privatisation as extraction companies are still private and require large amounts of water. Cochabamba and SEMAPA still suffer from corruption, which forces many communities to form cooperatives. These have shown promising results as seen in Santa Cruz de la Sierra, which could confirm some of Bakker's arguments in her "commons vs. commodity" debate.

The case study findings show important results notably on the liability of actors and enforceability in terms of the law. Nevertheless, finding data and statistics about pricing, quality and level of privatisation has revealed to be more difficult than first assumed. Federal water companies praise themselves with terms like “transparency”, but in the end, it is very hard to find evidence that suggests that these companies function better now with the HRW than during privatisation. Water prices in relation to time are virtually impossible to obtain. An important next step would be to investigate those prices in the countries themselves by talking to company officials and residents of different city districts. This extensive analysis would provide the needed information to completely understand the impact that the HRW has had in Latin America. This mentioned, it is still important to analyse it on bigger scale transcending national boundaries since individual findings could very well be exceptions, as there have been many also with privatisation. It would also be extremely important to take into account sanitation in those findings. Drinking water and sewerage are often considered together as they should since they most often are provided by the same source. In many of the discussed countries sanitation is still very limited and is often disregarded when discussing water-related issues.

The birth of Human Right to Water is deeply linked to the failure of water privatisation in Latin America. The countless failed concessions, scandals and protests reflected the insufficient results of private water companies. Rarely seen in Latin America are concessions without rising prices, bad quality, unequal treatment of the poor or environmental degradation. The Human Right to Water was supposed to counter privatisation and deliver the results that the latter could not. Uruguay, Bolivia and Argentina have demonstrated some of the improvements this Right has brought, like better enforceability in a court of law in Argentina and better access and community involvement in Uruguay. Nevertheless, many questions remain unsolved and water-related issues are still an everyday reality. The “alter-globalisation” debate could present viable alternatives by seeing water as a common good. The Human Right to Water is a strong foundation for the realisation of Target 6 of the SDGs. Water necessity, however, goes way beyond the Human Right to Water.

List of Figures and Graphs

Figure 1: Degrees of Privatisation	9
Figure 2: Modes of urban water supply	11
Figure 3: Map of Uruguay, Bolivia and Argentina	17
Graph 1: Proportion of Uruguayan population served with Improved Water	21
Graph 2: Proportion of Bolivian population served with Improved Water	26
Graph 3: Proportion of Argentine population served with Improved Water	31

Glossary

CNDAV: Comisión Nacional en Defensa del Agua y de la Vida

CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women

CESCR: UN Economic and Social Council

HRW: Human Right to Water

IFI: International Financial Institution

IMF: International Monetary Fund

INGO: International Non-Governmental Organisation

MDG: Millennium Development Goal

MNC: Multinational Company

NGO: Non-Governmental Organisation

OSE: Obras Sanitarias de lo Estado

OSN: Obras Sanitarias de la Nación

SAP: Structural Adjustment Program

SDG: Sustainable Development Goals

UN: United Nations

UNDP: United Nations Development Program

UNGA: United Nations General Assembly

WHO: World Health Organisation

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