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# Water Privatization: A Threat to Human Rights?

Kelly Pavelich<sup>[1]</sup>

## Abstract

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In developing countries, women often have responsibilities that are water dependent, such as collecting water and tending to the sick (Sewpaul, 2008: 45) As unpolluted water supplies diminish, these tasks become increasingly difficult to accomplish. Women face greater threats to their security as they are forced to walk farther, occasionally into dangerous areas, and lose several hours of their day, potentially reducing the household income and resulting in missed economic opportunities (Sewpaul, 2008: 46) To treat, ration, and dispense water, states may resort to privatized water management systems. Privatization, however, has routinely resulted in unaffordability and inaccessibility as well as poor service and water quality. This tendency has resulted in the question that this thesis will resolve, which is whether privatized water management is a violation of human rights. To answer this question, this thesis will analyze the impact privatization has on a number of groups, particularly women. In addition, to solve this puzzle, this thesis will examine Chile's water management system, which is viewed by a number of scholars as a 'star' example of water privatization.

## Keywords

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water, privatization, women, human rights, security.

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## 1. Introduction

In numerous rural communities, women have distinct responsibilities, such as caring for the sick, preparing food, raising children, and collecting water (Sewpaul, 2008: 49). Many of these tasks are water dependent, resulting in women being disproportionately impacted by poor water management. Though occasionally men participate in these tasks, women tend to carry the brunt of the work. Worldwide, women complete 80% of water-related tasks while in Africa about 90% of water collection is completed by women (UNDESA, 2010). In some countries, such as Malawi, women can spend four to five times longer than men collecting water (UNDESA, 2014).

As water becomes increasingly scarce or of poor quality, water collection becomes an all-consuming task, leading women to require extra assistance from their daughters. Oftentimes, girls will be pulled out of school to assist in this work. Although occasionally sons will participate in water collection, the brunt of the work falls on girls. In Benin, girls aged six to fourteen will spend about an hour a day collecting water while their brothers will spend just 25 minutes (UNDESA, 2014). Similarly, in Tanzania, “a survey found school attendance to be 12 per cent higher for girls in homes located 15 minutes or less from a water source” while boys were significantly less impacted (UNDESA, 2014). Thus females, regardless of their age, tend to bear the weight of this particular burden.

The international community has used a number of documents, such as CEDAW and General Comment No. 15, to declare water a human right. The protection of this right rests on five principles: the availability, accessibility, acceptability, affordability, and quality of water and

sanitation services (Meier, et al., 2014: 835). Henceforth, these concepts will be referred to as the principles of or criteria for the human right to water. By examining how water privatization interacts with these principles as well as Chile’s water management system, which is argued by many scholars to be a successful example of privatization, this paper will argue that water privatization tends to violate human rights. Resolving this research question could potentially advise governments in their water management planning, thereby leading to greater security for women and ensuring the protection of the human right to water.

## 2. Literature Review

This paper relates to existing scholarship by analyzing the role that water privatization might play in human rights. Current research addresses water as a human right or how privatization fails to provide decent water services. This paper will fill the gap in current research by connecting the two topics, human rights and privatization, and by presenting privatization as a violation of the former.

The groups that are most often negatively impacted by water privatization are the poor, indigenous persons, and women. Put simply, these groups are the most at risk to have their right to water violated. Though occasionally touching on the experiences of the poor and indigenous persons, this paper will highlight the impact privatized water management systems have on women, which is a group often overlooked as well as disproportionately impacted by water privatization. Intersections between the three categories are possible and will be further explored in the case study.

## 2.1 Is Water a Human Right?

Since the 1970s, the international community has taken it upon itself to recognize water as a human right. One of the first mentions of this right was in 1977 at the Mar del Plata Conference in Argentina (Hale, 2006: 765-795). From this conference, a report emerged, stating that “[all] peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs” (UN Water Conference, 1977). Since this monumental conference, the international community has increasingly discussed the right to water in a number of treaties, declarations, and committee interpretations (Meier, et al., 2014: 835). In 1999, the London Protocol on Water and Health placed a legal obligation on countries to provide their citizens clean water and, almost a decade later, the UN declared both water and sanitation a human right (Williams, 2017: 469-505). Since these declarations, states have been made responsible for ensuring the right to water (Meier, et al., 2014: 835).

Other noteworthy documents include CEDAW, the CRC, and UN Resolution 64/292, which explicitly mention or imply the human right to water (Williams, 2017). First, CEDAW declares the human right to water with an emphasis on the security and rights of women. This document states that women have the right to “enjoy adequate living conditions, particularly in relation to...water supply” (UNSEDA, 2014). Unlike CEDAW, the CRC does not explicitly state that water is a human right but instead acknowledges that “water is implicit to other rights”, including “food, life, health, and dignity” (Bakker, 2007: 438). Additionally, this document confirms that “clean drinking water” is necessary to “combat disease and

malnutrition” (ECOSOC, 2003). In July 2010, the UN released Resolution 64/292, which resembles the CRC in its implicit mention of water as a human right. More specifically, this resolution mentions that “clean drinking water and sanitation are essential to the realization of all human rights” (UNSEDA, 2014).

A final noteworthy document is CESCR’s General Comment No. 15. According to this Comment, the right to water “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” (ECOSOC, 2003). Similar to CEDAW, this document explicitly mentions the impact poor water management has on women, noting that the “disproportionate burden women bear in the collection of water should be alleviated” (ECOSOC, 2003). Additionally, this document states that individuals have “the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water” (ECOSOC, 2003). Combined, these documents prove that the international community, in regards to states and international institutions, affirms that water is a human right (McDonald, et al., 2013).

But what about non-state actors, such as the private corporations running water management systems? At the Fourth World Water Forum, private corporations confirmed that water is a human right. Indeed, “representatives of private water companies issued a statement recognizing the right to water” (Bakker, 2007: 440). At another date, Veolia Water issued a statement, declaring that “[no] one can deny that the right to water is a basic human right” (Murthy, 2013). A few, though not many, private companies have pages on their websites dedicated to this topic. Nestlé, for example, in response to a PR nightmare, has a page dedicated to its chairman’s, Peter Brabeck-Letmathe, belief

that “water is a human right and that everyone, everywhere in the world, has the right to clean, safe water for drinking and sanitation” (Nestlé, 2005).

## *2.2 International Documents*

A number of international agreements exist, bolstering the arguments of both critics and proponents of water privatization. Though these documents are not equivalent to international law, they are still valued and referred to by a number of states within the international community. Therefore, these documents still warrant the attention of scholars.

Critics have cited the Water Manifesto, the Treaty Initiative to Share and Protect the Global Water Commons, the Accra Declaration, and various UN statements to support their argument against water privatization. First, the Water Manifesto, which was established thanks to the efforts of former Portuguese president Marlo Soares, states that water “belongs to all the inhabitants of the Earth” and that “[none] of them, individually or as a group, can be allowed the right to make it private property” (Dilworth, 2007: 49-54). Similarly, the Treaty Initiative to Share and Protect the Global Water Commons, which was ratified by forty countries, states that “fresh water will not be allowed to be privatized, commodified, traded or exported for commercial purposes” (Dilworth, 2007: 49-54). In addition, the Accra Declaration criticizes privatization, claiming that water should not “be bought and sold in the marketplace as an economic good” (McDonald, et al., 2004). Echoing these documents, the United Nations issued a statement saying that “[water] should be treated as a social and cultural good, and not primarily as an economic good” (ECOSOC, 2003). Overall, these documents clearly state that water cannot be viewed solely as an

economic good or treated and commodified as such.

There are international documents, however, that counter these ideas and support the arguments of proponents of privatization. Though the United Nations has stated that water is not solely an economic good, the Dublin Principles and Hague Declaration disagree (Bakker, 2007: 441). The Dublin Principles, though confirming that water is “essential to sustain life”, states that “[water] has an economic value in all its competing uses and should be recognized as an economic good” (UN Documents, 1992) The document goes on to state that “[managing] water as an economic good” can “[encourage] conservation” and “[protect]...water resources” as well as “[achieve] efficient and equitable use” (UN Documents, 1992). The Hague Declaration embodies similar ideals, arguing that, though water is “vital for the life and health of people”, water must be managed “in a way that reflects its economic, social, environmental, and cultural values” [emphasis added] (World Water Council, 2000). Broadly, these documents claim that water is essential to human life and that treating water as an economic good can ensure it as a resource for the future.

## *2.3 Is Water Privatization a Violation of Human Rights?*

### *2.3.1 Availability & Accessibility*

For the most part, water as a human right is a settled dispute in the international community. The question of whether privatized water management violates this right, however, continues to be de-bated.

The concepts of availability and accessibility can refer to the distance of water sources or whether the “water supply for each person [is] sufficient and continuous for personal and domestic uses” (Hale, 2006).

Women are particularly affected by this definitional aspect as they often bear the responsibility of collecting water. Today, women may walk as much as seven or eight hours a day to collect water. In terms of distance, sources vary, claiming that women could cover anywhere from six to fifteen kilometers a day (Brown, 2010: 61). During these treks, women are exposed to a variety of dangers, including “physical assault, water-related diseases, attacks from animals, and physical problems due to heavy water weight” (Gündüz, 2011). Additional threats to women’s security can result from having “to walk through isolated territory, over unsafe terrain, in the dark of the early morning or the late evening” (Light, 2008). Vishanthie Sewpaul confirms these risks, adding that the distance some women are forced to walk can make them “vulnerable to sexual abuse” (Sewpaul, 2008: 46). Physical and sexual assault have been highlighted as key issues for women who lack accessible water sources. According to the UN, “[convenient] access to water...[reduces] risk to women and girls of sexual harassment/assault while gathering water” (UN-DESA, 2014).

Sexual assault in regards to sanitation is equally concerning. Sanitation facilities often depend on clean, accessible water, meaning that women are again disproportionately affected by poor water management. In a number of cultures, women and girls are expected to relieve themselves in privacy. Without sanitation facilities, females become “prisoners of daylight”, only able to relieve themselves in the secrecy of night (UNICEF, 2017). In circumstances where women are unable to wait until dark or find themselves surrounded by people, they can be at risk of sexual assault. In Kenya, for example, there is “a high number of women in slum areas [that are] raped when they resort to open

defecation” (UNICEF, 2017). Provision of adequate sanitation services can also impact girls’ efforts to receive an education due to cultural requirements regarding menstruation. Linda Light writes that “the availability of sanitation increases school attendance for girls by 11 per cent” (Light, 2008). Overall, Sharmila Murthy asserts that “[the] idea of everyone being entitled to access a safe and clean place to relieve him or herself is fundamentally about upholding human dignity, which is at the core of the human rights system” (Murthy, 2013: 117).

Ultimately, walking long distances and carrying loads that weigh as much as 20kg can severely impact women’s health and wellbeing, especially when done on a regular basis (Eliasson, 2011). The farther women have to walk, the more strenuous and dangerous this burden becomes. Addressing this aspect of water management could have profound impacts on women, namely “[improving] health for women and girls, [reducing] child and maternal mortality, [increasing] dignity and [reducing] psychological stress, [reducing] physical injury, and [reducing] risk of rape, sexual assault, and [increasing] safety” (Burns, 2015).

Availability and accessibility can also refer to whether “the distribution of water is free from discrimination” (Hale, 2006). Opponents of water privatization claim that the poor are nearly always excluded from having access to water sources, resulting in the further deterioration of “the position of the vulnerable and disadvantaged in society” (Murthy, 2013: 120). Bayly Guslits and Jyoti Phartiyal argue that “[the] unregulated nature of private water companies in a neoliberal market...allows these companies to deliberately exclude the poorest demographics from the water networks to increase their profitability” (Unattributed, 2009). Jessica Budds, Gordon McGranahan, Sharmila Murthy, and N. Prasad agree,

asserting that private companies are frequently unwilling to operate in low-income areas because they “do not represent an attractive market” (Budds, et al., 2003: 109). This is a trend; low-income areas are regularly seen as “too poor to be profitable” and/or “[representative of] too great a financial risk” (Budds, et al.,: 109). Due to the image attributed to low-income and rural areas, private companies prefer to focus on wealthy, urban areas or on those “who can afford to pay” (Budds, et al.,: 111). This idea is confirmed by Rebecca Brown who argues that “[water] continues to be prioritised for those most able to pay” (Brown, 2010: 61). Low-income areas, which tend to be “most in need of improvements in water and sanitation”, are therefore often excluded or lack access to water sources (Budds, et al.,: 111). Indeed, privatized water systems routinely “affect low-income groups most negatively” by simply not serving them (Budds, et al.,: 98).

As a result, poor individuals and rural areas often have to rely on unsafe and/or unreliable sources of water, such as expensive “private water tank trucks” (Grusky, 2001: 14-19). According to Karen Bakker, receiving water from private vendors can cost “from a low of 4 times up to 100 times more” than mainstream water sources (Bakker, 2003: 328-341). Despite these prices, “over a quarter of the urban population in Latin America and nearly half of the urban population in Africa rely on small-scale vendors to some extent” (Murthy, 2013: 133). Another option for the poor is water collection from “streams, rivers, lakes or shallow hand-dug wells” (Grusky, 2001). This form of collection has obvious quality concerns and in some cases, such as in Bolivia, can be too expensive due to the requirement of permits (Grusky, 2001).

The exclusion of the poor represents a violation of human rights and is illustrative of widespread economic discrimination.

Vandana Smith compares this discrimination to terrorism, writing that “[terrorists] are not just those hiding in the caves of Afghanistan. Some are hiding in corporate boardrooms” (Smith, 2002: 13). The motivation of profitability is a continuous critique of privatized water systems, which will be further discussed later on.

A third definition of availability and accessibility involves “the ability to participate in decision-making about water policy” (Hale, 2006). Critics of water privatization have argued that privatized water systems “[limit] public discussion...and [marginalize] the voices of those who will be most affected” (Brown, 2010: 65). This not only includes women, but also involves the poor and indigenous populations. Women, however, despite experiencing a range of negative impacts resulting from poor water management, are routinely “barred from significant decision making” (Gündüz, 2011). According to Linda Light, “[few] women are at the table when decisions are made about strategies on how to ensure clean water,...how to maintain water as a public resource, or how to ensure that the delivery of water is a government responsibility rather than a profit-making enterprise” (Light, 2008). Lynn R. Horton asserts that this exclusion is due to “[women’s] use of water [being] narrowly framed in terms of the domestic, private sphere of health, hygiene, and basic family needs, in contrast to the use of water for irrigation and economic production that is defined as masculine” (Horton, 2007: 165-III). She continues, writing that “these representations of women’s use of water as purely domestic relegate women’s water claims to the ‘apolitical’ realm of social welfare and charity, limiting women’s voice in water management” (Horton, 2007).

The involvement of women in decision-making processes is necessary to improve “access to safe, affordable,

sufficient and physically accessible water” (Brown, 2010: 65). Rebecca Brown speaks to the value of including women, stating that their participation is necessary to fully understand “the gendered aspects” of water and to then ensure that these aspects are appropriately addressed (Brown, 2010: 64). These ideas are echoed by the Dublin Resolution of the Water for Life Decade, which states, “[women] play a central role in the provision, management and safeguarding of water and sanitation and must be involved in all water-related development efforts” (Light, 2008).

Proponents of privatization are adamant that this form of water management improves accessibility due to increased efficiency and greater investments. The World Bank and John Nellis argue that “privatization will actually expand access to clean water and sanitation” (Clarke, et al., 2009: 327-361). Furthermore, proponents argue that privatization fails to discriminate against the poor or rural areas. G.R.G. Clarke et al. claim that there is “no evidence...that private sector participation hurts the poor” (Clarke, et al., 2009) while John Nellis argues that “privatization has a very small effect on inequality” (Nellis, 2003: 15). Many scholars even argue the opposite of opponents, claiming that privatization can improve the poor’s access to water and that “coverage among low-income households rose after reform” (Clarke, et al., 2009). Karen Bakker, for example, argues that water privatization could “deliver water to those who currently lack access” (Bakker, 2007: 436-437). Examples throughout the world have been cited in support of these arguments. In Colombia, for example, “60-80 per cent of new connections...went to low-income households” while in Senegal “coverage of low-income households...rose faster following reform” (Clarke, et al., 2009). Mean-while, in Argentina, “new [water] connections increased by 11 per cent over the

[first] five years and coverage increased from 70 per cent of customers in the service area in 1992 to 83 per cent by 1997” (Loftus, et al., 2016: 179-199). Overall, proponents argue that privatization has either “reduced poverty or has no effect on it” (Nellis, 2003: 15). Furthermore, consumers are argued to have improved accessibility.

### 2.3.2. Water Quality

In addition to previously listed issues, poor quality, which can be defined as water containing dangerous or unhealthy levels of “micro-organisms, chemical substances and radiological hazards”, is cited by opponents to be a risk of privatized water systems (Moyo, et al., 2015). Bayly Guslits and Jyoti Phartiyal write that these systems tend to neglect infrastructure and suspend “regulatory over-sight”, which in turn threatens water quality (Unattributed, 2010). N. Prasad agrees, suggesting that a central reason for privatization failure is “the lack of a regulatory mechanism” (Prasad 2006). In general, opponents argue that water privatization does not “[lead] to better quality” and that in most cases “[levels] of accessibility and water quality have...deteriorated” (Gündüz, 2011). Overall, privatization generally fails to “improve water services” and, in Latin America especially, has been proven to actually decrease water supply and quality (Bosco-Allen, 2009).

Proponents, however, believe that privatization can “generally [enhance] the quality of services” (Nellis, 2003: 7). According to G.R.G. Clarke et al., as “connections are regularized, consumers are likely to have access to improved service and water quality” (Clarke, et al., 2009). This theory relies on the assumption that individuals are already connected to water sources and fails to specify the amount of time that might be needed to make these



connections ‘regularized’. Examples exist, however, of water quality improving upon privatization. In Argentina, for example, “child mortality fell 8 per cent in regions that privatized their water systems” and these “effects were largest in the poorest areas” (Clarke, et al., 2009).

### 2.3.3. *Affordability*

For the purpose of this essay, affordability can be defined as a cost that is not considered to be a “high burden”. UNDP elaborates, stating that water should not take up more than 3% of “median household income” (Pacific Institute, 2017). Upholding affordability therefore does not mean that water needs to be free. Sharmila Murthy agrees, using General Comment 15 to suggest that “the human right to water and sanitation does not prohibit pricing water to recover costs...Rather, it emphasizes the concept of economic accessibility” (Murthy, 2013). However, as is witnessed in the case of Manila, which will be discussed later, privatized systems tend to “increase the price” of water and oftentimes these increases impact “the economically weaker class of the society who cannot afford the increased water tariffs” (Bhattacharya, 2016: 86-97). This consequence is not limited to Manila, but can be seen worldwide. In France, for example, privatization “led to a cost increase of 150%” while England saw a price increase of 450% (Unattributed, 2010). Additionally, as a result of IMF and World Bank policies, Nicaragua and Ghana experienced a 30% and 95% “increase in consumer water fees” respectively (Grusky, 2001). In an extremely shocking case, Bolivia’s “minimum wage stood at less than \$64 a month” while “many of the poor had water bills of \$20 or more” (Grusky, 2001). These cases provide an important reminder: “[what might] be a bearable annoyance for

upper income people might be an insurmountable, inequality enhancing financial burden for the poor” (Nellis, 2003: 12). Overall, as a result of privatization, “customers all over the world face price increases between 15 and 50 percent” (Gündüz, 2011). However, as can be seen in previous examples, price increases can exceed these averages.

According to critics, private corporations are not interested in attempting to make water more affordable. Frequently, privatized water systems fail to pursue public policy, which could make water more affordable to a large number of people. Corporations, for example, generally do not pursue “water subsidies for the poor” because they are found to be “unprofitable” (Hale, 2006). Seemingly, private corporations are unwilling to commit to any actions that could result in profit loss, even if those actions are essential to preserving the human right to water. This again relates to the concept of profitability.

A limited number of proponents attempt to argue that water privatization can “lower prices”, making water more affordable (Bakker, 2007: 436-437). Sarah Hale and Karen Bakker, for example, suggest that privatization could result in “more affordable water rates and increased access to clean water because the market [creates] incentives to expand connections and charge lower rates” (Hale, 2006: 4). Overall, however, most proponents seem to accept that “prices often rise following reform” (Clarke, et al., 2009). This price increase is justified and explained by the need to increase accessibility as well as improve quality and service. John Nellis writes that “price increases are of-ten necessary if the firm is to modernize [and] expand to meet demand” (Nellis, 2003: 11). Sharmila Murthy agrees, stating that “providing clean water and sanitation services is expensive, requiring treatment

plants, the installation and maintenance of piped infrastructure, metering, and other costs” (Murthy, 2013: 130). She adds that “[maintaining] affordability of water and sanitation can be challenging when expensive infrastructure needs to be built or repaired” (Murthy, 2013: 131). In other words, there appears to be a trade-off between accessibility, quality, and affordability. Murthy acknowledges this trade-off, writing that there is a “tension between trying to make these infrastructure improvements and providing good quality, accessible, and affordable services to all without discrimination” (Murthy, 2013: 122). N. Prasad builds upon this statement by more bluntly stating that “[raising] water prices increases inequality” (Prasad, 2006). Based on the criteria for the human right to water, however, individuals should not have to choose between affordability and accessibility.

According to opponents, private corporations occasionally attempt to lower costs by “[compromising] on water quality” (Bhattacharya, 2016). This is just one example of how availability, accessibility, affordability, and quality can intersect. In the case of Manila, which will be elaborated on below, all of these concepts come into play.

### *2.3.4 Mini Case Study: Manila, Philippines (Hale, 2006)*

Water privatization was first introduced in the Philippines in 1997 as a response to poor government management. The hope was that this new system would “[expand] service, [lower] water rates, and [improve] the efficiency and operation of the utility.” Instead, citizens of the Philippines received “high prices, inadequate access, and insufficient quality.” In fact, affordability reached an all-time low in 2006 when costs

were inflated to 500-700% the original cost. And, in 2003, the quality of water was so at risk that there was an outbreak of cholera, resulting in 600 sick and 6 dead. Not only that, but the World Bank published a study in 2003 that listed Manila as the second worst Asian city in regards to water access. In summary, the privatized water management system failed to uphold the human right to water.

### *2.3.5 Profitability & Efficiency*

In regards to profitability, opponents of water privatization tend to believe that private companies are driven and motivated by a few things: “profit maximization” and “its shareholders” (Dilworth, 2007). As a result, water becomes nothing more than a “profitgaining commodity” (Gündüz, 2011). In the words of Sarah Hale, privatized water systems are driven not “by public objectives” but “by private interests and market demands” (Hale, 2006). These priorities are inherently a threat to the human right to water. Zuhail Gündüz and Richardson Dilworth affirm this, writing that the right to water becomes “obliterated the moment it becomes a means to profits” and that “to set a price on water is to set a price on life” (Gündüz, 2011). Indeed, when private corporations set their eyes on profits, the planet and people tend to take the backburner (Boscov-Ellen, 2009). N. Prasad encompasses these ideas perfectly, stating:

[There] is, after all, a significant conflict between social development, public health and environmental concerns and poverty reduction, on the one hand, and the private sector’s motive of profit maximizing, on the other. The profit-seeking motive of the private sector seems difficult to reconcile with providing service to the poor (Prasad, 2006).

Sharmila Murthy supports this statement, writing that “real tensions do exist between the idea of respecting, protecting, and realizing the human right to water and sanitation for all and the goals that motivate a private company” (Murthy, 2013: 122). This suggested mindset of private corporations is dangerous. Vandana Smith agrees, writing that the human species “cannot survive...if greed is privileged and protected and the economics of the greedy set the rules for how we live and die” (Smith, 2002: xiii). She goes on to quote Gandhi who said, “[the Earth] has enough for the needs of all, but not the greed of a few” (Smith, 2002: xiii). Overall, the motivations of private corporations do not appear to be compatible with the criteria for the human right to water.

These concepts, profit-maximization and dedication to shareholders, are presented by opponents as weaknesses but are argued by proponents to be strengths. Karen Bakker suggests that when private companies are held accountable to shareholders and customers, they can run water management systems more efficiently than public or governmentally run water systems (Bakker, 2007: 441). According to Bakker, this efficiency takes the form of “lower prices, [improved] performance, and [increased] cost recovery, enabling systems to be upgraded and expanded” (Bakker, 2007: 437). Sarah Hale agrees, adding that privatization encourages “efficiency” and tends to be more “responsive to consumer needs” (Hale, 2006: 6,2). The World Bank supports these ideas, stating that “[effective] water resource management requires that water be treated as an economic good”, eventually leading to “sharp efficiency gains, improved service, and faster investment in expanding service” (Grusky, 2011). In other words, the World Bank views privatization as a means of efficiency, thereby improving the water management system. In support of these arguments, John Nellis provides data on

Latin America, which reveals that “[efficiency] gains...averaged a remarkable 67%” (Nellis, 2003). The pursuit of efficiency has been criticized by some for resulting in layoffs - in Nicaragua, privatization resulted in the “dismissal...of 15% of the total labor force” - but these decisions have saved corporations money, allowing them to expand services (Nellis, 2003: 11). In general, proponents argue that reliance on stakeholders and profits can boost efficiency and drive private corporations to better fulfill their responsibilities.

### *2.3.6 Conservation*

In addition to efficiency, proponents suggest that privatization can help conserve water and combat water scarcity. Specifically, proponents believe that water privatization can resolve issues regarding “water scarcity, water waste, overconsumption, and pollution” (Gündüz, 2011). Vandana Smith defines water scarcity as being apparent when a country has less than “1,000 cubic meters per per-son per year” available (Smith, 2002: 1). In response to this particular issue, Karen Bakker argues that price setting can encourage water conservation (Bakker, 2007: 441). She believes that adjusting or raising water prices can encourage individuals to limit their water use and take only what they need. Sharmila L. Murthy agrees, stating that “the goal of water demand management strategies has been to develop a way for the user to value water more and factor water usage into economic decisions” (Murthy, 2013: 96).

Though not explicitly presented as a reason to support water privatization, proponents could naturally extend the concept of water conservation to the prevention of water conflicts. Water conflicts, frequently occurring in response to water scarcity, often result in “political violence” (Smith, 2002: viii). Such violence

has occurred, for example, in Syria and Turkey as well as in Egypt and Ethiopia (Smith, 2002: viii). This idea is especially important based on the predictions of the World Bank, which believes that “the Middle East and North Africa” as well as “an increasingly large number of countries in all parts of the world are approaching a ‘water crisis’” (Bakker, 2003). Water conflicts (and violent conflicts in general) have substantial, negative impacts on women. According to the UN, “[women] and girls [suffer] disproportionately during and after war, as existing inequalities [are] magnified, and social networks [break] down, making them more vulnerable to sexual violence and exploitation” (UNSC, 2003). Preventing such conflicts could therefore have large benefits for women who often experience gendered impacts of violent conflicts.

Opponents of water privatization have criticized Bakker and Murthy’s theory, which is foundational to the idea that privatization could positively impact conservation efforts. Zuhail Gündüz, for example, finds the proposal unethical and a danger to the human right to water (Gündüz, 2011). As was previously mentioned, raising prices could potentially result in the poor “[having] to use less [water] or go without” (Grusky, 2011). In response to Bakker’s theory that individuals can limit their water use, N. Prasad suggests that “[water] consumption varies very little with income, since individual water needs are similar in terms of drinking, hygiene and sanitation” (Prasad, 2006). Therefore, “no matter how high the prices are”, people will continue to pay if it is within their ability to do so (Prasad, 2006). Gündüz adds that private corporations are unlikely to show interest in water conservation efforts due to their profit-gaining motivations. In particular, Gündüz suggests that corporations may not be tempted to control and sustain conservation efforts because “[a] short supply of a

commodity is per se the prerequisite for excellent returns” (Gündüz, 2011). This statement suggests that corporations may in fact be motivated to encourage water use to see higher re-turns and benefit their stakeholders.

### *2.3.7 Economic Benefits*

Finally, proponents of privatization argue that this form of water management is economically beneficial. Even scholars identifying as opponents or critics admit that these systems tend to benefit the economy. Sarah Hale, for example, states that privatization “promotes economic stability, creates markets that are more responsive to consumer demand..., and provides incentives to invest in infrastructure” (Hale, 2006: 6). Carl J. Bauer and Renate Gazmuri Schleyer agree, writing that water privatization can “[encourage] private investment”, “[foster] efficient agricultural use of water”, and “[increase] agricultural productivity” (Bauer, 2004: 132). N. Prasad adds that there are significant increases in “microeconomic performance”, for example in “profitability of firms, productivity increase and efficiency” (Prasad, 2006). These economic contributions appear valuable but are in fact meaningless when the actual human right to water is violated. In other words, economic benefits cannot replace the human right to water or the importance of maintaining the accessibility, quality, and affordability of water.

### *2.3.8 Conclusion*

In conclusion, opponents of privatization namely point to issues of availability and accessibility, quality, and affordability, arguing that this form of water management directly violates the human right to water (Meier, et al., 2014). Meanwhile, proponents of privatization

argue that this form of management is ideal due to its essential economic benefits as well as its impacts on efficiency and conservation efforts. Both sides of the debate provide contradictory facts and statistics to support their arguments, making this issue even more complicated. This literature review does not discuss the concept of acceptability, which can be defined as whether “[government] proposals [are]...consistent with people’s demands,” due to context dependency (Estrada, 2007). Each country has its own experiences with and reactions to privatization, making acceptability difficult to analyze broadly. This concept will, however, be discussed in the case study.

### 3. Methods

This paper will resolve the question of whether privatized water management systems violate human rights, particularly in regards to women’s security. Water privatization will be defined as “the shift in ownership from the public to the private sector” (Bakker, 2003). In addition, the human right to water can best be understood as being upheld when water is available, accessible, affordable, acceptable, and of high quality (Meier, et al., 2014). A successful example of water privatization would not merely be economically profitable but would operate within these human rights parameters, thereby ensuring the protection of human rights.

#### 3.1 The Case Study: Chile

This paper will focus on Chile, following the creation of the Water Code in 1981, which is the document responsible for the privatization of Chile’s water system. This case is argued by many to be a successful example of privatization. In fact, Chile has often been considered “an

international model”, “[the] poster child for successful water privatization”, or “the world’s leading example of the free-market approach to water law and water resources management” (Bauer, 2004: 25).

The World Bank presents Chile as its ‘star’ example of water privatization, calling it “an inspiration for water policy reforms in other countries” (Simpson, et al., 1997). Continuously, this case is publicized and used as a motivational tool to encourage other Latin American countries to adopt similar policies (Bauer, 2004: 26). But what makes Chile so extraordinary? According to John Briscoe, a water engineer for the World Bank, Chile’s water management system is “a brilliant conceptual solution to the enduring problem of reconciling practical and economic management of water” and positively “[deals] with problems of water scarcity” (Bauer, 2004: 27). Briscoe even goes as far as to call Chile “a world leader in water governance” (Bauer, 2004: 3).

This essay will challenge Chile’s success. In order for a water system to be deemed successful, it must abide by international standards as well as human rights. Indeed, water systems must “address equality and non-discrimination in water access” while upholding the principles of the human right to water (Meier, et al., 2014). Chile’s water system arguably conflicts with a number of these principles. To support this argument, this thesis will utilize detailed accounts of the water system’s failures and will examine how Chilean women have been impacted by water privatization. The information and debate surrounding Chile can be generalized and applied to privatization more broadly. In fact, many of the issues that will be covered in this thesis can pertain to privatized water systems worldwide.

#### 3.2 Sources

For the most part, this essay will be archival, acting as a culmination of studies and data compiled since the 1980s. Peer-reviewed sources found on reliable databases, such as ProQuest and JSTOR, will be used to support arguments on both sides. Additionally, this paper will utilize international documents, such as the Water Manifesto and the Dublin Principles, and UN resources (Dilworth, 2007).

## 4. Discussion

### 4.1 Background

In 1981, Chile's military dictatorship privatized the country's water supply through the creation of the Water Code (Abbot, 2013). This Code altered the use and management of water, making it like "any other real estate" and allowing it to "be bought, sold, mortgaged, inherited, and transferred" (Bauer, 2004: 3). Additionally, water property became "separate from land ownership and [there-fore could] be freely traded between different users" (Prieto, 2015: 220-229). This shift has been criticized by a number of scholars and international organizations. ECLAC, for example, has written that the Code consists of "severe limitations", such as the way in which water rights are allocated, and is difficult to modify, making much needed changes challenging to obtain (UNECLAC, 2017).

### 4.2 Case Presentation

Chile's water system will be discussed and reviewed in regards to its impact on the principles of the human right to water (Meier, et al., 2014). The following paragraphs will explore each principle from the perspective of both proponents and opponents of water privatization.

In regards to availability and accessibility, proponents of privatization argue that Chile's water management system

successfully addresses these aspects. M. Baer, for example, suggests that nearly 100% of citizens are able to receive "their water from private companies" (Bauer, 2014: 163, 142). Gabriel Bitran and Eduardo Valenzuela agree, saying that "[by] 1995 water and sewerage services had been extended to nearly all households in most parts of the country" (Bitrán, et al., 2003). According to G.R.G Clarke et al. this expansion of services exceeds that which public utilities are capable of (Clarke, et al., 2009). Furthermore, scholars argue that Chile's system does not harm or exclude the poor. Renato Schleyer, for example, states that Chile's system "[works] in favour of the poorest sectors of the population" (Schleyer, 1996). These positions suggest that Chile's system has not negatively impacted individuals, particularly those belonging to disadvantaged groups, in regards to accessibility.

A number of scholars, however, believe that Chile's water system has not improved accessibility. The Water Code has been proven to have inconsistent impacts across the country. In fact, the Code does not consider "local geographic, economic, or cultural specificity" and has an "uneven, geographically diverse, and quite complicated" impact (Prieto, 2015: 220). Additionally, social, environmental, and political factors are frequently presented as being Chile's water management system's weaknesses or "[the] most negative results of the Water Code" (Bauer, 2004: 10-11). ECLAC confirms this, stating that the Water Code is "inefficient from the overall economic, social or environmental point of view" (UNECLAC, 2017). These excerpts reveal that water may not be as accessible as proponents presume. Additionally, Thomas Abbot notes that water distribution in Chile is unequal and, in direct contradiction to Schleyer, argues that the poor are regularly left behind (Abbot, 2013). In particular,

peasant farmers have been identified as being significantly worse off since the implementation of the Water Code (Bauer, 1997: 650). Since 1981, peasant farmers have been repeatedly discriminated against due to the Code's tendency to bypass traditional jobs in favor of "fast return activities and lucrative segments" (Madaleno, 2007). Today, most farmers "lack secure water supplies or legal title to water rights", resulting in their livelihood being constantly at risk (Bauer, 1997: 649). Overall, Chile's Water Code creates "a vastly unequal distribution of water, benefiting agro-industrial companies, many of them foreign or with foreign connections, at the expense of small local farmers" (Abbot, 2013).

Without the intention of insinuating that Latin American women are a monolithic group, many women within this region have a complicated relationship with water (Horton, 2007). In other words, many women view water management or collection to be "a 'labor-intensive, physically demanding, and even stressful part of everyday life'" (Horton, 2007). This perspective is directly related to accessibility and availability. The more distant or insecure the water supply is, the more challenging the task of water management becomes. Worsening this situation, women are often re-moved from the decision-making process. Deere and Leon argue that decision-making processes tend to privilege "household heads, most of whom [are] male" and, according to Lynn R. Horton, "[resistance] to gender equality or incorporation of women into water management" exists at nearly every level of society, including local "communities, NGOs, states, and transnational institutions" (Horton, 2007). In Latin America, this exclusion can be attributed to women's "limited access to land, water, credit, knowledge, and technology, as well as women's heavy domestic labor load" (Horton, 2007). As a result of this exclusion,

Chilean women are unable to address the gendered impacts of water privatization and are fighting this exclusivity, "calling loudly for the government to give them more active participation in the management of natural resources" (Estrada, 2007).

Chile's water system also has severe impacts on poor and indigenous women. There is an undeniable intersection between women and the poor, which is illustrated by Vivienne Bennett et al. in *Water and Gender: the Unexpected Connection that really Matters*. In this piece, Bennet et al. state that:

A recent study carried out in Chile indicates that poor women, thanks to their responsibilities for managing household and family well-being, have been the first to signal the consequences of the privatization of water delivery. These include the significantly negative impact of water tariffs on household budgets, suspension of water service as a consequence of unpaid water bills, lack of information and the absence of mechanisms for water consumers to use in response to the new conditions imposed by the privatized water authorities (Bennet, et al., 2008).

Poor women are therefore often the first to be negatively impacted by water privatization. As was previously mentioned, another intersection exists in regards to women and indigenous populations. An example of this intersectionality is ANAMURI, which led a conference with the slogan: "It's our turn to speak! It's time to fight, to dream, to build, to sow, to participate" (Estrada, 2007). This conference addressed women's access to water as well as the resource's growing scarcity, noting that "access to water supplies is increasingly problematic" (Estrada, 2007). The conference blamed these issues on large companies, such as mining, sanitation, and

electrical corporations, that control the water supplies (Estrada, 2007). ANAMURI has made it its mission to see that “the rights of rural and indigenous communities, and of women in particular, to water and land, [are] guaranteed priority over the economic activities of big companies” (Estrada, 2007). These ideas directly relate to availability and accessibility as well as the inequality resulting from the Code’s allocation of water rights.

Attempts to reform the Water Code to benefit women have been largely ineffective. Chile has not produced any legislation stating that “men and women have equal rights to own land or be beneficiaries of state programs independent of their marital status” (Deere, et al., 2001: 37). In this regard, Chile is significantly less progressive than other Latin American countries, such as Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, and Peru, which have all enacted legislation explicitly stating the equality of men and women (Deere, et al., 38). As was previously stated, under the Water Code, water became like “any other real estate” (Bauer, 2004: 3). Therefore, when stating that ‘men and women have equal rights to own land’ or property, these rights also refer to water. Additionally, Chile has yet to enact any principle of joint titling. Joint tilting “establishes explicitly that property rights are vested in both the man and the woman who make up a couple” thereby “[reinforcing] the concept of a dual-headed household where both husband [and] wife represent the family and may administer its property” (Deere, 2001: 39). This concept is particularly important as Chile’s environmental situation, due to climate change and other factors (occasionally privatization itself), worsens. According to Deere and Leon, “when seasonal migration by the spouse turns into permanent migration, women are left behind without secure land rights and thus suffer

great insecurity in providing for their families” (Deere, 2001: 53). Joint titling is also important because it could open doors for women to become involved in the decision-making process. In other words, being recognized as an equal head of the household could justify women’s participation in discussions, thereby increasing women’s access to water. Unfortunately, failures or a lack of desire to reform reflects the previously mentioned idea that Chile’s Water Code is unusually difficult to reform, making it unchanging with modern times to the detriment of disadvantaged groups.

Increasingly, individuals across Latin America are speaking out against their country’s water system by protesting and demanding public ownership. Such protests reveal limited acceptability for a privatized water system. An opinion poll reveals that in 2000 “a clear majority [disapproved] of the privatization process” in Latin America (Mckenzie, et al., 2003: 161-233). In regards to the water system in Chile, approximately 74% of Chileans desire a change in water management (Gallagher, 2016). When Chile’s Water Code was adopted in 1981, the military dictatorship forced the Code to be implemented throughout the country without regard for citizens’ opinions (Abbot, 2013). This shift was criticized by many for being undemocratic (Abbot, 2013). Many individuals were frightened by the forced privatization. One said, for example, that “[the] mayor came here and told us that if we did not privatize, [the military] would come and they would beat us with sticks” (Prieto, 2015). This again illustrates the lack of acceptability for the Chilean water system.

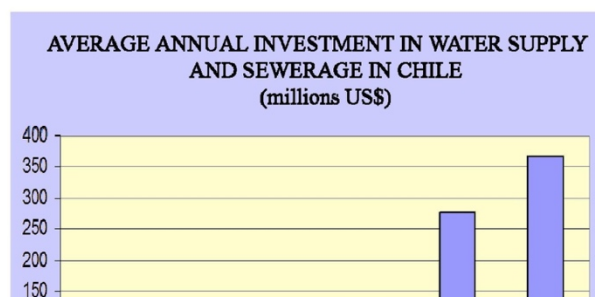




Figure 1

In regards to quality, multiple proponents of privatization point to an increase in investments in both water supply and sewage systems. Figure 1, which is a production of the World Bank, illustrates the expanded investments and resulting change in sewage treatment quality (Peña, 2003: 4). Surprisingly, limited research and data exists in regards to the impact of privatization on water quality in Chile. Most proponents express that the impact of privatization has been positive, while opponents tend to omit the factor of quality altogether. This discrepancy and the overwhelming data in support of quality has resulted in this thesis making the assumption that the privatized water system has had an overall positive impact on water quality in Chile.

Finally, a select number of scholars argue that privatized water systems are more affordable than their public counterpart. Bitran and Valenzuela, for example, suggest that “efficiency gains from superior private management will translate into lower rates in the long term” (Bitrán, 2003: 4). In addition, proponents insist that any economic gains resulting from privatized systems are not “at the expense of society” or the result of “consumer exploitation” but instead are due to “improved operating efficiency” (Chong, et al., 2004: 60, 70, 55, 77). Regardless, as of 2016, millions of Chileans have reported that water costs are “unnecessarily high”, that they are without running water, and/or that they are experiencing poor service

(Gallagher, 2016). From 1998 to 2001, private companies’ rates rose about 20% more than public companies’, impacting both rural and urban communities (Bitrán, et al., 2003: 1,3). Certain parts of the country face higher prices than others. In Northern Chile, for example, water is extremely scarce, resulting in high prices (Bitrán, et al., 2003: 4). In fact, in the past few years, this region has witnessed the growth of a “gap between demand and provision of water” (Madaleno, 2007: 200). In general, Chile’s water system appears to be unaffordable, especially for individuals with low-incomes. Indeed, these individuals report being unable or unwilling to “pay the full costs” associated with water and sanitation (Budds, et al., 2003: 96).

### 4.3 Analysis

Proponents of Chile’s water system argue that Chile is “a rare success story” (Bauer, 2014: 164). Additionally, both Baer and Bakker claim that privatization “is compatible with human rights” and that “the human right to water can potentially be fulfilled in a private system” (Bauer, 2014: 163-164). Despite contradictory statistics, scholars overwhelmingly seem to agree that Chile’s system tends to disregard accessibility and availability, that there is limited acceptability, and that the water system is not affordable. Though the quality of water appears to be positive, all of the criteria for the human right to water must be respected in order for there to not be a violation of human rights. Therefore, Chile’s water management system as it currently exists is a violation of the human right to water. This finding supports this thesis’ argument that water privatization tends to violate the human right to water, particularly threatening the well-being and security of women. Chile is especially important to regard as a ‘failure’ as it is presented as one of the World Bank’s best examples of water

privatization and is often used to encourage other countries, especially in Latin America, to adopt similar water policies.

Occasionally, the World Bank will even make loans contingent on the acceptance of these policies (Grusky, 2001). This case study reveals, however, that such policies may not be advisable.

## 5. Conclusion

Though this paper has argued that water privatization tends to violate the human right to water, particularly in regards to women's security, it is important to note that water privatization does not always or unfailingly violate that right. In *Privatization in Latin America: What Does the Evidence Say? [With Comments]*, Alberto Chong et al. discusses the reasons why privatized water systems tend to fail. The main reason for failure, they argue, is "inadequate regulation" (Chong, et al., 2004). State regulation is routinely cited as being necessary to improve privatized water systems. According to an OHCHR report, "human rights obligations nonetheless require States to regulate and monitor private water and sanitation providers" (Murthy, 2013: 118). Another UN document, the Human Rights Council Resolution of 2010, "[recalls] that States should ensure that non-State service providers: [fulfill] their human rights responsibilities" (Murthy, 2013: 144). In other words, states cannot make the decision to privatize and then wipe their hands of all responsibility. This idea is reiterated by Sharmila Murthy who writes that "[states] still have a responsibility to protect, respect, and fulfill the human right to water and sanitation, even where private actors are involved" (Murthy, 2013: 143). The state's role in this process will naturally involve regulation as well as "monitoring" and

general "oversight" (Murthy, 2013: 143). Hopefully, through increased state involvement, the tensions that exist between private corporations' motivations and the human right to water can be relieved (Murthy, 2013: 122). In addition to regulation, states will need to work towards making water more affordable as privatization has been proven to raise the costs of service. This involvement may take the form of "long-term financing" and subsidies (Murthy, 2013: 143).

Next, in order to improve privatized management systems, a method of accountability must be created. Private corporations that lack "sufficient accountability mechanisms" are more likely to mismanage water sources (Murthy, 2013: 97). To counter this issue, corporations should universally abide by and commit to "corporate codes of conduct", which "commit participants to minimum standards of human rights, labor, environmental, and related standards" (Moyo, et al., 2015). In addition, corporations should provide a "[grievance] mechanism" in order to "[hold themselves] accountable for any deteriorating services, unmet performance standards, and unjustified tariff increases" (Moyo, et al., 2015).

Finally, states need to be provided an 'out' should private corporations commit human rights violations. As the system currently stands, states often find themselves locked in deals with private corporations due to international investment law (Murthy, 2013: 141). This situation, however, implies that international investment law outweighs international human rights law in regards to importance. Should the latter be violated, the former should be void or else human rights abuses will continue.

To make privatized systems as beneficial to and inclusive of women as possible, countries should include women in discussion and strategy planning. To push

this initiative forward, property laws should be revisited, ensuring that women and men have equal property rights and, as a couple, can own property together (Deere, et al., 2001: 39). According to Deere and Leon, “land legislation must explicitly recognize the right of women to own land [and property in general] independent of their marital status and must provide specific and mandatory mechanisms of inclusion” (Deere, et al., 2001: 58). Such policy would demonstrate that women’s relationship with water pushes be-yond the domestic sphere and also illustrates women’s equal right to be a part of water-related discussions. Involving women in these discussions would likely limit the negative, gendered impacts

of privatization, particularly challenges regarding accessibility.

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The author declares no conflict of interest with respect to the research, authorship, and/or publication of this article.

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