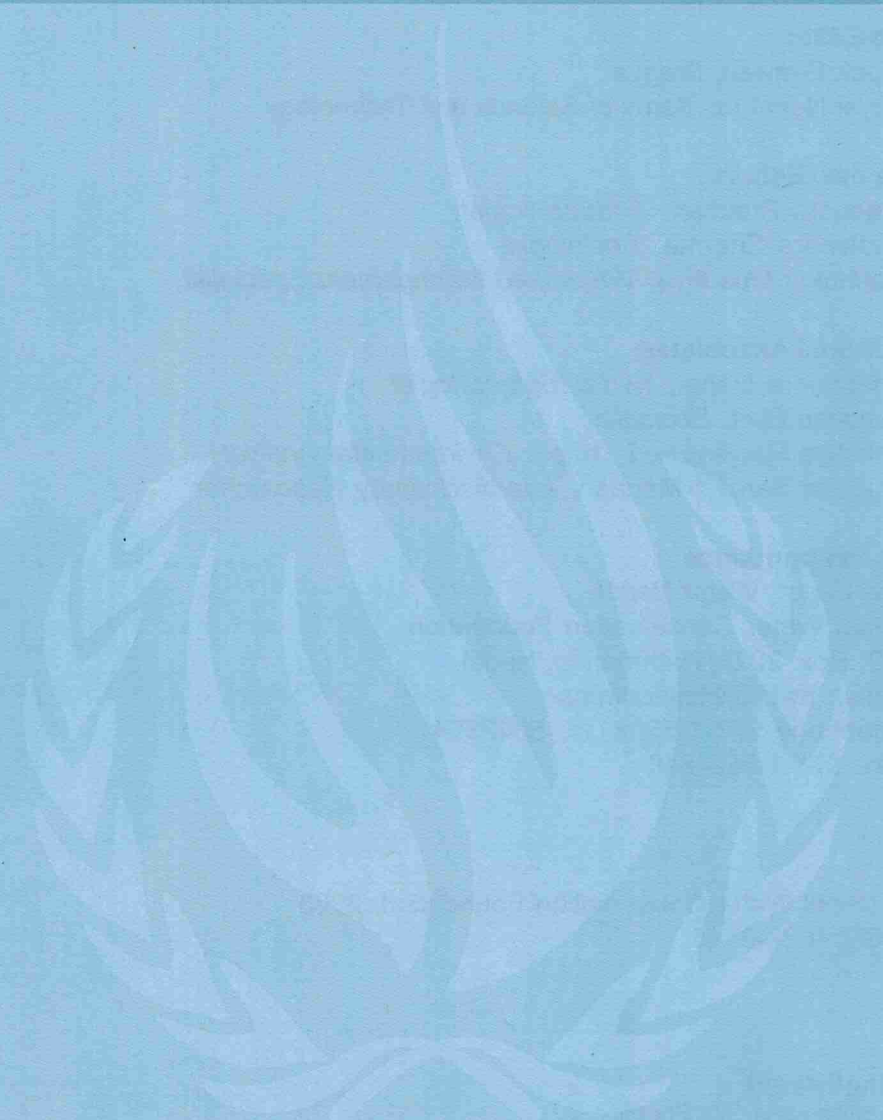


# WaterNepal

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Water,  
Human Rights  
and Governance

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## FOREWORD

Nepal Water Conservation Foundation (NWCF) and The Institute for Social and Environmental Transition (ISET) hosted an international meeting on Water, Human Rights and Governance in Kathmandu from February 26<sup>th</sup> to March 2<sup>nd</sup>, 2001.

This special issue of *Water Nepal* is the proceeding of the meeting. There were altogether 68 participants from different parts of the world. In all, 36 papers were presented, of which 27 papers are included in this volume. Many of the papers have been revised by the authors and edited after the meeting. As editors, we have retained opinions of experts even though we may not necessarily subscribe to some of the views. The papers are arranged in five broad themes, which are: The Starting Point, Human Rights to Water-Thirst and Sanitation, Diverse Perspectives, Justice Denied and Governance Examples.

We would like to thank the Rockefeller Foundation, the Ford Foundation and Water Aid UK for providing financial support to the conference. This special issue is a combined effort of the two organisations, NWCF and ISET. We would also like to thank Perry Thapa, Ngamindra Dahal, Kanchan Mani Dixit, Rakshya R. Thapa and Pratibha Sarojini Manaen for their efforts in going through every little bit of details in the process of revising the papers. Thanks to Narayan Adhakari and Gita Bhomi for the layout.

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# TRANSNATIONAL LED PRIVATISATION AND THE NEW REGIME FOR THE GLOBAL GOVERNANCE OF WATER

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## ABSTRACT

Many aspects of the current and looming freshwater crisis can be traced to the basis on which water resource development and management is organised. In this context, it is necessary to formulate a socially just and environmentally sustainable approach to water issues. This paper, outlines four components of such an approach. First, this paper emphasises the need for recognising water as a fundamental human right and explore what is at stake in that recognition. Second, it stresses the limits and dangers of the current approach centered on privatisation of water, which assumes that water is only an economic good. As an alternative, this paper explores the potentialities of recognising that water is foremost a social good and only then an economic good. Third, it outlines areas where structural changes in patterns of water use have to come about. The two primary areas of focus are pollution and consumption. Finally it explores the global governance issues involved in this alternative strategy.

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## INTRODUCTION

### **Water today**

While the amount of freshwater resources available in the world has remained broadly constant over centuries, there has been a very large increase in the water use in the last century.<sup>1</sup> Despite this increase, as many as 1.3 billion people – one out of five – lack access to clean drinking water, and 2.6 billion – almost 40 per cent of the world's population – lack sanitation facilities.<sup>2</sup> Widespread water shortages beyond those that already exist are predicted in both rich and poor countries.

This global water crisis has many aspects. Environmentally, this includes the contamination and depletion of ground and surface water, salinity increase, loss of wetlands, and loss of biodiversity.<sup>3</sup> Socially, it has led to diversion of water away from rural communities and farms to urban centres and industry, degraded human health, food insecurity, and political instability.

This crisis seems destined to grow worse. Today, irrigated agriculture accounts for 69 per cent of world's water resource use, while industry and domestic use accounts for 23 per cent and eight per cent respectively.<sup>4</sup> According to the UN, the human population will reach 7.8 billion by 2025 – a 38 per cent increase over present levels. The Food and Agriculture Organisation (FAO) has estimated that a 34 per cent increase in irrigated area will be needed to meet the projected water requirements for this growing population.<sup>5</sup> In a 'business as usual' scenario, such an increase in irrigated area will significantly affect water available for both ecosystem and domestic human needs.<sup>6</sup> It is in this context that a number of leaders of international stature – including Boutros Boutros-Ghali of Egypt, Ismail Serageldin of the World Bank, the late King Hussein of Jordan among others – have warned that sooner or later wars may break out between nations as a result of conflicts over water.<sup>7</sup>

In keeping with the market oriented approach that is dominant globally, international financial groups have aggressively promoted privatisation of water services as a solution to the crisis since the early 1990s. From 1988 to 1995, the pace of privatisation was not very fast: in a seven year period private utilities serviced less than 100 million people all over the world.<sup>8</sup> According to estimates by Vivendi, one of the largest water companies in the world, the share of the private sector in water services is still minimal: even in the largest market, the United States, the share of private companies was Five per cent in 1995, while in Asia it was only One per cent as recently as 1999.<sup>9</sup> However, the pace of privatisation has steadily been increasing in the last 5 years, and while much of the focus of privatisation is in the area of water supply and sanitation services, other areas are being opened up.<sup>10</sup>

This paper provides a critical examination of the trend towards privatisation, and tries to contribute to the development of an alternative vision. The first section surveys the broad developments that have led to the current water crisis; the second tries to identify the major institutional actors involved in promoting transnational privatisation of water services. Through a focus on the crucial role played by regulatory mechanisms, the third section explores why privatisation is not, in the case of water, an adequate response to the crisis. The fourth section provides an overview of the institutional sites from where a perspective critical of transnational privatisation has sometimes been articulated. The fifth section outlines an alternative human rights framework from within which to think of water; the final section explores the practical steps that would be necessary to make this framework a reality.

### **Water Resources Development and the 'tragedy of commons'**

The changes in water use that have occurred in the last century are sometimes viewed as simply the result of population explosion, increase in irrigation, and improved standards of living.<sup>11</sup> Such accounts, however, fail to focus on social and political processes, and



presume that phenomena such as population explosion or irrigated agriculture necessarily lead to water shortages. Most of the problems can be traced to the assumptions that organise water resource development and management practices. This section briefly outlines the three major dimensions of the social and political processes that are most directly relevant to an understanding of the strengths and weaknesses of the current mainstream response to the freshwater crisis.

The last hundred years have been marked by dramatic shifts in patterns of water management. First, there was the development of a hydraulic mission, and an accompanying displacement of community based organisations.<sup>12</sup> Increasingly, water resources management has sought to meet modern societies' growing needs in water supply and power – for industry, irrigation, and domestic use.<sup>13</sup> This was done primarily through large engineering projects like hydroelectric dams and groundwater extraction. This development peaked around the 1960s in the developed world, by which time a technocratic water administration system was in place. This 'hydraulic mission' continues even today, especially in the South, where many countries have not yet developed a comparable infrastructure.<sup>14</sup>

Second, accompanying this shift towards intensive water extraction has been an emphasis on extremely intensive/extensive water use – not only in irrigated agriculture, but also in industry and homes. While increasing population is an important factor, it would be wrong to assume that the water crisis is caused primarily by overpopulation. According to Maude Barlow, author of *Blue Gold: the global water crisis and the commodification of the World's Water Supply*, 85 percent of the world's water is used by only 12 per cent of its population, and most of this population is based in the developed world.<sup>15</sup> In the South, the bulk of the population is not covered by the centralised water supply systems which encourage the most intensive domestic water consumption. And even the centralised water supply systems often do not provide large amounts of water, especially to the domestic sector. Thus, it is in the North, where the hydraulic mission has been most successful, that the bulk of water consumption takes place.<sup>16</sup>

Third, in most parts of the world these centralised water development projects were managed by the public sector. Water supply was perceived as the State's responsibility by all concerned and was provided at highly subsidised rates.<sup>17</sup> Thus, there are water policies (still in place in most countries), which encourage unlimited consumption, focus on a supply oriented rather than demand management approach, privilege luxury needs over basic needs, externalise the environmental costs of production, and do not punish polluters.<sup>18</sup> To make matters worse, by the 1970s, state investment in the infrastructure did not increase in proportion to the demand. This resulted in a situation where state-run water management programmes deteriorated in many countries. Also, there were no easy answers to questions of efficiency, equity and sustainability, or of how to finance the ever-expanding need for infrastructure development and maintenance.



The dominant international response to this situation was analogous to the response to the so-called tragedy of the commons. Briefly put, those who perceived such a tragedy argued that goods shared in common – to which state-managed resources were implicitly compared – were likely to suffer from ecological degradation. Experiences of water scarcity, water related fights, appropriation as well as wasteful use of water resources, lack of finances for the effective management of water resources – all were ascribed to public management of water resources.

It is in this context that privatisation was increasingly claimed to be the best solution. Proponents of privatisation support it not only on the grounds that it will be more efficient, some of them also claim that it will ensure better water availability to the poor. They usually cite two major reasons in support of the latter argument. First, they point out that the public sector cannot finance water projects, and therefore private-public partnerships are needed to raise the necessary finances. Second, they argue that the public sector wastes as much as 40-50 per cent of the water, and this can be reduced by privatisation, (since private companies are more efficient).

The push towards privatisation has been helped by the influence of the well-organised private water service sector, increasingly dominated by a handful of transnational corporations and their subsidiaries. Four of the top ten water companies are ranked among the 100 largest corporations in the world.<sup>19</sup> Most of them are either British or French transnational corporations, the two countries where water has been privatised for some time.<sup>20</sup> All these corporations are vying for the control of the global water market, estimated to be worth \$ 800 billion.<sup>21</sup> They have also been systematically cultivating relations with influential governments like the United States, or with international institutions like the IMF and World Bank, helping the formation of international water policy organisations that are sympathetic to their concerns.<sup>22</sup>

## **INSTITUTIONAL BASIS OF THE TREND TOWARDS PRIVATISATION**

The trend towards privatisation has been very much strengthened by the support of two key sets of institutions in the international financial order – those around the WTO and Bretton Woods.<sup>23</sup>

### **WTO, GATS and water services**

Globalisation and economic liberalisation, involving the increased movement of capital across borders has been facilitated and accompanied by the development of bilateral and multilateral trade agreements and establishment of new intergovernmental institutions such as the World Trade Organisation. Indeed, the General Agreement on Trade in Services (GATS) under the World Trade Organisation (WTO), still under renegotiation – and

potentially open to being influenced by the interventions of various actors, including NGOs – will be of crucial importance in deciding the future of water services.<sup>24</sup>

The WTO was the outcome of the Uruguay Round of trade negotiations concluded in 1994. That round strengthened the scope of General Agreements on Tariffs and Trade (GATT) of 1947. It also led to 15 trade agreements, including the GATS. The WTO was established to oversee these agreements. Today, with the inclusion of China and Taiwan, 144 countries are members of WTO. The WTO, an intergovernmental organisation, has the power to make and enforce free trade agreements and to impose trade sanctions on member countries caught breaking them. WTO rules will curtail the national space available to legislate any national laws enacted in the interest of ecological sustainability, equity concerns or national food security issues.<sup>25</sup>

True, the WTO allows members to apply higher levels of protection for legitimate objectives such as health, safety and environmental protection. But this is on condition that technical regulations are no more restrictive than necessary to meet those objectives; However, it is often very difficult to meet these conditions. In fact, as many critics have pointed out, the WTO tends to view trade in isolation from its environmental and social impacts.<sup>26</sup>

Of the WTO agreements, water resources are likely to be most directly affected as a result of GATS, of which every WTO signatory-country is part.<sup>27</sup> When public services are brought under GATS, they are deregulated and subject to the legally enforceable obligations imposed by WTO rules. Thus, market access commitments under GATS could hinder attempts by developing countries to keep out transnationals in the interests of marginal groups or the environment.

Two aspects of GATS in particular are noteworthy. First, there is its inclusiveness and irreversibility. The US pushed very hard to have services included in the Uruguay Round negotiations, but did not succeed in requiring the inclusion of all services. Countries were unwilling to accept privatisation of all their public services and would only agree to GATS if they could choose which services to include in the agreement. As a compromise, countries can currently choose which services they wish to have included under GATS.<sup>28</sup> But even this choice may be less real than it appears – the obscure Article 6.4 of the text ‘implies that all service sector regulations can be contested across the board’. Furthermore, the agreement requires that once countries accept the GATS agreement, they cannot back out of their commitments.

Second, while it ‘incorporates a provision (Article 14.b) that is intended to provide an exception to its rules if required for environmental protection or health purposes... these exceptions are very narrow. For example, they only address environmental protection when life or health is at risk, but not when a non-living natural resource is endangered. This would mean that measures to address wetland erosion or fresh water quality would

not fall within the GATS exception, and so would be illegal and therefore open to challenge under WTO rules'.<sup>29</sup> This environmental exception has so far been interpreted in a narrow way by the WTO, which has allowed only 'necessary' exceptions, and has rejected more cautious environmental approaches. Thus, rather than adopting 'reasonable laws', governments must choose the 'regulatory measure that will have the least impact on the companies'.<sup>30</sup>

In many regards, GATS is very similar to the 'failed' Multinational Agreement on Investment (MAI). Both are basically attempts to ensure that opportunities are made available to transnational corporations to invest in domestic service delivery sectors. The clause on non-discriminatory treatment ensures that corporations have rights without responsibilities. This includes, for example, the right of a US corporation to set up operations abroad and be immune from US laws. As the North American experience suggests, trade agreements may create an environment where sovereign national governments lose control of water in their jurisdiction.<sup>31</sup>

Water itself is defined as a commodity under GATT.<sup>32</sup> The GATT definition of a 'good' lists 'waters, including natural or artificial waters and aerated waters' as a good and adds in an explanatory note that 'ordinary natural water of all kinds, other than sea water' is included. The operation of water pipelines, ships etc. to supply bulk water, municipal systems for sewer and water supply are all services that could be included under GATS. If these water services are included in GATS and the provision is to be applied in various countries, the water crisis will be aggravated, especially in the developing countries, where privatisation is likely to be poorly regulated. It would also be difficult to regulate/direct the activities of these transnational corporations to ensure environmental sustainability. Likewise, if water services are brought under GATS, this would eliminate the possibility of ensuring efficient and equitable access.

The manner in which water services will be brought under GATS is still the subject of debate. At the November 2001 WTO Ministerial Meeting at Doha, a group of developed countries, led by the EU and US, proposed that water services be brought under GATS as part of environmental services.<sup>33</sup> This may have partially been in response to the criticisms from some developing countries and advocacy groups that water services should never be part of GATS. By claiming instead to provide an environmental service (of treating and disposing of polluted sewage and industrial water), part of this criticism may seem to be addressed. Yet, technically, such disposal is always combined with the provision of water services, which is also usually the most profitable sector of these services. Therefore, by focusing on environmental aspects and disposal issues the earlier agenda of privatising water services is being promoted under a new guise.



### **The World Bank, IMF and loan conditionalities**

The Bretton Woods institutions, especially the IMF and World Bank have been quite influential in these developments. They have been calling for opening up of national economies for international investments and trade, and privatisation of many public sector undertakings for economic development and efficiency improvements. Of late, this has included a call for privatisation of water projects including public water services.

A recent review of IMF policies in forty countries found that during 2000, IMF loan agreements in 12 countries included conditions imposing water privatisation or full cost recovery for public provision of the service. When the IMF presses for privatisation of water it is difficult for countries to refuse, especially if they are dependent on IMF loans, as many in the South are. Also, compliance with IMF conditionalities is a pre-requisite usually for access to other international creditors and investors, including the World Bank.<sup>34</sup>

The World Bank too has been actively involved in water privatisation. In Bolivia, at the insistence of the World Bank, the local administration privatised the water supply of Cochabamba, allowing the transnational water company Bechtel to run the project.<sup>35</sup> World Bank backed policies have set the stage for water privatisation in several other countries as well.<sup>36</sup>

### **THE IMPLICATIONS OF POORLY REGULATED PRIVATISATION**

There can be little doubt that the older model of providing water services through centralised public sector institutions is seriously flawed and unsustainable. Nevertheless, the trend towards transnational-led privatisation worsens existing problems rather than solving or reducing them. by economic commission for Laten America and Carrebean, while recognising the possible strengths of privatisation in some contexts, has sounded a particularly serious note of caution about water privatisation. 'Overall, an inconclusive, albeit growing, body of evidence suggest that privatisation of industries operating in competitive markets free from substantial market failures leads on the whole to significant efficiency gains'. But water services, it went on to argue, presented a different situation, for it was a classic case of a natural monopoly.

A natural monopoly is an industry where, by virtue of its inherent technical characteristics, total costs of production are lower when a single service provider produces the entire industry output than any collection of two or more service providers dividing the total among themselves, thus making entry unprofitable and making it efficient for there to be a single service provider within a given geographical area. The water industry is perhaps the most monopolistic of all public utility services ... Direct market competition in the provision of water supply and sewerage services would entail inefficient, wasteful, and prohibitively costly duplication of the network of water mains and sewers.

Private ownership, the study pointed out, does not make the natural monopoly problem go away. Simply converting a publicly owned monopoly into a privately owned one provides few, if any, incentives to reduce costs. 'A free market will fail to provide an economically efficient outcome when a natural monopoly exists, because there will be no competition to regulate the behaviour of the monopoly in the interest of society.' Therefore, it said, the options available to governments regarding natural monopolies were two: public ownership, as has traditionally been the case in most countries, or the regulation of privately owned monopolies. 'The purpose of regulation is to replicate the results that the competitive market system would achieve in the way of allocative and productive efficiency'.<sup>37</sup>

This question of the regulation of monopolies provides a particularly effective lens through which to view the transnational takeover of water services. Proponents of privatisation who see it as a panacea assume that the principal problem is caused by state ownership of water resources and services. But in view of the fact that water is a natural monopoly, privatisation, if poorly regulated, is not an effective solution even to economic and managerial inefficiency often associated with state ownership. And in the absence of proper regulation, transnational private sector institutions are likely to be even more environmentally damaging and insensitive to the concerns of marginal groups than the public sector monopolies that they replace.

Thus, there is, first, considerable evidence indicating that privatised water services are no more efficient than the public-sector controlled ones that they replace. Privatisation has resulted in shoddy maintenance of the infrastructure (as has been happening over the last decade in the UK, where the regulating authority has very limited powers), deterioration of quality of water supplied (as in the case of Tucuman, Argentina, 'where water tariffs doubled and water supplied turned brown')<sup>38</sup> or in substantial increase in water price (Bolivia).<sup>39</sup> Since the privatisation of water services in Britain during the Thatcher government, prices skyrocketed by up to 450 per cent, averaging an increase of 67 per cent. Thousands of people, unable to pay their bill, had their water service cut.

Second, privatisation, which often focuses on full cost recovery, has been especially adverse in its effects on the most marginal sections of society, and on the ecosystem – both of which cannot pay for water. (Here I do not raise the point that access to water is essential to life and that one should be discussing the issue of entitlement rather than that of purchasing power.) The result is that basic life and ecological demands on water are likely to be ignored in a privatised regime unless it makes business sense to support these services.<sup>40</sup> Where regulatory mechanisms are not operational, water will be collected/extracted from the cheapest source, even if the ecosystem is threatened. Such environmental degradation also directly affects the livelihoods of the (predominantly marginal) people who depend most upon the ecosystem.



Also, the practice of full cost recovery charges much more than what marginal groups can afford to pay in cash. This can result in communities resorting to other less reliable and safe means of getting water – some times even resulting in deaths.<sup>41</sup> In Cochabamba, for instance, a third of the population did not have any significant access to water resources; An attempt at privatisation in early 2000, worsened the situation as the water prices went up manifold. Even many of those who earlier had access, could no longer afford to pay for water. Civic protest eventually resulted in throwing the multinational out, but this was at the cost of many injuries and the death of one person. Even the ‘efficiency’ of the transnational corporations is likely to be at the cost of the poor. Consider the issue of ‘waste’. While there is little doubt that public sector provision of water encouraged wasteful use, it is not clear that privatisation is addressing the right kind of wasteful use. The most serious forms of wasteful use – those associated with excessive consumption – remain entirely unaddressed. Much of what the transnational private sector seeks to eliminate as ‘waste’ is part of the quasi-legal appropriation of water resources by marginal groups. Here, to eliminate ‘waste’ would effectively marginalise these groups even more.

Third, privatisation under poorly regulated institutional systems has reduced the control of the public, and of civil society organisations, over water resources. In these situations, a monopoly transnational corporation will be accountable neither to their customers, nor to the civil society organisations of the country where the business operations take place, let alone those who are not their customers due to lack of purchasing power. Essentially, such a scenario implies that the public loses much of the control they may have had before privatisation (in terms of holding the public servants accountable for the implications of their actions). Such has been the case in Britain.<sup>42</sup>

Fourth, countries have often had to make compromises in accepting transnational privatisation. Often when a public sector undertaking is privatised, the private corporation acquires existing infrastructure facilities for a throwaway price from the public sector (as happened when British water services were privatised in the late 1980s). In case of water sector investments, governments often enter into agreements with the transnational companies (at the behest of the international monetary organisations like World Bank), guaranteeing them a certain percentage as return on investment, whether the enterprise is profitably run or not. This obligation is often met by the nation states by cutting the budget allocated for essential public sector spending.<sup>43</sup>

Thus, poorly regulated privatisation reduces the control over water resources not only of the traditionally marginalised groups, but even of the mainstream civil society groups and of the state. And a range of experiences indicate that transnational-led privatisation will be less amenable and susceptible to regulation. Even in the North, there is evidence to show that transnationals and private companies have often successfully subverted regulatory systems and rendered them ineffective. And relatively weak governments in

the South will be much more vulnerable to pressure from the Northern governments, trade sanctions, and to Bretton Woods institutions which generally tend to support these transnationals.

Transnational-led privatisation need not even be the most effective means of financing. It is not clear how much of the investment in these projects comes from the private companies, and how much from other sources including the countries of operations/international financial institutions. Also, the money that the private companies raise on the market is often on the basis of guarantees from these organisations. If such guarantees were to be provided to groups outside the transnational private sector, they too might be able to raise similar amounts.

Furthermore, as the first section of the paper indicated, the inefficient and centralised water distribution systems under state ownership is only one of the three major dimensions of the current freshwater crisis. The other two dimensions are the hydraulic mission, which has caused erosion of community based water management, and patterns of intensive use. And privatisation aggravates these two other dimensions of the freshwater crisis. For example, transnational companies are likely to have little or no interest in reducing intensive use through regulatory mechanisms or low cost technologies. Their interest will rather be in supplying high cost water saving/purification technologies, not in addressing the issues related to over consumption and intensive use of water. The problem with poorly regulated privatisation, thus, is not that it abandons the old style of water management which has contributed to the current crisis; it is rather that it often reproduces and aggravates the worst features of that style.

## **INTERNATIONAL RESPONSES TO WATER CRISIS**

Many international institutions and fora have recognised the complexity of the current water crisis, and have tried to evolve a more nuanced response to it rather than responding with a simplistic emphasis on transnational-led privatisation. Three sets of organisations have been particularly important in this process: the UN organisations, the new water councils and partnerships, and international NGOs.

### **UN Organisations: Rio Conference and the aftermath**

Right from the time of the UN Conference on Human Environment (Stockholm, 1972), the looming crisis in freshwater availability was recognised as a problem of international dimensions. It was an awareness of this crisis that led to the launch of International Drinking Water Supply and Sanitation Decade, at the UN Water Conference (Mar del Plata, 1977), and to the UN General Assembly Proclamation of the decade 1981-1991 as the 'International Drinking Water Supply and Sanitation Decade'. The focus of such efforts

was not holistic, and they failed to recognise that the problem was often caused by the very same intensive water use patterns that state policies encouraged in other contexts.<sup>44</sup> They often entirely failed to solve the drinking water problem.

But from the mid-eighties, it was felt that state intervention was not an adequate response to the crisis, and that while the lack of water for domestic use was its most serious and immediate aspect, the freshwater crisis was also much larger than that alone. The most influential effort to address these broader ramifications was the 'UN Conference on Environment and Development', which resulted in Agenda 21, a document that dealt specifically with Earth's future (Earth Summit, 1992).

Calling for an integrated approach, Agenda 21 devoted an entire chapter (chapter 18) to freshwater resources, in addition to referring to them in other contexts.

Integrated water resources management is based on the perception of water as an integral part of the ecosystem, a natural resource and a social and economic good, whose quantity and quality determine the nature of its utilisation. To this end, water resources have to be protected, taking into account the function of aquatic ecosystems and the perennality of the resource, in order to satisfy and reconcile needs for water in human activities. In developing and using water resources, priority has to be given to the satisfaction of basic needs and the safeguarding of ecosystems. Beyond these requirements, however, water users should be charged appropriately.<sup>45</sup>

In the context of the initiatives around the same time to privatise water, this insistence at the conference (often referred to as the Earth Summit or the 'Rio Conference') on the priority of basic needs and ecosystem requirements, represented a cautious approach. Many of the other follow-up actions after the conference shared this caution, and focused directly on the issue of sustainability.<sup>46</sup>

One consequence of the summit was the creation of the UN Commission on Sustainable Development or UNCSD. The Earth Summit was one of the first international fora where there was a tremendous participation from both southern and northern non-government organisations. They pushed governments to create an institutional follow-up mechanism. Thus, the (UNCSD) was set up in 1992, in order to monitor the implementation of Agenda 21 and to ensure an effective follow-up of the Rio conference.<sup>47</sup> The Earth Summit had also emphasised the need for space for active and effective participation of non-governmental organisations, the scientific community and the private sector as well as local groups and communities.<sup>48</sup> Partially because of this, a UNCSD NGO steering committee was created in 1994.<sup>49</sup>

In another follow up to the summit, the UNCSD commissioned a study in 1994 on 'Comprehensive assessment of the fresh water resources of the world'. The report was prepared by Stockholm Environment Institute along with representatives for UN/DPCSD, UN/DDSMS, UNESCO, UNEP, UNDP, UNIDO, WMO, WHO, FAO, and the World Bank. The



preparation process recognised the 'need for a partnership of all stakeholders' for water resource stewardship.<sup>50</sup> These processes of debate over water policy contributed to the creation of new international forums for discussing and acting upon the water crisis.

### **World water council, global water partnership**

Two international forums have been particularly important – the World Water Council (WWC) and the Global Water Partnership (GWP) – and have played complementary roles in the international debate over water policy. The one big difference between the two is that, while the WWC, an independent NGO, registered in France, presents itself as an independent think-tank on water issues for all those individuals and professional associations and organisations concerned with water policy issues, GWP is conceived as an apex body of an international federation of regional water partnership.<sup>51</sup>

These two institutions have provided forums where a range of interests have been represented – from the transnational corporations on the one end of the spectrum to a few civil society organisations on the other end, along with bilateral aid organisations, international financing organisations, national level water organisations, independent professionals, development oriented non-governmental organisations etc. falling in between. However the decision-making is mostly influenced by two of these groups: international financing organisers like the World Bank and IMF and transnational water corporations.

The WWC, set up in 1996 took a lead role in organising the first (1997) and second (2000) World Water Forums. In 1997, it launched the World Water Vision process at the First World Water Forum in Marrakesh, and convened the 'World Commission on Water in the 21<sup>st</sup> century' to develop a vision for water.

The GWP secretariat too was set up in 1996 (See footnote 55) and was entrusted with a mandate to develop the framework for action through regional consultations, a parallel process to the development of 'World Water Vision'.<sup>52</sup>

The Vision document (developed by the commission) and the 'Framework for Action' developed by GWP, were presented at Second World Water Forum (The Hague, 2000).<sup>53</sup>

The 'Ministerial Declaration of the Hague on Water Security in the 21<sup>st</sup> Century', made by 158 delegations, representing 130 countries (including 114 ministers), as well as heads of many international organisations at the 2<sup>nd</sup> World Water Forum, drew heavily on these documents.<sup>54</sup> It stated that the main challenges facing us were meeting basic needs, securing food supply, protecting ecosystems, sharing water resources, managing water related risks, valuing water, and governing water wisely. While recognising that governments play a pivotal role in meeting these challenges, it also stressed the need for institutional, technological, and financial innovations in order to move beyond the 'Business as usual scenario'. It recognised that the involvement of all stakeholders was required to meet these challenges on the basis of an integrated approach to land and water resources management.

Yet it was in many ways a step backward from the Rio Declaration. Unlike the latter, for example, it did not stress that water should be made available free of cost to meet basic human needs and for safeguarding the ecosystem. Also these groups/ processes are not integrated in the United Nations processes on water such as the Commission for Sustainable Development.<sup>55</sup> While the forum recognised that access to water was a basic human need (*which can be provided as a service*) the forum refused to recognise water as a human right (*which has to be ensured by humanity/nation-states*)

### **NGOs: questioning privatisation**

Southern and northern NGOs have been playing a critical role, not only emphasising the need to revive traditional water management systems and develop low-cost systems, but also raising pertinent questions about inequitable and unsustainable water resource development, and transnational-led privatisation initiatives. At the second World Water Forum, some of them came out with a 'NGO Major Groups Statement to the Ministerial Conference'. Their statement questioned not only the Ministerial Declaration, but also the mandate of the World Water Commission, and the World Water Council Vision Document. It expressed serious concerns about the process and contents of the framework of action.<sup>56</sup>

After the Earth Summit, the Second World Water Forum was one of the first international fora where these groups expressed a collective opinion in an effort to influence the official statement on water. In the formulation of the Vision document and framework of action, there had been considerable consultation with national and regional organisations – especially in the South. Nevertheless, critics felt that these documents still did not reflect the views of consumer organisations, trade organisations or civil society in general.<sup>57</sup> They felt that in the 'World Water Vision' and 'Framework for Action' exercises effective participants were a group – including World Bank and the Suez-Lyonnaise des Eaux, the second largest global water corporation, amongst others – closely associated with each other;<sup>58</sup> that while some NGOs were consulted, citizens interests were effectively excluded. The NGO Major Group Statement to the Ministerial Conference called for more transparency in the work of Global Water Partnership and World Water Council. Also, some of the advocacy groups felt that the Vision document had not engaged concretely with the dangers presented by the new initiatives coming from the WTO and Bretton Woods organisations.

Specifically, some felt that 'NGOs working in fresh water needed to strengthen their capacity to respond to international, regional and national policy formulation and implementation. International policy making, around fresh water issues is dominated by multilateral donors, especially the World Bank and professional research institutions. NGOs have amassed a great deal of experience in water and governance issues under different political, economic, cultural and environmental circumstances and have a diverse range of



valuable contributions to make to policy development. Yet there has been no concerted effort to co-ordinate advocacy efforts or to integrate NGOs across the sectors (i.e. water supply and sanitation, environment, food security, dams etc.).<sup>59</sup> Out of this recognition came the establishment of Freshwater Action Network (FAN), an initiative by UNED forum, a British NGO. It aims to increase NGO participation in policy-making around freshwater issues through multi-stakeholder dialogues involving all interested groups. Blue Planet Project, an initiative by Council of Canadians, (a Canadian, national level advocacy organisation) around freshwater advocacy was an immediate outcome of the second world water forum.<sup>60</sup>

Another initiative, though not as directly relevant, has been the creation of Citizen's Compact, in response to the call by UN Secretary General Kofi Annan, for a 'Global Compact' between the UN and the business community.<sup>61</sup> The 'Citizens Compact' observes that 'citizens' organisations and movements recognise that the public sector has enormous influence on human health, environment, development and human rights'. Nevertheless, it points out, the goals of the private sector and the United Nations are different, and 'at times, corporations work at cross purposes to the wider realisation of rights and responsibilities enshrined in United Nations covenants, declarations and agreements'. As an implicit corollary to Annan's proposed compact with the business community, it proposed a 'compact between UN and civil society, regarding UN's relationship with the private sector'. The proposed compact tries to ensure that UN principles are not compromised in the UN's dealings with the transnational private sector.<sup>62</sup>

The most important citizens initiative with reference to the global water crisis, has been the 'Global Committee for the Water Contract'. This is a group initiative by 'citizens concerned by the fact that 1.4 billion of the planet's 5.8 billion inhabitants do not have access to clean drinking water, the fundamental source of life'. The Group came together in 1998 and is constituted of people from Africa, Asia, Europe, Latin America and North America.<sup>63</sup> The 'Global Contract' identifies the establishment of a 'World Water Treaty', legalising water as a vital trust and common good for all humanity as a priority. According to their manifesto, this 'treaty should exclude water from all international commercial conventions (such as those existing within the framework of the World Trade Organisation) as is already for the cultural domain' (emphasis added). National groups are now active in a number of countries, including Belgium, Canada, and USA.

While Blue Planet Project and Global Water Partnership are global networks with their origins in the North, national alliances against water privatisation are being formed in the South that share a number of platforms with these groups. Well known examples of the groups from South are The Coalition in Defense of Water and Life, Bolivia, and Ghana National Coalition Against the Privatisation of Water. In addition there are groups opposing privatisation initiatives in East Asia, South Asia, Eastern Europe, and Southern Africa.<sup>64</sup>

### **Alternatives: water as a human right**

Underlying many of these critiques by NGOs is an alternative vision which views water primarily as a common good. In this section, I would like to spell out some key components of this vision. Perhaps a useful starting point would be the Rio Declaration. The declaration specified, to recall the citation earlier, that 'in developing and using water resources, priority has to be given to the satisfaction of basic needs and the safeguarding of ecosystems. Beyond these requirements, however, water users should be charged appropriately.' This is in sharp contrast to the approach of 'full cost recovery' advocated by the proponents of privatisation. In the latter, water is presumed to be always primarily an economic good. Here, in contrast, while water is recognised as an economic good in some contexts, this economic value is subordinate to its ecological and social value. Such a recognition is important to ensure that people and ecosystems have enough water set apart to meet basic requirements.

This framework informs the new South African water policy, which insists on recognising basic human and ecosystem water requirements as a right.<sup>65</sup>

This fundamental emphasis on water as a human and ecological right may be the most succinct way of describing the alternative vision. Careful consideration needs to be given, of course, to the framework within which we conceive of water as a human right. There have often been criticisms, especially from Southern NGOs and activists, of a human rights approach. These criticisms have usually focused on how the conventional idea of human rights focuses on the individual rather than society; and on how a human rights perspective has often authorised the imposition of Northern values and culture on other societies.

These reservations are largely justified. But it is possible to defend an alternative vision of human rights. By defining water as a basic human right, we recognise an entitlement only to a certain minimal right to water. The recognition of such a minimal entitlement provides the basis for equitable access as well as a means to resist attempts by powerful groups to misuse/ mismanage water to meet their expanding wants at the cost of these basic rights or the environment.

There is much at stake in emphasising a rights based approach. It brings into the picture people who would otherwise be without protection; it allows for the development of institutional mechanisms to meet these rights; and it makes possible the development of a regulatory framework within which to secure rights.<sup>66</sup>

There is evidence of a transition to an explicit recognition of right to water in international agreements and state policies.<sup>67</sup> For e.g., the UN Guidelines for Consumer Protection, 1985, recognised the state responsibility to ensure drinking water availability and stated that 'Governments should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking'.<sup>68</sup> An explicit

recognition of the connections between human health, well being and the provision of adequate clean drinking water (and nutritious food) was articulated for the first time in the 1989 Convention of the Rights of the Child (CRC).<sup>69</sup> As of October 1999, this convention has been signed by 191 countries – more than any other human rights treaty in history.<sup>70</sup> The Convention on the Elimination of All Forms of Discrimination against Women also defines adequate living conditions, particularly in relation to housing, in terms of access to sanitation, electricity and water supply amongst other facilities.<sup>71</sup> Similarly, in interpreting Article 8 of the Declaration on the Right to Development the UN explicitly includes water as a basic resource when it states that ‘persistent conditions of underdevelopment in which millions of humans are denied access to such essentials as food, water, clothing, housing and medicine in adequate measures represent a flagrant mass violation of human rights’.<sup>72</sup> Nevertheless, there also continues to be serious opposition to the recognition of access to water as a basic human right. At the 2000 World Water Forum in the Hague, for example, water was declared a human need. This formulation was a rejection of the proposal made by many civil society organisations at the forum that water be recognised as a human right.<sup>73</sup>

What would be involved in recognising a right to water? Two aspects above all: quality and quantity. With regard to the first, i.e., right to clean water of potable quality, while the international guidelines formulated by WHO could serve as a point of reference, countries normally evolve their own ‘safe’ water standard in light of local conditions.

Secondly, since water is a limited resource, there are several questions about quantity: How much clean water does/should a person or a community have a right to? And right to clean water for meeting what purposes? In 1997, the Comprehensive Assessment of the Fresh Water Resources of the World, prepared for the UN Commission on Sustainable Development, stated that ‘all people require access to adequate amounts of clean water for such basic needs as drinking, sanitation and hygiene. It is important to have a quantified minimum so that interested groups can monitor the progress we make towards ensuring the human right to water of potable quality’.<sup>74</sup> Most evaluations of the minimum required for meeting the basic domestic water requirements<sup>75</sup> range from 25 to 70 lpcd or litres per person per day.<sup>76</sup> There seems to be considerable consensus among NGOs and water professionals that 50 lpcd would be a fair minimum in all situations.<sup>77</sup> In this case too, of course, countries will have to evolve their own ‘minimum’ water standard in light of local conditions.

However, the right to clean water cannot be met merely by ensuring that centralised water delivery systems (such as those common in the developed world and in many of the urban areas of the developing nations) adhere to these nationally set standards on quality and quantity. The bulk of the world’s population meets their basic water needs by drawing directly from surface and ground water resources. In view of this, it is important to ensure that these resources are clean by introducing measures to control pollution/ depletion of these resources.



As this suggests, a human rights approach to water resources management also does away with the conventional opposition between humans and the ecosystem. This opposition usually seems appropriate partially because humans are seen as pursuing infinitely expandable wants, and these are often met at the cost of environment. To think in terms of 'rights to meet basic needs', however, is to affirm a much more minimal but equitable access to water. In the context of a limited resource such as water, it provides a means of questioning the notion of wants as infinitely expandable, and actually complements and strengthens the environmentalist emphasis on ecosystem needs for water. Indeed, when attention is focused on the human right to water of marginal but numerically large communities, most of whom are outside the centrally organised water delivery systems, then the complementarity is even more marked, since such groups are the first to be threatened when the ecosystem is adversely affected.

### **Practical steps towards this vision**

This section considers some practical steps that can be taken to translate this alternative human-rights vision of water resources management into concrete policy. Some of these measures are already being tried out in small communities; what is needed is more national commitment and global institutional support. Needless to say, these practical steps cannot be the same everywhere. They will have to be modified with due attention to local and regional specificities around socio-economic and political considerations as well as to river basin level/micro watershed level peculiarities.

While water availability may vary seasonally and spatially, in most parts of the world there is enough water locally to meet the basic water needs of the people, the ecosystem needs and the local food security needs.<sup>78</sup> The need to use available water equitably, efficiently and sustainably raises five fundamental issues of

- allocation efficiency (i.e. the allocation of water between competing needs and demands);
- water use efficiency (i.e. how to accomplish a given purpose using 'reasonable' amount of water);
- demand management;
- community-based water augmentation and
- institutional mechanisms to support such use.

### **Re-prioritisation and allocation**

Worldwide, irrigated agriculture uses 69 per cent of the total water resource use and much of this water is used consumptively, i.e. it will not be available for reuse. In many arid regions this percentage is higher. In a large number of the developing nations where access

to safe drinking water and sanitation is a major problem, the percentage of water used consumptively reaches the high 90s!<sup>79</sup> Thus the most important issue we need to address in today's water management is that of allocation- priorities.

Allocation priorities – and these are basically political decisions, not technical or managerial as they are often understood to be – should give primacy to basic water requirements for humans and ecosystems. After meeting this, second priority could be allocation for 'reasonable domestic water requirements' above the basic minimum, and for home-based production, such as kitchen-gardening. A third priority could be for 'reasonable local production needs', such as family farm based agriculture, cattle-rearing, or fishing.

The first priority would call for campaign for measures to redirect the use of water such that more water is available to marginal groups as well as to meet the ecosystem need for fresh water. The former can be attempted through a universal right to clean water. Such an international water code would seek to ensure that commercialisation/ privatisation does not reduce citizen's access to the minimum that they would require. The ecosystem needs of the water is best managed locally/ regionally, and ensuring this calls for an understanding of the carrying capacity of the fresh water resources of the region. Drawing a lesson from South African Water Policy, national and local water policies may 'identify this as 'The Reserve' which shall enjoy priority of use by right'.

After meeting this first priority, water may be charged at cost price for the second priority of reasonable domestic use. Local policies may identify what can be termed 'Reasonable use of water' for different regions, localities and watersheds.<sup>80</sup> After the allocation of water to meet the third priority – local production needs – the use of water for any other purpose may be subject to authorisation. Providing for a limit to use, in terms of deciding on 'The Reserve' and 'Water for Reasonable Use' for an area will ensure that food security interests are addressed to a great extent at local and household level.

### **Efficiency improvement**

There are at least three areas where we need to focus our attention, First, since agriculture accounts for almost 70 percent of water use that is where much of the efficiency improvement has to take place.<sup>81</sup> The use of water in agriculture is mostly consumptive in nature. This means that water which is lost in the process of collection, storage, transfer, and application in the field is lost for good as far as that particular water cycle goes. Any improvement in the efficiency of the above services can free up and generate new water, especially for regions with growing water demand (from lifestyle changes/ new developments/ increase in population) and increasing water resource crunch.

Second, depending on the technology (irrigation methods and types) used, on-farm efficiency of water use can be increased substantially. It is common to lose more than 50 per cent of the water made available at the farm gate to unproductive purposes.<sup>82</sup>



Improving the on-farm efficiency especially in terms of cutting down the evapotranspiration will free up a lot of water, that is otherwise wasted.<sup>83</sup> This can contribute to both improved productivity and decrease in water use.

Third, outside agriculture, there is a need to improve the water use efficiency of domestic appliances. This is especially relevant for people who use centralised water delivery system for their domestic use.

### **Demand management**

However, in addition to reorganising allocation priorities and getting 'more crop per drop', there is a need for specific measures to redirect, in as painless a manner as possible, the use of water 'so as to equitably meet the developmental and environmental needs of the present and future generations'.<sup>84</sup> The approach adopted till now, based on supply management, assumes an unlimited supply of resources – whether petrol, power or water. A demand management approach in water sector could be organised around two axes. First, there could be measures to ensure that the use of water in some areas/spheres are reduced. For example, today the average water use of a US resident is 5445 lpcd, the highest in the world; in some of the developed countries like Belgium the average per capita water use is at a much lower 2292 lpcd. Compare these with the Nicaraguan average of 747 lpcd.<sup>85</sup> For India the average water use is 1369 lpcd. This demonstrates that there is scope for reducing the consumption at household level especially in water guzzling societies.

Another area where water can be saved substantially is in agriculture. Most national and regional agriculture policies promote cultivation of water intensive crops, irrespective of local water availability. For example, even in water scarce countries or regions, many policies encourage shifting away from traditional crops (tested and proven to have drought resistance) to thirsty cash crops like cotton, sugarcane and to floraculture.

Second, there could be measures to ensure that pollution, which places a great demand on water as a pollutant carrier, is minimised, so as to create a greater availability of clean freshwater. Many parts of the world are likely to experience substantial deterioration in water quality by 2025 under a business as usual scenario.<sup>86</sup> In most of North America and Europe, this will be a result of runoff and infiltration from non-point pollutant sources like intensive farming operations (which uses rising levels of fertilizer, pesticide, herbicide, antibiotics etc. and produces large quantities of animal waste). All over the world, urban waste as well as point source pollutants like factories/industries will continue to pollute water resources. In this context, it is important that incentives/disincentives are in place at every level to ensure that the water we return to the ecosystem is of such quality that the regenerative capacity of the ecosystem is not affected.

### **Augmentation of additional water supplies<sup>87</sup>**

There is also a need to explore possibility of generating additional water supply. By thinking outside the framework of hydrology mission, and by looking at the ways in which many communities have managed to survive in water scarce situations, we might learn some innovative ways to augment the supply of available water. Some examples are: rainwater harvesting in small watersheds by making contour bunds, plugs, percolation tanks, or water collection wells (in arid areas of South and West Asia); roof water harvesting and storing it in under ground tanks (in Greece, India); and fog collection (in many desert areas).<sup>88</sup>

The scope for such technologies may be immense. For instance, in the Indian context, the Centre for Science and Environment, has argued that if there is institutional support and financial commitment, rainwater harvesting in micro-watersheds can almost entirely solve the local food and water security needs of all Indian villages.<sup>89</sup> An interesting aspect of these technologies is that most can be undertaken and managed at household or community level. This can help in increased access, ownership and stewardship.

Colonial experiences in many parts of the world, and the modernisation drive of the twentieth century, saw the breakdown of these systems. Many of these traditional technologies are now being revived through non-governmental and civil society initiatives. However unless there is institutional support and incentives, these will not be undertaken more broadly.

### **Some institutional mechanisms**

In order to ensure effective adoption of these measures, it will also be necessary to devise a system of incentives and disincentives, and to institutionalise these through regulatory mechanisms.<sup>90</sup> Incentives could be provided to water users to switch to water saving gadgets/traditional, drought resistant crops, and to adopt low-cost, decentralised water augmenting mechanisms. Disincentives could restrict the spread of water guzzling crops, industries, and polluting production practices like intensive farming and industrial effluents.

Functioning local governance structures have to be in place to bring about many of the suggestions above. It is only through the powerful articulation of socially and environmentally aware community interests that a just water management regime can be realised. However, in order to ensure that a conducive environment is available for these local initiatives to flourish, a new thinking is called for in the international water management regime.

## **CONCLUSION**

Recognising 'access to a minimum quantity of clean water' as a fundamental right, or recognising a certain amount of water as 'The Reserve' to meet basic human and ecosystem needs, will be important steps towards ensuring equity and sustainability. It is only within a framework that recognises the primacy and inalienability of such rights that any

participation by countries in GATS and other WTO initiatives should be considered. Such a rights framework, coupled with local and national measures for water conservation, augmentation, demand management, pollution control as well as reprioritisation and reallocation, institutionalised through an incentive disincentive system, will help us deal with the crisis in our water resource development. The effective adoption of these can be ensured through local, regional or national regulatory mechanisms.

## NOTES

- <sup>1</sup> For details of annual water use, see Postel, *et al.* (1996), cited in Pielou (1998); Molden, *et al.* (2001).
- <sup>2</sup> See Owen (2000), p. 24. Most of these people are in the developing nations (which account for 4.76 of the world's 6 billion population).
- <sup>3</sup> Sampat (2000)
- <sup>4</sup> See, Gleick (1993). An analysis of the national water use pattern in the (highly industrialised) OECD countries shows that agriculture is the primary water user in those countries too, with the sector accounting for 44 per cent of the total water utilisation; and for 9 of those nations the use is higher than 60 per cent p. 8, in OECD: *Water Use*
- <sup>5</sup> Molden, *et al.* (2001)
- <sup>6</sup> At present, no cost efficient technological solution seems to be in sight for increasing the absolute amount of fresh water available.
- <sup>7</sup> For a systematic evaluation of the potential for conflicts between nation-states over water resources, see Postel (1993) pp 10-18. However as Prof. Kader Asmal, Chairperson, World Commission on Dams, has pointed out, Judicial or multi-lateral dispute settlements is the only way, if we are to move away from great power politics that verges on hegemony: 'Water War' rhetoric should not replace the vacuum left by the Cold War's end.' Remarks of Prof. Kader Asmal, Opening Session, Stockholm Water Symposium Laureate Lecture, Monday, 14 August 2000, Convention Centre, Stockholm.
- <sup>8</sup> Owen (2000) p 24.
- <sup>9</sup> No Profits on Water, PSI Briefing Paper, Second World Water Forum, March 2000
- <sup>10</sup> Thus, there are also efforts to privatise hydroelectric power generation. The struggle around the Maheshwar project in Narmada Valley, India, is partially in opposition to such an effort by Indian State.
- <sup>11</sup> Gleick (2000)
- <sup>12</sup> For an excellent historical analysis of the breakdown of traditional community management of water resources in the arid areas of Kutch, Gujarat, see Mahajan and Bharwada (1997). For a pan-Indian analysis see Agarwal and Narain, (1999).
- <sup>13</sup> In almost all developing countries, however, centralised water supply with piped waters and sewers is available only to the better-off section of urban groups. Poor urban settlements are not covered by such supply schemes, and no such schemes are even planned for rural areas.



- <sup>14</sup> See Allan (2001) for a discussion on 'hydraulic mission' period.
- <sup>15</sup> Barlow (2000).
- <sup>16</sup> According to Barlow (Blue Gold: the global water crisis and the commodification of the Worlds Water Supply, A special report issued by International Forum on Globalisation in June 1999): 'While billions go without clean water, North Americans use 1,300 gallons of water per person per day'.
- <sup>17</sup> The costs involved in managing any centralised water supply system are high. They include infrastructure development for: collection, storage, and transfer of water from the source to the user (and in the case of domestic and some industrial uses, extensive purification too) and management of the same. In addition when this water is returned to the nature it has, at least ideally, to be treated. This provision of subsidy extended to water extracting mechanisms (such as water pumps) to individuals and groups who wanted to manage their own water supply
- <sup>18</sup> A telling example of this privileging luxury needs over basic needs is commercial floraculture, which consumes more water than many Third World flower-growing regions can sustainably spare. On the Bogota savanna (Colombia – the second largest flower growing country in the world) where half the flowers sold in the US are grown, the water table has fallen so low that household taps run dry for most of the week. Also many flower farms let pesticides/chemicals leach into the ground water or run off into area's shriveling rivers, making the available water highly polluted. Maharaj and Hohn (2001), pp 66-67.
- <sup>19</sup> Blue Planet Project, Fact sheet No.1, 2001.
- <sup>20</sup> The global water market is dominated primarily by French companies (Vivendi, Suez-Lyonnaise des Eaux etc.) and British companies (Thames Water, Anglican Water etc.). Among the top ten transnational water companies, the only exceptions are, US company Azurix – a subsidiary of Enron – a recent entrant, and RWE of Germany. These companies form consortiums of different permutations and combinations, or subsidiaries to bid against each other depending on the specificities of a particular contract. (BPP, Fact Sheet: 1)
- <sup>21</sup> The World Bank has estimated the global market of water to be worth \$ 800 billion. In the US alone, where the vast majority of water services remains in public hands, private water corporations generate revenues more than \$ 80 billion a year, four times the annual sales of Microsoft.(The Blue Planet Project: Fact sheet no.1, 2001)
- <sup>22</sup> The right-to-water list archive, October 2001, message dated 10/26/2001, Subject: Enron: Washington's Number One Behind-the-Scenes-GATS Negotiator; Lanz (2000); Also see Boys (2000) pp 15-16. at [http://www.world-psi.org/psi.nsf/6e53a54e88ae01c12568270037cc33/C7659AA37C67AC26C12569190052DA9D/\\$FILE/Focus2\\_No\\_profit\\_from\\_water.pdf](http://www.world-psi.org/psi.nsf/6e53a54e88ae01c12568270037cc33/C7659AA37C67AC26C12569190052DA9D/$FILE/Focus2_No_profit_from_water.pdf)
- <sup>23</sup> In the ensuing discussion it is important to keep in mind that these organisations work closely with national governments and the decisions are reached in particular ways due to the bargainings and leverages used by various actors. There are ongoing efforts at various international fora to further these trends, as will be seen at the ensuing discussion.
- <sup>24</sup> In 'GATS Handbook: WTO's General Agreement on Trade in Services', Alliance for Democracy, Ruth Caplan notes that European GATS negotiators want to ensure that drinking water is included in the GATS agreement, since some of the largest water TNC's are based in Europe. Countries like the US are considering compromise positions, where they exclude transportation of bulk water across international borders by private companies, but permit water treatment,

distribution, and sewage treatment within the country. Other countries, especially in the South, 'might have a very hard time resisting the pressure from TNCs [and their allies] to put public water systems on their schedule of commitments.'

- <sup>25</sup> Murphy (1999). I thank Sophia Murphy for discussion about the WTO.
- <sup>26</sup> Letter from US national environmental organisations in July 1999 to Clinton Administration, Friends Of Earth: The World Trade Organisation and the Environment: A citizen Action guide.
- <sup>27</sup> Ruth Caplan, 'GATS Handbook: WTO's General Agreement on Trade in Services', Alliance for Democracy. This section draws heavily from Caplan in its discussion of WTO and GATS.
- <sup>28</sup> For example the US is planning to propose that GATS 'carve out' or exclude bulk water transport across international borders by private companies, and to limit application of GATS in the US to commercial operations water services. See Ruth Caplan, 'GATS Handbook: WTO's General Agreement on Trade in Services',
- <sup>29</sup> Concannon and Griffiths (2001)
- <sup>30</sup> Tim Concannon and Hannah Griffiths, 'Stealing our water: implications of GATS for Global Water Resources', Friends of the Earth, November 2001.
- <sup>31</sup> Bilateral trade agreements such as NAFTA (and multilateral trade negotiations such as FTAA) too, create an environment where sovereign national governments lose control on water in their jurisdiction. For example NAFTA, left open the possibility of export of water from the Great Lakes, the world's largest fresh water source. Sun Belt Water Inc. of Santa Barbara, California, in suing the Canadian government for \$14 billion as the British Columbia banned the export of bulk water in 1993. [In a welcome move, in the month of February 2001, The Govt. of Canada and the 8 Great lakes states of USA have passed laws banning the removal of water from the Great Lakes, since banning the export of water could be challenged under NAFTA. Right-to-water list archive, [www.iatp.org/listarchive](http://www.iatp.org/listarchive)
- Bulk water transfer or the transfer of water across continents or from one country to another (from lakes/and other large water sources) in large ships or floating bags is one of the projects favoured by some transnational water companies in North America. Another similar proposed project is cutting up the glaciers and towing it to Canada/ USA for bottling. The possible environmental impacts of such developments may be quite devastating. If bulk water transfer is defined more broadly, it can include transfer of water from one river basin to another, or from one aquifer to another, as well as transfer of water which occurs through grain trade. Bulk water transfer of this kind is done not only under privatisation but also under state schemes. Here too one needs to look at the environmental and socio-economic implication for the source and for the end users.
- <sup>32</sup> Maude Barlow, The Free Trade Areas of the Americas and the threat to social Programmes, Environmental Sustainability and Social Justice in Canada and the Americas', Council of Canadians, January, 2001. Is this fn still correct
- <sup>33</sup> WTO Services Negotiating Proposals, October 24,2001 available at WTO website; The document numbers are: US - S/CSS/W/25; EU - S/CSS/W/38; Canada - S/CSS/W/51; Switzerland - S/CSS/W/76; Australia - S/CSS/W/112
- <sup>34</sup> Sara Grusky, 'IMF forces Water Privatisation on Poor Countries', Globalisation Challenge Initiative, February 2001.

- <sup>35</sup> It took a civil society resistance movement much effort to ensure that peoples right to water was not violated. right-to-water listserv archive at [www.iatp.org](http://www.iatp.org)
- <sup>36</sup> For an analysis of this see 'The World Bank and Water Privatisation in Ghana', by Rudolf Amenga-Etego, Integrated Social Development Centre, Ghana, and Sara Grusky, Globalisation Challenge Initiative, USA:
- <sup>37</sup> Andrei S. Juravlev, *Water utility regulation: issues and options for Latin America and the Carribean*, Economic Commission for Latin America and the Carribean, October 2000.
- <sup>38</sup> PSI Briefing at the 2<sup>nd</sup> World Water Forum, The Hague, 2000.
- <sup>39</sup> Right-to-water list archive, [www.iatp.org/listarchive](http://www.iatp.org/listarchive)
- <sup>40</sup> When it comes to meeting water quality and pollution standards, the world's private corporations have a poor record; they have a bad environmental record as well. For example British water corporations have been amongst the worst environmental offenders in the UK between 1989 and 1997. Source: Blue Planet project Fact sheet No.3, The Council of Canadians, [WWW.canadians.org](http://WWW.canadians.org)
- <sup>41</sup> In October 2000, it was reported in water forum (a listserv at [www.yahoo.com](http://www.yahoo.com)) that a cost recovery system introduced by department of Water Affairs ('notoriously imposed and driven by the World Bank and the International Monetary Fund', according to spokesperson Moloantoa Molaba of the National Health and Allied Workers' Union) in South Africa, lead to a situation where rural communities could not afford the service and began using water from polluted streams in the densely populated area and probably was the cause of the cholera outbreak in KwaZulu-Natal, SA, killing 31 people in the first week of the incidence.
- <sup>42</sup> Even in cases where public-private partnership handles the water supply, and where public investment often exceeds that of private, at least by a few points, the control of the board is retained by the Corporations. See PSIRU document on privatisation of water\_services for a survey showing this. [www.psir.org/reportsindex.asp](http://www.psir.org/reportsindex.asp)
- <sup>43</sup> *Ibid*
- <sup>44</sup> See Section 1, para 3 above. To cite a few examples: the state of Gujarat in India supports an active industrialisation policy, as a result of which water intensive industries are set up in the water scarce region of Saurashtra. Similarly, Spain's tourism development policy diverts water for golf courses for tourists, in an otherwise arid area. (right-to-water listserv, [www.iatp.org/listarchive](http://www.iatp.org/listarchive)
- <sup>45</sup> Article 18.8, Agenda 21
- <sup>46</sup> These included other important water events like, the UN Conference on Human Environment (Stockholm, 1972); the launch of International Drinking Water Supply and Sanitation Decade, at the UN Water Conference (Mar del Plata, 1977); the UN General Assembly Proclamation of the decade 1981-1991 as the 'International Drinking Water Supply and Sanitation Decade; the Global Consultation on Safe Water and Sanitation for the 1990s (New Delhi,1990) and the International Conference on Water and the Environment: Development Issues for the 21<sup>st</sup> Century, or ICWE (Dublin,1992).
- <sup>47</sup> UNCSO is constituted of 53 member countries at any time and meets once every year in April.
- <sup>48</sup> Chapter 38, Agenda 21, Section dealing with international institutional arrangements.



- <sup>49</sup> NGOs are organised into issue based 'Cacus Groups' and one of them has been on fresh water. NGO Fresh Water Cacus of the UN CSD has not been as active as some of the other Cacus groups.
- <sup>50</sup> SEI, CAFRW, World fresh water problems – call for a new Realism, Stockholm, 1997, pp48-49.
- <sup>51</sup> Towards this end, in the past couple of years, GWP has set up regional 'technical assistance committees (TACs)' in many parts of the world. It has also set up 'Gender and Water Alliance', which is closely linked to but is promoted as an independent network of water professionals concerned with gender issues.
- <sup>52</sup> Currently the secretariat is based in London
- <sup>53</sup> To guide the World Water Vision Exercise, in 1998 the World Water Council convened the World Water Commission. The three parts of the vision include vision for water for people (Water Supply and Sanitation Collaborative Council), vision for water for food (FAO) and vision for water for nature (IUCN). The perceived irreconcilable positions of the latter two gave rise to the 'Dialogue on water for food and environment' an on-going process which met for the first time in December 2000 in Sri Lanka.
- <sup>54</sup> The statement agreed to by the Ministers and Heads of Delegations at the second world water forum, The Hague, 2000 is available at <http://www.worldwaterforum.net/Ministerial/declaration.html>
- <sup>55</sup> An analysis of the 2<sup>nd</sup> World Water Forum, The Hague, 2000 by David Boys, PSI, pp.15-16. Available at [http://www.world-psi.org/psi.nsf/6e53a54e88ae01c12568270037cc33/C7659AA37C67AC26C12569190052DA9D/\\$FILE/Focus2\\_No\\_profit\\_from\\_water.pdf](http://www.world-psi.org/psi.nsf/6e53a54e88ae01c12568270037cc33/C7659AA37C67AC26C12569190052DA9D/$FILE/Focus2_No_profit_from_water.pdf)
- <sup>56</sup> The statement by this group (of about 55 non government organisations and trade unions from around the world), however supported the process of community based participation employed for the Vision for Water and People
- <sup>57</sup> PSI Briefing: Controlling the Vision and Fixing the Forum: the politburo of privatisation, World Water Forum, Hague, March 2000.
- <sup>58</sup> PSI briefing paper at the World Water Forum, March 2000.
- <sup>59</sup> FAN Statement, in a letter to members, 2000.
- <sup>60</sup> [http://www.waterobservatory.org/library/uploadedfiles/Treaty\\_Initiative\\_by\\_Blue\\_Planet\\_Project\\_To\\_Sh.doc](http://www.waterobservatory.org/library/uploadedfiles/Treaty_Initiative_by_Blue_Planet_Project_To_Sh.doc)
- <sup>61</sup> This initiative is not specific to water. However it has implications for the ways in which water policies will be formulated. (Calling for a Global Contract, Mr. Annan challenged business leaders to embrace the core principles derived from UN agreements on labour standards, human rights and environment protection and in exchange promised that UN will support free trade and open markets.)
- <sup>62</sup> Citizens Compact members (>67) represent Citizens organisations, non-governmental efforts and advocacy groups from both South and North.
- <sup>63</sup> [http://www.iatp.org/watershed/library/admin/uploadedfiles/WATER\\_MANIFESTO\\_The\\_right\\_to\\_water\\_THE.doc](http://www.iatp.org/watershed/library/admin/uploadedfiles/WATER_MANIFESTO_The_right_to_water_THE.doc)
- <sup>64</sup> [http://www.waterobservatory.org/library/uploadedfiles/Cochabamba\\_Declaration\\_The.doc](http://www.waterobservatory.org/library/uploadedfiles/Cochabamba_Declaration_The.doc), [http://www.waterobservatory.org/library/uploadedfilesAccra\\_Declaration\\_On\\_The\\_Right\\_To\\_Water\\_The.htm](http://www.waterobservatory.org/library/uploadedfilesAccra_Declaration_On_The_Right_To_Water_The.htm)

- <sup>65</sup> Principle 10 of the New Water Law states that 'The water required to meet the basic human needs referred to in principle 8 and the needs of the environment shall be identified as 'The Reserve' and shall enjoy priority of use by right. The use of water for all other purposes shall be subject to authorisation' (See White Paper on a National Water Policy for South Africa, 1998). However, according to 'Water for All' June 2000, (a document by Rural Development Services Network, a network of South African civil society organisations, which initiated a 'Water for All' campaign in May 2000) even there in South Africa), 'water needs for reasonable domestic production needs have not been recognised'.
- <sup>66</sup> Julia Hausermann: 'Can we do anything sensible with a rights based approach to development?' Talk given at ODI, March 31, 1999. Of course one needs to acknowledge that despite the human right to food, 827 million of the 6 billion people in the world today, a staggering 13 percent, remain chronically underfed according to FAO estimates and this percentage will further increase by 2010. A rights-based approach can only be a first step, and provide the basis for addressing problems; it obviously cannot by itself solve problems.
- <sup>67</sup> Many of these international agreements are not legal documents, nor are they representations of international norms, but they demonstrate international intent and policy. One such example is the statement issued by the Mar del Plata Conference, 1977, which explicitly recognised the right of access to water for basic needs. As Peter Gleick has pointed out most major covenants and international agreements fail to explicitly recognise water as a human right. He argues, however, that the right to water is a derivative right even in these. Among the rights explicitly protected by these agreements are rights to life, adequate food, access to a standard of living adequate for health, well-being, and right to protection from disease. Access to clean water would appear to be a pre-condition, and hence a derivative right, necessary to meet the explicit right to health and adequate standard of life. Similarly, right to life implies the right to fundamental conditions necessary to support life. Thus it could be argued that the 'right to life' and 'rights to health and well being' together include the 'right to clean water' in sufficient quantity to support life. See Peter Gleick, 'A human right to water', *Water Policy*, Vol. 1, No.5, 1999, pp. 487-503
- <sup>68</sup> Campaign for safe drinking Water-II, CUTS/Safety Watch: Water: What are our rights to it? 1998
- <sup>69</sup> Article 24.2 of CRC, (like Article 24.2(c) of UDHC) deals with health, food and in addition also with clean water. Source: <http://www.unicef.org/crc/crc.htm>
- <sup>70</sup> Somalia and USA are yet to sign the treaty (Source: <http://www.unicef.org/crc/crc.htm>)
- <sup>71</sup> Article 14.2(h), Convention on the Elimination of All Forms of Discrimination against Women (was accepted by UN General Assembly in 1979, was ratified by 139 countries and came into force in September 1981)
- <sup>72</sup> UN 1995: The United Nations and Human Rights 1945-1995 United Nations Blue Book Series, Vol. vii, Dept of Public Information, UN Publications, New York.
- <sup>73</sup> The workshop which explored the issue of water being a human right as opposed to a mere commodity, agreed that access to safe and clean drinking water and sanitation services is a human right. However this conclusion was not accepted by all ministers (representing over 140 governments) and thus the ministerial declaration declared water as a human need. Article on

2<sup>nd</sup> World Water Forum, by David Boys, PSI, pp.15-16. Available at [http://www.world-psi.org/psi.nsf/6e53a54e88ae01c12568270037cc33/C7659AA37C67AC26C12569190052DA9D/\\$FILE/Focus2\\_No\\_profit\\_from\\_water.pdf](http://www.world-psi.org/psi.nsf/6e53a54e88ae01c12568270037cc33/C7659AA37C67AC26C12569190052DA9D/$FILE/Focus2_No_profit_from_water.pdf)

- <sup>74</sup> Comprehensive Assessment of the Fresh Water Resources of the World, SEI, Stockholm.
- <sup>75</sup> In many developing countries, persons from marginal groups survive on about 10 to 15 litres of water per day – equivalent to the amount of water used by most of us in flushing our toilets every time we use it – and the water is not necessarily of potable quality; But to use this figure as indicative of desirable minimums would be misplaced
- <sup>76</sup> According to South African water policy 25 lpcd is defined as a right (In South African Water policy there is a stipulated minimum requirement to meet ecosystem needs too); The white paper on water prepared for the state of Guujarat, India establishes 70 lpcd as the minimum basic requirement. However for urban areas with sewage, the requirement is put at 140 lpcd.
- <sup>77</sup> RSDN of South Africa is currently running a campaign to have the minimum raised from 25 lpcd to 50 lpcd. Gleick also estimates 50 lpcd as the minimum. The break up he provides is: Sanitation services: 20 l; Bathing 15 l; Food preparation (excluding the water required for growing the food consumed) 10 l; and drinking water (minimum required to sustain life in moderate climatic conditions): 5 l (Gleick, 1996.) As he points out, while USAID, World Bank and WHO recommend between 20 to 40 lpcd as the minimum needed to meet drinking water and sanitation requirements, each of these had excluded water for cooking, bathing and basic cleaning respectively.
- <sup>78</sup> Most urban centers may be exceptions; Also human settlements such as those in parts of California and Israel have developed only because there are state policies which provide incentives to do so despite limited resources.
- <sup>79</sup> Examples of some countries for which data is available for the early 1990s are Sudan (1995): 94 per cent; Afghanistan (1991): 99 per cent; Nepal (1994): 99 per cent; Guyana (1992): 99 per cent; Turkmenistan (1994): 98 per cent;
- <sup>80</sup> Such an approach would, for example, suggest that State of California will have a lower limit for reasonable use, while in the east coast the limit for reasonable use might be higher. Use of water beyond reasonable levels may be charged at progressively higher rates.
- <sup>81</sup> According to IWMI calculations, (using medium projections) inspite of efficiency improvement efforts, the world will still need an additional 17 per cent increase in irrigation to meet the demands of the world's population. (These estimates are based on the assumption that developed world will continue to consume the same way and that developing world will not only need to feed their larger population but also at a higher level of nutritional requirement. It also calculates global needs on the basis of aggregate numbers rather than in terms of local food security estimates). Part of this can be met through locally managed, low energy intensive technology like use of draught power or treadle-pumps for extraction of ground water etc. This can be an alternative to bringing more areas under centralised irrigation, and can also help improve productivity. More importantly it calls for a questioning of our current consumption pattern.
- <sup>82</sup> It is to be borne in mind that part of this 'lost water' may provide useful functions like leaching the salts of the soil, improving the moisture content of soils downstream etc. and contribute towards increasing production in those fields.



- <sup>83</sup> An interesting traditional practice in the coastal Kutch is to have mix cropped gardens with multi-level canopies, where by evapo-transpiration is reduced to a great extent.
- <sup>84</sup> This catchy phrase – more crop per drop – was also used by United Nations Secretary General Kofi Annan in his millennium address. On the one hand, this phrase captures the essence of improving irrigation efficiency; it is also however used to push for genetically engineered crops which use less water for grain production. Quote from: Report of the United nations Conference on Environment and Development, Annex 1, Principle 3.
- <sup>85</sup> USEPA: How much drinking water do we use in our homes, at <http://www.epa.gov/OGWDW/wot/howmuch.html>;
- <sup>86</sup> According to the document, Vision for Water and Nature (IUCN, February 2000).
- <sup>87</sup> Though there are modern technologies like desalinisation which is used by countries like Israel and Saudi Arabia, or pumping of flood water and storing it in aquifer (as reported in Governing, December 2000, for Equus Beds aquifer, Wichita, at \$130 million), I do not elaborate on them, as they are beyond the reach of most developing countries.
- <sup>88</sup> It has to be kept in mind that even in attempting something like rainwater harvesting the ecological functions of run-off has to be kept in mind and balanced against the need for augmentation.
- <sup>89</sup> The consumption levels presumed in this estimate are quite frugal: water for basic need was calculated approximately at 13 lpcd, a quantity used by poor people in many parts today. See Agarwal (2000).
- <sup>90</sup> Lanz (2000) cites this as one of the four lessons for a sustainable future.

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