

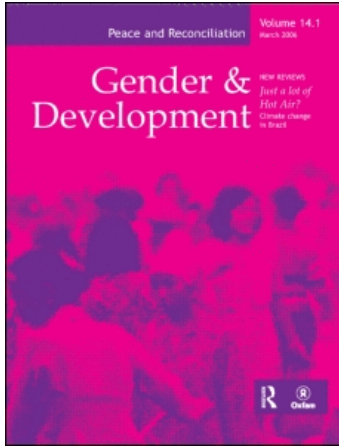
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Unequal burden: water privatisation and women's human rights in Tanzania

Rebecca Brown

Access to water is a critical component in advancing the human rights of women. Although privatisation of water services continues to be pushed by donors such as The World Bank, the available information shows that privatisations are not increasing access to water for poor women. This paper examines the human right to water and why this right is critical for women and girls. It then discusses privatisation, and the tension between contractual obligations and respect for human rights. Finally, it explores some strategies and successes from women's involvement in the struggle against water privatisation in Tanzania.

Key words: water; privatisation; Tanzania; women; human rights; equality

Introduction

In Tanzania, as in many other countries, women function within a system of structural and gender-based inequality, in which they are responsible for ensuring available water for the cooking, cleaning, bathing and other needs of the household. Lack of implementation of the right to water has a disproportionate impact on women because they are 'the ones who generally have to fill in when the state abdicates its ... social service responsibilities' (Yamin 2005, 1233).

Access to water is widely understood to be an independent and fundamental human right, as well as a necessary precondition for the right to life and enjoyment of all other human rights. The human right to water is recognised in the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on Persons with Disabilities, and the Convention on the Rights of the Child. It has also been recognised by the Committee on Economic, Social and Cultural Rights, and in the Right to an Adequate Living in the International Covenant on Economic, Social and Cultural Rights. It is thought that the original drafters of the Universal Declaration of Human Rights did not include water in their provision on the right to an adequate living, because water, like air, was so obviously necessary for life itself, and the enjoyment of other human rights, that it did not need mentioning (Gleick 2007).

National constitutions and court decisions from around the world increasingly recognise access to water as a fundamental human right. South Africa, Ecuador, Bolivia, Gambia, Uruguay and others have included the human right to water in their constitutions. The Indian courts have determined that although the right to water is not included in the constitution, it must be protected, as fundamental to the right to life (*Attakoya v. Union of India* 1990; *Mehta v. Union of India* 2004).

Implementing the right to water requires meeting the standards of quality (safe and acceptable), accessibility (within a reasonable distance and affordable) and availability (sufficient quantity without interruption). States are responsible for respecting, protecting, and fulfilling all human rights, including the right water (Committee on Economic, Social and Cultural Rights [CESCR] 2003). Respecting the right to water requires governments to refrain from actions that undermine enjoyment of the right, such as polluting water sources or engaging in forced evictions. Protecting the right to water requires the state to ensure non-state actors, including private water providers, do not take any actions that undermine the enjoyment of the right to water; an obligation that is especially relevant to this article.

Fulfilling the right to water requires the state to take affirmative steps to improve the safety, accessibility and affordability of water for all (Gorsboth 2005). In addition, the right to water must be implemented on a basis of non-discrimination, ensuring the needs of the most vulnerable communities are prioritised. States must take steps such as adopting legislation and creating a national water strategy, realising the right to water on a continuously progressive basis with maximum available resources until it is fully enjoyed by all. However, states must also ensure minimum essential levels of water are available to all in the process of improving access, safety and affordability until the right is fully realised (CESCR 2003).

The privatisation of water in Tanzania

Tanzania is legally obligated to recognise and implement the right to water as a state party to all of the legal mechanisms mentioned previously, with the exception of the Disability Convention. In Tanzania, the need for implementation of the human right to water is acute. In comparison to other countries in sub-Saharan Africa, Tanzania is below the average of 59 per cent overall access, and has the lowest level of access in the East Africa sub-region (World Health Organization [WHO] 2009).

The average Tanzanian survives on less than 50 litres of water per person, per day, which the WHO has said is the minimum to meet basic needs and dignity (WHO 2004). As of 2006, 46 per cent of those Tanzanians living in rural areas, and 81 per cent in urban areas, have access to an improved water source (WHO 2009). Although these numbers might seem promising, if data-mapping changes between 1990 and 2006 are compared, the general trend shows improvement in rural access – from 39 per cent to

46 per cent. In contrast, in the urban areas, there has been a decline – from 90 per cent to 81 per cent.

In Tanzania and around the world, the problem is not water supply, but lack of access (United Nations [UN] 2003; Department for International Development 2001). Changing this would mean a shift in the approach of policymakers. Water continues to be prioritised for those most able to pay, or for industrial use and other income-generating activities, which privileges male users. Women's voices have been marginalised, while economic and political elites, with a disproportionate influence on global economic policymaking, have favoured the neo-liberal approach of privatisation and deregulation (Khosla and Pearl 2003). This has led to water provision being seen more as a vehicle for profit than as a vital service for human survival, fulfilment of state obligations and the realisation of human rights.

The understanding of water as a commodity underpins the privatisation of water resources and delivery systems. The commoditisation of resources such as water inevitably leads to the imposition of schemes to recover the full cost of provision, and where possible to ensure a profit. Full-cost-recovery is an effort to cover all costs of water provision, and to meet profit targets. It has resulted in significant reductions in subsidies and cross-subsidies. Higher tariffs are charged to users who exceed prescribed amounts, and this excess income can be used to offset the amounts owed by users on low or no income (UN 2003). However, under cost-recovery schemes, even when the concept of affordability is integrated, inequities in access persist, both between rural and urban populations and along class lines. There is also no protection for those who cannot afford water even at reduced prices, which perpetuates the inequalities already experienced by the most marginalised groups (Bluemel 2004).

Access to water in rural communities has lagged behind urban improvements, and little if any effort has been made to improve access for poor rural women. As of 2005, 80 per cent of the population of Tanzania lives in rural areas. Studies from rural areas of Tanzania show a much lower rate of water consumption than in urban areas, which is a direct consequence of affordability and distance required to collect water (Tanzanian Gender Networking Programme [TGNP] 2005b). Consumption plummets even further during the dry seasons, where in many regions women are walking four to seven hours a day to collect water or are resorting to unimproved sources nearer to home. Making matters worse for women, in a number of cases where new boreholes have been dug or water schemes developed, water use has been prioritised for brick-making or agricultural activities, supporting men's ability to generate income, but undermining women's access to clean water near to the home, which would then liberate them to engage in income-generating activities as well (TGNP 2005b).

In urban areas, water schemes have largely been targeted in areas of 'demand'. Demand, however, is not based on need; rather, it is based on the ability to contribute capital costs, as well as the ability to cover user-fees (TGNP 2005b). One 2004 study cited that so far, 98 per cent of the spending on water in Dar Es Salaam had gone to

improving access for the wealthiest 20 per cent of the population (Action Aid 2004). Lack of access to water has led to an increase in numbers of private water vendors, whose services also divide along class lines. Those able to invest in a large amount of water at one time, and who own storage tanks, can purchase good-quality water from private boreholes, for Tshs 1–5 (Tanzanian shillings) per litre, which is less than US\$0.01 per litre. However, the poorer members of the community are left purchasing 20-l containers from street vendors of often dubious quality, and for higher rates per litre, especially in the dry season (TGNP 2005b).

A 15-year study of the impacts of water privatisation schemes in developing countries points to the inherent problem of using a business model to address poverty. Under the current global economic structure, poorer countries are considered higher risks for loans, making capital (owing to high interest rates) more expensive for investments. Higher costs of capital result in higher tariff rates for users, so that the private company may recover costs and still make a profit. This results in poor people paying more for basic services, reinforcing their poverty. In fact, the extensive list of failed water privatisation ventures to date illustrates the inappropriateness of this model in providing water. The list currently includes 17 countries, and in the last decade at least 12 cases have been brought against governments in relation to access to water in The World Bank's arbitration tribunal, the International Center for the Settlement of Investment Disputes (Peterson 2009).

Governments have come under international pressure to privatise water supplies. Following the original structural adjustment programme implemented by The World Bank between 1984–1990, in the late 1990s the government of Tanzania came under pressure to privatise the municipal water service provider, Dar Es Salaam Water and Sewerage Authority (DAWASA). Debt relief under the Heavily Indebted Poor Countries initiative was also conditional on privatisation of DAWASA (Action Aid 2004). Only one bid for the water concession contract was received, from a consortium of British (Biwater), German (Gauff) and Tanzanian (Superdoll) companies, which was known as City Water. Of the US\$164.6 million needed to complete the contract, City Water only agreed to invest US\$8.5 million. The rest was to be raised through public funds. By 2003, only 4 per cent of households had a direct connection to water supply, and there was tremendous waste in the delivery system (World Development Movement 2005). The government of Tanzania alleged that after only two years the water services in Dar Es Salaam had worsened, and that City Water had failed to fulfil numerous terms of the contract.

Residents of Dar Es Salaam began complaining of rising prices, while water connections became intermittent, leaving them to pay for water they weren't getting, and then having to pay for water from street vendors; correspondingly non-payment of services rose. In an attempt to recover unpaid fees, City Water took the drastic step of disconnecting entire communities from water supply (World Development Movement 2005). City Water claimed that inaccurate information from the Tanzanian

government had been given regarding the number of available customers, and the extent of damage to the service lines, as the reason for the poor service delivery. In 2005, after months of negotiations and the continuing deterioration of water services, the government of Tanzania terminated the contract with City Water, and a publicly owned water and sewage provider, Dar Es Salaam Water and Sewerage Corporation (DAWASCO), took over City Water's operations. As a result of the termination of the contract, City Water initiated a claim with the International Centre for Settlement of Investment Disputes, the arbitration tribunal of The World Bank (Lawyers' Environmental Action Team *et al.* 2006).

Women in Tanzania respond

Civil society organisations in Tanzania have spoken out against water privatisation and its impact on human rights – and especially on the human rights of women. In response to the tribunal case, several Tanzanian non-government organisations (NGOs) raised important arguments as to why using the business model and private investment to supply water is inappropriate. They highlighted the common practice of contract renegotiation, in which companies bid low on contracts without investigating the actual costs, and then claim lack of adequate information and demand renegotiation of the contract. They claimed this strategy is increasingly being used by private water investors, and that this is especially inappropriate in severely poor countries where people's health and lives will be directly threatened by poor performance (Lawyers' Environmental Action Team *et al.* 2006). Also, in light of Tanzania's obligations under international human rights law, the decrepit water system and lack of access to safe, sufficient and affordable water put the state in a position of violating their international legal obligations on the right to water.

Tanzanian women's rights groups have also highlighted specifically gendered impacts of a lack of access to water, such as the HIV/AIDS crisis. Under Tanzania's policy of home-based care for HIV/AIDS sufferers, women are increasingly burdened with the care of family members infected with HIV/AIDS. Caring for a person suffering with HIV/AIDS is very water-intensive and often, because of the high rates of infection in Tanzania (overall infection rates are at 6.5%, with rates as high as 19% in urban areas), there can be more than one person per household to be attended to (International Center for AIDS Care and Treatment Programs 2009). The TGNP undertook a study to explore the impacts of home-based care for HIV/AIDS sufferers on women, and found that of the 40 households they surveyed, 31 stated that their need for water greatly increased. Of these 40 households, 35 of the primary caregivers were women. Some households stated they now spent twice as much time collecting water, that they sometimes had to ask other relatives to help with the water collection, and that at times there was not enough water available because so many households in the community needed extra water to take care of their sick relatives. One household

in particular claimed they were paying Tshs 4,500 (US\$3.50) per day for water (TGNP 2005a), in a country where at the time the gross national income was an average of US\$760 per year (WHO 2009).

The lack of access to clean water also impacts on women's ability to earn a livelihood from growing fruit and vegetables and so affects the health of the entire community. In many communities around Dar Es Salaam, women grow fruit and vegetables to sell to earn income for their families. It must be done close to their homes so that they are able to attend to their other daily responsibilities. This results in many women handling contaminated water which runs off from local factories, and using this water to irrigate their gardens. In May 2008, the women of TGNP were developing a video to try and educate community members of why this practice was harmful to their health and also as an advocacy tool with municipal and national government officials (Brown 2008).

Despite the fact that women are disproportionately affected by water sector reforms, reports show little or no consultation with women during the design and implementation of the privatisation scheme in Dar Es Salaam (Action Aid 2004). Analysis of the 'pro-poor' water reform policies under this scheme failed to integrate an understanding of how impacts of reforms can be gender-specific and, therefore, did not ensure equitable access and distribution for women and girls. Issues such as the distance to water source, the impact of rising water tariffs on the household's ability to send their children to school or to buy food, the amount of water needed to care for sick family members, or the impact of inconsistent water supply, all of which have gender-specific impacts on women, were not considered (Action Aid 2004).

However, the work of TGNP and other feminist NGOs in Tanzania shows that women are analysing the problem and strategising for solutions. For example, their ground-breaking work on gender budgeting 'advocate[s] for a more people-centred participatory development strategy with equitable and just allocation of resources' (TGNP 2009). Efforts such as these have produced information, research and public awareness, and critically, they have improved the understanding of Parliamentarians of the impact their budgetary decisions have on women and the poor. The budgetary review process – which included TGNP – resulted in the requirement of gender mainstreaming to be added to the 2003 national budget for the water sector (TGNP 2009).

Women's participation is essential to ensure the gendered aspects of the lack of access to water are addressed effectively through law and policy. The active involvement of TGNP and other Tanzanian women's organisations has successfully created awareness of the critical impact access to water has on women. Although women's groups in Tanzania have been effective in ensuring their voices are heard, their critical perspectives must be integrated throughout the design, implementation and monitoring processes if women's right to water is to be fulfilled (CESCR 2003).

Claiming women's human right to water

Using the human rights framework establishes a clear obligation to ensure non-discrimination, equality and participation, and can be a critical tool to address the particular impacts of policies on women. State obligations under the International Covenant on Economic, Social and Cultural Rights integrate the requirement of ensuring non-discrimination and equality of women in the enjoyment of all rights in the Covenant (CESCR 2003). Therefore, by demanding that states honour their obligations under existing international human rights law, the participation of women during the decision-making and implementation process is required. Also, once the 'Optional Protocol' to the International Covenant on Economic, Social and Cultural Rights enters into force, legal remedies will be available for violations of Covenant obligations.

However, it would unhelpful only to focus on the role of the state in light of the current reality in which the push for privatisation is occurring. States, especially poor countries such as Tanzania, are functioning within a larger political economy dominated by large transnational corporations and multi-lateral institutions, controlled by wealthy donor countries (Yamin 2005). Although human rights law is still developing in this field, some processes for ensuring accountability for multilateral institutions and transnational corporations have been moving forward within the UN (for example, through the Norms on the Responsibilities for Transnational Corporations and Other Business Enterprises with Regard to Human Rights, and the appointment of a Special Representative of the United Nations Secretary-General on business and human rights). These processes have begun to explore the scope of human rights obligations of non-state actors. To date, this discussion has largely been within the state obligation to protect human rights and the corporate duty to respect human rights (Ruggie 2008). NGOs are also advancing the idea of corporate accountability for violations of human rights by attempting to engage with The World Bank Inspection Panel, and using the reporting processes on particular rights such as food, water, housing and health (Yamin 2005).

However, privatisation's drive for profits over the needs and rights of people will make it an unlikely system to meet state obligations on the right to water. Currently, where a state has contracted a private firm to provide water, it remains the obligation of the state to ensure that the private entity is meeting all of its obligations. A state cannot relinquish its human rights obligations by contracting a private company to provide services (Human Rights Council 2007). Water privatisation schemes have been widely criticised for limiting public discussion, and marginalising the voices of those who will be most affected. Integrating a human rights framework, particularly the obligations of non-discrimination and participation, is critical in ensuring that lack of access to water is understood in the context of the realities of life for different vulnerable groups, including poor women.

Improved access to safe, affordable, sufficient and physically accessible water requires that the design of the policy itself includes the full participation of poor and marginalised women. The design and implementation of a national water strategy must ensure that the policy is formulated on the basis of equality. Every phase of the strategy must not only ensure that these women are a part of the process, but also that they are facilitated to participate as actively as possible. This is to ensure that women are not confined to the role of objects upon which state policy is based, but that they are actors in ensuring the policy responds to their realities and accounts for differences between them. Finally, for the call for participation to be meaningful, it must ensure the real power is transferred from the state and third parties to women and the community to foster collective action that yields results (Yamin 2005).

Current surveys of privatisation plans around the world show that, to date, privatisation of water has failed to increase access in any meaningful way. Of course, this is not to say that nationally controlled and operated water service providers can always ensure fulfilment of the human right to water for women; but national control would at least mean that civil society maintains the ability to engage with policy-makers, and demand access to information regarding service provision. This generally increases the possibility of demanding accountability based on established obligations under international human rights law.

Conclusion

Increasing women's access to safe, sufficient and affordable water requires that states, development practitioners, activists and NGOs, recognise the inherent short-comings of applying a business model approach to such a fundamental and critical human right as water. The complex challenges faced by women living in poverty who lack access to the water they need are most unlikely to be addressed by private companies. If governments do rely on private providers to supply water, they must ensure that their internationally agreed obligations regarding upholding the right to water are respected. Although it is unlikely that private providers of such a critical resource will have the incentive actually to fulfil the human right to water, at a minimum they must be aware of, and agree to respect, the state's obligations.

Historic and systemic discrimination against women has inscribed gender roles which require them to walk miles every day for water, care for sick family members, and be responsible for cooking and cleaning for the household. When the state fails to ensure sufficient water is available to meet these needs, the burden falls on women at the expense of their education, livelihood and health. Regardless of the public or private nature of the water service provision, support for women to claim their human rights, and to organise effectively, can bring about lasting change. This support is best provided by ensuring the conditions necessary for women to participate actively in all aspects of the design, implementation and monitoring of water service delivery,

ensuring that women are not only objective beneficiaries, but active contributors in demanding implementation of human rights obligations. The inclusion of women in decision-making must, therefore, be meaningful, and create the conditions in which women are able to enter and change spaces of political, social and economic power.

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