

Human Rights to Water Access in South Africa: Challenges and Critical Concerns

Tinuade Adekunbi Ojo

<http://orcid.org/0000-0002-5924-3424>

University of South Africa

tinuadeojo@gmail.com

Abstract

Many scholars have written on the challenges of ensuring access to water in South Africa, and much research has been done on the national water policy of the South African Government, yet major challenges facing the water sector persist. This study presents a human rights approach as a theoretical foundation for investigating the basic right to water access, with a specific focus on the sustainable development goals (SDGs) in the three tiers of governance. Existing literature on the history of water access was explored regarding the global as well as the South African history of water rights. The main focus of this study was SDG no. 6, which is related to issues regarding water access in South Africa. The study concluded that the human right of having access to water is a crucial issue to be treated with caution by the government in order for the poor to have basic infrastructure.

Keywords: human rights to water; Sustainable Development Goals (SDGs); water access; South Africa

Introduction

Over the years, scholarly writings have shown great interest in the issue of water and sanitation as part of the necessities of life. Such interest and humanitarian concern probed the international community with the support of the United Nations Organisation (UN) to introduce a human rights framework on water at the international level (Meier et al. 2014, 834). State parties to the UN, including the Republic of South Africa, were obliged and encouraged to implement these international standards by incorporating them in their local legislations.

To the UN, “human rights” regarding access to water are important to ensure freedom and enjoyment of life and all human rights (Takacs 2016, 63). Schorr (2017, 285) defines human rights to water as “the rights to a minimal amount of water essential to supply daily basic needs.” According to Baquero, De Palencia, and Foguet (2016, 1), to measure water access in the sustainable development goal era is to define it in terms of a human rights framework. The definition justifies the approach that water access can only be discussed within the context of a human rights framework to align with the mandate of current sustainable development goals (SDGs).

The literature reviewed for this study has a similar view of the importance of and link to the theory of human rights to water access. According to Schorr (2017, 281), human rights to water are analysed and viewed in two ways:

- 1) Water rights in terms of property rights: this states that the government/state owns the water and is the custodian in charge of all water resources across the world.
- 2) Water in terms of human rights: this states that every individual should have access to a minimal amount of water needed for daily use (Schorr 2017, 205).

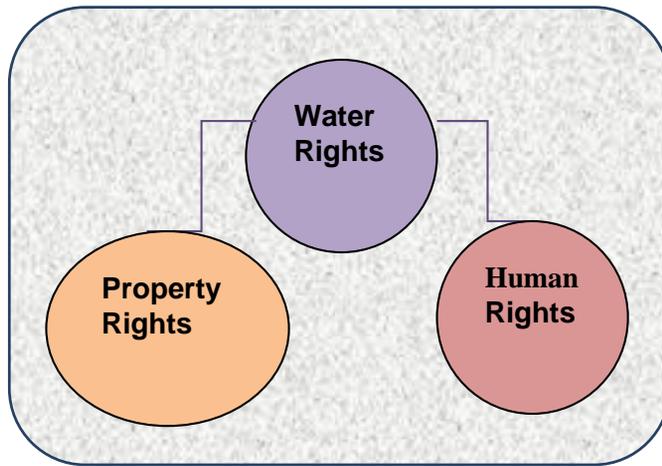


Figure 1: Schorr’s concept of water rights (Schorr 2017, 281).

This definition is also supported by the argument of Woodhouse and Muller (2017, 226), who define water as a “fugitive” that is unevenly allocated, highly variable and can be renewed as a natural resource in the ecosystem; and which is essential for social and economic use. Nevertheless, critics have argued that the concept of human rights does not unify the different tiers of life, as special rights are given to royalty and individuals in power, which leads to structural oppression (Brysk 2017, 4; Wutich, Beresford, and Carvajal 2016, 1).

Unfortunately, the rights of ordinary citizens are still being violated, despite the fact that these rights were originally set to protect them (Brysk 2017, 4). Other critics question the effectiveness of policies implemented by each nation (Colin, Priscila, and Léo 2016, 665). It is argued that although some countries have implemented human rights to water and sanitation in their constitutions, their principles are not applicable and effective in their national laws, policies and regulations (Colin et al. 2016, 665). According to Wutich et al. (2016, 1), there are practical difficulties in extending human rights to water and to citizens in the country. They argue that despite the governments’ efforts in improving water access in the urban areas, many squatter settlements, shanty towns and slums are excluded from municipalities’ water schemes. This situation is also applicable to South Africa. The continuous growth of informal settlements in metropolitan areas makes it impossible for the government to have an accurate database on informal settlements that are in dire need of water.

Sustainable Development Goals: Agenda 2030

The SDGs Agenda 2030 for sustainable development was inaugurated by the UN in September 2015, with the aim of changing formal management development goal

(MDG) loopholes and giving more attention to sustainable development across the globe. The SDGs Agenda 2030 is universal and an opportunity for all countries to respond in an integrated manner to global problems. The goals in the SDGs Agenda 2030 contain a corporate commitment to reduce inequalities within and among countries. It aims to make a demand for sustainable consumption, attain production patterns and implement aspirations for peace (Martens et al. 2016, 11). The goals implemented by the UN assembly were 17 in total, of which SDG no. 6 addresses the importance of water and sanitation accessibility for the disadvantaged and less privileged citizens in all countries.

This study focuses on SDG no. 6 as it relates to the human right to water access. One of the challenges to be battled in the SDGs Agenda 2030 is SDG no. 6, which aims to establish access to water and sanitation as a fundamental human right in all countries. SDG no. 6 aims to guarantee accessibility and sustainable distribution of water and sanitation for all by 2030 (ICSU 2015, 3; Rosche 2016, 11). Every nation has designed its water policy in line with SDG no. 6. South Africa's NDP 2030 also embraces this goal and has initiated plans to fulfil this goal by 2030 (RSA 2012b, 55). Nonetheless, the question is if this goal is achievable and attainable with regard to South African informal settlements. The researcher evaluates this goal as one of the approaches in analysing and exploring the concept of water access in South Africa.

The significance of the SDGs Agenda 2030 includes the following:

- 1) It enables the rectification of the mistakes of neglected MDGs policies. The MDGs policies neglected the effects and impacts of extreme poverty and the provision of basic infrastructures to underprivileged countries (Colglazier, 2015, 11; Rosche 2016, 3). The nations agreed that the MDGs were not capable of tackling the economic and financial obstacles globally, the sustainability of the ecosystem and the duties of the developed nations to the developing nations (Colglazier 2015, 11).
- 2) The SDGs Agenda 2030 is expected to provide a resolution to global warming, inequalities amongst the nations and other universal challenges. Hence, the SDGs serve as a bridge in reducing the equity gap between the developed and developing nations (Colglazier 2015, 11).
- 3) The SDGs Agenda 2030 is universal and all nations are expected to adopt these goals into their system. Presently all states are still working towards achieving a sustainable society, both in the developed and developing nations (Colglazier 2015, 11).

Part of the negotiation groups during the implementation of the SDGs Agenda 2030 were different water justice organisations, namely Blue Planet Project, Non-Governmental Organisations (NGO), and Mining Working Groups. Their goal was to campaign against the abuse of freshwater sources by corporate bodies, the awareness of small communities over their own natural resources by providing capacity training, and

the universal access to water and sanitation services (Hemson 2016, 1025). This caused more than 621 organisations across the globe to request for the implementation of the human right to water and sanitation as a basic strategy to achieve the goals and aims of the SDGs Agenda 2030.

It was a plan initiated after considering mistakes and loopholes (since human rights were conspicuously absent) in the MDGs, and to achieve the targets of the SDGs Agenda 2030 (Colin et al. 2016, 664). The SMART (Specific, Measurable, Achievable, Realistic and Time-bound) principle was adopted to assist nations in achieving their goals (ICSU and ISSC 2015, 3). The SDGs are expected to create a balance in the three major tiers of sustainable development (i.e. economic, social and environmental). However, some critics argue otherwise. They highlight different loopholes in the implementation of the SDGs which pose a challenge to the SDGs Agenda 2030. One of the loopholes is that the agreement included only 193 UN countries globally. The SDGs may then seem like an ideal objective not easily achievable in that time frame, although the SDGs Agenda 2030 recognises a wide gap between global opportunities, capital restraints and power (Colglazier 2015, 11).

Another loophole is the issue of economic inequalities among nations. This has an adverse effect on the human rights approach, which poses a great challenge for the implementation of SDGs to all nations (Colglazier 2015, 11). The third point of criticism is that the SDGs Agenda 2030 gives power to private investors and corporate bodies and weakens the power of the state, which hinders the power of the latter in promoting human rights and sustainability (Colglazier 2015, 12). These criticisms allow the researcher to rightfully ask if the SDGs Agenda 2030 is feasible in a country like South Africa. Are the goals measurable and achievable as clearly outlined in the National Development Plan (NDP)? This concept is explored further in the literature as we discuss human rights to water in South Africa.

History of Human Rights to Water

In 2010, the United Nations General Assembly (UNGA) resolution on water and sanitation introduced a normative framework to protect human rights through the water and sanitation policy (Meier et al. 2013, 116). The UNGA acknowledged the rights to water access and sanitation as a crucial factor for human survival and to enjoy full life benefits (Colin et al. 2016, 662). This framework was also initiated to advance global health; however, the implementation of this policy at the local level of an individual state remains one of the greatest challenges to the success of this international standard. The history is classified into four generations.

The First Generation of Human Rights

The first generation can also be referred to as the generation of civil rights and political rights (Vasile 2009, 199). According to Balahur and Monnet (2017, 978), the first generation dealt with establishing principles. It declared ownership, obligation and

integration of human rights (Evans 2007, 2–3). Balahur and Monnet (2017, 978) summarise the first generation achievements into three themes:

- 1) The stage from the Universal Declaration of Human Rights to the two covenants (ICCPR, ICESCR); the Bill of Human Rights.
- 2) The grounding philosophy and typologies of the rights in the Bill.
- 3) Generations of human rights and the first generation of Human Rights and The Universal Declaration of Human Rights (1948).

The Second Generation of Human Rights

The second generation of human rights set the standard that interprets the moral force of the UDHR into legal instruments that citizens could believe in and use to realise and protect the human rights of all individuals (Evans 2007, 4). It can also be referred to as socio-economic rights (Vasile 2009, 980). The principles of the second generation were significant achievements, but their practical effect in important and concrete situations was very limited (Evans 2007, 4). During this generation, the language of declarations and charters gave way to covenants, conventions and treaties. The bulk of “international human rights law” (the 1960s, 1970s and 1980s) was formulated in the second generation. Examples are the UN twin covenants (ICCPR, ICSECR, 1966) as well as other core treaties at the international level (Balahur and Monnet 2017, 11).

The Third Generation of Human Rights

The third generation was about coping with a new world order. This can be referred to as collective, environmental and development rights (Evans 2007, 8). Vasile (2009, 981) refers to the third generation as the generation of solidarity rights; the point raised is that rights cannot be exerted by the individual, but should be done collectively.

The Fourth Generation of Human Rights

The fourth generation emphasises the right to sustainable development of the future generation (Vasile 2009, 983). It entails making rights real. Human rights involve an obligation and a vision that bring about constant improvement; both in theory and in practice. The fourth generation is faced with the challenge of making the next decade an era of accomplishment and making rights attainable for all people and each individual (Evans 2007, 10). In the 1990s, there was a shift in human rights focus from water to other developmental issues, especially the ecosystem and global warming. However, in the year 2000, water access was revisited and the target was to have water accessible to all by 2015. All efforts were made to achieve this goal, particularly with the introduction of human rights on policies regarding water, as contained in the Sustainable Development Goals (SDGs).

Human Rights to Water in South Africa

The South African government incorporated international standards into its national policy, and the new rights-based agenda became the basic framework for human rights on water and sanitation. International human rights law was incorporated into national policy and the Constitution of South Africa (Meier et al. 2013, 125). Section 3 of the 1994 Constitution of South Africa, and the Water Service Act (108) of 1997, state that “all citizens have rights of access to basic water supply and sanitation.” Secondly, “all water stakeholders (water authorities, provider, committees and boards) must take practical measures to fulfil every citizen’s basic rights to water and sanitation.” Water service authorities must provide for these rights in setting out water service development plans (RSA 2007, n.p.). Furthermore, section 27(1) (b) of the Constitution states that “each individual has the rights to have access to adequate food and water.” Section 27(2) states that “the Government is expected to take equitable legislative and other measures, within its capacity to achieve the progressive realisation of the rights to the people.” Therefore, the state government is obliged to fulfil these rights. For Salo (2014, 27), the right to sufficient water intersect with environmental rights, and is an enabling right to enjoy other basic rights such as health, education and safety of citizens. To achieve the mandate of the rights to water, the three tiers of government (national, provincial and local government) must work in unity to implement the rights to water (Salo 2014, 27). The national government, through the DWS, sets the frameworks and standards for the delivery of water services while the provincial government (in terms of the National Environmental Management Act (NEMA 107 of 1998) is obliged to monitor and support the local government by ensuring that they exercise their functions in line with the national and provincial environmental implementation and managerial plans. The local government, on its part, is responsible for the delivery of water and sanitation services (Salo 2014, 27). The Cooperative Governance and Traditional Affairs (CoGTA) body plays an important role in municipal service delivery performance. It plans, budgets and monitors the municipality. CoGTA is responsible for the development of policies and legislation pertaining to provinces and to monitor the implementation of the local Government Municipal Act, 2000 (Act No. 32 of 2000) (University of Pretoria and SAFLII 2000; Salo 2014, 27). Therefore, water rights to people are to be achieved through the assistance of the municipal government in charge of each community. However, one obstacle to achieving this provision is a lack of basic amenities due to capital constraints (Schorr 2017, 286).

Scholars such as Takacs (2016, 64) state that “the rights to water are the only fundamental requirement for human survival; it is also the only important resource that satisfies all other human rights.” These rights are currently recognised as economic, social and cultural (ESC) rights, and they are in line with international human rights laws. Takacs (2016, 64–65) further states that the basic requirement for human survival is to have access to 50 litres of water daily, in comparison to the 20 litres proposed by the UN development programme. To guarantee a dignified life for the less privileged and vulnerable (pregnant women, children, labourers in harsh conditions), access to 50–

100 litres must be made available to every citizen, as declared by international human rights law.

According to the NDP 2030, the South African government has also initiated plans to ensure that every citizen has access to quality running water in their homes by 2030 (RSA 2012b, 55). Such an initiative influenced the decision of the National Water Bill of South Africa to prioritise the issue of access to water as a key factor for water provision (Bakker and Hemson 2000, 5). As mentioned above, the new water policy implemented by the South African government in entrenching the rights to water in its Constitution, states that “government must take logical legislative and other measures within its accessible resources to implement the progressive realisation of each of these rights” (Takacs 2016, 65). The South African Bill of Rights also attests to this in the *Mazibuko v Johannesburg* case in the 2009 ruling of the South African Constitutional Court. The right to “sufficient food and water” was legalised and recognised by the Constitutional Court.

The Constitutional Court obliges the government to cater for service delivery (water, electricity, food, healthcare, and housing) to the less privileged and disadvantaged. Although these responsibilities are challenging, the Constitutional Court deliberated that these are basic rights and the government has the mandate to fulfil them (Takacs 2016, 68). SAHRC (2001, 298) argues otherwise. It states that although the government is under an obligation to create mechanisms for people to have access to water, the rights of access to sufficient water in section 27(2) of the Constitution should not be understood to mean that the state is obliged to provide water freely, despite the state being the custodian of water and expected to be in charge of its distribution. In an ideal world, water was supposed to be free since everyone is required to have access to water. However, the present status of the rights of access to water is not enjoyed by all citizens, since water is not delivered free of charge (SAHRC 2001, 298). The urban poor and less privileged are denied the freedom of water access because of the following factors:

- 1) Inability to pay for water.
- 2) Capital constraints from the government.
- 3) Abandoned and dysfunctional projects.
- 4) Conflict amongst water institutions and government officials.
- 5) Lack of basic infrastructures (SAHRC 2001, 298).

The researcher in this study acknowledges that many disadvantaged communities are yet to realise this dream and enjoy the basic rights of access to water and sanitation. The government needs to introduce viable policies and programmes that will support the legislation in realising this goal. Recently, the South African Human Rights Commission (SAHRC) reported that 85% of South African households have access to water (Salo 2014, 14). Meanwhile, the Department of Water and Sanitation (DWA) in 2012 stated that 94.8% have access to water, while the remaining 5.2% do not have

access to water in South Africa. This is a call for concern from the government and water institutions.

There are certain critics who are against applying the concept of human rights to water policy in South Africa. For instance, Schorr (2017, 286) presented the arguments of various critics. Thielbörger (2013, 234–235) argues that human rights are unenforceable. Anand (2007, 524) states that the human rights policy has formal and informal constraints that do not contribute positively to equal access to water, especially in poor countries like South Africa. However, most literature, including official documents by both the United States water expert, Peter Gleick and the UN (Takacs 2016, 64), still recognise and emphasise the importance of implementing these rights so that people can have a healthy and dignified life (ICSU and ISSC 2015, 3; Meier et al. 2013, 128; Schorr 2017, 286; Takacs 2016, 64).

Moreover, the South African government (in its NDP 2030 plan in line with SDG no. 6 on the water access phenomenon) attests to the importance of providing water access for all by 2030. The government, water managers, policy makers, municipalities and citizens are all expected to play their role in implementing these rights. The NDP 2030 sets the pace for water sustainability, both in the present and in the future. However, one major limitation is that there are no equal distribution plants such as dead end, gridiron, circular and radial systems which are used as networks to treat and supply water to the communities. These systems are not found in informal settlements, hence not equally distributed in the cities of the country. Secondly, the municipality does not have accurate data on the number of informal settlements in the city, due to rural-urban migration and foreign migration coming into the city on a daily basis (Muzondi 2014, 102). All the efforts of the state to introduce policies that will help propagate water distribution and equal access in informal settlements—especially in the provision of water in the informal sector—have remained a major challenge (Muzondi 2014, 102).

As stated earlier, all municipalities are responsible for the implementation and supply of these basic amenities to the various communities, especially the disadvantaged localities, which include informal settlements (Schorr 2017, 286). According to Meier et al. (2013, 128); there are several factors that affect the implementation of human rights in every municipality. They include:

- 1) Lack of political will.
- 2) Financial constraints.
- 3) Limited access to basic infrastructure.
- 4) Low morale and administrative mishaps on implementing.
- 5) Lessened administrative capacity for implementation, coordination and monitoring of rights based policies.
- 6) Coordinated and monitored based policies.

- 7) Inadequate technical know-how to ensure water and sanitation policies.
- 8) Incomplete information on the population without access to water.
- 9) Challenges of water scarcity caused by climate change.

The impacts of these factors are core issues affecting the distribution of water service to different communities within the service area. The municipality must recognise and acknowledge these factors as major hindrances and work towards conquering these obstacles (Ojo 2018, 46).

Conclusion

Water access is a human right and a fundamental requirement for human survival. It is clear that human rights of water access remain a crucial issue to be treated with caution by the government, in order for the poor to have basic infrastructure. In order to achieve SDG no. 6 on water by 2030, the South African Government needs to be proactive and act strategically on issues relating to water access.

References

- Anand, P. B. 2007. "Right to Water and Access to Water: An Assessment." *International Development* 19: 511–526. <https://doi.org/10.1002/jid.1386>.
- Bakker, K., and D. Hemson. 2000. "Privatising Water: Bott and Hydropolitics in the New South Africa." *South African Geographical Journal* 82 (1): 3–12. <https://doi.org/10.1080/03736245.2000.9713679>.
- Balahur, D., and J. Monnet. 2017. "Generation of Human Rights, Social Equity and Sustainable Development." Centre for Social Management and Community Development (CSMCD). Accessed July 28, 2017, 1–14. http://ec.europa.eu/europe2020/priorities/smart-growth/index_en.htm.
- Baquero F., A. J. de Palencia, and A. P. Foguet. 2016. "Measuring Disparities in Access to Water Based on the Normative Content of the Human Right." *Social Indicators Research* 127: 741–759. <https://doi.org/10.1007/s11205-015-0976-8>.
- Brysk, A. 2017. "Expanding Human Rights." In *Expanding Human Rights: 21st Century Norms and Governance*, edited by A. Brysk, and M. Stohl. United Kingdom: Edward Elgar Publishing. <https://doi.org/10.4337/9781785368844>.
- Colglazier, W. 2015. "Sustainable Development Agenda: 2030." *Science Insights* 349 (6252): 1048–1050. <https://doi.org/10.1126/science.aad2333>.
- Colin, B., N. S. Priscila, and H. Léo. 2016. "The Human Right to Water and Sanitation: A New Perspective for Public Policies." *Ciênc. Saúde Coletiva* 21 (3): 661–670. <https://doi.org/10.1590/1413-81232015213.20142015>.

- Evans, D. G. 2007. *Human Rights: Four Generations of Practice and Development, Educating for HR and Global Citizenship*, edited by A. Abdi, and S. L. Abdi. New York: State University of New York Press. Accessed July 28, 2017.
https://derechoshumanosrrhh.files.wordpress.com/2011/09/article-human_rights_four_generations.pdf.
- Hemson, D. 2016. "Water, Sanitation and Health: South African Remaining and Existing Issues." *South African Human Rights (SAHR)* 1: 1–34.
- International Council for Science (ICSU) and International Social Science Council (ISSC). 2015. *Review of Targets for the Sustainable Development Goals: The Science Perspective*." Paris, International Council for Science (ICSU).
- Martens J., B. Adams, G. Sen, H. Schillinger, N. Bidegain, T. Mattig, R. Bissio, ... W. Obenland, C. Y. Ling, and Z. A. Samad. 2016. *Spotlight on Sustainable Development 2016*. Social Watch, Reflection Group on the 2030 Agenda for SDGs.
- Meier, B. M., G. L. Kayser, U. Quezon Amjad, and J. Bartram. 2013. "Implementing an Evolving Human Right through Water and Sanitation Policy." *Water Policy* 2013 (15): 116–133. <https://www.researchgate.net/publication/235746168>.
<https://doi.org/10.2166/wp.2012.198>.
- Meier, B. M., G. L. Kayser, J. G. Kestenbaum, U. Q. Amjad, F. Danlcanale, and J. Bartram. 2014. "Translating the Human Right to Water and Sanitation into Public Policy Reform." *Springer* 20: 833–848. <https://doi.org/10.1007/s11948-013-9504-x>.
- Muzondi, L. 2014. "Sustainable Water Provision in Informal Settlements: A Developmental Challenge for Urban South Africa." *Mediterranean Journal of Social Sciences* 5 (25): 1–102.
- Ojo, T. A. 2018. "Water Access Challenges and Coping Strategies in Informal Settlements: The Case of Iscor Settlement in Pretoria West." Master's dissertation, University of South Africa.
- Republic of South Africa. 2007. *Summary of the Water Services Act, no. 108 of 1997*. Pretoria, South Africa: Government Printer.
- Republic of South Africa. 2012a. *National Climate Change Response White Paper*. Pretoria, South Africa: Government Printer.
- Republic of South Africa. 2012b. *National Development Plan 2030: Our Future: Make it Work*. Pretoria, South Africa: Government Printer.
- Rosche, D. 2016. "Agenda 2030 and the Sustainable Development Goals: Gender Equality at last? An Oxfarm Perspective." *Gender and Development* 24 (1): 111–126.
<https://doi.org/10.1080/13552074.2016.1142196>.

- Salo, E. 2014. *Gender and Water Policies in Africa*. South Africa, Water Research Commission.
- Schorr, D. B. 2017. *Water Rights in Comparative Property Law: Global Perspectives*, edited by M. Graziadei, and L. Edward Smith. Massachusets, USA: Elgar Publishing.
- South Africa Human Rights Commission (SAHRC). 2001. "Chapter Eight: The Right to Sufficient Water." South Africa, SAHRC Publisher. Accessed July 24, 2017. [https://www.sahrc.org.za/home/21/files/Reports/3rd ESR Report chapter_8.pdf](https://www.sahrc.org.za/home/21/files/Reports/3rd%20ESR%20Report%20chapter_8.pdf)
- Takacs, D. 2016. "South Africa and the Human Right to Water: Equity, Ecology and the Public Trust Doctrine." *Berkeley Journal of International Law* 34 (2): 55–108. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2879132.
- Thielbörger, P. 2013. *The Right(s) to Water: The Multi-level Governance of a Unique Human Right*. Berlin: Springer.
- University of Pretoria and Southern African Legal Information Institute (SAFLII). Local Government: Municipal Systems Act 32 of 2000. Pretoria, South Africa: Government Printer.
- Vasile, C. A. 2009. *The Generation of Human Rights. Days of Law: The Conference Proceedings*, 1st edition, University of Masaryk, 978–980.
- Woodhouse, P., and M. Muller. 2017. "Water Governance: A Historical Perspective on Current Debates." *Elsevier* 92: 225–241. <https://doi.org/10.1016/j.worlddev.2016.11.014>.
- Wutich, A., M. Beresford, and C. Carvajal. 2016. "Can Informal Water Vendors Deliver on the Promise of a Human Right to Water? Results From Cochabamba, Bolivia." *Elsevier* 79: 14–24. <https://doi.org/10.1016/j.worlddev.2015.10.043>.