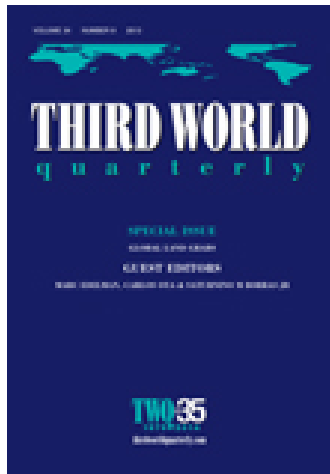


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The Global Politics of Water Grabbing

JENNIFER FRANCO, LYLA MEHTA & GERT JAN VELDWISCH

ABSTRACT *The contestation and appropriation of water is not new, but it has been highlighted by recent global debates on land grabbing. Water grabbing takes place in a field that is locally and globally plural-legal. Formal law has been fostering both land and water grabs but formal water and land management have been separated from each other—an institutional void that makes encroachment even easier. Ambiguous processes of global water and land governance have increased local-level uncertainties and complexities that powerful players can navigate, making them into mechanisms of exclusion of poor and marginalised people. As in formal land management corporate influence has grown. For less powerful players resolving ambiguities in conflicting regulatory frameworks may require tipping the balance towards the most congenial. Yet, compared with land governance, global water governance is less contested from an equity and water justice perspective, even though land is fixed, while water is fluid and part of the hydrological cycle; therefore water grabbing potentially affects greater numbers of diverse water users. Water grabbing can be a powerful entry point for the contestation needed to build counterweights to the neoliberal, corporate business-led convergence in global resource governance discourses and processes. Elaborating a human right to water in response to water grabbing is urgently needed.*

The contestation and appropriation of water is not new, but in the contemporary context of a convergence of changing global dynamics around food, climate, energy and finance, and the resulting global debates on land grabbing, there is renewed interest in a water perspective on resources grabs.¹ Increasing attention to water has the potential to (re)invigorate inquiry and action along two lines simultaneously: 1) by casting new light on the global land grab phenomenon itself and related issues of land governance; and 2) by opening up new windows on old questions of political control, social justice and environmental sustainability in relation to the use and management of water. Since about 2010 evidence has been growing that the rush to control water resources is an important cause, as well as effect, of the phenomenon now commonly known as land grabbing. Specific attention to *water* grabbing has been prompted by the observation that

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while *land* grabbing has received a lot of attention, ‘water as both a target and driver of this phenomenon has been largely ignored despite the interconnectedness of water and land’.²

In recent years various studies have put forward strong evidence for understanding land grabbing for agriculture (for food, feed, fuel and raw material for industrial use) as having important water dimensions. To illustrate, in many parts of sub-Saharan Africa rainfall is too erratic for high investment in agricultural production without securing access to reliable water. This is one of the reasons why land grabbing for agriculture almost by definition includes water grabbing, even when not explicitly specified in the land deals.³ Globally most agricultural production is based purely on rainwater that has infiltrated the soil locally (so-called ‘green water’), but diverted surface water and pumped-up groundwater (so-called ‘blue water’) are a far more reliable source for commercial agricultural production.⁴ Hence the proliferation of political narratives on ‘unexploited and underutilised’ land and water resources, and how these ‘need’ new and large-scale investment to ‘unlock’ their potential and to awaken Africa’s ‘sleeping giant’ and promote a blue revolution in Africa.⁵ Even when investment plans do not specify a requirement for water beyond rain, experience shows that additional water will have to be mobilised for the crops to do well and this may typically be in the most water-scarce period and in competition with existing and/or potential future uses.⁶

Beyond agriculture, water grabbing extends into the water, energy, climate and mineral domains in ways that highlight the distinct material character of water. In short, water may be the context of a grab, it may be the object of a grab, or it may be both at the same time. To illustrate, in agriculture-driven grabs, water is a crucial context for land grabbing—determining for example ‘which land located where’ is desirable or most coveted by investors, usually having some irrigation potential. Water can also then become the object of what is primarily an agriculture-driven land grab.⁷ In other cases water itself is the primary object of the grabbing, resulting in reallocations of formal and informal water rights and their benefits of use. For example, hydropower development in Turkey is made possible through neoliberal reforms that have transferred exclusive access rights to hundreds of rivers and streams to private companies for 49 years.⁸ In Cajamarca, Peru, large-scale private mining operations are prompting big changes in how water rights are allocated, leading to detrimental changes in the amount and quality of water available to downstream users.⁹

As these diverse examples suggest, while land and water are interconnected, a focus on the grabbing of water resources helps to bring out an additional, distinct set of issues that are linked to the materiality of water. For instance, water availability fluctuates across time and space, flows within watershed boundaries and often has pronounced dislocated (downstream) effects, in terms of quantities and qualities. Moreover, a focus on the grabbing of this materially distinct and finite natural resource also uncovers additional analytical complexities that have major implications for both policy and political action. It is very difficult to pinpoint (the effects of) reallocations, among other reasons because of surface water–groundwater interactions and inter-annual variability, a fact which in some settings has important ‘spillover’ implications for policy and political

action.¹⁰ Meanwhile, in other settings, pointing out the *threat* of reallocation of a natural resource that is so crucial for human life may be enough to generate political resistance. The fluidity of water thus both complicates and potentially enriches the picture on land grabbing, both analytically and empirically—something which researchers looking at the contemporary global enclosures are just beginning to explore.

With these issues and the ongoing build-up of water-grabbing-focused case material in mind, we find this to be a good moment to take a more systematic look at land and water governance—especially at the global level—to see where we are in terms of generating knowledge and insights that have relevance for policy and political action. The global level of water related governance mechanisms is emphasised here as it has largely been absent from the discussions on the new global enclosures. The mechanism and processes through which water grabbing takes shape in practice, such as everyday politics and the role of water technologies, would also deserve further scrutiny and theorisation, but are outside the focus of this current article. Our analysis builds on discrete policy discussions over uneven access to and control of water that go back decades and are not necessarily linked to or coterminous with the agrarian question in which much land grabbing research is framed. Meanwhile, some of the more land-oriented global governance discussions, which likewise go back decades, are virtually silent on the question of water. Land and water are interconnected, but not the same, and their management and governance have often been constructed in isolation from one another historically. There are ‘land experts/activists’ and there are ‘water experts/activists’, but seldom do the two synergise in matters of governance. Bringing water issues to the fore in this context thus involves more than simply adding water to the land grab/land governance debate and stirring. It requires taking stock of ongoing debates around discrete questions of water rights, water management, the right to water and water governance, in both the land and water domains, and exploring how these potentially inform and eventually re-forge the current global debate on land grabbing into a broader and more integrated understanding of land and water issues and governance. Such an understanding is needed in order to build political contestation towards eventually tipping the balance of power in the direction of social and environmental justice. This article aims to contribute to a deeper understanding of these issues. We begin by defining how we understand water grabbing before exploring the tendency towards neoliberal processes in disparate global land and water governance mechanism that facilitate resource grabbing. We chart the specific neoliberal turn in water management, growing corporate influence in global policy making around water and how seemingly neutral processes such as Integrated Water Resources Management (IWRM) can serve powerful players’ interests. We conclude with some thoughts on how social justice perspectives around land and water grabbing processes can be advanced.

Understanding water grabbing

Water grabbing is a process in which powerful actors are able to take control of, or reallocate to their own benefit, water resources used by local communities

or which feed aquatic ecosystems on which their livelihoods are based.¹¹ It is one manifestation of a wider global trend involving large scale (re)allocations of natural resources more generally. Drawing insight from the discussion on land grabbing, we understand water grabbing as the capturing of control not just of the water itself, but also of the power to decide how this will be used—by whom, when, for how long and for what purposes—in order to control the benefits of use. The fast growing case material on land grabbing demonstrates a wider contemporary trend or cycle in the context of the intersection of global changes in the food–feed–fuel system, in climate, and in global finance and economy, which is driving the further expansion of large-scale capitalist control over natural resources for purposes of production, extraction and speculation. As many analysts and observers have noted, capture of land and water resources by powerful actors is nothing new, but has been happening for centuries. It is useful to situate and analyse different episodes of appropriation in their particular historical and institutional context. The current cycle is what we refer to as land and water grabbing.

A key feature of this phenomenon is that the underlying business deals are large scale, most visibly in terms of land area and the capital involved. There is a strong tendency in the literature on land grabbing to try to define it mainly in terms of the physical size of the land acquired.¹² By incorporating scale of capital into the analysis, land, water and other resources become visible as central in the operation of capital. A purely land-centred view overlooks the underlying logic and operation of capital accumulation.¹³ For water grabbing, the fixation on size has a parallel in too narrow a focus on the volume of water involved, ignoring the fact that access to water concerns distribution in time and space.¹⁴ In their study of water grabbing in the Office du Niger Hertzog *et al* demonstrate how important it is to thoroughly assess water requirements in space and time, rather than just looking at water volumes.¹⁵ This also suggests a need to seriously take into account the notion of scale with regard to flows of water, in order to highlight and account more systematically for changes in water distribution and water quality.

We will return to this point later. For now it is useful to point out that our approach to water grabbing complements the work of Borras *et al* and is likewise grounded in a combined political economy, political ecology and political sociology approach.¹⁶ As such, it seeks to move beyond narrow, proceduralist mainstream understandings of the ‘grabbing’ as illegal by definition, which have the disadvantage of emphasising the formal-legal quality of the transaction and from there limiting the lens on grabbing to those cases where state law is clearly contravened. Such an approach is problematic.

First, it tends to dismiss deeper interrogation of the actual nature and desirability of the outcomes of these ‘transactions’ in terms of the underlying development model that the new economic arrangements usher in, including, as pointed out by Borras and Franco, changes in land use and land property relations that often entail dispossession and ecological destruction.¹⁷ How large-scale land and water grabs are prompting similar changes in and undermining existing use, management and social relations of water, has recently been explored by (among others) Williams *et al* in Ghana;¹⁸ Bues and Theesfeld in

Ethiopia;¹⁹ Houdret in Morocco;²⁰ Duvail *et al* in Kenya;²¹ and Velez Torres in Colombia.²²

Second, it tends to reduce the transaction itself essentially to a technical formal-legal procedure, at times even conflating financial accounting with political accountability, thereby underestimating (or ignoring) how the grabbing of natural resources is taking place in a historical–institutional field that is plural-legal, marked by power asymmetries and thus deeply political, as well as ignoring the fact that in many settings it is formal state law that has been fostering the grabs. Wily has shown how formal law that is supposed to protect vulnerable people can in practice ‘oppress and dispossess’ where land is concerned.²³ On the water front recent research shows how powerful actors use legal means as well as technical definitions to divert water and the benefits of its use away from local communities. In India sectoral reforms are used as a mechanism to legalise and legitimise water grabbing processes. The state also takes advantage of the opaqueness in the policy regime and when challenged on legal grounds, reform instruments are blatantly redefined.²⁴ In many cases state organisations bend or reinterpret existing rules and regulations that should actually prevent water grabbing, as in the case of Ethiopia, where the Water Resources Management Proclamation is supposed to protect local users.²⁵ In other cases and in various ways legally required Environmental Impact Assessments (EIAs) have served as mechanisms for ‘window dressing’ water grabbing activities.²⁶

All these studies show that a litmus test of ‘legality’ ultimately offers little traction when trying to determine what counts as water (or land) grabbing. In fact, grabbers often make use of legally complex situations around water tenure. New commercial users usually coexist with complex non-registered users who are invisible. This legal pluralism can be both enabling and disabling, but it is often very difficult for local users to defend their claims. Companies often strengthen their informal social and political networks to influence governance processes. Hertzog *et al* refer to the latter as ‘a fragmented negotiation process, whereby different investors have used different networks in the administrative and political apparatus in order to secure both suitable land and water arrangements’.²⁷ Meanwhile, formal water and land management are often separated from each other—an institutional void that also makes encroachment easier, while the separation of land and water rights can contribute to creating space for water grabbing to occur.²⁸

Stepping back, one finds that water grabbing (like land grabbing) is diverse in its appearance. Water grabbing is 1) driven by varied forms of state–capital alliances; 2) not limited geographically; 3) happening in diverse agro-ecological contexts; 4) unfolding across various water–land property rights regimes; and 5) leading to diverse impacts. Each of these points is elaborated below using recent water grabbing-focused case study material.

First, the main actors behind diverse grabbing processes are varied forms of state–capital alliances, involving varied types of mechanisms and processes that are serving to make the grabs possible—among others state law and policy reforms;²⁹ state law and new policy interpretations;³⁰ violation of state law;³¹ new public–private interest business coalitions;³² exploiting legal complexity;³³ and bypassing democratic accountability processes.³⁴

Second, water grabbing, like land grabbing, is happening across the globe. Many of the most prominent reports and studies, including those by Woodhouse,³⁵ Woodhouse and Ganho,³⁶ and Skinner and Cotula,³⁷ tended to focus initially on water grabbing happening in Africa, perhaps reinforcing the impression (cultivated in the media) that it was mainly an African phenomenon. But empirical evidence shows it unfolding throughout Latin America;³⁸ across Asia,³⁹ in the Middle East and in Eurasia as well.⁴⁰

Third, water grabbing is also happening across various agro-ecological contexts: river deltas and floodplains, inland rivers, freshwater lakes, wetlands, as well as semi-arid plains and savannah. Fourth, water grabbing, like land grabbing, is happening across diverse property rights regimes, including commons such as grazing corridors, as in the Tana Delta case;⁴¹ communal/community tenure and resource management systems;⁴² land- and waterscapes understood by local communities as territory;⁴³ and areas under individual private property rights regimes.⁴⁴

Finally, the impacts of water grabbing are diverse. The impacts of land grabbing have been distinguished as two broad types: exclusion and adverse incorporation.⁴⁵ However, water grabbing and its impacts appear to be even more diverse and ‘slippery’ because of their dislocated, timing-relevant and quality-related effects.⁴⁶ Interventions in the water cycle can, for instance, 1) disturb the amount of groundwater and downstream water available for existing users (exclusion from the volume); 2) change the peak and base flows (exclusion in timing); 3) change the agro-ecological landscape (exclusion from ecosystem benefits that require, for example, occasional flooding); and 4) affect the quality of the water (exclusion from clean and safe water). In the latter case water grabbing does not necessarily involve diversion of water, but rather pollution of water resources by powerful upstream actors in a process marked by the externalisation of problems and costs (which are transferred from the causers to local communities downstream).⁴⁷ These ‘watery’ types of exclusion could also be understood in terms of adverse incorporation—ie the imposition of water use and management regimes that directly or indirectly ‘incorporate’ people into changed water regimes tied to the new economic arrangements.

Global land and water governance

Water grabbing takes place in a field that is plural-legal—ie characterised by the coexistence of varied and diverse regulatory frameworks and processes shaping who gets what kind of access to which water resources and for what purposes. As seen in the previous section, much of the empirical work of recent years emphasises this point from a local perspective.⁴⁸ But legal pluralism characterises the ‘higher’ levels of the political system too, including the global level where plural-legal resource ‘governance-scapes’ are becoming increasingly apparent. This is certainly the case in the land and water domains. As Mehta *et al* argue:

the multiplication of institutional forms and sites of environmental governance and natural resource management itself generates greater uncertainty

as individuals, social groups, and organisations jostle for control over resources and their futures. The result is both that conventional theoretical divides between local and global, formal and informal have been made redundant, and that ambiguity, complexity and uncertainty increasingly characterise the conditions under which resources are governed and managed.⁴⁹

Powerful players can navigate their way through such uncertainties, making them into mechanisms of exclusion for poor and marginalised people, and facilitate grabbing processes.

In this section we review the main global processes that govern and attempt to regulate water access, use and the distribution of benefits and burdens of these. We describe this scene in terms of an ongoing build-up of structures, institutions and discourses. This has been happening in a fragmented fashion historically, resulting in separate regulatory activities that are relatively unconnected. The discussion traces their disparate trajectories and tries to reveal what each may be contributing to the regulation of water grabbing. We argue that these global level ambiguities are reinforcing an overall regulatory setting which is highly permissive to water grabbing when political contestation from a social justice perspective is either weak or absent.

Globally numerous competing governance mechanisms have emerged around the issue of global capital engaging with local natural resources. High-profile governance initiatives addressing land use, management and access in relation to agriculture thus include the World Bank led 'Principles of Responsible Agricultural Investment' (PRAI); the Food and Agriculture Organization (FAO)-based 'Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the context of national food security' (FAO-TG); the ongoing FAO- Responsible Agricultural Investment (FAO-RAI) process; and most recently the G8's 'Land Transparency Initiative' (G8LTI). None of these initiatives deals much with issues of water access, use or the distribution of benefits and burdens. Although 'land tenure security' is a major concern in all these initiatives, they do not necessarily refer to the same thing, while at the same time land remains the main focus of regulation. Despite the growing visibility of water grabbing, these agriculture-oriented governance initiatives have tended to neglect a wide and deep range of issues related to water.

The highly contentious political process that led to the recently adopted FAO-TGs warrants special attention, since it constitutes the most recent site of struggle in the 'proxy war' between competing views and interpretations of natural resources.⁵⁰ The FAO-TGs mark an important step forward in elaborating a human right to land, as they are 'the first international instrument which applies an ESC-Rights based approach to the governance of land'.⁵¹ Although the understanding of land in these guidelines has its problems and contradictions, the situation is even worse with respect to water, since it was excluded from coverage.⁵² During the final negotiations, the effort by civil society to get water into the guidelines ran up against opposition and resistance from other participants who denounced water and water governance as 'too complicated'.⁵³ For whatever the FAO-TGs are worth, this poses a major ambiguity since water is indeed deeply and inextricably interconnected with other natural resources.⁵⁴

The FAO-TGS and other agriculture-oriented governance initiatives have emerged against the backdrop of competing (and still evolving) international regulatory frameworks. One of these is international human rights law, which served as a crucial source of inspiration, guidance and support for the civil society delegation throughout the FAO-TG formulation process, while seeming to provoke much discomfort and disdain from some government delegations. Although there is still a long way to go and progress has been uneven, international human rights law has been slowly moving towards authoritative establishment of land, water and associated resources such as fisheries and forests as matters of human rights. This has led to the inclusion of access to land as part of ‘the right to feed oneself’.⁵⁵ Although there is as yet no distinct human right to land, the pressure to establish such a right remains.⁵⁶ There is a globally recognised right to water but it remains conceptually ambiguous and so far has had limited value as a countervailing force against grabbing processes.

The human right to water was the result of decades of intense global struggle and lobbying, as it was initially resisted by powerful players in the water domain and by countries such as Canada and the USA. It was not explicitly recognised in the 1948 Universal Declaration of Human Rights or in subsequent declarations. In July 2010 the UN General Assembly, and later in September 2010 the UN Human Rights Council, finally recognised access to clean water and sanitation as a human right. This official recognition was a great victory for the global water justice movement and has been used as a powerful mobilising tool for water struggles all around the world.

South Africa, Ecuador, Bolivia, Gambia, Tanzania, Uruguay and others have recognised the human right to water, thereby committing to respect, protect and fulfil the right of access to safe and affordable domestic water services. But all over the world there remains a considerable gap between human rights talk and human rights practice and governments are usually constrained in their financial commitments to achieving universal access to water and sanitation. There is often a clear tension between a government’s commitment to rights and to market-based mechanisms, with the latter tending to prevail. Bolivia, for example, has been at the forefront of international campaigns to recognise the human right to water. Yet, domestically, the Morales government has been criticised for pursuing economic development policies based on industrialisation and extractive industry expansion that are elite-driven and often violate local people’s human rights to water and water rights.⁵⁷ South Africa was the first country to provide constitutional recognition of the human right to water and in 2001 the Free Basic Water Policy was introduced, which aimed to provide a basic supply of water to all households free of charge. At the same time the South African water policies were also informed by market-driven approaches to water management, including an emphasis on cost recovery, user fees for water and controversial cut-offs which have violated poor people’s basic rights to water.⁵⁸

Human rights, like any rights, are open to interpretation, which makes ensuring a social justice interpretation a matter of political power and strategic political action. In the case of the human right to food, the office of the UN Special Rapporteur on the Right to Food has traditionally served as an important rallying point for civil society organisations and social movements seeking to

realise a social justice interpretation. By contrast, the UN Special Rapporteur on the Right to Water has taken a quite different approach, issuing reports stating that ‘the human rights framework does not express a preference over models of service provision’ and that ‘human rights are neutral as to economic models’.⁵⁹ Thus, it is not surprising that big global water corporations such as Suez have publicly declared that they ‘strongly believe’ in the right to water.⁶⁰ So far the human right to water has not been deployed to countervail water grabbing processes, partly because its scope is limited to domestic, rather than productive uses of water. Unlike the UN Special Rapporteur on the Right to Food, who has frequently commented on land grabs, the UN Special Rapporteur on the Right to Water has been reluctant to engage with water grabbing issues.

The other main competing international regulatory framework is being consolidated in an array of free trade agreements (FTAs) and bilateral trade agreements (BITs) building on legalist corporate business law discourses, principles, definitions and their underlying assumptions. Many social and environmental justice activists working on a wide range of concerns see these trade agreements as fundamentally at odds not only with human rights law, but also with democratic governance more broadly. They complicate national efforts to regulate environmental, labour, domestic content questions and treat national legislation on these matters as measures in restraint of trade, which are potentially actionable in the dispute resolution mechanisms of the FTAs or World Trade Organization (WTO).⁶¹ The rise of a corporate-business law agenda in recent decades is the result of the project to institutionalise and consolidate neoliberalism internationally by strengthening markets while shrinking states,⁶² and is expressed through law and policies on trade and investment, which ‘play a crucial role in building the global supply chains that are part of the modern international economy’.⁶³ Narratives that justify land and water grabbing play an important role in facilitating these processes. In addition to the narrative of ‘marginal’ and ‘idle’ lands as ‘underexploited resources’, there is also the ‘economic scarcity’ narrative. Such narratives have been serving to justify the involvement of the private sector in irrigation on the twin argument that public funds are short while private funds are more efficient with regard to water use. Since the 1990s FTAs and BITs have been opening up new opportunities for foreign investors to bypass national laws and to question proposed government regulations before international tribunals if profits are threatened. National governments are known to refrain from (or resist) enacting human rights-based social and environmental regulation within their own borders. Linked to these developments are the reforms of the water and energy sectors promoted by multilateral and regional banks encouraging privatisation and deregulation, often in the name of efficiency.

If the most prominent contemporary global governance mechanisms shaping the land domain today offer little concrete guidance or practical insight on how to deal with land and water grabbing, neither do the main global governance mechanisms that exist more specifically for water. Contemporary water governance at the global level is an arena arguably characterised by a high degree of ambiguity, resulting from competing formal regulatory actors and official processes, with few agreed rules or procedures regarding decision making. Even

the UN Watercourses Convention, the global water convention specifically related to the governance, use and management of watercourses, has not been ratified by sufficient countries to enter into force.⁶⁴ Because there are very few formal agreements, there is no single clear-cut global water regime with agreed-upon rules of the game providing normative prescriptions, clear expectations and institutionalised relationships.⁶⁵

Partly this is because water is not really a global issue or a 'global public good'. Despite the existence of the global hydrological cycle, water remains highly localised or at best regional in scope. Water availability is variable across time and space and depends on factors such as climate, season and temperature, making it very difficult to provide blanket statements and solutions regarding the global state of water. Access to water between countries, within regions and countries, and between women and men is highly unequal and water shortages affect different social groups differently, while hitting the poorest hardest. Even though the 'global' nature of water is difficult to capture, and there is no single overall clear-cut global water regime, there is nonetheless an emerging global water regime.⁶⁶ This emerging water governance regime at the global level could best be described as plural-legal, encompassing several separate regulatory orders, each with its own field of action and institutional logic. Examples include the dams movement, convergences around the neo-liberalisation of water, international consensus around IWRM, and the water footprint discourse.

It is relevant to briefly look more closely here at the water footprint discourse. In assessing water grabbing 'water footprint accounting', which demonstrates flows of 'virtual water' as 'embedded' in products, has been suggested as a useful tool.⁶⁷ But water footprint tools have not taken account of the political nature of water distribution, especially at the local level.⁶⁸ For instance, water footprint accounting does show that, through the import of Peruvian asparagus, large amounts of virtual water are imported,⁶⁹ but it does not differentiate between an asparagus produced under industrial agriculture, with devastating effects on the local economy and depleting a non-renewable aquifer, on the one hand, and an asparagus produced under robust family farming with renewable (rain)water.⁷⁰ In that respect water footprint accounting has very limited value in the assessment of global water grabbing; in some cases it could even facilitate grabbing processes thanks to assumed 'higher water productivity'.

Zooming back out to look at the broader picture, each of the different global regulatory orders for water have their own networks of experts, including economists, engineers, policy professionals, consultants, and so on. Many supranational organisations, such as the World Commission on Dams, the World Water Council (WWC) and the Global Water Partnership (GWP) are currently addressing global problems and issues concerning water. Even though UN agencies have water programmes, there is no one major agency devoted to water and the one that does exist, UN Water, established in 2003 as a UN inter-agency coordination mechanism, remains a virtual institute with little influence. The GWP was founded in 1996 to champion the case of IWRM around the world. The World Water Council is a controversial elite international body based in Marseille, established by the World Bank, members of French water companies operating around the world and other water policy experts. Added to the mix is the

current engagement of corporate players in water management, playing a key role in determining water security and insecurity. Even though these supranational organisations lack global legitimacy, they are powerful in shaping dominant debates and ongoing processes.

Amid increasing complexity and uncertainty, disparate global processes are interacting in a mutually reinforcing way to shape the way land and water are being allocated and reallocated. This is seen especially around processes of commodification and financialisation of natural resources, with land and water grabbing as both cause and effect.⁷¹ This process has been termed liberal environmentalism or market environmentalism.⁷² Land and water are increasingly taken strictly as an economic asset, either in productive, extractive or speculative directions. The convergence is therefore a reflection of the ideological ascendancy of neoliberal corporate power across domains. There is a danger that this leads to the establishment of an overarching global legal framework for natural resources that ‘secures’ rights to these from a corporate business and investor-protection perspective. Recent debates around the ‘securitisation of the environment’, accompanied by talk of future threats to human security and the ‘food–energy–water nexus’ driving new hydropower and energy developments and promoting the inclusion of new corporate players are all pointing in this direction.

Privatisation, commodification and water reforms

In this section we look more closely at the global processes that are interacting to shape the way water is allocated and reallocated and water grabbing is taking place. We do this by sketching the historical background of what marked the neoliberal turn in the water sector: the Dublin declaration and the subsequent processes of water privatisation, commodification and eventually also its financialisation (next subsection). The discourse of IWRM and its key principles have become highly influential all over the world. The ways in which IWRM policies and principles can form the playing field through which many of the water grabs take shape are elaborated in the following subsection before we conclude with a discussion on the growing influence of the corporate sector.

From Delhi to Dublin and the neoliberal turn in water

Water has been the focus of global collective action. Yet, despite repeated principles, declarations and meetings, nearly 800 million people lack access to safe water for drinking. The Mar del Plata Conference (1977) was the first—and still the only—global conference on water held under United Nations auspices. This led directly to the UN ‘Water Decade’ (1981–90), which aimed to achieve universal coverage for drinking water and sanitation by 1990. At the end of the decade the target remained distant. To assess what had happened and to look towards future pathways for collective action, in 1990 the UN held a global consultation in New Delhi hosted by the Indian government. Under the slogan, ‘Some for all rather than all for some’, the New Delhi Statement emphasised 1) protection of the environment and safeguarding of health through the

integrated management of water resources and liquid and solid wastes; 2) institutional reforms promoting an integrated approach; 3) community management of services, backed by measures to strengthen local institutions; and 4) sound financial practices, achieved through better management of existing assets, and widespread use of appropriate technologies.⁷³

The New Delhi Statement, with its focus on equity and universality, was rapidly overshadowed by the 'Dublin Statement' of 1992, an important turning point in the global discourse on water governance. This statement emerged from the International Conference on Water and the Environment (ICWE) held in Dublin in January 1992. It was organised by water experts and held under the auspices of the World Meteorological Organization. The conference culminated in the formulation of the Dublin principles which recognised the finite nature of water and its key role in sustaining life, development and the environment; the importance of participatory approaches in water development and management; the central role played by women in the provision, management and safeguarding of water; and the economic and competing values of water and the need to recognise it as an economic good. It is this final principle that has made Dublin a focus of policy differences and global fault lines ever since. Declaring water an 'economic good' in Dublin remains to this day deeply controversial. Many in the global water community still feel this not only legitimises the 'commodification' of a life-giving resource, but also continues to justify potential privatisation and resource capture (including water grabs). Strictly speaking, 'economic goods' are goods that are scarce and legitimise human action and market intervention.⁷⁴

The controversial declaration of water as an economic good must be seen as a logical next step from the sustainability paradigm that had its roots in the late 1970s in combination with the neoliberal turn to economics more generally. The sustainability perspective raises the question of financial sustainability, ie the ability to generate finances to sustain and maintain a particular use. But there are some water needs and uses that lie outside the gamut of economic valuation. Through its focus on water as an economic good, Dublin provided a solid building block for a global discourse that evaluates water distribution in the first place on its economic value.

Corporate agriculture, mining, hydropower and other capital-intensive economic activities are often seen as more important contributors to economic growth than smallholder agriculture, community drinking water and traditional fisheries. The latter may have a place in national development policies, but usually are then framed within the realm of 'subsistence' rather than being seen as sectors that can provide a long-term sustainable contribution to a country's development. In other cases peasant agriculture and traditional fisheries are completely ignored and the areas in which these are important declared 'vacant', 'unused', 'empty' or at least 'underutilised'. For Mozambique Beekman and Veldwisch demonstrate how discourses and policies that favour foreign direct investment over investing in smallholder agriculture encourage local water grabbing processes.⁷⁵ There are many other cases in which these dichotomies between smallholders and commercial investments are clearly observable in national processes, policies and discourses.⁷⁶

The shifts in paradigms around water provision and management as expressed in the Dublin statement must be viewed in conjunction with the rise of the neoliberal agenda of the early 1990s, which entailed a shift away from viewing governments as responsible for poor people's needs and problems. Instead, the state was required to play a facilitating and regulatory role without direct engagement. The Washington Consensus of the 1990s thus saw changes in how basic services such as water were governed, which included budget cutbacks, privatisation and deregulation, often legitimised through processes of economic liberalisation and structural adjustment. After Dublin the World Bank began to play a central role in water and sanitation and water has now moved from being viewed as a common good and a public service to a commodity being managed according to economic principles.⁷⁷ This has led to controversial water privatisations around the world, details of which cannot be discussed here.⁷⁸

Twenty years on from the Dublin Conference, we are witnessing the privatisation not just of the service and infrastructure but of the resource itself. In recent years water has been transformed into a commodity tradable on large-scale global markets through water trading schemes, leading to the financialisation of water resources and the management of water in the hands of financial markets.⁷⁹ In Chile it has been possible to buy and sell different types of water rights since 1981 and the country's water market is considered an important policy model on which various other countries, such as Mexico, Argentina and Morocco, have based their policies.⁸⁰ In Uganda the controversial Bujagali dam, which is being resisted by local communities around the Nile, is being financed by the hedge fund Blackstone in partnership with the World Bank and the European Investment bank.⁸¹ These and other examples highlighted in this section have demonstrated the diverse trajectories of neoliberalism that have led to the dominant discourse of water as an economic and tradable good whose market value supersedes its cultural and social values.

IWRM: fluidity of a concept

The concept of IWRM, as practised around the world for some two decades, emerged as an elaboration of the 1992 Dublin principles. The most frequently used definition of IWRM comes from the Global Water Partnership: 'a process which promotes the coordinated development and management of water, land and related resources, in order to maximise the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems'.⁸² Despite these laudable aims, IWRM is a rather vague, diffuse and amorphous concept and it remains unclear what should be integrated and by whom.⁸³ However, it still remains a highly attractive concept precisely because of its capacious nature, which provides a lot of space for interpretation, and because of its ideal-typical nature of what good water management should look like.⁸⁴

IWRM seeks to achieve a maximisation of economy, equity and ecosystems. However, it is rarely acknowledged that these goals are often 'antagonistic...that

trade-offs are necessary and hard to achieve in such situations'.⁸⁵ IWRM thus 'obscure[s] the political nature of natural resources management; and [is] easily hijacked by groups seeking to legitimise their own agendas'.⁸⁶ All this can make IWRM an apolitical cloak for processes that are deeply transformative and involve the reallocation of limited water resources. In what follows we direct attention to two aspects of many IWRM-influenced water reforms that are important for water grabbing dynamics: first, decentralisation according to hydrographical boundaries and the involvement of water users water management and, second, the licensing of water abstraction. While these reforms may have contributed to democratising water management in some ways, our purpose here is to show how they can also unwittingly contribute to water grabbing.

Decentralisation of water management. In the water sector decentralisation in practice means the reorganisation of water governance from administrative units (eg districts) to units that coincide with hydrographical boundaries (eg basins). This provides an opportunity to deal with the dislocated effects of water use (eg pollution). Decentralisation policies and approaches often involve the setting up of Water Users Associations (WUAs) and/or River Basin Organisations (RBOS), which are now important exemplary 'models' in the water sector.

The WUA and RBO models include an emphasis on participation of water users in water management. A large body of literature highlights the mixed experiences with user involvement in water management at all levels of governance.⁸⁷ For example, the involvement of users in water management does not prevent strong actors from capturing unfair shares of water. Rather, user participation often becomes the forum through which the resource capture is taking shape, often facilitated by excluding the informal, legally unrecognised water users. Kemerink *et al* have analysed in detail for a case in South Africa where, despite the best of intentions, a policy of user participation in water management through the establishment of a WUA is used by the most powerful actors in the catchment to maintain the status quo of a highly unequal water distribution pattern established in the apartheid era.⁸⁸ Warner *et al* refer to various cases of participatory water management in which the process was used as a mechanism to delay decisions to the benefit of vested interests.⁸⁹

More recently participatory processes have come to form the stage of appropriation processes and are used to legitimise water grabbing, though this does not mean that these processes cannot also be used to resist capture. In many countries licences for large-scale land and water investments are subject to an EIA that includes stakeholder consultations. When investors get a licence they may be expected to have passed through this stakeholder consultation process. However, such processes are often flawed and end up justifying the investment and silencing further resistance because of the completion of the stakeholder consultation exercises. Examples of such processes with regard to water grabbing have recently been documented in Ghana,⁹⁰ Mozambique,⁹¹ and Kenya.⁹²

Regulation and control through permit systems. Permit systems are an integral part of IWRM frameworks and have been drawn up in many countries. Van Koppen shows how formal administration-based water rights systems in sub-Saharan Africa have tended to dispossess the informal majority by design, as 'permit systems boil down to the formal dispossession of rural informal

water users who manage their water under community-based arrangements'. Water rights that have historically been arranged locally are now declared subject to formalisation under national law. Existing rights are cancelled-out, with a promise to include them in the new law. In practice many of these rights are not (and often cannot) be included in the registration and licensing, leading to a weakening of the position of historical smallholder use. Complicated and expensive license application procedures ensure that water permits 'favour the administration-proficient'.⁹³ Dispossession through licensing is a prominent mechanism in the current era of global resource grabs.

Many of the colonial permit systems were designed to dispossess rural informal water users and van Koppen has argued that recently introduced or revised permit systems, based on such colonial logic, are *de facto* facilitating water grabs.⁹⁴ Small-scale water use, for drinking water and small productive use, is in many systems excluded from licensing, granting it a status of exemption, which according to Hodgson cannot be considered to be a right.⁹⁵ In practice this ignores pluralistic legal systems in which traditional legal systems govern the thousands of smallholders who are deemed uncontrollable under the registration system.⁹⁶ In South Africa general authorisations provide exemptions for larger volumes in designated areas.⁹⁷ In Mozambique these exempted uses are called *uso común*, or common use, and in Zimbabwe they are referred to as 'primary uses'.⁹⁸ In Islamic law rights to drinking water, formulated as 'rights to thirst' also have a priority.⁹⁹

It is questionable whether these *de minimis* rights provide any security in practical terms, as this type of 'entitlement cannot lawfully prevent anyone else from also using the resource even if that use affects his own prior use/entitlement'.¹⁰⁰ Formal permits with state backing create first-class rights in comparison to any other right.¹⁰¹ The exemption from a need for a permit keeps small-scale users from being registered as users, which makes it easier to overlook them in planning and allocation procedures, as for instance happened in a water grabbing case in Mozambique.¹⁰² In Kenya nomadic livestock keepers and fisher folk without formal water licences were dispossessed of their traditional rights when large-scale investors started developing the Tana River Delta.¹⁰³ In many cases smallholders are even aware that their historic agricultural water rights are not recognised in national legal frameworks and that this has facilitated water grabbing. A formal right to abstraction of community drinking water does not guarantee that this cannot in practice be dispossessed through a land and water grab.¹⁰⁴ In Peru smallholder irrigators' formalised water right did not protect them against a water grab by a mining company.¹⁰⁵ In the context of limited registration of smallholder water use, poor hydrological knowledge and/or weak enforcement, permits provide an 'easy way in' for newcomers, while giving them the formal backing of the state.¹⁰⁶

Growing corporate influence in water management

We now turn to the growing influence of corporate players in water resources management and water policy debates.¹⁰⁷ This is different from the

privatisation of water supply services, which largely concerns urban water provision. Players include transnational corporations (TNCs), which use large volumes of water (to produce beverages, crops and services) and are engaging globally in debates about water management and protection of their access to supply in the face of growing shortages. The heads of 40 major TNCs recently issued a communiqué to heads of governments calling for decisive action to strengthen 'the enabling environment' for water resources management around the world.¹⁰⁸ Other groupings include the '2030 Water Resources Group', which is a platform of private sector companies, one international NGO (the World Wide Fund for Nature, WWF), some aid agencies and some national governments (eg those of China, India and Mexico). The 2030 Water Resources Group seeks to play a key role in water resources management at the basin scale, a function that is historically vested with the state. Instruments deployed include information sharing of data on water availability accrued through so-called 'water tool risks', a range of convening stakeholders, as well as engagement with communities.¹⁰⁹ However, business interests could triumph over altruistic ones. Water availability data can be framed to serve certain interests and stakeholder engagement may be merely symbolic. Finally, national governments may prioritise business interests and the scope of foreign revenue generation over local interests and questions of environmental integrity.

Companies are also spearheading innovation and action in water use in the beverages sector. One example is Coca-Cola, which operates in about 200 countries and has 300 bottling partners.¹¹⁰ Coca-Cola set a target to improve water-use efficiency in its plants by 20% by 2012, against a 2004 baseline. The company claimed in 2010 that it had achieved six years of consecutive reduction along with a 16% reduction on the 2004 baseline.¹¹¹ But as Box 1 demonstrates, there are many contradictions in the way Coca-Cola actually operates in-country.

The activities of TNCs have largely been welcomed by dominant players in the water sector. In 2012 Pepsico and in 2011 Nestlé controversially won the Stockholm Industry Water Award for leadership, performance and efforts to improve water management in their supply chains and also for their work with local farmers at the World Water Week in Stockholm, the annual mecca of water experts worldwide.¹¹²

Nestlé is one of the world's largest corporations involved in food. Like Coca-Cola and Pepsico, it has massive structural and bargaining power over the world economy and trade policies, including virtual water flows embedded in trade.¹¹³ Nestlé, like Coca-Cola, is playing a leading role in corporate water accountability, which includes paying attention to how farmers manage their water and active engagement in various corporate networks around water.¹¹⁴ According to Genetic Resources Action International (GRAIN), companies such as Bunge (one of the world's largest agribusiness corporations) are also making direct investments in land as part of the global rush for land.¹¹⁵ After winning an award at World Water Week in Stockholm in 2012 for water efficiency (20% per unit four years ahead of its 2012 goal), Pepsico announced the next day that it was seeking the right business model to significantly expand operations in Africa and 'thrive in this market of one billion people'.¹¹⁶

India

Across India, movements have emerged against Coca-Cola as a result of alleged water grabs and water contamination. According to local people, Coca-Cola was extracting 1.5 million litres of water per day in a plant located in Plachimada, resulting in a drop in the water table from 150 to 500 feet. Waste deposits from the plant also made the water in the surrounding wells, fields and canals unfit for drinking. The plant was closed on 17 February 2004. This movement triggered new demands against the 87 other Coca-Cola and Pepsi plants in India, where water had been depleted and polluted. Coca-Cola claims that these accusations are unjustified and points to an independent report undertaken by the Energy and Resources Institute, known as TERI, which assessed its practices in India. TERI found the plants to be complying with the government regulations. However, even this report states that Coca-Cola must take into account local community needs since in some plants excesses of bacteria and other pollutants were found.

Mexico

Mexico is currently the number one Coca-Cola consuming nation in the world. The beverage has attained religious significance in places like San Juan Chamula in the state of Chiapas, replacing traditional beverages used in religious ceremonies and as dowry payment for marriage (Rovira 2000). The company has strong political connections. Vicente Fox, México's former president was the President of the Coca-Cola Corporation of Mexico before coming to power and during his mandate Coca-Cola started to bottle water from water-rich Chiapas and the drink is often handed out for free during local elections by those in power.

However, the main reason for its immense consumption is the lack of potable water, making Mexico the second largest consumer of bottled water, most of which is largely owned by Coca-Cola. Since 2000 Coca-Cola has been allowed to extract water from 19 aquifers and 15 rivers and also has concessions to dump waste in public water. In 2003 the company paid \$20,000 to compensate for over-extracting water while the profits of one bottling plant alone reached \$40,000.

Box 1. Coca Cola in India and Mexico.

Sources: Shiva, V (2006) 'Resisting Water Privatisation, Building Water Democracy', a paper on the occasion of the World Water Forum in Mexico City March 2006.

Bokaie, J. (2007) 'Coke must prove it really cares', Marketing Jun 13: 19.

Bell, B. (2006) 'Cola Wars in Mexico', In these times <http://inthesetimes.com/article/2840/> (accessed 1 May 2013).

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While some may argue that the growing corporate influence in water management does not yet have clear implications for water grabbing, these companies' emerging strategic influence on policy making does have risks and implications for current and future grabbing processes. These include the potential re-allocation of water to the 'highest economic value', with detrimental impacts on local lives, livelihoods and water and food security. Also there is a significant gap between the promotional instruments deployed by companies and what they are actually doing on the ground. The case of Coca-Cola illustrates these issues. Despite commitments to 'shared risks' and to sustainable water management, risks are often unequally shared and new water stresses may be created. Furthermore, companies are often more legally bound to be accountable to distant shareholders than to local stakeholders, who are often voiceless and powerless. Thanks to their structural bargaining power and influence over global and national policies and processes, they shape and frame powerful discourses, subjecting water governance institutions to processes of capture.¹¹⁷

Discussion and conclusions

The slippery nature of water grabbing means that it is difficult to pinpoint the effects of reallocations for reasons of surface water/groundwater interactions and inter-annual variability, among others. These characteristics of water have important implications for those interested in either regulating or contesting its management. This may partly explain why local communities have reacted in different ways to land and water grabbing. The fluidity of water (and dislocated effects of water grabbing) and the 'invisibility' of customary water rights systems can complicate the task of 'framing' water grabbing as really happening and as an injustice warranting a serious and systematic political response. Global governance mechanisms need to address these local complexities as well as two other challenges, namely the (in)visibility of customary access, use and management systems *vis-à-vis* formal state law, and the complexity of the regulatory field as both plural with overlapping regulatory orders and fragmented (separate state agencies for land vs water vs forests vs. fisheries).

As in the land sector, formalisation of rights in the water sector is increasingly seen as a universal solution; but the underlying issue is: formalising what? Rights that have historically been arranged locally are now declared subject to formalisation under national law, and in the context of limited registration of smallholder water use, poor hydrological knowledge and/or weak enforcement, permits provide an 'easy way in' for newcomers, while giving them the formal backing of the state.¹¹⁸ Moreover, some of the security provided by customary arrangements to women and small-holders through informal and kinship arrangements are also being eroded, not to mention this being a highly bureaucratic process.

Even if formalisation could be a possible 'answer', it can truly only be an effective answer if what is being 'formalised' is water as a human right, *prioritising* the well-being and livelihoods of the poor, marginalised and vulnerable with regard to access, use and control. As has been noted, the human right to water was the result of decades of intense global struggle and lobbying, and this official recognition was a great victory for the global water justice movement. But so far

debates around the right to water have had very limited effect on water resource management and have been very narrowly interpreted in the mainstream as the right to safe drinking water, neglecting the need for productive uses of water. The Special Rapporteur for the Right to Water and Sanitation also seems to be underserving the cause of human rights by claiming that rights are market-neutral and by remaining agnostic. Instead, human rights need to be actively used as a countervailing force against commodification. Here we are calling for both a stronger social justice perspective to the right to water as well as a broader definition of the human right to water, encompassing both the domestic and the productive uses so integral for survival and well-being.

In this article we have explored the significance of global land and water governance initiatives for water grabbing at the national and local level. We demonstrated how disparate and seemingly isolated global processes have led to a domination of neoliberal discourses and trends. In the field of water management the Dublin conference provides the exemplar of a watershed moment and thus won out over earlier processes, such as Delhi, in which there was a stronger focus on equity and universality. The Dublin declaration and its popularity reflect the dominant Washington Consensus of the 1990s, which also influenced environmental governance. In water management this has led to clear neoliberal tendencies, elaborated alongside policies of integration, participation, water rights formalisation and basin management. After the privatisation of water services the privatisation and financialisation of the resource itself are now taking place. Similarly to IWRM policies, with their 20-year roots, new trends, such as drawing attention to the food–energy–water nexus, are reinforcing a call for integrated governance while at the same time legitimising increased corporate involvement. Fuzzy and ambiguous processes of global water and land governance are thus increasing local-level uncertainties and complexities. Usually powerful players can navigate their way through such uncertainties, making them into mechanisms of exclusion of poor and marginalised people.

For less powerful players resolving ambiguities in conflicting regulatory frameworks may require tipping the balance toward the most favourable. This may not be as impossible as it might seem. As Margulies *et al* point out, political-institutional uncertainties in global governance can also potentially become opportunities for previously excluded actors and ideas to be heard and make an impact, by creating unexpected ‘opportunities for policy entrepreneurs and new ideas to enter global policy spaces that may set governance along new pathways’.¹¹⁹

How to convert this potential into actual gains from a social justice perspective is a major challenge. When understood as the capturing of control not just of the water itself, but also of the power to decide how this will be used and by whom, water grabbing is a potentially powerful entry point for increasing contestation and building resistance to the neoliberal, corporate business-led convergence in global resource governance discourses and processes. Control grabbing is perhaps best seen as a contingent process, marked by conflict, negotiation and friction, which can end up ratifying an existing balance of power. Although poor people often do lose out, under certain conditions their political action can make a positive difference. Yet, compared with land grabbing, water grabbing seems less contested from an equity and water justice perspective,

much less an agrarian- and environmental justice perspective, even though the materiality of water means that water grabbing potentially affects greater numbers of diverse water users. If done systematically, applying a water lens to grabbing situations can help to open up vistas for possible political action that has the potential to challenge dominant governance processes:

- The far-reaching spillover effects of specifically water grabbing widen the space/time field of impacts and suggest the value of and need for more systematic horizontal and vertical alliance building among affected people. There is a need to go beyond the fixation with water volumes to focus on issues of access, quality, timing and control.
- Water has crucial importance for sustaining human life, which means that grabbing of land and water potentially affects all kinds of users directly in their sustenance of life. This reinforces the need to build alliances across land and water sectors.

It is unlikely that such a perspective will simply materialise on its own; social pressure and strategic political action are needed. The human right to food may also have potential as a basis for organising strategic political action and building cross-class and multi-sectoral alliances, similar to the way it has served as an important focal point for agrarian justice and land rights activism. For, whatever problems there are with the FAO-TGS, they can potentially still be used to pressure governments, since water is indeed deeply and inextricably interconnected with the other natural resources that are covered (land, fisheries and forests) and which are framed in the context of food security and the right to food.

Finally, our analysis points to a need for land and water rights advocates to begin more systematic engagements with each other around elaborating a human right to land and water that can off-set or build counterweights to the neoliberal corporate business-led convergence we are seeing in global resource governance discourses and processes, and which are imposing views of land and water as tradable economic assets. This would mean elaborating a human rights perspective to land and water that is both more interconnected, more social justice-oriented and which encompasses productive uses of water.

Notes

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