

# Right to Water: Learning from Indonesia's Struggle

Wednesday 29 May 2013, by [BELANGER DUMONTIER Madeleine](#), [DRAGE Katherine](#), [DUGARD Jackie](#) (Date first published: 28 July 2012).

## Contents

- [Jakarta's resounding call \(...\)](#)
- [Legal avenues for reform](#)

The privatization of water services over the past 30 years has generated a counter-wave of popular resistance that is still growing strong, with activists at times invoking rights or using litigation to reverse private deals and fight for public provision. On the second anniversary of the United Nations recognition of the right to water, many will put down their swords for a moment to take stock of the efficacy of such legal battles in challenging privatized water services.

The Municipal Services Project [1] research *Shields and Swords: Legal Tools for Public Water* [2] finds that their success has been mixed, with some legal actions managing to get the right to water written into law or banning private water provision altogether, while others have met with partial success. Among others, it analyzes at length the campaigns that unfolded in Indonesia and draws lessons for other water movements around the world.

Indeed, in 2004-2005 a group of legal aid foundations and NGOs lodged a request for a judicial review of Indonesia's Water Resources Law widely seen as advancing water privatization, and as contravening the Constitution which establishes that the water sector shall be controlled by the state. Although the Constitutional Court rejected the petition, the litigation did establish various water service regulatory safeguards and conditions, thus creating some space for future action by civil society.

The decision was silent on pre-existing private water concessions, however, which remains a vexed issue.

## **Jakarta's resounding call for public water**

Some lasting civil society networks emerged from the struggle and continue to mobilize around the right to water and public control over this essential service. On June 10, the Jakarta Globe told the story of the People's Coalition for the Right to Water [3] (KRuHA)'s year-long effort to access information on Jakarta's water management, as guaranteed by law. The citizen group is asking for disclosure of data used to calculate water tariffs, such as capital and operational expenditures as well as financial projections.

KRuHA's request set the scene for a theatrical exchange between private providers and publicly owned PAM Jaya, each trying to make the other carry the can for the release of the key documents. PAM Jaya is supposed to be publicly accountable for the concession contracts but has been hiding stubbornly behind a "confidentiality clause" that protects "all commercial and technical information"

to justify its hesitancy.

So the citizen group launched legal action in late 2011 to end the deadlock through Indonesia's Public Information Commission (KIP). In early June 2012, the process entered adjudication. And KRuHA will keep up the pressure.

### **Legal avenues for reform**

In short, litigation campaigns have proven to be an effective way to tap into widespread public opposition to reverse or challenge privatization and, as a counter-strategy, appear to be growing in popularity around the world. Where they have been less successful is in defining alternative models of public water services; this next step will be crucial to ensure that sustainable models fill in the vacuums left by private providers.

These cases demonstrate that privatization can be challenged on its own legal terms, exposing it to closer public scrutiny. But using or creating a new law is only the first step in what must be a longer political struggle to provide genuinely democratic forms of public water provision. As such, legal campaigns must also strive toward building frameworks for regulating, maintaining and monitoring progressive management of services after they become public. For that reason dedicated and committed activism is more critical to the success of campaigns than the legal tools themselves.

Finally, whether or not 'rights' frameworks are invoked, pro-public activists derive authority, legitimacy and solidarity in their legal campaigns from the international recognition of the right to water of July 28, 2010. From leftist perspectives there is much debate about whether this vision of law can ever be useful for radical social and economic change, many arguing it is ideologically biased toward the status quo and private interests; as such, legal tools are seen as potentially harmful to radical movements.

Notwithstanding, our research shows that the right to water can be viewed as an enabling framework that, although potentially friendly to privatization, can be used along with other laws to build, mobilize and legitimize campaigns opposed to privatization.

Two resounding victories in Berlin and Italy – two other cases explored in our study – are marking the right to water's first anniversary at the UN. In Berlin, the city administration recently announced it was buying the shares of private company RWE in the water utility, raising its stake to 75.05% from 50.1%. In February 2011, Berlin residents had voted by a margin of 98.2% after a Berlin Water Table [4] campaign to pass a draft bill to force the municipal administration to disclose secret agreements on the partial privatization of the city's water services. Some months later, hopes for remunicipalization are coming true.

In Italy, after the Berlusconi government went ahead with its privatization agenda despite a citizen-led referendum that rejected by 96 per cent the proposed privatization of the country's water supply in June 2011, the Italian Constitutional Court ruled this month to uphold the people's will to keep water in public hands. The unrelenting efforts of the Forum Italiano dei Movimenti per l'Acqua [5] have no doubt gone a long way to safeguarding what had been gained from hard mobilization work.

Let's keep building on these foundations, everywhere.

**Jackie Dugard, Katherine Drage and Madeleine Bélanger Dumontier – July 28, 2012**

---

## P.S.

\*

[http://www.kruha.org/page/en/dinamic\\_detil/52/273/Water\\_Privatization/Right\\_to\\_Water\\_Learning\\_from\\_Indonesia\\_s\\_Struggle.html](http://www.kruha.org/page/en/dinamic_detil/52/273/Water_Privatization/Right_to_Water_Learning_from_Indonesia_s_Struggle.html)

\* Jackie Dugard is Executive Director of the Socio-Economic Rights Institute of South Africa (SERI) <<http://www.seri-sa.org>> and visiting Senior Fellow, School of Law, University of the Witwatersrand. <<http://www.law.wits.ac.za/>>

Katherine Drage is a former Intern at SERI and is currently an articulated clerk at Withers LLP (London).

Madeleine Bélanger Dumontier is Communications Manager for the Municipal Services Project (<http://www.municipalservicesproject.org>) (MSP), a global research initiative that explores alternatives to the privatization and commercialization of service provision in the electricity, health, water and sanitation sectors..

---

## Footnotes

[1] <http://www.municipalservicesproject.org/>

[2] <http://tinyurl.com/brk47ok>

[3] <http://tinyurl.com/ccoeode>

[4] <http://berliner-wassertisch.net/>

[5] <http://www.acquabenecomune.org/raccoltafirme/>