

SDG 6: CLEAN WATER AND SANITATION



A LEGAL GUIDE



This Legal Guide to the Sustainable Development Goals (SDGs) was first published by Advocates for International Development (A4ID).

Disclaimer

The information contained within this guide is correct at the date of publication.

Acknowledgements

We would like to thank Peter Newborne of ODI, and Baker McKenzie for their contributions in the development of this Guide.

Thanks are also due to Thomas Istasse, Learning and Development Manager, for his editorial inputs.

Publishing information

February 2022

London, United Kingdom

Text and analysis © Advocates for International Development (A4ID), 2020 under Creative Commons Attribution – Non-Commercial – ShareAlike 2.5 licence

About A4ID

Advocates for International Development (A4ID) was founded in 2006 to see the law and lawyers play their full part in the global eradication of poverty. Today, A4ID is the leading international charity that channels legal expertise globally toward the achievement of the UN Sustainable Development Goals. Through A4ID, the world's top lawyers are able to offer high-quality, free legal support to NGOs, social enterprises, community-based organisations, and developing country governments that are working to advance human dignity, equality, and justice. A4ID also operates as a knowledge and resource hub, exploring how the law can be better used to help achieve the SDGs through a range of courses, publications, and events.



www.a4id.org | [@a4id](https://twitter.com/a4id)

Foreword



The SDG Legal Initiative

There are now less than ten years left to realise the achievement of the UN Sustainable Development Goals (SDGs). Aware of the challenge, Advocates for International Development (A4ID) has been continuing its innovative work towards meeting these targets by harnessing the power of the law and the work of lawyers. A4ID's SDG Legal Initiative has been developed because it is now more important than ever that the global legal community comes together to use their skills to advance positive global change.

The SDG Legal Initiative is a call to action to the global legal profession to work towards the achievement of the SDG Agenda and we have until 2030 to do so. By sharing knowledge and providing opportunities to take practical action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity, A4ID will continue its work with the legal sector to enhance this impact. The SDG Legal Initiative aims to create communities of practice, and to amplify the role of the legal sector in achieving the SDGs.

Legal Guide to the SDGs

As part of its SDG Legal Initiative, A4ID has developed the world's first Legal Guide to the SDGs. The Legal Guide has been developed as a unique resource, providing a foundational analysis of the role that law can and should play in the achievement of the SDGs. Developed in collaboration with lawyers, academics, and development practitioners, the Guide is made up of 17 distinct chapters, each focussed on one of the 17 goals. Each chapter provides an overview of the relevant regional, national, and international legal frameworks, highlighting how the law can be applied to promote the implementation of the SDGs. The Guide also offers key insights into the legal challenges and opportunities that lawyers may encounter, presenting clear examples of the actions that lawyers can take to help achieve each goal.

Role of Law in Water and Sanitation

Access to water and sanitation are recognised by the United Nations as human rights, reflecting the fundamental nature of these basics in every person's life. 30% of the global population lack access to safe, readily available water at home, whilst water stress affects more than two billion people worldwide.

Lack of access to safe, sufficient and affordable clean water, sanitation and hygiene facilities has a devastating effect on the health, dignity and prosperity of billions of people the world over. It also has significant consequences for the attainment of other human rights. Indeed, the COVID-19 has demonstrated very clearly how vital hygiene, sanitation and clean water are in the prevention or transmission of disease. SDG 6 calls for ensuring the availability of clean water and

sanitation to all.

SDG 6's overarching goal of clean water and sanitation for all is part of the 2030 Agenda's vision of more sustainable and prosperous societies, living in harmony with nature. However, achieving universal access to clean water, sanitation and hygiene remains a major challenge. SDG 6 is perhaps one of the most interconnected goals: improved access to clean water, sanitation and hygiene (WASH) aids economic development, poverty reduction, education, health, and more. For example, progress on health can only be achieved when people's needs for safe water and sanitation are satisfied. Hence, the lack of access to clean water and sanitation has significant consequences for the achievement of other SDGs.

Whilst the global water crisis remains urgent the existing rules and regulations are essentially ill-equipped to adequately

Yasmin Batliwala, MBE

Chief Executive

The role of law and lawyers in advancing good health and well-being is still underestimated or poorly understood.

address the various complexities regarding water usage. Long-term preservation and redistribution of water resources within a normative framework is therefore a priority. SDG 6 has the potential to provide a way in challenging the global water crisis and influence international water law. SDG 6 also aims to "ensure availability and sustainable management of water and sanitation for all". SDG 6 therefore provides an ideal opportunity for lawyers to make that essential difference



Contents

- | | | | |
|-----------|---|-----------|---|
| 2 | The Sustainable Development Goals | 18 | Regional legal and policy frameworks |
| 3 | Key terms | 22 | Examples of relevant national legislation |
| 4 | Overview of the targets | 26 | Insights for the legal profession |
| 10 | Key actions lawyers can take | 26 | a) Examples of relevant cases and legal proceedings |
| 11 | Elements of the international legal framework | 30 | b) Legal context and challenges |
| | | 32 | c) So, what can lawyers do? |

The Sustainable Development Goals

The UN Sustainable Development Goals (SDGs) are a universal call to action to end poverty, protect the planet, and ensure that all people can enjoy peace and prosperity.

Also known as the Agenda 2030, the SDGs were agreed in 2015 by the UN General Assembly (Resolution 70/1). They were adopted by all UN Member States, and 2030 was set as the deadline for achieving them.

Compared to the Millennium Development Goals (MDGs),



which they succeed, the SDGs cover more ground, with wider ambitions to address inequalities, climate change, economic growth, decent jobs, cities, industrialization, oceans, ecosystems, energy, sustainable consumption and production, peace, and justice. The SDGs are also universal, applying to all countries, whereas the MDGs had only been intended for action in developing countries.

The 17 interdependent goals are broken down into 169 targets. At the global level, progress is monitored and reviewed using a set of 232 indicators. The Addis Ababa Action Agenda provides concrete policies and actions to further support the implementation of the 2030 Agenda. Each year, the UN Secretary General also publishes a report documenting progress towards the targets. In addition, the annual meetings of the High-level Political Forum on Sustainable Development (HLPF) continues to play a central role in reviewing global progress towards the SDGs.

At the national level, even though the SDGs are not legally binding, governments are expected to implement country-led sustainable development strategies, including resource mobilisation and financing strategies. They are also expected to develop their own national indicators to assist in monitoring progress made on the goals and targets.

SDG 17 stresses the importance of multi-stakeholder partnerships to achieve the goals. The mobilisation of governments, local authorities, civil society, and the private sector is needed to achieve this aim. Today, progress is being made in many places, but, overall, action to meet the SDGs is not yet advancing at the speed or scale required. This decade must therefore deliver rapid and ambitious action to meet the SDGs by 2030.

Key terms

SDG 6: Ensure availability and sustainable management of water and sanitation for all

In the context of SDG 6, the key terms are defined as follows:

‘Integrated water resources management’: is defined by the Global Water Partnership as, ‘a process which promotes the coordinated development and management of water, land and related resources in order to maximise economic and social welfare in an equitable manner, without compromising the sustainability of vital ecosystems.’¹

‘Sanitation’: according to the World Health Organization (WHO), sanitation is the provision of facilities and services for the safe disposal of human urine and faeces. The word ‘sanitation’ also refers to the maintenance of hygienic conditions, through services such as garbage collection and wastewater disposal.²



1 Global Water Partnership (n.d.). *What is IWRM?*. [online] Available at: <http://www.gwp.org/The-Challenge/What-is-IWRM/>

2 WHO (n.d.). *Health Topics, Sanitation*. [online] Available at: <http://www.who.int/topics/sanitation/en/>

Overview of the targets

SDG 6 strives for sustainable access to water and sanitation for all. The lack of access to safe affordable drinking water and suitable sanitation affects many fundamental rights: the right to health, a clean environment, food security, gender equality and even the right to life.

SDG 6 is closely interlinked with the other SDGs. The COVID-19 pandemic has underscored the importance of hand washing and hygiene to combat illness (SDG 3). Water is required across all sectors of society to produce food (SDG 2), energy (SDG 7), goods and services (SDG 8). Yet, climate change (SDG 13), the degradation of ecosystems (SDG 14 and 15), industrial pollution (SDG 9 and 12), and insufficient cooperation between

countries on transboundary rivers and lakes (SDG 17) are all growing challenges to ensuring universal access to safe water.

Billions of people around the globe still live without safely managed drinking water, sanitation and hygiene services. Despite progress in recent years, the world is not on track to achieve SDG 6. A dramatic acceleration in current rates of progress is needed.

The following is a breakdown of each of the targets under SDG 6 showing the issues relevant to the achievement of each target:

TARGET 6-1 **By 2030, reduce the global maternal mortality ratio to less than 70 per 100,000 live births**



From 2000 to 2015, one of the targets under the MDGs was to halve the global proportion of the population without sustainable access to safe water (MDG 7). The target was met at the global level in 2010. However, progress was uneven. In 2015, 3 in 10 people worldwide, or 2.1 billion, still lacked access to safe, readily available water at home.³

SDG target 6.1 is more ambitious in calling for ‘universal and equitable access to safe and affordable drinking water’. Progress towards SDG 6 is measured through ‘service ladders’

The drinking water ladder defines five service levels, ranging from surface water to safely managed drinking water services, which is the indicator for target 6.1. Safely managed drinking water refers to drinking water from an improved water source that is located on premises, available when needed, and free from contamination.⁴

30% of the global population lack access to safe, readily available water at home.

³ UNICEF (2017). *Progress on Drinking Water, Sanitation and Hygiene*. [online]. Available at: https://www.unicef.org/publications/index_96611.html

⁴ WHO (n.d.). *Factsheet: Drinking Water*. [online]. Available at: <http://www.who.int/en/news-room/fact-sheets/detail/drinking-water>

SERVICE LEVEL	DEFINITION
SAFELY MANAGED	Drinking water from an improved source that is accessible on premises, available when needed and free from faecal and priority chemical contamination
BASIC	Drinking water from an improved source, provided collection time is not more than 30 minutes for a round trip, including queuing
LIMITED	Drinking water from an improved source, for which collection time exceeds 30 minutes for a round trip, including queuing
UNIMPROVED	Drinking water from an unprotected dug well or unprotected spring
SURFACE WATER	Drinking water directly from a river, dam, lake, pond, stream, canal or irrigation canal

Source: WHO and UNICEF (2021). *Progress on household drinking water, sanitation and hygiene 2000-2020: Five years into the SDGs* Available at: <https://washdata.org/>

Between 2000 and 2020, 2 billion people gained access to safely managed drinking water services. However, achieving universal access by 2030 will require a fourfold increase in the current rate of progress. Moreover, there are large disparities between regions of the world: for instance, half of the 771 million people still lacking even a basic drinking water service in 2020 lived in sub-Saharan Africa. Within countries, coverage of safely managed drinking water services is considerably lower in rural areas (60%) than in urban areas (86%).⁵

Achieving universal access to safe drinking by 2030 will require a fourfold increase in the current rate of progress.

⁵ WHO and UNICEF (2021). *Progress on household drinking water, sanitation and hygiene 2000-2020: Five years into the SDGs*. [online]. Available at: <https://washdata.org/>

TARGET 6-2

By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations

The ladder for sanitation defines five service levels, ranging from open defecation to safely managed sanitation services. SDG target 6.2 seeks to achieve universal access to safely managed sanitation services by 2030.

Between 2000 and 2020, 2.4 billion people gained access to safely managed sanitation services. Still, in 2020, 3.6 billion people lacked safely managed services, of which approximately half didn't even have access to basic services.

In recent years, progress has been made in some parts of the world. For instance, China is on track for universal coverage by 2030. However, at current rates of progress, the world will only achieve 67% of coverage by 2030, far from the objective of universal access.⁶

SDG target 6.2 calls for 'special attention to the needs of women and girls'. WASH (Water Sanitation and Hygiene) programmes are increasingly monitoring menstrual health related needs, i.e. use of menstrual materials, access to a private place to wash and change while at home, and participation in school, work or social activities during menstruation. Data is still sparse but emerging statistics show that, in many countries, a significant proportion of women and girls do not have the services they need for menstrual health.

SERVICE LEVEL	DEFINITION
SAFELY MANAGED	Use of improved facilities that are not shared with other households and where excreta are safely disposed of in situ or removed and treated offsite
BASIC	Use of improved facilities that are not shared with other households
LIMITED	Use of improved facilities that are shared with other households
UNIMPROVED	Use of pit latrines without a slab or platform, hanging latrines or bucket latrines
OPEN DEFECATION	Disposal of human faeces in fields, forests, bushes, open bodies of water, beaches or other open places, or with solid waste

⁶ Ibid.,

TARGET 6-3



By 2030, improve water quality by reducing pollution, eliminating dumping and minimising the release of hazardous chemicals and materials into the environment, halving the proportion of untreated wastewater

and substantially increasing recycling and safe re-use globally

SDG Target 6.3 sets out to improve water quality, which is essential to protecting both ecosystem and human health, by eliminating or significantly reducing different streams of

pollution into water bodies.

The UN's indicators for attainment of this target are the percentage of wastewater safely treated and the percentage of water bodies with good ambient water quality.

Dumping of pollution into water supplies is widespread. The UN estimates that, in developing countries, 70% of industrial wastes are disposed into waters without being treated. This therefore pollutes the usable water supply.⁷ Two million tons of sewage, industrial and agricultural waste is dumped into the world's waterways every day.⁸

TARGET 6-4



By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and to substantially reduce the number of people suffering from water

scarcity

When a country withdraws 25% or more of its renewable freshwater resources, it is water stressed. This challenge affects countries on every continent. In 2018, more than 2 billion people lived in water-stressed countries. Some regions of the world, such as Northern Africa or Central Asia, experience high water stress levels of over 60%. These levels of water stress indicate a high risk of water scarcity, especially in certain seasons.

Improving water-use efficiency is one key to reducing water stress. This is the focus of SDG target 6.4. Agriculture alone

accounts for more than 70% of water withdrawals, making progress in this sector especially important. All economic sectors have seen their water-use efficiency improve since 2015, with a 15 per cent increase in industry, 8 per cent in agriculture and 8 per cent in the service sector. However, water stress is likely to get worse as population grows and the effects of climate change intensify. More concrete measures are therefore needed to save water and increase water-use efficiency, particularly in those regions that already have a critical level of water stress.

Water stress affects more than 2 billion people worldwide.

⁷ United Nations (n.d.). *UN Water: Water Facts*. [online]. Available at: <http://www.unwater.org/statistics/statistics-detail/en/c/211800/>

⁸ United Nations (2010). *Water Quality and Sanitation*. Media Brief. [online]. Available at: <https://bit.ly/30VaOsm>

TARGET 6-5

By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and to substantially reduce the number of people suffering from water

scarcity

With only 0.5% of the earth's water being available fresh water, the importance of water resources management cannot be overstated. The UN aims to implement integrated water resources management (often shortened to 'IWRM') at all levels, including through transboundary cooperation between States sharing a river or lake basin.

Governments are responsible for setting and overseeing the framework for water resources management, including the principles and procedures which determine how water resources are allocated between different, and often competing, water uses. Governments need to review and reform their water resources management so they can operate in contexts of growing water demand and climate variability. In many areas, climate change is manifesting itself with shorter and more unpredictable rainy seasons. The consequences are more intense periods of drought, as well as intermittent flooding, due to short but intense precipitation events. At the same time, population growth means that demand for water resources is growing. The rules on who withdraws what volumes of water (and at which times) need to take account of these changes.

Transboundary waters – lake and river basins shared by two or more countries – support the lives and livelihoods of vast numbers of people across the world. Increasing water stress

Governments need to reform their water resources management in response to growing water demand and climate variability.

has the potential to spark conflict between countries. SDG target 6.5 therefore includes an emphasis on the need for a supranational integrated approach to equitably share the benefits and costs of transboundary waters. Even though approximately 295 international agreements have been negotiated and signed since 1948, around two-thirds of the world's transboundary waters still do not have a cooperative management framework in place.⁹



⁹ United Nations (2017). *Factsheet: Transboundary waters*. [online] Available at: <https://www.unwater.org/water-facts/transboundary-waters/>

TARGET 6-6



By 2030, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes

Water-related ecosystems play a fundamental ecological role. However, population growth and economic expansion have placed great pressure on freshwater.¹⁰ Natural wetlands around

the worlds are dramatically declining. Between 1970 and 2015, they shrank by approximately 35 percent, three times the rate of forest loss.¹¹ The activities that pose the most threat to water-related ecosystems are oil and gas production, coastal mineral extraction, urban, industrial and port development, tourism growth, marine fisheries growth and increases in coastal aquaculture and agriculture.¹² Efforts to protect and restore water-related ecosystems must be urgently scaled up and accelerated.



10 United Nations Economic Commission for Europe (2006). *Nature for Water: Protecting water related ecosystems for sustainable development*. [online]. Available at: <https://bit.ly/3FK3ZZT>

11 The United Nations Department of Economic and Social Affairs (2021). *The Sustainable Development Goals Report 2021*. [online]. Available at: <https://bit.ly/3DQF4Ds>

12 Creel, L. (2003). *Ripple Effects: Population and Coastal Regions*. Population Reference Bureau. [online]. Available at: <https://www.prb.org/rippleeffectspopulationandcoastalregions/>

Key actions lawyers can take

The final section of this chapter provides more details on how the international legal community can engage in efforts to achieve SDG 6. However, the following summary describes

some of the key actions you can take to contribute to the sustainable development agenda for universal clean water and sanitation.

Learn and educate

Substantial research and analysis is available to lawyers, including resources with a special focus on SDG 6. In order to create effective change, lawyers can enhance their understanding of WASH (water, sanitation, and hygiene) and,

IWRM, along with the policy and programmatic efforts to promote them at local, national, regional, and international levels.

Integrate

In-house counsel can play a crucial role in examining how their business model positively contributes or negatively affects progress towards SDG 6 targets. This review could, for instance, lead to the adoption of processes that utilise less water and/or less chemicals than the industry standards.

Lawyers advising public authorities or companies active in the water or waste management sectors can familiarise themselves with SDG 6 and consider how the law can be used to enhance positive outcomes and reduce potentially negative impacts on SDG 6.

Act

The legal community can take various actions, including raising awareness and providing trainings on the legal framework governing the rights to water and to sanitation; supporting the drafting of legislation; and assisting civil society organisations in holding authorities accountable.

Strategic litigation, when combined with social mobilisation, advocacy, and public awareness campaigns, can play a transformative role and lead to legislative reforms beneficial for the access of all to water and sanitation.

Elements of the international legal framework

International Covenant on Economic, Social and Cultural Rights

Adopted by the UN General Assembly: 16 December 1966

Entered into force: 3 January 1976

Status of ratification (as of November 2021): 171 Parties

The International Covenant on Economic, Social and Cultural Rights (ICESCR), drawing on the Universal Declaration of Human Rights, affirms a series of human rights and encourages social progress. Legally binding on a large number of States, it indicates a wide consensus on economic, social and cultural human rights. However, a number of States have signed but not ratified the ICESCR, notably Cuba, Malaysia, Saudi Arabia and the United States.

The ICESCR does not explicitly enshrine a right to water or

sanitation. Yet, Article 11 recognises the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions. In its General Comment No.15 on the Right to Water (1995), the UN Committee on Economic, Social and Cultural Rights interprets Article 11 as implicitly recognising the human right to water as indispensable for leading a life of dignity.¹³ The General Comment No.15 defines the right to water as ‘the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses’. General Comment No. 15 is a key document in setting out the substantive requirements of the human right to water and the challenges of its implementation.

Convention on the Rights of Persons with Disabilities

Adopted by the UN General Conference: 13 December 2006

Entered into force: 3 May 2004

Status of ratification (as of November 2021): 182 Parties

The Convention on the Rights of the Persons with Disabilities (CRPD) is a UN treaty intended to promote and protect the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.

Persons with disabilities, especially those living in poorer countries, encounter difficulties to access to water, sanitation and hygiene. Article 28(2)(a) of the Convention creates a right to equal access to clean water services for all people with disabilities.

¹³ Office of the High Commissioner for Human Rights (2003). *General Comment 15: Right to Water (Article 11 and 12 of the Covenant)*. Adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights. [Online]. Available at: <http://www.refworld.org/pdfid/4538838d11.pdf>

Convention on the Rights of the Child

Adopted by the UN General Assembly: 20 November 1989

Entered into force: 2 September 1990

Status of ratification (as of November 2021): 196 Parties

The United Nations Convention on the Rights of the Child (CRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. It defines a child as 'any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation'. Compliance is monitored by the UN Committee on the Rights of the Child. The CRC is the most widely ratified

international human rights treaty. Notably, the United States is the only country that has signed, but not ratified, this Convention.

Article 24 of the Convention on the Rights of the Child provides that governments recognise the right of the child to the enjoyment of the highest attainable standard of health. Under Article 24, States Parties are under a duty to pursue full implementation of this right. In particular, they are to take appropriate measures to ensure clean drinking water, taking into consideration the dangers and risks of environmental pollution.

Convention on the Elimination of all Forms of Discrimination against Women

Adopted by the UN General Assembly: 18 December 1979

Entered into force: 3 September 1981

Status of ratification (as of November 2021): 189 Parties

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) defines what constitutes discrimination against women and sets forth an agenda to end it.

Without safe drinking water, adequate sanitation and hygiene facilities, it is disproportionately harder for women and girls to lead safe, productive, healthy lives. Across low-income countries, and especially in rural places, women and girls have primary responsibility for water supply, sanitation and health. Often, fulfilling these roles precludes their participation in

education or work. Women also have particular needs in terms of hygiene and menstrual health. Addressing the needs of women and girls in relation to water, sanitation, and hygiene is therefore a key driver in achieving gender equity.¹⁴ Hence, Article 14 of CEDAW affords all women in rural areas the right to adequate living conditions in relation to sanitation and water supply. It places an obligation on all State Parties to take steps to realise this right

Addressing the needs of women and girls in relation to water, sanitation and hygiene is therefore a key driver in achieving gender equity.

¹⁴ UN Water (2021). *Factsheet: Water and Gender* [Online]. Available at: <https://www.unwater.org/water-facts/gender/>

UN Convention to Combat Desertification (UNCCD)

Adopted by the UN General Assembly: 17 June 1994

Entered into force: 26 December 1996

Status of ratification (as of November 2021): 197 Parties

The UN Convention to Combat Desertification aims to combat desertification by mitigating the effects of drought through national action programmes supported by international cooperation and partnership arrangements.

Combating desertification requires long-term strategies, including sustainable management of water resources. The Convention requires State Parties to 'promote cooperation in the fields of conservation of water resources' (Article 4(2) (d)) and to support research activities 'that enhance the availability of water resources' in areas affected by drought (Article 17 (1)(g)).

Protocol on Water and Health

Adopted by the UN General Assembly: 17 June 1999

Entered into force: 4 August 2005

Status of ratification (as of November 2021): 27 Parties

As a protocol to the Water Convention, the main aim of this instrument is to protect human health and wellbeing by better water management and by preventing, controlling and reducing water-related diseases. The Protocol is the first international agreement of its kind, focusing on quality of drinking water. So far, the Protocol has only been ratified by European countries.

State Parties are required to establish targets for the quality of drinking water, as well as for the performance of wastewater treatment. They are also required to reduce outbreaks and the incidence of water-related diseases.

The Protocol provides a practical framework to translate into practice the human rights to water and sanitation and to implement both SDG 3 and SDG 6.



Convention on the Protection and Use of Transboundary Watercourses and International Lakes

Adopted by the UN General Assembly: 17 March 1992

Entered into force: 6 October 1996

Status of ratification (as of November 2021): 46 Parties

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (also known as the Water Convention) is a unique international legal instrument. It aims to ensure the sustainable use of transboundary water resources by facilitating cooperation between countries. Initially negotiated as a regional instrument by European countries, it was opened up for accession to all UN Member States in 2016. Since then, Chad, Senegal, Ghana, Guinea-

Bissau and Togo have ratified the Water Convention.

The Water Convention requires States to use transboundary waters in a reasonable and equitable way and to ensure their sustainable management. As a framework agreement, the Convention does not replace bilateral and multilateral agreements for specific river or lake basins. Instead, States bordering the same waters have to cooperate by entering into specific agreements and establishing joint bodies. As such, the Convention directly supports implementation of SDG target 6.5, which requests all countries to implement integrated water resources management.



The United Nations Framework Convention on Climate Change (UNFCCC)

Adopted by the UN General Assembly: 9 May 1992

Entered into force: 21 March 1994

Status of ratification (as of November 2021): 197 Parties

TAadopted in 1992, the UNFCCC is the first internationally negotiated instrument to combat climate change. Its objective is to 'stabilise greenhouse gas concentrations in

the atmosphere at a level that would prevent dangerous interference with the climate system' (Article 2).

Every year since 1995, governments meet in a Conference of the Parties (COP) to measure progress in the implementation of the UNFCCC. COPs have also been used to negotiate protocols and agreements.

The Paris Agreement

Adopted by the UN General Assembly: 12 December 2015

Entered into force: 4 November 2016

Status of ratification (as of November 2021): 193 Parties

AIn December 2015, Parties to the UNFCCC reached a landmark agreement in Paris, with a legally binding agreement replacing the Kyoto regime. The Paris Agreement has three objectives (Article 2):

- i. To limit global warming to less than 2 degrees Celsius above pre-industrial levels and pursue efforts to limit the rise to 1.5 degrees Celsius
- ii. To improve the ability to adapt to climate change and foster climate resilience
- iii. To make finance flows consistent with the above objectives.

At first glance, the UNFCCC and the Paris Agreement are not relevant to water policy: the term 'water' does not appear in

the text of the Paris Agreement. However, climate policy has far-reaching implications for the availability of water and vice versa. On one hand, global warming impacts water resources in a number of ways:

- Increased droughts and flooding
- Seasonal changes in rainfall
- Salinisation of freshwater due to rising sea levels, etc.

On the other hand, technologies that capture atmospheric carbon dioxide (CO₂) in carbon sinks use considerable quantities of land and water, which can exacerbate existing regional water shortages.¹⁵

¹⁵ Dombrowsky, I, et al. (2016). *What does the Paris Climate Agreement mean for the water policy?* German Development Institute. [online]. Available at: <https://bit.ly/3FNz9iP>

Soft law and declarations

The Mar Del Plata Action Plan (1977)

In 1977, the UN Conference on Water, held in Mar Del Plata, Argentina, approved the first internationally coordinated approach to integrated water resources management (IWRM).

The Mar Del Plata Action Plan notes that all people have the right to have access to drinking water in quantities, and of a quality, equal to their basic needs.

UN Resolution 54/175 on the Right to Development (1999)

UN Resolution 54/175 reaffirms that the right to food and water are fundamental human rights and that their promotion constitutes a moral imperative both for national

governments and the international community (Recital 12(a)).

UN Resolution 7/22 on the Human Right to Safe and Clean Drinking Water and Sanitation (2008)

UN Resolution 7/22 appoints an Independent Expert on human rights obligations related to access to safe drinking water and sanitation. This resolution recognises that all

governments are bound by human rights obligations to ensure access to safe water and sanitation.

All governments are bound by human rights obligations to ensure access to safe water and sanitation.

UN Resolution 64/292 the Human right to Water and Sanitation (2010)

UN Resolution 64/292 acknowledges that clean drinking water and sanitation are integral to the recognition of all human rights. The Resolution also calls upon States and international organisations to provide financial resources,

as well as assist, build and transfer technology, to help other countries to provide safe, clean, accessible, and affordable drinking water and sanitation

UN Resolution 70/169 the Right to Safe Drinking Water and Sanitation (2015)

UN Resolution 70/169 recognises the right to water and the right to sanitation as distinct rights. The right to water in terms of this resolution is defined as an entitlement to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.¹⁶ The right

to sanitation is described as the entitlement to physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable, and that provides privacy and ensures dignity.

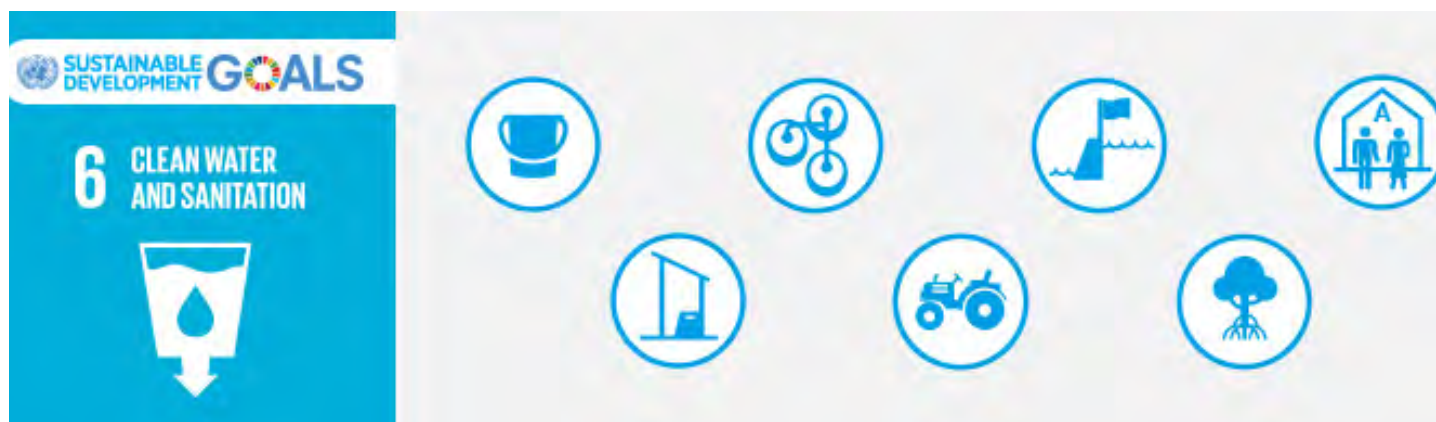
Berlin Rules on Water Resources (2004)

Adopted in 2004 by the International Law Association (ILA), the Berlin Rules on Water Resources is a document that summarises international customary law applying to freshwater resources. These rules supersede the earlier “Helsinki Rules on the Uses of the Waters of International Rivers”, which was limited to transboundary rivers.

resources. The document contains both rules of law and norms that are not legally binding.

The rules call for States to take all appropriate measures to manage waters sustainably and to prevent or minimize all environmental harm.

They provide States with a guide to managing water



¹⁶ United National (2016). *The human rights to safe drinking water and sanitation*. A/RES/70/169. [Online]. Available at: <http://www.refworld.org/pdfid/4538838d11.pdf>

Regional legal and policy frameworks

African Union

African Charter on Human and Peoples' Rights (1981)

The African Charter on Human and Peoples' Rights (ACHPR) does not explicitly protect the right to water and sanitation. However, according to the African Commission on Human and Peoples' Rights, this right is implied in the protection of a

number of other rights, including but not limited to the rights to life (Article 4), dignity (Article 5), work (Article 15), health (Article 16), economic, social and cultural development (Article 22) and to a satisfactory environment (Article 24).¹⁷

The African Charter on the Rights and Welfare of the Child (1999)

Article 14 of the Charter confirms that every child has the right to enjoy the highest attainable state of physical, mental, and spiritual health. States' obligations in pursuing the full

realisation of this right include taking measures to ensure the provision of adequate nutrition and safe drinking water.

The African Convention on the Conservation of the Nature and Natural Resources (2003)

Adopted in 2003, as an update of the earlier Convention of Algiers of 1968, the Convention entered into force 13 years later due to the slow pace of ratifications. Article VII contains an obligation for State Parties to manage their water resources to maintain them at highest possible quantitative and qualitative levels. However, even though it has entered into force in 2016, the Convention is not operational yet.

¹⁷ African Commission on Human and Peoples' Rights (n.d.). *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*. [Online]. Available at: http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf

¹⁸ IUCN and World Commission on Environmental Law (2019). *La Convention africaine sur la conservation de la nature en vigueur mais non opérationnelle: l'urgence de convoquer la première Conférence des Parties*. [Online] Available at: <https://bit.ly/3EjfPd5>

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

Adopted in 2003 and known as the Maputo Protocol, this treaty is the main legal instrument for the protection of the rights of women and girls in Africa.

The Protocol obliges State Parties to take appropriate measures to provide women with access to clean drinking water (Article 15.a).



Council of Europe

European Charter on Water Resources (2001)

Adopted as a recommendation by the Committee of Ministers of the Council of Europe, the European Charter on Water Resources confirms that everyone has the right to a sufficient quantity of water for his or her basic needs (Article

5). This article recommends social measures to be put in place to prevent the supply of water to destitute persons from being cut off.¹⁹

European Union

Drinking Water Directive and Revised Drinking Water Directive

The objective of the Directive 98/83/EC, adopted in 1998 and known as the 'Drinking Water Directive', was to protect human health from adverse effects of any contamination of water by ensuring that it is wholesome and clean. The Directive laid down essential quality standards at EU level.²⁰

On 16 December 2020, the European Parliament adopted a revised Drinking Water directive (Directive 2020/2184/EU). Following the European Citizens' Initiative 'Right2Water', the revised Directive includes the obligation for EU Member States to improve accessibility to safe drinking water for everyone, particularly for vulnerable and marginalised people. When doing so, the Directive expressly refers to SDG 6.



¹⁹ Council of Europe (2001). *Recommendation 14 of the Committee of Ministers to member states on the European Charter on Water Resources*. [Online]. Available at: <https://bit.ly/2ZMbaBu>

²⁰ European Commission (2020). *The Directive overview*. Environment Legislation. [Online]. Available at: http://ec.europa.eu/environment/water/water-drink/legislation_en.html

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for community action in the field of water policy – the EU Water Framework Directive

The Water Framework Directive (WFD) commits EU Member States to achieve good qualitative and quantitative status of all water bodies (including marine waters up to one nautical mile from shore).

One important aspect of the WFD was the introduction of river basin districts. These areas have been designated, not

according to administrative or political boundaries, but rather according to the river basin as a natural geographical and hydrological unit. River basins are to be managed according to river basin management plans, which should provide a clear indication of the way the objectives set for the river basin are to be reached within the required timescale.



Examples of relevant national legislation

Since the publication of the UN Committee on Economic, Social and Cultural Rights' General Comment No. 15 on the Right to Water (1995), the number of States recognising the

right to water within their constitution or legislation has doubled.²¹

Nigeria

Constitution of the Federal Republic of Nigeria (1999)

The Constitution provides that the 'State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.' The provision is

considered non-justiciable; and there is no fundamental right to water explicitly recognised in the Constitution.

The Water Resources Act (1993)

The Water Resources Act vests the right to the use and control of all surface and groundwater in the Federal Government. However, the Act preserves existing rights, including customary rights, provided they are for domestic use, watering of livestock and irrigation.

Nigeria is recognised as a country with abundant natural water resources.²² Despite this, coverage rate of water and sanitation in Nigeria is one of the lowest globally: approximately 54 percent of rural and 78 percent of urban inhabitants currently have access to potable water.²³ Three

levels of government – federal, state and local – share the responsibility for water supply. The federal government is responsible for the management of water resources; state governments have the main responsibility for supplying urban water; and local governments and communities are in charge of rural water supply. There is no clear division for the responsibility for sanitation. Water tariffs and the quality of water supply services are both low, and many water users do not pay their bills. Therefore, service providers largely rely on subsidies to cover their operating costs.²⁴

21 WASH United, et al. (2012). *The human right to safe drinking water and sanitation in law and policy - a sourcebook*. [online]. Available at: <https://bit.ly/3DbwwFR>

22 Central Intelligence Agency (n.d.). *Nigeria Profile: World Factbook*. [online]. Available at: <https://bit.ly/31bKjPH>

23 Adeniran, A, et al. (2021). *Water Infrastructure Development in Nigeria: Trend, Size, and Purpose*. *Water* 2021, 13, 2416 [online]. Available at: <https://bit.ly/3rxvX7r>

24 Ajai, O. (2012). *Law, Water and Sustainable Development: Framework of Nigerian Law*. *Law Environment and Development Journal*. Available at: <https://bit.ly/3pjmVBJ>

Water Policy Management Act (2001)

Burkina Faso in West Africa is an example of an economically weak country²⁵ which is facing major water challenges. Much of the country is arid or semi-arid, with low annual rainfall. The past three decades have seen signs of increasing variability in rainfall distribution – both temporally and spatially – manifested by shorter and more unpredictable rainy seasons. This has serious implications for agriculture in Burkina Faso, which is mainly rain-fed.

Water law in Burkina Faso recognises the human right to water for all citizens (Article 2, Water Policy Management Act 2001 - La loi d'orientation relative à la gestion de l'eau). Both urban and rural populations in Burkina Faso of course require water for drinking, domestic, and productive uses, although Burkina law adopts the usual order of priority, whereby water for essential human needs comes before other uses. Drinking water use is the first listed in Article 1 of the 2001 Act. National water policy (la Politique Nationale de l'Eau) adds that, in relation to water for drinking, "the different categories of population must be treated equitably".

Under the Decentralisation Law of 2004, the general responsibility to provide water and other urban services lies with local authorities (communes). These authorities are not expected to deliver services by themselves, but rather to delegate delivery to public or private bodies – primarily, but not exclusively, to the national water company, ONEA. The goal of water management, as stated in Article 1 of the 2001

Water Policy Management Act, is to: 'satisfy or reconcile the demands of agriculture, livestock, fishing and aquaculture, extraction of minerals, industry, energy production, transport, tourism, leisure and all other legally-exercised human activities,' as well as demands for 'water quality' and 'protection of aquatic ecosystems'. The government, through the Ministry of Water, is responsible for overseeing how these different demands are to be satisfied as far as possible to the extent they are complementary, or how they are to be reconciled, where competing. To achieve this objective, 'integrated' water resources management (IWRM - 'GIRE' in French)²⁶ is noted as being the 'foundation' of the national water strategy.

Water law in Burkina Faso recognises the human right to water for all citizens... The national water policy adds that, in relation to water for drinking, "the different categories of population must be treated equitably."

²⁵ Burkina Faso is a low-income country, 182nd (out of 189 countries) in the UNDP's 'human development index' 2020. For example, the life expectancy (a birth) of females is 60 years compared with 83 in the UK, and the expected years of school for girls is 7.3 years instead of 16.7 years in the UK.

²⁶ In French, gestion intégrée des ressources en eau (GIRE), hence the title of the national integrated water resources management (IWRM) plan in French: the PAGIRE

South Africa

The Constitution of the Republic of South Africa (1996)

The South African Constitution was one of the first in the world to proclaim that everyone has the right to have access to sufficient food and water (Section 27). The Section further

provides that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

National Water Act 36 (1998) and Water Services Act 108 (1997)

Pursuant to Section 3 of the Water Services Act, everyone is provided with the right to have access to a basic water supply and basic sanitation. All water institutions (including water services providers, intermediaries, water boards and water services communities) must take reasonable measures to realise these rights. Section 5 states that, if a water services institution is unable to meet the needs of all its existing consumers, it must give priority to providing basic water supply and basic sanitation.

Regions of South Africa, most notably the city of Cape Town in 2017-2018, have experienced severe water shortages, due to extreme drought. However, the failure to improve water infrastructure to face the growth in demand due to population increase exacerbated the issue. Tensions between the national and provincial governments have also been blamed.



Pursuant to Sec 3 of the Water Services Act, everyone is provided with the right to have access to basic water supply and sanitation.

England & Wales

Water Resources Act (1991)

The legal regime in England illustrates how laws relating to water withdrawal need to adapt.

The perception of most people in England is that water resources are plentiful. In fact, the East Anglian region and the south-east corner of the country, particularly the Thames Valley, are dry. East Anglia, for example – Cambridgeshire, Norfolk, Suffolk, Essex – receives just 600-700 mm of rain per year, which makes the region semi-arid, like Burkina Faso in West Africa. This water scarcity, combined with population density and growth, presents a substantial challenge.

The perception of most people in England is that water resources are plentiful. In fact, the East Anglian region and the south-east corner of the country, particularly the Thames Valley, are dry.

The water resources regulator in England and Wales, the Environment Agency (EA), is working, on behalf of the UK government, to communicate to water users the pressure of demands on water resources. In the areas of greatest pressure, the EA aims to transition to a system of managing water abstractions in a manner that is fit-for-purpose for current and future climate and demographic conditions. The

EA has two kinds of legal power. First, under Section 61 of the Water Resources Act 1991, it can seek an agreement with those who have a right to withdraw water for agricultural or commercial/industrial uses to voluntarily change the conditions of their licence. This could include an agreement to reduce abstraction based on a sense of altruism or care for the environment. If this approach is unsuccessful, the EA has a second legal power under Section 52 of the Water Resources Act 1991 to impose a change to licence conditions. The EA would be obliged to pay compensation for an imposed licence change except in cases of 'serious' damage to the environment.²⁷



²⁷ Under the 2013 Water Law.

Insights for the legal profession

a) Examples of relevant cases and legal proceedings

Argentina

Villa 31 bis, an informal settlement near the centre of Buenos Aires, was not connected to a piped water network. Instead, residents were supplied water for domestic purposes by means of water storage tanks. The City of Buenos Aires stopped this supply in June 2006. Residents, represented by the civil society organisation *Asociación Civil por la Igualdad y la Justicia*, applied for an injunction against the city before the Administrative and Fiscal Court. The Court granted the injunction. The City of Buenos Aires appealed to the Appeal Chamber for Administrative and Fiscal Matters against this decision, but the Appeal's Chamber upheld the decision of the Court in first instance.²⁸

Interestingly, the Appeal's Chamber made strong reference to international human rights norms, referring to the ICESCR, General Comment No. 3 on the nature of State Parties' obligations and General Comment No. 15 on the right to water. The Appeal's Chamber also cited cases before the Inter-American Commission of Human Rights. The Chamber distinguished between the duty of the City of Buenos Aires to progressively realise improved water supply through piped water network and the State's obligation to guarantee minimum levels of access to water to all citizens. Indeed, recognising that the right to water is a fundamental human right, the decision calls for the State authorities to adopt relevant measures to provide basic access, even in times

of crisis or emergencies and especially for groups living in precarious conditions.

In this case, the supply of a sufficient quantity of cistern trucks every day to the residents of the slum district is the minimum the State is obliged to provide them, until an improved alternative service is offered by the local authorities.



²⁸ WaterLex Legal Database (2007). *Asociación Civil por la Igualdad y la Justicia v. Gobierno de la Ciudad de Buenos Aires*. Available at: <https://bit.ly/31WO64a>

Bangladesh

The claimant, a former Member of Parliament and Minister for Social Welfare, filed a writ petition on behalf of all water users against the government for its failure to comply with the Environment Conservation Act 1995 and its 1997 regulations. The petition alleged that there was widespread arsenic contamination in tube wells across the country in quantities well above health standards. After the High Court dismissed the petition, the claimant appealed to the Supreme Court.

The Supreme Court noted that, by failing to monitor drinking water quality and to take appropriate measures to provide safe arsenic-free water, public authorities breached their statutory duty under the Environment Conservation Act. The

Court held that this failure constituted a violation of the right to life as guaranteed by Articles 31 (right to protection of law) and 32 (right to life) read in combination with Articles 15 (provision of basic necessities) and 18 (duty to improve public health) of the national Constitution. The Court also referred to Article 12 of the ICESCR and the General Comment 14 on the right to the highest attainable standard of health.

The Supreme Court directed the authorities to adopt measures to fulfil their legal obligations, including testing water for presence of arsenic, sealing wells contaminated by arsenic, and providing a yearly report to the Court of steps taken to implement the national arsenic mitigation policy.²⁹

South Africa

Govt. of the Republic of South Africa and Others v. Grootboom and Others (2000)

This case concerns a group of people living in informal housing in the Wallacedene area in Cape Town. They decided to move out when their shacks became waterlogged after a particularly wet winter in 1998, and illegally occupied private land. They were subsequently evicted and left homeless.

The Constitutional Court held that the State is obliged to take positive action to meet the needs of people living in extreme poverty, in particular the homeless or those living in intolerable conditions. Access to water and sanitation were

key components in this case. The Court held that the State had to provide the persons who it had evicted with adequate housing until such time that they could find suitable alternative accommodation. This included the supply of tents, portable latrines and a regular supply of water.

The Court held further that the right of access to adequate housing cannot be read in isolation but must be read together with other socio-economic rights provided in the Constitution. These socio-economic rights include the right

²⁹ Supreme Court of Bangladesh (2007). *Rabia Bhuiyan, MP v. Ministry of Local Government and others*. [online] Available at: <https://bit.ly/3sbbWUc>

to water as provided for in Section 27 of the Constitution. The State must take reasonable legislative and other measures,

within its available resources, to achieve the progressive realisation of this right.³⁰

Residents of Bon Vista Mansions v. Southern Metropolitan Local Council (2001)

Residents of a block of flats brought this case after the local Council disconnected the water supply due to non-payment of water charges.

The High Court held that, in adherence to Section 27 of the Constitution, all persons ought to have access to water

as a right. Since reasonable notice of termination and the opportunity to make representations, as required by the Water Services Act, had not been provided, the conditions and procedures for disconnection had not been 'fair and equitable'.

Mazibuko and Others v. City of Johannesburg and Others (2009) ZACC 28

The applicants in the Mazibuko case were five residents of Phiri, Soweto. Phiri is one of the poorest areas in Johannesburg where multiple residents often used the same water supply. The water company and the City of Johannesburg developed a plan to reduce unaccounted-for water and improve the rate of payment, based on the installation of prepayment meters (PPMs). The PPMs dispensed 6,000 litres of free water per household per month, and once this free water allocation had been consumed, the PPMs automatically cut off the water supply unless more credit was purchased.

Two issues arose before the court. The first issue was whether the city's decision to supply 6,000 litres of free water per month conflicted with the right to have access to sufficient water, which was set out in the Constitution (Section 27). The second was whether it was lawful to install prepayment

meters when consumers exceeded the free basic water allowance.

The High Court, followed by the Supreme Court of Appeal, ruled in favour of the plaintiffs, increasing the minimum amount of water required to be supplied to 50 litres per person per day and declaring the use of PPMs unlawful.

However, the Constitutional Court overturned the judgments of both lower courts. The Court held that 'ordinarily it is institutionally inappropriate for a court to determine precisely what the achievement of any particular social and economic right entails and what steps government should take to ensure the progressive realisation of the right'. The Court therefore refused to give quantified content to the right to water.

30 Budlender, S. et al. (2014). *Public interest litigation and social change in South Africa: Strategies, tactics and lessons*. [online]. Available at: <https://bit.ly/3276pmX>

The Court went on to hold that the positive obligations imposed upon government will be enforced by courts only: '(a) where government takes no steps to realise the rights; (b) where the government adopts measures that are unreasonable; and (c) where the government fails to give effect to its duty under the obligation of progressive realisation to continually review its policies to ensure that the achievement of the right is continued to be realised.' In this case, the Court found that the City's water policy was

reasonable and that the installation of the PPMs was not unlawful.

The Constitutional Court judgement sparked outrage on the part of activists and fears that the progressive jurisprudence in terms of socio-economic rights was challenged. However, the lessons from the case in terms of strategic litigation are more nuanced.³¹

Beja and Others v. Premier of the Western Cape and Others (2011) 3 All SA 401 (WCC)

This case was based on the provision of unenclosed toilets to a poor community. The Court held that this amounts to a violation of fundamental rights as guaranteed under the Constitution and relevant legislation. The Court notably listed the affected rights as the right to human dignity and the right to adequate housing. The Court recognised further that the failure to provide for meaningful community participation amounted to a failure to take account of the needs of vulnerable groups of people, which constituted a violation of the Constitution and relevant legislation.



Failure to provide for meaningful community participation amounted to a failure to take account of needs of vulnerable groups of people, which constituted as a violation of the Constitution.

³¹ Ibid.

b) Legal context and challenges

SDG 6's overarching goal of water and sanitation for all is part of the Agenda 2030's vision of more sustainable and prosperous societies, living in harmony with nature. Achieving universal access to water, sanitation and hygiene remains a major challenge. Millions of people, especially disadvantaged and rural populations, lack access to safe, sufficient and affordable water and sanitation and hygiene facilities.

The lack of access to water and sanitation has significant consequences for the realisation of other SDGs. Indeed, SDG 6 is one of the most interconnected goals: improved access to water, sanitation and hygiene (WASH) aids economic development, poverty reduction, education, health and more.³² For example, progress on health can only be achieved when people's needs for safe water and sanitation are satisfied.

There are three main challenges to achieving SDG 6: water scarcity, the lack of infrastructure, and the complexities of water resource management. The latter challenge is caused by many users accessing water for different – and in some circumstances, competing – purposes, such as drinking water, agriculture, and industrial use. Water management is further complicated by the number of agencies working across political and administrative boundaries to manage water in its diverse hydrological and hydrographic context, often with inadequate participation by stakeholders.

Access to safe water and sanitation are human rights, as recognised by the UN General Assembly. The international legal framework is robust and imposes clear obligations on governments to take positive steps towards water and sanitation for all. The rights to water and sanitation are either derived from the rights to an adequate standard of living or the right to health, which are recognised by legally binding treaties (especially ICESCR Art. 11 and 12); or are explicitly referred to in specific human rights treaties (CEDAW, CRC, CRPD). Soft law, such as UN Resolutions and guidance by UN Committees, adds a layer of substance by providing minimum standards without prescribing rigid methods of implementation.

Today, most legal experts agree on the justiciability of economic, social and cultural rights, including the rights to water and sanitation.

If the justiciability of economic, social and cultural rights has been challenged in the past, today most legal experts consider that arguments against the justiciability of these rights, including the rights to water and sanitation, are unfounded.³³ The entry into force of the Optional Protocol to the ICESCR in 2013, establishing complaint and inquiry mechanisms, represents a significant step towards international accountability, even though, to this date, only 23 States have ratified it.³⁴

32 Water Aid (2019). *SDG 6 as a critical enabler: policy briefs for the UN high level political forum 2019*. [online]. Available at: <https://bit.ly/33tCPD>

33 UN Special Rapporteur on the human right to safe drinking water and sanitation (2014). *Realising the human rights to water and sanitation: A handbook by the UN Special Rapporteur Catarina de Albuquerque*. [online] Available at: <https://bit.ly/3scJpOe>

34 United Nations (2008). *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*. [online] Available at: <https://bit.ly/3pZ6Ezr>

Guaranteeing that these human rights are a reality for all is the responsibility of States. Governments are responsible for setting and overseeing water resource management systems in their jurisdictions so that people may access water for drinking and domestic use, as well as for productive use, such as agriculture, industry, and energy. Yet, the UN 2018 Synthesis Report on Water noted that ‘most countries have yet to seriously put [water] plans into action.’³⁵ The report concludes that ‘accelerated progress is needed in most regions’. In low-income countries, especially in sub-Saharan Africa, ministries of water and environment suffer from a chronic lack of financial and human resources. Water laws and policies which exist on paper may not be applied in practice.

International cooperation is encouraged, mainly through sharing expertise and experience in tackling common issues.

Governments must also work in tandem with communities to achieve access to water and sanitation for all. Poor and marginalised populations must be included in plans for water and sanitation services; cost and payment processes must be affordable;³⁶ pollution and contamination of existing water resources must be reduced; water usage must be efficient to minimise waste, reduce untreated water and increase recycling or reuse of water; there must be clear laws on water abstraction and allocation that support sustainable economic growth and promote equality; and finally, governments and communities must develop the infrastructure to collect, store and distribute water efficiently.

As shown with the South African case law, strategic litigation can sometimes be successful in compelling authorities to implement the right to water and sanitation. However, strategic litigation is not a panacea, and many barriers remain

to access to justice, especially for the people whose human rights to water and sanitation are most likely to be violated. These barriers include:

- Access to information: many people do not have sufficient information or skills to engage with legal procedures. In some cases, even legal professionals may not have enough knowledge on how to use international legal norms.
- Geographical accessibility: the lack of tribunals at local levels is a major obstacle, especially for rural populations.
- Affordability: in numerous instances, the costs of enforcing rights are often prohibitively high, and thus, outside the reach of poor and often disorganised communities.

Governments must work in tandem with communities to achieve access to water and sanitation for all.

³⁵ UN Water (2018). SDG 6 – Synthesis report on water and sanitation. [online] Available at: <https://bit.ly/3lXlE1i>

³⁶ Affordable – not, as sometimes misunderstood, free. Water supply is made available by service providers for a fee/charge, which should be affordable

c) So, what can lawyers do?

This section highlights several areas for action, encouraging the profession to use its expertise and influence to contribute

to the objective of clean water and sanitation for all

Learn and educate

Lawyers can enhance their understanding of WASH (water, sanitation and hygiene) and IWRM, along with the policy and programmatic efforts to promote them at local, national, regional, and international levels.

Substantial research and analysis is available, including resources with a special focus on SDG 6. Important sources include international development agencies, such as the WHO/UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene (JMP), whose mission is to produce reliable estimates of national, regional and global progress on WASH.³⁷ The Development Law Office of the UN Food and Agriculture Organisation (FAO) is also a useful source of information, including reports and other materials on water law.³⁸ The information portal 'The Rights to Water and Sanitation', set up by a consortium of NGOs, provides essential information for a human rights-based approach to water and sanitation.³⁹ Also of particular interest for interested legal professionals, is the handbook by the Special Rapporteur on the human rights to water and sanitation.⁴⁰

WaterLex is a network of experts in water law, governance and human rights from the academic, public service, diplomatic, private and non-profit sectors, undertaking legal research on water and sanitation laws and policies at the international, national and local levels. They also develop capacity building programmes. The website provides an online mapping of national water laws and policies and a selection of international, regional and national case law on the right to water.⁴¹

Lawyers can enhance their understanding of WASH and IWRM, along with the policy and programmatic efforts to promote them at local, national, regional, and international levels.

37 The WHO/UNICEF JMP estimates for WASH in schools are now available, WHO UNICEF, JMP, available at: Available at: <https://washdata.org/>

38 <http://www.fao.org/legal/development-law/water/en/>

39 The Rights to Water and Sanitation, information portal on the human rights to water and sanitation, available at: <http://www.righttowater.info>

40 UN Special Rapporteur on Human Rights to Water and Sanitation (2014). *Realising the Human Rights to Water and Sanitation: A handbook*. [online] Available at: <https://bit.ly/3p8wDOS>

41 WaterLex Legal Database. Available at: <https://www.waterlex.org/waterlex-legal-database/>

Integrate



The adoption of the UN Sustainable Development Agenda provides impetus for law firms, corporate legal departments and other law-related organisations to examine and re-align their own policies and practices.

Law firms are invited to analyse the SDG 6 targets to identify opportunities of positive contributions but also the potential negative or unintended impacts of their activities on SDG 6. Social and environmental objectives can be reviewed to ensure that they are aligned with the targets of SDG 6.

Corporate legal departments can be at the forefront of the effort of examining how their business model positively contributes or negatively affects progress towards SDG 6 targets. This review could, for instance, lead to the adoption of processes that utilise less water and/or less chemicals than

the industry standards.

The UN Global Compact, established in 2000, is one of the world's leading corporate responsibility initiatives. The main purpose is to encourage companies to support a core set of values, called the Ten Principles, in the areas of human rights, labour rights, environment, and anti-corruption. Several of these principles are directly relevant to SDG 6, in particular Principle 1 'Businesses should support and respect the protection of internationally proclaimed human rights', Principle 7 'Businesses should support a precautionary approach to environmental challenges', and Principle 8 'Businesses should undertake initiatives to promote greater environmental responsibility'.⁴²

Law firms and companies should also look at their internal

⁴² UN Global Compact (2010). *Ten Principles of the UN Global Compact*. [online]. Available at: <https://bit.ly/3e8Zdt7>

operations, which could involve tracking and reducing their own water use or ensuring that all employees have access to adequate sanitation.

Lawyers who, as solicitors or in-house counsel, advise public authorities or companies active in the water or waste management sectors have a particular responsibility and role to play. They should be familiar with SDG 6 and should consider how the law can be used to enhance positive outcomes and reduce potentially negative impacts on SDG 6.

A contested topic is the increasing role of the private sector in the water and sanitation sectors. The delegation of these services in many countries has been justified by an alleged superior performance of the private sector. However, without an effective regulatory framework, privatisation can lead to decreased investments in maintenance or increased prices for users. Lawyers involved in these transactions should ensure that such contracts and concession of public services comply with the human right to sufficient, safe and affordable water and sanitation.

Act

The SDGs also present a compelling opportunity for law firms, corporate legal departments and other lawyers to expand their pro bono legal activities domestically and abroad.

In regard to SDG 6, the legal community can play a significant part in promoting the realisation of universal access to clean water and sanitation in the following ways:

- Lawyers can raise awareness and provide trainings on the legal framework governing the rights to water and to sanitation and how civil society organisations can use a human rights-based approach in their advocacy work.
- Lawyers and law firms can support the drafting of legislation implementing the rights to water and sanitation. The legal profession can support ministries, parliamentarians, water service providers and regulators as well as civil society organisations to contribute to positive change in water and sanitation laws and policies.

- Lawyers can help civil society organisations supporting the most disadvantaged groups and individuals to hold the authorities accountable for the realisation of their human rights to water and sanitation. For many years, A4ID has led the way in facilitating such engagement.⁴³

As illustrated by the examples above, strategic litigation, when combined with social mobilisation, advocacy, and public awareness campaigns, can play a transformative role and lead to legislative reforms beneficial for the access of all to water and sanitation.

The SDGs, and particularly SDG 17, provide a call for law firms to deliver their pro bono activities in partnership with the corporate sector, civil society, NGOs, governments and international organisations. Working in partnership when delivering pro bono legal support is crucial to ensure that the intervention is adapted to the local context, responsive to actual community needs and more effective.

⁴³ Become A4ID's Legal Partner: <http://www.a4id.org/get-involved/becoming-a-legal-partner/>



Photo credits

Inside cover: Kathy Mueller/Canadian Red Cross; page ii: LawWorks; page 1: Sheryl Silverman/World Bank; page 2: Ana Cecilia Gonzalez-Vigil/World Bank; page 3: Albert González Farran/UN Photo; page 8: Allison Joyce/UN Women; page 9: Jo. D. Anderson/Flickr; page 13: ZAK/UNICEF; page 14: Tim Lumley/Flickr; page 17: UN Water Website; page 19: Ayene/UNICEF; page 20: Michael Sauer/Flickr; page 21: Sinn Fein/Flickr; page 24: Indagando/Water for life voices; page 25: Cycling Man/Flickr; page 26: Vee/Flickr; page 29: SuSanA Secretariat; page 33: Ismail Abdulhi/Worldbank; Inside backcover: Arne Hoel/World Bank



Advocates for International Development
Lawyers Eradicating Poverty