

EDITORIAL

Editorial for Localising the Sustainable Human Right to Water

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This Special Issue on Localising the Sustainable Human Right to Water begins with contributions focused on a global and more general perspective. These contributions provide a general introduction to the topic of the sustainable human right to water. It then shifts perspective to provide regional contributions, and finally zooms in to contributions focused on the implementation of this right at the national level.

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The idea that everyone has a right to water is not new, and water's indispensability for human survival has been recognised throughout history. Globally, the human right to water is almost universally (politically) accepted and in the last two decades the human right to water has gained a prominent place in international law and policy. Significant developments have been made in international fora towards recognition of the human right to water, including the adoption of General Comment 15 by the United Nations Committee on Economic, Social and Cultural Rights, which states that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. The United Nations General Assembly Resolution 64/292 on the Human Right to Water and Sanitation, from 2010, reinforced this as a self-standing justiciable human right.

The right to water and the right to sanitation are two distinct human rights, and this Special Issue will only examine the human right to water. The human right to water has a firm international foundation and there is a consistent dialogue between the international and national level on this right. This should influence national law and policies related thereto. However, the human right to water is still in the process of being implemented at national levels with less frequent formulations in national constitutions, legal frameworks, national strategies, plans of action and jurisprudence. Therefore, to make the right to water really effective attention should shift from the international to the national level.

The importance of this natural resource (water) is also reflected in the concept of sustainable development, which according to its classic formulation in the 1987 Brundtland Report is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.' The more recent Sustainable Development Goals from the 2030 Agenda for Sustainable Development refer to the importance of water in – amongst others – Goal 6 'Clean Water and Sanitation' which aims to achieve universal and equitable access to safe and affordable drinking water for all by 2030. One of the characteristics of the Sustainable Development Goals is that they are country based, thus placing the essential responsibility for their accomplishment at the national level. This accords with the fact that the majority

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of freshwater resources are regulated by the States within which they are allocated. National regulations, plans and policies thus have a central role to play in ensuring that the Sustainable Development Goals are achieved, including to ensure that the drinking water targets under Goal 6 are met by the year 2030.

The human right to water and the concept of sustainable development are interconnected at both theoretical and practical levels. While they are advocated at an international level, their implementation and realisation take place at the State level. This Special Issue thus focuses on the national implementation of the sustainable human right to water and draws on national experiences and insights to understand how it has been implemented at the State level. This Special Issue consists of articles encompassing a broad spectrum of issues relating to the human right to water, sustainable development and the sustainable human right to water in local contexts. The different focal points on the implementation of these concepts in different States in each article demonstrate the complexity of issues this topic raises, and how the sustainable human right to water is adaptable to the national context within which it is implemented. This wide range of issues is clearly evident in the global scope of the authors and the national contexts explored by each.

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From a global perspective, **Antoinette Hildering's** article *'The Impact of a Human Right to Water on the Sustainable Balance of Water Uses under the UN Watercourses Convention'* explores the impact of the human right to water on the sustainable balance of water uses and how this relates to different water sources under the United Nations Watercourses Convention. This article addresses the general principles of that Convention, particularly the principle of equitable and reasonable utilisation. It concludes that, even though no water use is granted inherent priority under international water law, the key impact of the human right to water on the Convention is to provide effective priority to vital human needs over other less vital water uses. It establishes that the human right to water strengthens the position of water uses under the Convention's principle of equitable and reasonable utilisation for vital human needs.

Also, from a global perspective, **Otto Spijkers'** article *'The Sustainable Human Right to Water as Reflected in the Sustainable Development Goals'* addresses how the Sustainable Development Goals facilitate the implementation of the international human right to water, *inter alia* by calling for a more sustainable interpretation of this human right. This article links the human right to water, as derived primarily from the International Covenant on Economic, Social and Cultural Rights, and the priority of satisfying vital human needs, based on Article 10 of the United National Watercourse Convention, to some of the pledges made in the Sustainable Development Goals, and SDG 6 in particular. The article explores these linkages in several stages of the SDGs development and implementation. It focuses on the 2013 to 2015 drafting process, and analyses in-depth the suggested insertions into SDG 6 of references to the human right to water. Attention is thus paid to the inclusive and multi-stakeholder drafting process in formulating the final SDG 6. The article provides a textual analysis of SDG 6 as adopted in 2015, comparing it with authoritative codifications of the human right to water in sources of international law, primarily treaties. Treaties used for the purpose of this analysis are diverse and include the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights. It further includes an analysis of the implementation process of SDG 6 following its adoption in 2015. The article concludes by highlighting how SDG 6 can encourage States to comply with their obligations to respect, protect and fulfil the internationally recognised human right to water with a sustainable interpretation thereof.

Again, from a global perspective, **Henry F. (Chip) Carey's** article *'The Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation: An Assessment of its First Dozen Years'* looks at the role of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation. It begins with an analysis of the work of the First Rapporteur, Catarina de Albuquerque, known for her Handbook on Realising the Human Rights to Water and Sanitation, her analysis of right violations, and her country visits to the USA and Brazil. The article then turns to the work of the Second Rapporteur, Leo Heller, and his studies on gender inequalities, and his country visits to El Salvador, among others. This article addresses the influence the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation has had on the universal implementation of the rights and challenges and criticisms of this procedure.

We then shift perspective, from the global to the regional. Adopting a European Union perspective, **Jerry van den Berge, Rutgerd Boelens and Jeroen Vos'** article *'How the European Citizens' Initiative "Water and Sanitation is a Human Right!" Changed EU Discourse on Water Services Provision'* explores the first ever

successful European Citizens' Initiative (ECI) encouraging the EU to legally recognise the human right to water and sanitation. The ECI makes it possible to propose an issue for European legislation, and the Right2Water campaign was launched in support. This article details the Right2Water campaign, which proposed to implement the human right to water and sanitation in European law and gave directives for this implementation. However, the European Commission gave a disappointing response thereto; stating that the implementation of the human right to water was left to Member States, that many of the suggestions made by Right2Water were already part of EU policy, and there was no need to change existing EU legislation. The article details that, despite this disappointing response at the regional level, at the State level the Right2Water campaign had a much bigger impact than expected, with several countries adapting their national legislation. It also led to the eventual revision by the European Commission of the Drinking Water Directive. This article explains the success of the Right2Water campaign and describes how the ideological debate around the human right to water took shape during the campaign. It also analyses the controversy between the ECI Right2Water, and the response of the European Commission, and the wider impact it has had in the long term.

We then leave the European region, and travel to Southern Africa. From a Southern African regional perspective, **Michelle Barnard's** article *'Constitutionalising a Human Right to Water in the Southern African Development Community'* showcases the link between a sustainable human right to water and the objective of enhancing the standard and quality of the lives of all peoples in Southern Africa, in particular, in the region of the Southern African Development Community (SADC). SADC Member States include; Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe. Articles 4 and 5 of the Treaty establishing the Southern African Development Community require that the community must strive to enhance the standard and quality of the life of all peoples of Southern Africa, and in doing so must act in accordance with human rights. With water in the SADC region being unevenly distributed, it is a formidable challenge to provide sustainable access to safe and sustainable water for all the peoples of the SADC, and this is a situation that negatively impacts the standards and quality of life. The article discusses the possibility of deriving a right to sustainable water access from existing human rights at the international and African regional levels, including the United Nations Resolution 64/292, General Comment 15, the African Charter on Human and Peoples Rights, and the African Union African Convention on the Conservation of Nature and Natural Resources. The article also addresses the regulation of SADC water resources under various SADC instruments, including the Regional Strategic Action Plan on Integrated Water Resources and Development Management, and the Revised Protocol on Shared Watercourses.

We then zoom in on one particular State in Africa. **Pedi Obani's** article *'Localising the Human Right to Water in Lagos State, Nigeria'* explores the localisation of the human right to water in Lagos, Nigeria, in the context of water reforms and the privatisation of water resources. This article recognises that the human right to water has been used as a critical tool in water justice struggles and local advocacy against the privatisation of water resources, to the extent that the human right to water and anti-privatisation discourses have become almost inseparable. As a result, the issue of the ideal economic model for the delivery of basic water services is quite often conflated with the State's obligation in localising the human right to water. The opportunity for private sector involvement in the control of water supply services has been met with stiff opposition from local water justice advocates in Nigeria. The findings of this article show that, contrary to the focus in literature, whereas the national government continues to participate in international human right to water processes, private sector participation is often embedded in water sector reforms at sub-national levels of governance, without addressing the compatibility with human rights standards. An assessment of the instruments adopted by the regulators and water services providers in Lagos indicates incoherence and contradictions within the human right to water. The article concludes that, although private sector participation cannot account for all of the failures to localise the human right to water of local people, and has even improved water supply service coverage in many cases, the current legal framework for the water reforms in Lagos in particular entrenches human vulnerabilities and exacerbates inequalities in the distribution of access to water for personal and domestic uses.

We then travel to yet another African State. **Tobias Schmitz and Bas Rensen's** article *'Participation in the Implementation of the Human Right to Water in Tunisia'* focuses on the link between the human right to water and the Sustainable Development Goals in the Tunisian context. It does this by placing primary focus on local institutions and communities in Tunisia to demonstrate the importance of local indicators and local action to measure and achieve Sustainable Development Goal 6, specifically Target 6.B. The realisation of this SDG target in Tunisia is assessed by focusing on localised water management bodies that are the lowest appropriate level of decision making in water management, and how successfully Target 6.B. is integrated

into the management principles of these bodies. The article demonstrates that the criteria used to judge the performance of local water management bodies in Tunisia do not on the whole correspond to the substantive targets of Sustainable Development Goal 6. This leaves open the question how progress in realising Sustainable Development Goal 6 is, and ought to be, monitored. This article concludes that documenting country experiences with the implementation of Sustainable Development Goal 6, as well as experiences with monitoring it, can be useful in creating a community of practice amongst Sustainable Development Goal practitioners.

We then turn to another region of our world, South America. **Gabriela Cuadrado-Quesada's** article *'Realising the Human Right to Water in Costa Rica through Social Movements'* explores the realisation of the human right to water in Costa Rica through social movements. This article argues that denouncing and demanding the realisation of the human right to water through social movements and struggles, and especially through social organisation, is the way forward to consolidate this right in paper and in practice. This article does so by discussing and reflecting on the recent role of social movements in consolidating the human right to water in Costa Rica. This is done primarily through two research methods. First, a document-based analysis was conducted in two parts: (i) a literature review on the content of human rights as social process, and; (ii) a policy and law analysis on the right to water, at the international level and at the national level in Costa Rica. Second, an empirical examination of recent struggles by many people who have defended their right to water in Costa Rica was conducted. It does this through empirical examination of two case studies, and forty interviews with human rights defenders, NGOs, Community Based Organizations and government agencies in Costa Rica.

Also from a South American perspective, **Yulia Levashova's** article *'The Right of Access to Water in the Context of Investment Disputes in Argentina: Urbaser and Beyond'* explores the privatisation of water resources through foreign investment and focuses on investment disputes between foreign investors and host States concerned with the legal application of the right of access to water of the host States' population against the economic rights of foreign investors under International Investment Agreements. This article focuses on Argentinian water privatisation disputes and demonstrates that tribunals have adopted different positions on the legal status of the right of access to water in the context of foreign investment. It also analyses the interaction between the regime of international investment law and the international regime pertaining to freshwater resources. The primary aim of this article is to explore how the human right of access to water is applied and interpreted in the legal framework of international investment law. To this end the article briefly outlines how the right to water intersects with international investment law. It also provides a comparative analysis of several water investment disputes where the legal status of the right of access to water in the context of investment has been discussed. It places emphasis on the *Urbaser* case, the first to assess the application of the human right to water, and analyses the contribution of this unique case to the broader discourse of investors responsibilities. The article also addresses the legal implications of these decisions and their impact on the right of access to water.

Again from a South American perspective, **Daphina Misiedjan's** article *'Exploring the Road to Justiciability of the Human Right to Water in Suriname'*, explores the role the court could play in realising the human right to water in Suriname. It discusses the avenues for establishing a justiciable right and explains the challenges the judicial system in Suriname might encounter. Suriname is in the top ten water rich countries in the world. Even though there is thus enough water, not everyone is benefitting from it, as the percentage of the national population with access to safe drinking water is only 72.6 percent. This article uses a methodology which, firstly, reviews the relevant legal framework, paying special attention to economic, social and cultural rights. The legal analysis for Suriname includes reviewing the national Constitution, and the implementation of the relevant international law instruments. Although an in-depth analysis of case law in Suriname is not possible due to judgements not being publicly available, interviews demonstrate that cases concerning access to water have not reached the courts. The article is based on stakeholder and expert interviews. Using this methodology, the possibility of creating a Constitutional human right to water through constitutional revision in Suriname is explored, as well as the possibility of creating a justiciable human right to water by interpreting existing norms to include such right. This includes an exploration of international instruments, the approach taken by the Inter-American Human Rights systems and a national approach, and explores possibilities contained within Suriname's Constitution. This article determines the best way in which a justiciable human right to water can be established in Suriname, and how the local courts can be a catalyst in this process.

We continue our travel to the Middle East. **Ahmed Beshtawi's** article *'The Human Right to Water and the Realisation of Water Rights in the Occupied Palestinian Territory'* assesses the role of international human

rights law in relation to the protection of the human right to water in a scenario of hydro-hegemony in the Occupied Palestinian Territory. This article details the human right to water as an individual right and the related obligations it imposes on States in protecting water rights. It details Israel's violations of this right, particularly the availability, quality and accessibility of water resources in the Occupied Palestinian Territories.

Finally, we travel to Asia. From an Asian perspective **Farnaz Shirani Bidabad and Ladan Afshari's** article '*Human Right to Water in the Helmand Basin: Setting a Path for the Conflict Settlement between Afghanistan and Iran*' addresses the issues experienced between Iran and Afghanistan in their joint management of the Helmand River, a shared watercourse. The lack of cooperation in the management thereof has had significant detrimental impacts on the lives and livelihoods of those in the region as they are directly dependent on the waters, associated natural resources and wetlands of the Helmand River. This article analyses this situation from the perspective of the human right to water and principles of international water law. The article provides information on the features of the Helmand River and its importance to both Iran and Afghanistan. It also provides the historical and contemporary legal framework covering the Helmand River. Particular attention is paid to the 1973 Helmand Treaty and its insufficiencies. The article provides recommendations based on international water law and human rights law principles in order to promote cooperation between the two States and fulfil their human rights obligations relating to water in the basin.

These contributions teach us a number of lessons. We can see that the different State's contexts in which the sustainable human right to water is implemented displays a variety of different roadblocks and realisations. It is clear to see that the sustainable human right to water is not implemented uniformly internationally, and that the means of implementation must be tailored to the State in which it is being realised. It is clear to see that some States, typically those classified as developing States, have experienced significant difficulties and challenges in implementing the sustainable human right to water, and still have a way to go towards its realisation; while other States and regions, typically those classified as developed States, have had more success in the realisation thereof. The differences between the levels in realisation between these States is minimal in some comparisons, and remarkable in others.

Another important lesson is that the traditional focus in human rights scholarship on the relationship between the State – as duty bearer – and its own individuals – as rightsholders – does not result in a complete picture. Individuals outside the territory of the State, foreign direct investors, oppressed and occupied peoples... they all have a stake in how the international sustainable human right to water takes shape and is applied and interpreted in the regional, national and even local context.

A further important lesson to note from these contributions is that while this Special Issue places emphasis on the implementation of the sustainable human right to water in local contexts, authors and States alike often treat sustainability and the human right to water in isolation, and thus miss the crucial interconnectedness of these concepts and the mutual benefit and realisation these offer each other.

Perhaps the most important lesson to learn from this worldwide examination of efforts at localising the sustainable human right to water is that, despite the differences and difficulties experienced in each State's context, there has been an almost universal movement and commitment towards the implementation and realisation thereof.

This Special Issue provides a global, regional, national and local perspective on the reality of the realisation of the sustainable human right to water and the achievement of SDG 6. It covers most corners of the globe, and the broad range of issues which accompanies the implementation of the sustainable human right to water in the various contexts. This broad assessment is crucial to the relation of the human right to water and sustainable development internationally, as the integration of these national implementations results in global solutions, and collectively this national realisation can be an instrument of international change.

Competing Interests

The authors have no competing interests to declare.

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