



# **SDG 6 on Ensuring Water and Sanitation for All: Contributions of International Law, Policy and Governance**

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### I. INTRODUCTION

Sustainable Development Goal 6 on Water and Sanitation (SDG 6 Water) commits to “ensure availability and sustainable management of water and sanitation for all”, highlighting the need to ensure access to water and sanitation for all, and to care for the water resources necessary for sustainable development. This analysis focuses on the support for SDG 6 Water found in treaties such as the International Covenant on Economic, Social and Cultural Rights,<sup>1</sup> the UN Convention on the Law of the Non-navigational Uses of International Watercourses (*New York Convention*),<sup>2</sup> the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (*Helsinki Convention*),<sup>3</sup> and the Convention on Wetlands of International Importance especially as Waterfowl Habitat (*Ramsar Convention*),<sup>4</sup> illustrating synergies, complementarity and compatibility in the implementation of SDG 6 on water and sanitation.

After a concise outline of the international treaties and global policy frameworks that support SDG 6, this Issue Brief highlights certain legal obstacles that the international community and individual States may face in their efforts to achieve SDG 6 on water and sanitation, followed by a discussion of innovative international law, policy and governance mechanisms which could foster greater coherence in implementation. Connections between SDG 6 and the other SDGs are also discussed in the context of global and domestic policy integration, illustrated by a hypothetical example of national-level coordination and engagement, and initial conclusions are offered.

### II. CONTRIBUTION OF INTERNATIONAL LAW, POLICY AND GOVERNANCE TO SDG 6 ON WATER AND SANITATION

SDG 6.1, which aims towards universal and equitable access to water, derives from the right to an adequate standard of living, as per Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has 164 State Parties.<sup>5</sup> The Committee on Economic,

<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, entered into force 3 January 1976, 993 UNTS 3 [ICESCR]

<sup>2</sup> *UN Convention on the Law of the Non-Navigational Uses of International Watercourses*, 21 May 1997, annexed to GA Res 51/229 (1997). The New York Convention entered into force on 17 August 2014 but has yet to be registered in the UNTS. [New York Convention]

<sup>3</sup> *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, 17 March 1992, 1936 UNTS 269. [Helsinki Convention]

<sup>4</sup> *Convention on Wetlands of International Importance especially as Waterfowl Habitat*, 2 February 1971, 996 UNTS 245. [Ramsar Convention]

<sup>5</sup> The right to water is also protected under other international treaties, including the UN Convention on the Rights of the Child (CRC), which has 196 States Parties, and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has 189 States Parties. Article 14, paragraph 2, of the CEDAW stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 27 of the UN Convention on the Rights of the

Social and Cultural Rights (CESCR), the independent body of experts elected by States to interpret the ICESCR, has clarified that the right to water is essential for securing an adequate standard of living.<sup>6</sup> Indeed, providing evidence of customary law, in the United Nations (UN) General Assembly and the Human Rights Council, States affirm by consensus that “the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.”<sup>7</sup>

As the CESCR also notes, the right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses,<sup>8</sup> as endorsed by the UN General Assembly and the Human Rights Council.<sup>9</sup> General Comment 15 on the right to water, adopted in November 2002 by the UN CESCR, sets criteria for the full enjoyment of the right to water addressing: availability, quality, and accessibility to water which includes non-discriminatory physical and economic access to water and information on water issues as components.<sup>10</sup> Of importance to SDG 6.6, General Comment No. 15 states that, “The right of individuals and groups to participate in decision-making

### Box 1: SDG 6 Water and Sanitation - Ensure availability and sustainable management of water and sanitation for all

**6.1** By 2030, achieve universal and equitable access to safe and affordable drinking water for all

**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

**6.3** By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally

**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 substantially reduce the number of people suffering from water scarcity

**6.5** By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate

**6.6** By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes

**6.a** By 2030, expand international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programs, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies

**6.b** Support and strengthen the participation of local communities in improving water and sanitation management

Child (CRC), recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. This Article has consistently been interpreted by the Committee on the Rights of the Child, the treaty body in charge of monitoring and interpreting the CRC, to include access to clean drinking water and sanitation.<sup>5</sup> Article 24, paragraph 2, of the CRC requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.

<sup>6</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (2002), U.N. Doc. E/C.12/2002/11 (2003), para. 3 (“General Comment No. 15”).

<sup>7</sup> For example, UN Human Rights Council Resolution 15/9 (2010), para. 3, UN General Assembly Resolution 68/157 (2013), para. 2; UN General Assembly Resolution 70/169 (2015): Note that the General Assembly and Council referred to the right to safe drinking water and sanitation as a single right until the adoption of UN General Assembly resolution 70/169 in 2015 which recognizes them as two rights – a right to safe drinking water and a right to sanitation.

<sup>8</sup> UN CESCR, General Comment No. 15, para 2.

<sup>9</sup> UN General Assembly Resolution 70/169 (2015), para. 2, UN Human Rights Council Resolution 27/7 (2014), preambular para. 21.

<sup>10</sup> General Comment No. 15, para 12 “(a) Availability. “sufficient and continuous,” (b) Quality. “safe, and free from [threats] to a person’s health, (c) Accessibility. Water and water facilities and services have to be accessible to everyone without discrimination, [with] four overlapping dimensions: (i) Physical accessibility: “within safe physical reach,” (ii) Economic accessibility: “affordable for all,” (iii) Non-discrimination: “accessible to all,” (iv) Information accessibility: access information concerning water issues.”

processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water.”<sup>11</sup> Additionally, General Comment No. 15 recognizes: “Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.”<sup>12</sup> Similar obligations apply for the right to sanitation.<sup>13</sup>

Indeed, supporting SDG 6.2, the right to safe drinking water and sanitation is a derivative right to an adequate standard of living, a pre-requisite to the realization of rights to adequate housing and health. These are necessary to the right of every child to a standard of living adequate for the child's development, including access to sanitation, as guaranteed by the UN Convention on the Rights of the Child (CRC). As the CESCR indicates, States must ensure that everyone, without discrimination, has physical and affordable access to sanitation “in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity,”<sup>14</sup> endorsed by the UN General Assembly and the Human Rights Council.<sup>15</sup> Additionally, the UN Independent Expert on human rights obligations related to access to safe drinking water and sanitation has endorsed and expanded upon the criteria articulated by UNCESCR.<sup>16</sup> These international human rights standards require States to take active steps to ensure that everyone can enjoy the right to water universally (supporting SDG 6.1) and sanitation (achieving SDG 6.2). State parties must adopt the necessary measures directed towards the full realization of the right to water and sanitation, including by taking positive measures to assist individuals and communities to enjoy the right,<sup>17</sup> as expeditiously and effectively as possible.

SDG 6.3 focuses on pollution reduction and is founded in Chapter 21.3 of *Agenda 21* (Rio Earth Summit, 1992),<sup>18</sup> Article 25 and 40 of the *Johannesburg Declaration on Sustainable Development* (WSSD, 2002),<sup>19</sup> the UNEP Manila Declaration (UNEP, 2012),<sup>20</sup> and the *Future We Want* (Rio+20, 2012).<sup>21</sup> The key instruments relating to the release and transportation of hazardous chemicals – the Basel, Rotterdam and Stockholm Conventions – are implicated by the SDG 6.3's focus on minimizing release of “hazardous chemicals” for clean water.<sup>22</sup> In implementing these Conventions, State Parties to the Conventions have enhanced synergies, cooperation and coordination in their decision-making. The “Synergies” framework, grounded in an Ad Hoc Joint Working Group, was adopted through decisions of each respective Convention,<sup>23</sup> re-focusing

<sup>11</sup> General Comment No. 15, para. 48.

<sup>12</sup> General Comment No. 15 para. 48.

<sup>13</sup> *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, para. 66.

<sup>14</sup> Committee on Economic, Social and Cultural Rights, ‘Statement on the Right to Sanitation’, para. 8.

<sup>15</sup> UN General Assembly Resolution 70/169 (2015), para. 2, UN Human Rights Council Resolution 27/7 (2014), preambular para. 21.

<sup>16</sup> *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, (1 July 2009) U.N. Doc. A/HRC/12/24, para. 72-73, 75: “There must be a sufficient number of sanitation facilities (with associated services) within, or in the immediate vicinity, of each household, health or educational institution, public institutions and places, and the workplace... Physical accessibility must be reliable, including access at all times of day and night. The location of sanitation facilities must ensure minimal risks to the physical security of users... Moreover, sanitation facilities should be constructed in a way that minimizes the risk of attack from animals or people, particularly for women and children.”

<sup>17</sup> UN CESCR, General Comment No. 15, para 25.

<sup>18</sup> Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

<sup>19</sup> *Johannesburg Declaration on Sustainable Development*, Report of the World Summit on Sustainable Development, Johannesburg, South Africa, UN Doc. A/CONF.199/20.

<sup>20</sup> *Manila Declaration on Furthering the Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities*, (2012), UNEP/GCSS.XII/INF/10.

<sup>21</sup> UN Doc. A/RES/66/288 (27 July 2012).

<sup>22</sup> *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, 1673 UNTS 126; 28 ILM 657 (1989); *Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, 2244 UNTS 337; 38 ILM 1 (1999) [Rotterdam Convention]; *Stockholm Convention on Persistent Organic Pollutants*, 2256 UNTS 119; 40 ILM 532 (2001).

<sup>23</sup> *Basel Convention*, Decision BC-IX/10 (June 2008), *Rotterdam Convention*, Decision RC-4/11 (October 2008) and *Stockholm Convention*, Decision SC-4/34, (May 2009).

decision-making around organizational, thematic, management and administrative issues. Further integration has occurred through simultaneous extraordinary meetings of the COP held in 2010, providing a group of early joint activities including synchronized budget and auditing,<sup>24</sup> a move in 2011 to begin harmonization of the Secretariats,<sup>25</sup> a 2013 omnibus decision coordinating all meetings of the COP,<sup>26</sup> and in 2015, enhanced measures for cooperation and coordination which further expands institutional integration on strategic, technical and financial matters.<sup>27</sup>

With regards further targets – SDG 6.4, SDG 6.5 and SDG 6a – three further international treaties intersect for environmental protection of waters. First, the *Ramsar Convention*<sup>28</sup> and its 169 Contracting Parties<sup>29</sup> facilitate the conservation and sustainable use of natural resources through emphasis on the wise use of wetlands.<sup>30</sup> Second, the 1997 *New York Convention*, with 16 signatories and 36 Parties,<sup>31</sup> seeks the harmonization of terms and principles relating to watercourse agreements,<sup>32</sup> facilitation of cooperation and consultation relating to the protection and management of international watercourses,<sup>33</sup> and constructive reconciliation of disputes.<sup>34</sup> Its adoption holds potential to further harmonization of international legal standards with respect to integrated trans-national management of international waterways and watersheds. Third, the 1992 UN Economic Commission for Europe (UNECE) *Helsinki Convention*, with 26 signatories and 40 Parties,<sup>35</sup> aims to protect transboundary watercourses and international lakes through cooperation to strengthen measures to prevent pollution of the marine environment, and to address, minimize, and mitigate any adverse effects from the failure to do so.<sup>36</sup>

Given the transboundary operative scope of the Helsinki Convention,<sup>37</sup> and the New York Convention,<sup>38</sup> cooperative arrangements under these treaties facilitate the implementation of SDG 6.5 which calls for integrated water resources management at all levels, including through transboundary cooperation. For instance, the Helsinki and New York Conventions' regional cooperation efforts to prevent adverse health and socio-economic impacts from environmental damage to transboundary rivers might be recognized as good practices for SDG 6.5, or might

<sup>24</sup> See: Decisions BC.Ex-1/1, RC.Ex-1/1 and SC.Ex-1/1.

<sup>25</sup> See: Decisions BC-10/29, RC-5/12 and SC-5/27; Proposal from the Executive Secretary of the Basel, Rotterdam and Stockholm Conventions for the organization of the secretariats of the three conventions (21 December 2011), <http://www.brsmeas.org/SynergiesProcess/JointManagerialFunctions/OrganizationoftheSecretariats/tabid/2619/language/en-US/Default.aspx>.

<sup>26</sup> See: Decisions BC.Ex-2/1, RC.Ex-2/1 and SC.Ex-2/1. .

<sup>27</sup> See: Decisions BC-12/17, RC-7/9, SC-7/27 (international cooperation); BC-12/18, RC-7/8, SC-7/22 (integrated financing); BC-12/20, RC-7/10 and SC 7/28 (enhanced cooperation); BC-12/20, RC-7/11, SC-7/29 (clearing-house mechanism); BC-12/22, RC-7/12, SC-7/30 (science); BC-12/22, SC-7/31, RC-7/13 (coordination of COPs).

<sup>28</sup> The Ramsar Convention was agreed on 2 February 1971 in Ramsar, Iran, and includes the 1982 amendments and a 1987 protocol. See *The Ramsar Convention Manual* 6<sup>th</sup> ed, (Ramsar Convention Secretariat, 2013) 21, <http://www.ramsar.org/sites/default/files/documents/library/manual6-2013-e.pdf> [accessed 27 May 2015] (*Ramsar Manual*).

<sup>29</sup> *Ibid*, Ramsar Manual, 21–2. Originally with 7 members when it entered into force in December 1975, the Ramsar Convention had 168 Contracting Parties as of May 2014.

<sup>30</sup> Ramsar Convention, Article 6.

<sup>31</sup> UN Treaty Collection, *Chapter XXVII Environment: Convention on the Law of the Non-Navigational Uses of International Watercourses* (New York, 21 May 1997), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXVII/XXVII-12.en.pdf> [accessed 27 May 2015].

<sup>32</sup> New York Convention, Article 3(2).

<sup>33</sup> New York Convention, preamble vi, Article 6(2).

<sup>34</sup> New York Convention, Article 33.

<sup>35</sup> UN Treaty Collection, *Chapter XXVII Environment: Convention on the Protection and Use of Transboundary Watercourses and International Lakes* (Helsinki, 17 March 1992), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXVII/XXVII-5.en.pdf> [accessed 27 May 2015].

<sup>36</sup> Helsinki Convention, preamble iii.

<sup>37</sup> Helsinki Convention, Article 1, applies to: (1) “transboundary waters”, including both surface and groundwater, and which traverses two or more States, and (2) “transboundary impacts” which are human-induced adverse effects on the environment impacting human health, biodiversity, cultural heritage and socio-economic conditions,

<sup>38</sup> New York Convention, Article 1, states that the treaty applies to uses of international watercourses for purposes other than navigation, and to measures relating to protection, preservation and management. New York Convention, Article 2, defines “watercourse” to include the system of surface and groundwater as a unitary whole.

further the capacity building, international cooperation and other support necessary for SDG 6a. With respect to wetlands, State Parties to the Ramsar Convention recognize that wetlands – whether naturally occurring or manmade, permanent or temporary,<sup>39</sup> with adjacent marine water deeper than six meters at low tide<sup>40</sup> – constitute vital ecosystems that provide broad socio-cultural, environmental and economic benefits. The Ramsar Convention’s inclusive definition of wetlands as one contiguous whole can advance States’ achievement of SDGs 6.3, 6.4, 6.5 and 6.6.<sup>41</sup>

The New York Convention and the Helsinki Convention agree key principles relating to the cooperative and equitable use and management of international watercourses, including sustainable use, environmental protection, and a duty to cooperate on equitable governance of the watercourse.<sup>42</sup> Additionally, the precautionary principle, the polluter-pays principle, and the principle that water resources should be managed for both present and future generations are reflected in the Helsinki Convention.<sup>43</sup> Under the Ramsar Convention, Parties aim to facilitate cooperation relating to the “wise use” of wetlands and water resources based on an ecosystem approach,<sup>44</sup> with “wise use” conceptually defined as “the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development.”<sup>45</sup> The active institutional framework arising from the cooperative and precautionary mechanisms of the Convention might encourage Parties to achieve core aspects of SDG 6 including: (i) reduction of pollution under SDG 6.3, (ii) support for sustainability across the water-use chain under SDG 6.4, (iii) policy harmonization and collaboration under SDG 6.5, (iv) establishment of protective measures under SDG 6.6, and (v) mobilization of international support for capacity building and water-usage programs under SDG 6a.

The three water Conventions facilitate the development and strengthening of local, regional, and national measures to protect transboundary waters, providing a normative framework to guide regional and sub-regional agreements on key watercourses, actively engaging for achievement of SDG 6. Parties to the Helsinki Convention aim to implement a variety of mechanisms to prevent/control pollutants, notably precautionary measures and application of environmental impact assessments to minimize pollution.<sup>46</sup> As such, supporting SDG 6.3, the Helsinki Convention includes provisions to address water quality and quantity, and integrated management of water basins.<sup>47</sup> Under the New York Convention, Parties are encouraged to harmonize watercourse agreements to the Convention terms.<sup>48</sup> Parties to the Ramsar Convention implement National Wetland Policies based on common guidelines.<sup>49</sup> Measures under the three Conventions that allow for the harmonization of water-related policies, in particular concerning

<sup>39</sup> Ramsar Convention, Article 1.1.

<sup>40</sup> Ramsar Convention, Article 2(1): “Wetlands” as a category includes areas of marsh, fen, peatland or water (fresh, brackish or salt) and may extend to riparian and coastal zones adjacent to wetlands or islands, and marine water deeper than six meters at low tide.

<sup>41</sup> Ramsar Manual, 7.

<sup>42</sup> New York Convention, Article 5, 7, 8-9, 20; Helsinki Convention, Article 2(1)–(6), 5, 6, 9-10, 12.

<sup>43</sup> Helsinki Convention, Article 2(5); L B de Chazournes, *Freshwater and International Law: The Interplay between Universal, Regional and Basin Perspectives* (The United Nations World Water Assessment Programme Report 3, Insights 2009), available at: <http://unesdoc.unesco.org/images/0018/001850/185080E.pdf>.

<sup>44</sup> Ramsar Convention, Article 3(1); Ramsar Manual, 46–7. W E Burhenne & M Jahnke, *International Environmental Soft Law: collection of relevant instruments* (IUCN: MArticleinus Nijhoff, 1993).

<sup>45</sup> Ramsar Convention, COP 9 Resolution IX.1, Annex A (2005).

<sup>46</sup> Helsinki Convention, Article 3(1)(a)–(l). “(a) mechanisms to prevent/control pollutants through non-waste technology, (b) point of source licensing for waste-water discharge, (c) limits for waste-water discharges, (d) precautionary requirements for deterioration of water quality, (e) pre-discharge treatment procedures for municipal waste-water, (f) industrial and municipal nutrient input reduction measures, (g) agricultural nutrient input reduction measures, (h) application of environmental impact assessments, (i) sustainable water-resource management through the ecosystem approach, (j) development of contingency plans, (k) groundwater pollution prevention measures, and (l) measures to minimize accidental pollution”

<sup>47</sup> Helsinki Convention, Article 3(3); FAO, *Forests and Water: International Momentum for Action* (FAO, Rome:2013) available at: <http://www.fao.org/docrep/017/i3129e/i3129e.pdf>.

<sup>48</sup> New York Convention, Article 3.

<sup>49</sup> Ramsar, COP 4, Recommendation 4.10 (1990); Ramsar, COP 7, Resolution VII.7 (1999). Further: Ramsar Manual, 47–8.

water quality, the use of the precautionary approach, and the use of environmental impact assessments, constitute important channels for the adoption of the mutually supportive programs, policies and procedures necessary to effectively achieve SDG 6 – water and sanitation.

Environmental protection is a key feature across the Conventions. In the New York Convention, riparian States are required to protect the ecosystem of relevant watercourses, prevent the introduction of pollution and alien species, and to mitigate any significant adverse impacts where there is reasonable belief that these may occur.<sup>50</sup> The Helsinki Convention seeks to prevent, control and reduce transboundary impacts from pollution, including through environmental impact assessments, joint measures, cooperative monitoring and public participation in policy making directly supporting SDG 6.5 on transboundary water management, also peripherally bolstering SDG 6.3 on pollution prevention through information of water-quality.<sup>51</sup> Under the Ramsar Convention, Parties designate suitable wetlands for inclusion on the *List of Wetlands of International Importance*, requiring establishment of a domestic monitoring framework and ecological information-sharing with the Ramsar Secretariat regarding changes to their ecological character, with notations indicated on the Montreux Record among other procedural mechanisms.<sup>52</sup> Policy-making decisions relating to water-use efficiency, integrated water management and protection of water-related ecosystems can be significantly enhanced through the monitoring framework established under Ramsar, which provides valuable insight to changes in ecological character of water sources informing policy in support of SDG 6.4-6.6. Each convention's notification efforts support integrated water management under SDG 6.5, and implicitly foster greater dialogue and cooperation in support of SDG 6 more broadly speaking.

Apart from negotiations in the respective forums of the UNECE, or the Ramsar Standing Committees and Conference of the Parties, dispute settlement procedures can be provided. Given the importance of the management of shared water resources to future sustainable development and the potential for conflict over shared waterways, the importance of such mechanisms cannot be underestimated. Disputes that arise relating to an international watercourse under the New York Convention are to be resolved through use of negotiation, mediation, conciliation by a third party or joint watercourse institution, or by submission of the dispute to the International Court of Justice (ICJ).<sup>53</sup> The Helsinki Convention provides for similar measures including consideration by the ICJ or arbitration using its Annex IV process.<sup>54</sup> While the Ramsar Convention does not provide for explicit dispute settlement procedures, the Secretariat has been identified as a modality for consultation and implementation of measures relating to the waters in question by the ICJ.<sup>55</sup> Additionally, Parties from Europe may access dispute resolution measures established under the Helsinki Convention. Dispute settlement provisions provide clear procedures for consideration of contentious measures relating to the implementation of SDG 6.

<sup>50</sup> New York Convention, Article 11-16, 20, 21(2), 22-27; Additionally, international watercourses and related installations, facilities and works relating thereto are provided protection under international during times of armed conflict, with Parties empowered to use indirect means of communication, consultation and negotiation where serious obstacles to contact exist, see Article 29-30.

<sup>51</sup> Helsinki Convention, Article 3, 15-16; UN, Convention on Environmental Impact Assessment in Transboundary Context (1991), available at: [http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo\\_Convention\\_authentic\\_ENG.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf); UNECE, Protocol on Strategic to the Convention on Environmental Impact Assessment in a Transboundary Context Environmental Assessment (21 May 2003), available at: <http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/protocollenglish.pdf>.

<sup>52</sup> Ramsar Convention, Article 2, 3(2); See also UNECE, Seminar on the role of ecosystems as water suppliers (13 - 14 December 2004), available at: <http://www.unece.org/index.php?id=22245#/>; UNECE, Nature for Water: Protecting Water-Related Ecosystems for Sustainable Development (2004), available at: [http://ramsar.rgis.ch/pdf/key\\_unece\\_water\\_brochure01.pdf](http://ramsar.rgis.ch/pdf/key_unece_water_brochure01.pdf).

<sup>53</sup> New York Convention, Art 33.

<sup>54</sup> Helsinki Convention, Art 22.

<sup>55</sup> *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)*, Provisional Measures, ICJ Reports 2011 p 6, 27; *in passim*, Indication of New Provisional Measures, ICJ Reports 2013 p 354, 370. Further: C Miles & MC Cordonier Segger, *Ramsar Convention Secretariat Mandate—Nicaragua Border Area Dispute before the International Court of Justice* (CISDL Legal Brief, 2014).

### III. LEGAL OBSTACLES FACING THE IMPLEMENTATION OF SDG 6 ON WATER

The principal legal, policy and governance challenges to the implementation of SDG 6 include: human-induced pressures on water quality and quantity, impacts from climate change on water availability, increased demand for water-based energy both within and beyond the watershed, and degrading biodiversity and ecosystem integrity. Increased institutional capacities and cooperation are needed to foster comprehensive and compatible solutions. Water is a cross-cutting resource often traversing or impacting multiple jurisdictions, national or regional and various local rights holders, requiring a cohesive administrative approach both nationally and internationally.<sup>56</sup>

Rights to water and sanitation were relatively recently recognized, and are only adopted as legally binding in a certain number of countries.<sup>57</sup> A right to sanitation is recognised in less countries than the right to water.<sup>58</sup> A greater number of countries adopt elements of these rights in national laws and policies on water and sanitation.<sup>59</sup> Other policy obstacles are particularly relevant to SDG 6.1 and 6.2, such as: (i) exclusion of particular groups in planning decision-making, (ii) lack of culturally sensitive and pro-poor policies for the allocation of water resources between water user sectors, (agriculture, industry, energy, tourism, conservation) and also within sectors, (iii) insufficient allocation of resources for water and sanitation, and (iv) dramatically increasing populations of urban informal settlements that are often not politically accepted. Levels of drought are also being exacerbated by alterations in weather patterns due to climate change and by desertification due to poor farming practices. Decentralisation policies in many countries are transferring responsibilities for water and sanitation from the national to the regional, local or municipal level. While residents may gain closer access to decision-making processes, the necessary capacity and finances are not always transferred to the new authorities, making it difficult to manage services adequately, extending them to the unserved and under-served.

Lack of information, particularly at the local levels, can exacerbate the administrative governance challenges for SDG 6. All three Conventions provide mechanisms for information sharing and collaboration or supported its implementation. Both the Helsinki and New York Conventions provide for cooperative measures including sharing of ecological data, development of mutually applicable measures, and creation of joint mechanisms. The Ramsar Convention requires timely exchange of data relating to the ecological character of a wetland, with Advisory Missions to supplement and support domestic response capacity. Ensuring effective and consistent domestic and regional monitoring in the face of limited capacity, personnel and political changes, continues to prevent elimination of water pollution in line with SDG 6.3, among other targets.

Inadequate financing and ineffective institutional collaboration are further challenges to ecosystem protection and restoration. The lack of adequate resources in individual jurisdictions is a prime inhibitor of successful implementation of SDG 6, exacerbated by gaps in operational experience. By leveraging collaborative forums provided by the Conventions and informal

<sup>56</sup>UNECE, Seminar on the role of ecosystems as water suppliers (13 - 14 December 2004), available at: <http://www.unece.org/index.php?id=22245#/>; UNECE, Nature for Water: Protecting Water-Related Ecosystems for Sustainable Development (2004), available at: [http://ramsar.rgis.ch/pdf/key\\_unece\\_water\\_brochure01.pdf](http://ramsar.rgis.ch/pdf/key_unece_water_brochure01.pdf).

<sup>57</sup> The right to water is recognised in national law by, inter alia, Algeria, Angola, Belarus, Bolivia, Central African Republic, Congo (DRC), Costa Rica, Ecuador, France, Guinea, Kenya, Honduras, Indonesia, Madagascar, Maldives, Mauritania, Mozambique, Namibia, Nicaragua, Paraguay, Russia, South Africa, Tajikistan, Uganda, Ukraine, Uruguay and Venezuela. Note that this list is not comprehensive. The above list does not include provincial legislation recognising the right to water (e.g. California, Quebec, Wallonia, Flanders, Brussels and Mexico's Federal District). Some national judiciaries recognise the rights to water and sanitation on the basis of the direct incorporation of the ICESCR in national law (e.g. Argentina) or as rights implicitly contained in the right to life (e.g. India).

<sup>58</sup> These include, inter alia, Algeria, Bolivia, Kenya, Maldives, South Africa and Uruguay.

<sup>59</sup> The most authoritative assessment of laws is in: WASH United, Freshwater Action Network, WaterLex, *The human right to safe drinking water and sanitation in law and policy – a sourcebook*, 2012.



accompanying partnerships, costs of domestic implementation may be reduced. The Ramsar Convention plays a key role in SDG 6.5 and 6.6, among others. While all three Conventions cover water and groundwater, only the Ramsar Convention has specific jurisdiction over wetlands, and complementary jurisdiction over transboundary water and groundwater resources. As the Ramsar Convention has broad membership and a long institutional history in relation to the other two Conventions, there may exist potential to capitalize on its collaborative nature as a means to preserve and restore aquatic ecosystems in partnership with others.

#### IV. INTERNATIONAL POLICY, INSTITUTIONAL AND GOVERNANCE ARRANGEMENTS TO COORDINATE DELIVERY OF SDG 6 ON WATER

Existing policies, institutional and governance arrangements in place at international levels may require strengthening to coordinate delivery of key targets for the SDG 6 on water. Policy and governance arrangements could be deepened and improved, particularly to promote coherence, achieve synergies and mobilize additional resources for action. Internationally, transparency can be strengthened for communicating, monitoring and reporting efforts towards achieving this SDG globally, with particular reference to UN Water and other international mechanisms.

The UN human rights system supports efforts to meet SDG 6 on water and sanitation through its role both in monitoring and supporting national implementation of human rights to safe drinking water and sanitation, life and human dignity, an adequate standard of living and a healthy environment, and the highest attainable standard of physical and mental health. The UN Human Rights Council, a body made up of 47 member states elected by the UN General Assembly, carries out norm-setting related to human rights, reviews country performance, and can adopt relevant resolutions. The operationalization of frameworks relating to water rights can be assisted by special procedures, such as independent experts (often Special Rapporteurs) mandated by the Council to examine, monitor and publicly report on human rights situations in specific countries or territories (country mandates) or on major human rights issues of worldwide relevance (thematic mandates). A committee of independent experts elected by States that have ratified the treaty is established to receive and review reports from States at regular intervals (e.g. every five years for the ICESCR). The CESCR, in particular, has devoted particular attention to water and sanitation in many of its Concluding Observations.<sup>60</sup> Key human rights treaties, including ICESCR, CRC and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), include an Optional Protocol which permits individuals from signatory countries to make complaints to the Committee regarding specific alleged infringements and provides a review procedure. Human rights monitoring systems can also be activated under the auspices of three regional organisations: the African Union (AU) with 53 members; the Organization of American States (OAS) with 35 members; and the Council of Europe (COE) with 47 members. Each system includes a commission or committee that monitors implementation of these treaties and addresses individual complaints if the State in question is party to the relevant regional human rights treaty. Each system also includes a court that is empowered to make legally binding decisions with respect to individual complaints, if the State in question has ratified the relevant Protocol accepting the jurisdiction of the court over the regional human rights treaty.<sup>61</sup>

<sup>60</sup> For example: *Concluding Observations of CESCR: Libyan Arab Jamahiriya*, 25 January 2006, UN Doc E/C.12/LYB/CO/2, para 18, 35; *Concluding Observations of CESCR: Morocco* UN Doc E/C.12/MAR/CO/3 (2006); *Concluding Observations of CESCR: Bosnia and Herzegovina*, 24 January 2006, UN Doc E/C.12/BIH/CO/1, para 27, 49; *Concluding Observations of CESCR: Yemen*, E/C.12/1/Add.92 (2003), para 18; *Concluding Observations of CESCR: Zambia*, UN Doc E/C.12/1/Add.106 (2005).

<sup>61</sup> The African Court on Human and Peoples' Rights can consider complaints relating to all human rights protected by African human rights treaties, which uphold the rights to water and sanitation. The European Court of Human Rights and the Inter-American Court on Human Rights (IACHR) can only consider complaints relating to water and sanitation that relate to non-discrimination, civil and political rights, and the right to education.

National mechanisms in each country provide a primary institutional framework for the realisation of international human rights standards. Many actors are relevant in monitoring implementation, including judiciaries, human rights commissions, ombudspersons and their related offices and institutions, civil society, and individual persons. Increasingly, such institutions are addressing the rights to water and sanitation, with ground-breaking jurisprudence on these rights emerging from countries such as India, South Africa and Argentina.<sup>62</sup>

Greater emphasis must be placed on mobilization of effective financing, policy coordination and stakeholder engagement to actualize policy objectives underlying the SDGs. Particularly, there remains a lack of clarity as to how best to leverage each forum established under the respective Conventions for collaborative policy development relating to conservation and sustainable use of water resources in support of SDG 6. In addition to the mutually supportive roles of the Helsinki Convention, the New York Convention, and the Ramsar Convention, other relevant forums established under global water or related instruments include the COP/MOPs of the relevant Conventions, subsidiary or technical bodies established under the Convention on Biological Diversity (CBD) and others, or meetings of specific working groups. More broadly, stakeholder forums such as the World Water Week, or organizations such as Global Action Networks, Water Footprint Network or the Alliance for Water Stewardship – can provide valuable channels for cross-pollination, knowledge transfer and coordination of policy approaches. These forums provide for effective discussion and dissemination of information, however greater emphasis is needed for the mobilization of financing, policy coordination, and effective public participation and stakeholder engagement to actualize the SDGs policy objectives.

Innovations in three areas could be particularly relevant for SDG 6 implementation: cooperation and collaboration, environmental protection, and dispute settlement. Cooperative and sustainable management of a shared natural resource can be improved by prior consultation, notification and mitigation/minimization of significant harm relating to planned measures on international watercourses as put forward in the NY Convention, and as echoed by the Helsinki Convention's bilateral and multilateral cooperation in developing and implementing legal and policy measures applicable to pollution prevention. The wise use of wetlands of international importance under the Ramsar Convention includes domestic monitoring of changes in ecological character, and notification of human-induced changes including sharing of relevant information with the Secretariat. At COP12, Parties to the Ramsar Convention established a Wetland City Accreditation which allows for independent verification of conservation status, a quasi-certification for wise use of urban wetlands.<sup>63</sup> The Helsinki Convention also provides for public participation through dissemination of information including permits, water-quality data and strategic planning indicatives. Coordinated policy responses, sharing of practices, and financial resources mobilization are possible for critical components of SDG 6.3-6.6 and 6.a. Dispute settlement provisions, as discussed above, are quiet but impactful measures with practical application.<sup>64</sup>

## V. SDG 6 GUIDING DOMESTIC ACTION ON WATER

Water and sanitation are key for several SDGs beyond SDG 6. SDG 15 is also of particular relevance as it calls for the protection, restoration and promotion of sustainable use of terrestrial

<sup>62</sup> The most comprehensive overview of such decisions is contained in WaterLex and Wash-United, *The Human Rights To Water And Sanitation In Courts Worldwide A Selection Of National, Regional And International Case Law* (2014).

<sup>63</sup> Ramsar, Resolution XII.10 Wetland City Accreditation of the Ramsar Convention (1-9 June 2015), available at: [http://www.ramsar.org/sites/default/files/documents/library/cop12\\_res10\\_wetland\\_cities\\_e\\_0.pdf](http://www.ramsar.org/sites/default/files/documents/library/cop12_res10_wetland_cities_e_0.pdf).

<sup>64</sup> *Certain Activities carried out by Nicaragua in the Border Area* (Nicaragua v Costa Rica), ICJ 2013, Modification of Provisional Measures, Order of 16 July 2013; Provisional Measures, Order of 22 November 2013. [Border Areas]

ecosystems, the sustainable management of forests, a halting to desertification, and a reversal of land degradation and biodiversity loss.<sup>65</sup> SDG 15.1 calls for the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, particularly forests, wetlands, mountains and drylands, by 2020.<sup>66</sup> Similarly, SDG 15.8 calls for the introduction of measures to prevent the introduction of and to significantly reduce the impacts of invasive alien species on both terrestrial and aquatic ecosystems, and control and/or eradicate certain priority species by 2020.<sup>67</sup> SDG 14 calls for the preservation and sustainable use of the world's oceans, seas and marine resources.<sup>68</sup> SDG 3.9 calls for the reduction of deaths and illnesses related to hazardous chemicals, and air, water and soil pollution and contamination by 2013.<sup>69</sup> SDG 11.5 calls for a significant reduction in deaths caused by disasters, including water-related ones, by 2030, focusing on the poor and vulnerable.<sup>70</sup> SDG 12.4 calls for environmentally sound chemical life-cycles and wastes management, and reductions in their release to air, water, and soil to minimize their adverse impacts by 2020.<sup>71</sup>

## BOX 2: NATIONAL IMPLEMENTATION

Achievement of SDG 6 at the national level requires incorporation of sound coordination channels to facilitate effective horizontal and vertical integration relating to strategic planning, knowledge sharing, decision making and stakeholder participation. As each relevant Convention has a respective mandate, SDG 6 demands identification and responsiveness to the unique mechanisms under each respective regime in a complementary fashion. This process naturally needs to be driven at the ministerial or potentially the provincial levels where there is a clear preexisting mandate.

Development of a water roadmap or strategy which identifies international obligations, and national and local priorities based on a basin approach provides a basis for identification of relevant domestic legal instruments, and inclusion of impacted stakeholders (different authorities, private sector actors, civil society, indigenous and local communities, and others) to ensure policy objectives are practical and have ownership at the local level. SDG 6 has significant synergies with SDG 15 on terrestrial biodiversity and SDG 14 relating to marine ecosystems, and broader interfaces with issues relating to access to food (SDG 2), human health (SDG 3), poverty eradication (SDG 1), water or agriculturally related enterprises (SDG 8) among others.

National implementation could be achieved through creation of an inter-ministerial multi-stakeholder decision making body which integrates members from applicable domestic bodies, institutions and communities, and which establishes national policy. Participation should include members of key ministries responsible for environment, marine/fisheries, finance, and agriculture, as well as the private sector particularly water or agricultural based enterprises, academia, NGOs, and indigenous and local communities. Localization of policies can benefit from decentralization of management to community organizations in conjunction or coordinated principally in local communities or at sub-national levels. Coordinated monitoring and compliance mechanisms can be leveraged to localize monitoring of changes in ecological character. Channels to share data, and best practices need to be established to allow for knowledge transfer and capacity building.

<sup>65</sup> SDG 15.

<sup>66</sup> SDG 15.1.

<sup>67</sup> SDG 15.8.

<sup>68</sup> SDG 14: SDG 14.1 calls for by 2025 the prevention and significant reduction of marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution. SDG 14.2 calls for by 2020 the sustainable management and protection of marine and protected marine and coastal ecosystems aimed at the avoidance of significant adverse impacts, through strengthening their resilience and restorative measures to achieve health and productive oceans. SDG 14.3 aims to minimize and address the impacts of ocean acidification, including through enhanced scientific cooperation at all levels. SDG 14.5 calls for by 2020 conservation of at least 10 percent of coastal and marine areas, consistent with national and international law and based on best available scientific information. SDG 14.7 calls for by 2030 an increase in the benefits to small island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism

<sup>69</sup> SDG 3.9.

<sup>70</sup> SDG 11.5.

<sup>71</sup> SDG 12.4.

SDG 17.9 calls for the enhancement of international support for implementation of capacity building in developing countries to support national planning and implementation efforts related to the SDGs.<sup>72</sup> Given the central importance of water and sanitation to human, environmental, and economic development, SDG 6 explicitly or implicitly impacts the success of nearly all other SDGs. Greater emphasis must be placed on harmonization of policy responses which implicitly impact water and sanitation issues. Measures to achieve the SDGs may, therefore, need to be incorporated into each country's growth and development strategy. Leadership at the national level may be crucial to create a clear roadmap for implementing, monitoring and coordinating action. While discussion of national-level measures is beyond the scope of this Brief, an illustrative example is included (see Box 2).

## VI. CONCLUSION

Conservation and sustainable use of global water resources and implementation of adequate sanitation provides a wide range of benefits to ecosystem health and the welfare of current and future generations. Individually and collectively, the New York Convention, the Helsinki Convention and the Ramsar Convention play an integral role in achieving SDG 6, also SDG 15, and to a certain extent, SDGs 3.9, 11.5, 12.4, 14, and 17.9. With overlapping mandates to conserve and sustainably use water resources based on an ecosystem approach, the collaborative, substantive and procedural aspects of each Convention could provide valuable tools, particularly for developing nations, that can and must be leveraged.

SDG 6 provides a unique opportunity for the recognition, development and integration of mutually supportive legal and institutional measures. Complementary strategic planning under the Strategic Plan and Aichi Biodiversity Targets is a prospective avenue for enhanced synergies, clarity and coordination. Increased communication and collaboration at the executive level of applicable Secretariats would also benefit the implementation of SDG 6. The Basel, Helsinki, Rotterdam, and Stockholm Conventions have each adopted valuable approaches to meeting the challenges of effectively managing international water resources and reversing their degradation. The effective realization of SDG 6 also requires greater policy coherence across all governance mechanisms at all levels, and across applicable industry sectors. The development of national, regional, local and sector-based water and sanitation strategies allows for domestic policy harmonization and enhancement of interfaces with related strategic planning modalities such as NBSAPs. Further emphasis must be placed on increased complementarity across the relevant international treaties, and at the national level, through implementation and enforcement of environmental legal norms as applied by the domestic judiciary. Greater collaboration among the international legal research community, including law schools, international organizations, and the judiciary, is required to meet the need for increased legal and policy cohesion in the domestic application of international sustainable development law and those related to SDG 6 in particular.

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<sup>72</sup> SDG 17.9.

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