



The Human Right to Water

*A Research Guide
& Annotated Bibliography*

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THE HUMAN RIGHT TO WATER: RESEARCH GUIDE & ANNOTATED BIBLIOGRAPHY*

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This guide supports research on the human right to water. First it defines the right and identifies some of the challenges of research in the field. Next, it delineates international standards and institutional mechanisms designed to protect those affected by the denial of this human right. Finally, it selectively reviews current literature that provides useful starting points for contemporary research on the right to water.

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INTRODUCTION

Countries, small and large, developed and developing, all have issues relating to water quality, quantity, affordability and access. These issues need imminent and efficient solutions because of the critical importance of water to human health, life, and dignity;¹ A lack of water can lead to death from dehydration, as well as other serious diseases and risks, including diarrhea, arsenicosis, fluorosis, schistosomiasis, helminthiasis, malaria, legionellosis, and trachoma.² Women, children, minority groups, indigenous peoples, refugees, and prisoners are most vulnerable to water-related problems.³

Goal 7.C of the Millennium Development Goals (“MDGs”) based on the United Nations Millennium Declaration (“Millennium Declaration”),⁴ set a target to reduce by half the number of people without sustainable access to safe drinking water and basic sanitation by 2015.⁵ The Millennium Declaration’s basic target for drinking water was reached in 2010, and a total of 2.6 billion people gained access to improved water sources between 1990 and 2015. However, there was a serious disparity in progress among regions. The goal could not be fully reached in developing regions due to reasons such as physical water scarcity, the failure of institutions, lack of infrastructure,⁶ poverty, and rapid growth of population.⁷ Particularly, four developing regions—Caucasus and Central Asia, Northern Africa, Oceania and sub-Saharan Africa—failed to reach the target.

The issues relating to water originated from multiple sources, including political, economic, social, cultural, and environmental causes. A wide variety of solutions to water problems have been suggested by international organizations, non-governmental organizations, and human rights activists as well as national governments. One of the most promising approaches to solve water issues is for international entities—including governments, international organizations, and multinational enterprises—to legally recognize access to water as a human right under international law.⁸ In this approach,

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- 1 U.N. ESCOR, Comm. On Econ., Social & Cultural Rights (hereinafter CESCR), *General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the Covenant)* ¶ 1, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).
 - 2 *Water-related Diseases: Information Sheet*, WORLD HEALTH ORGANIZATION, http://www.who.int/water_sanitation_health/diseases-risks/diseases/diseasefact/en (last visited Feb. 15, 2017).
 - 3 *General Comment No. 15 (2002)*, *supra* note 1, at ¶ 16. See, e.g., European Monitoring Centre on Racism and Xenophobia, Council of Europe, *Breaking the Barriers – Romani Women and Access to Public Health Care*, 14 (2003); UNICEF, *World Declaration on the Survival, Protection and Development of Children*, World Summit for Children (Sept. 30, 1990), <https://www.unicef.org/wsc/declare.htm>.
 - 4 G.A. Res. 55/2, ¶ 19 (Sept. 8, 2000).
 - 5 *Goal 7: Ensure Environmental Sustainability*, UNITED NATIONS, <http://www.un.org/millenniumgoals/envIRON.shtml>.
 - 6 Water scarcity can be divided into three dimensions: physical water scarcity, economic water scarcity, and institutional water scarcity. UNESCO, *The United Nations World Water Development Report 2016, Water and Jobs* 18, <http://unesdoc.unesco.org/images/0024/002439/243938e.pdf> (last visited Feb. 15, 2017).
 - 7 UNICEF & World Health Organization, *25 Years Progress on Sanitation and Drinking Water: 2015 Update and MDG Assessment 2 (2015)*, https://www.wssinfo.org/fileadmin/user_upload/resources/JMP-Update-report-2015-English.pdf (last visited Feb. 15, 2017). The World population is expected to grow to 9.7 billion in 2050 and 11.2 billion in 2100 from the 7.3 billion current population. United Nations Department of Economic and Social Affairs, *2015 Revision of World Population Prospects (2015)*, <https://esa.un.org/unpd/wpp> (last visited Feb. 15, 2017).
 - 8 U.N. ESCOR, Comm. On Econ., Social & Cultural Rights, *General Comment No. 6 (1995): The Economic, Social and*

international entities assume active duties to protect and promote an individual right to water and to prevent violations of that right. The human right to water includes the obligations to avoid depriving people of water, to protect people against deprivation of water by other people, and to provide for the subsistence of those unable to provide water for themselves.⁹ When effectively implemented and enforced, it ensures people's access to adequate quantities of safe water.¹⁰ The human right to water is based on legally binding instruments that allow everyone to actively participate in the decision making process on water issues, including allocation, and to claim their rights instead of passively waiting for a charitable gift.¹¹ It allows the prior appropriation of water for a beneficial use to be superior to any other claims, such as a property right.¹² The human right to water may also enable people to seek judicial enforcement at the local and international levels when their rights are violated.

Researching the human right to water implies use of a wide variety of legal instruments and documents produced by inter-governmental and non-governmental organizations and states. Research is made more difficult by the complex interplay of interests behind the recognition of the right to water, the difficulty of defining water and the right to water, the diversity of stakeholders involved (including indigenous people and minority groups), the complicated and interdisciplinary nature of research (including data, statistics, strategies, implementation plans, and training materials), and the many different types of relevant legal sources (including international treaties, international custom, general principles of law, jurisprudence, soft law, and domestic laws).

In order to ease the difficulty of researching the right to water, this guide first investigates various definitions of water and the right to water and identifies the some of the challenges in carrying out this research. Next, it delineates the history of laws relating to water and various mechanisms and international principles that can be useful for protecting the rights of indigenous and local communities. Finally, the article selectively reviews several books and articles that provide excellent starting points for right to water research.

Cultural rights of Older Persons ¶ 5, ¶ 32, U.N. Doc. E/1996/22 (Dec. 8, 1995). See also Malgosia Fitzmaurice, *The Human Right to Water*, 18 *FORDHAM ENVTL. L. REV.* 537, 539-40 (2007); Peter H. Gleick, *The Human Right to Water*, 1 *Water Policy* 487, 488 (1998); Stephen C. McCaffrey, *The Human Right to Water: A False Promise?*, 47 *U. OF PAC. L. REV.* 221, 223 (2016); Edith Brown Weiss, *The Evolution of International Water Law*, in *COLLECTED COURSE OF THE HAGUE ACAD. INT'L L.* 308, 332 (2009).

9 HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY*, 52-53 (1996). It also imposes transnational duties on one government to avoid depriving people living in another territory, under another government, of access to water. *Id.* at 150.

10 Stephen C. McCaffrey, *supra* note 8, at 223-24.

11 Inga T. Winkler, *THE HUMAN RIGHT TO WATER: SIGNIFICANCE, LEGAL STATUS AND IMPLICATIONS FOR WATER ALLOCATION* 214, 220 (2012).

12 A. Dan Tarlock, *The Future of Prior Appropriation in the New West*, 41 *Nat. Resources J.* 769, 770-71 (2001).

WATER AND ITS DEFINITIONS

Water, which has been claimed by states and people, has many different meanings, depending on the context. Water can be defined in terms of quality, quantity, affordability, access, location, and usage. While the clear delineation of each international legal discipline is difficult due to the increase in multidisciplinary research,¹³ different international legal regimes either domestically or internationally may be relevant, depending on what definitions water researchers select. While the sea is regulated by the Law of the Sea, surface water and ground water are regulated by the Law of International Watercourses.¹⁴ The sustainable maintenance of water quality for future generations is primarily regulated by international environmental law. Humans, either individually or collectively, claim their right to water against states and other entities, including multinational corporations, under the human rights legal regime.

Traditionally, states asserted rights to non-navigational and navigational use of water, encompassing both quality¹⁵ and quantity of water. International civil society, represented by the International Law Association¹⁶ and the U.N. International Law Commission, has made efforts to create legal regimes for the use of water by states since the late 1960s. Specifically, the International Law Commission completed a project to develop principles for non-navigational uses of international watercourses in 1994; the 6th Committee working group finished drafting articles on the topic in 1997, and then the UN General Assembly adopted the Convention on the Law of Non-Navigational Uses of International Watercourses in May 1997.¹⁷ This treaty covers non-navigational uses of international water courses, such as surface water and ground water,¹⁸ and includes measures to protect, preserve, and manage them.¹⁹ In this arena, states claim their rights *vis-à-vis* other states. The treaty emphasizes the equitable and reasonable utilization of an international watercourse,²⁰ the obligation not to cause significant harm,²¹ and the obligation for states sharing a given watercourse to cooperate.²²

Water has also been addressed by international environmental law, which emphasizes sustainable development of water resources with an emphasis on maintaining and improving the quality of water for future generations. A series of declarations and action plans since

13 Human rights, international environmental law, law of the sea, law on international water courses, and international humanitarian law are all inextricably connected each other.

14 See e.g. STEPHEN McCAPFREY, *THE LAW OF INTERNATIONAL WATERCOURSES* (2007).

15 Convention on the Law of the Non-Navigational Uses of International Watercourses arts. 9, 21, *opened for signature* May 21, 1997 (entered into force Aug. 17, 2014), Report of the Sixth Committee, UN Doc. A/51/869 (Apr. 11, 1997).

16 International Law Association, *The Helsinki Rules on the Uses of the Waters of International Rivers*, U.N. Doc. A/CONF. 52/ 484 (1967) [hereinafter Helsinki Rules].

17 Convention on the Law of the Non-Navigational Uses of International Watercourses, *supra* note 15.

18 The treaty did not expressly cover aquifers.

19 Convention on the Law of the Non-Navigational Uses of International Watercourses, *supra* note 15, art. 1.

20 Convention on the Law of the Non-Navigational Uses of International Watercourses, *supra* note 15, arts. 5, 6.

21 Convention on the Law of the Non-Navigational Uses of International Watercourses, *supra* note 15, art. 7.

22 Convention on the Law of the Non-Navigational Uses of International Watercourses, *supra* note 15, art. 8.

the 1970s—the Stockholm Declaration, the Rio Declaration,²³ the New Delhi Statement,²⁴ the Dublin Statement on Water and Sustainable Development (“Dublin Statement”),²⁵ and Agenda 21²⁶—emphasized the scarcity of fresh water and environmentally sustainable development of water resources for future generations. The Convention on the Protection and Use of Transboundary Watercourses and International Lakes²⁷ followed this tradition and codified the general environmental principles relating to international water, such as the precautionary principle, the polluter-pays principle, and sustainable development.²⁸

The human right to water approach, however, looks at water from a different angle. Instead of focusing on the use of water by states *vis-à-vis* other states, the human right to water focuses on the use of water by natural persons, either individually or collectively. The effective implementation of the human right to water will provide natural persons with their right to water in terms of quality, quantity, affordability, and access. This is explained in the definition provided by the Committee on Economic, Social, and Cultural Rights, which defines the human right to water as a right to “sufficient, safe, acceptable, physically accessible and affordable water.”²⁹ Both quantity and quality of affordable water are directly connected to safe drinking water and sanitation, and, ultimately, linked to the health and life of people. Low cost or free access to water for certain vulnerable sectors of the population is also critical to the health and welfare of those vulnerable populations.

The World Health Organization (WHO)³⁰ emphasizes that safe drinking water quality is fundamentally important to human development and well-being.³¹ Health-based government regulations and effective drinking water management practices for water suppliers, communities, and households are necessary for safe drinking water.³² In order to effectively maintain safe drinking water, the WHO also publishes Guidelines for Drinking-water Quality, which provide:

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- 23 United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development* Principle 3, U.N. Doc. A/CONF.151/5/Rev.1, 31 I.L.M. 874 (1992).
- 24 Global Consultation on Safe Water and Sanitation, New Delhi Statement, A/C.2/45/3 (1990).
- 25 International Conference on Water and the Environment, *The Dublin Statement on Water and Sustainable Development* [hereinafter Dublin Statement] (Jan. 31, 1992), <http://www.un-documents.net/h2o-dub.htm> (last visited Feb. 15, 2017), Principle 1.
- 26 U.N. Conference on Environment and Development [hereinafter Earth Summit], *Agenda 21*, UN Doc. A/CONF.151/26 (Vol. II) (1992).
- 27 The Convention on the Protection and Use of Transboundary Watercourses and International Lakes, *opened for signature*, Mar. 17, 1992, 1936 U.N.T.S. 269 [hereinafter Helsinki Convention].
- 28 *Id.* art. 2 at 272.
- 29 *General Comment No. 15* (2002), *supra* note 1, at ¶ 2.
- 30 World Health Organization, <http://www.who.int/en/> (last visited Feb. 24, 2017) [hereinafter WHO].
- 31 *Water Safety and Quality*, WORLD HEALTH ORGANIZATION, http://www.who.int/water_sanitation_health/water-quality/en (last visited Feb. 15, 2017).
- 32 *Id.*

- health-based targets;
- water safety plans;
- monitoring of the safe drinking water framework;
- verification of drinking water quality;
- identification of priority concerns;
- development of drinking-water quality standards;
- drinking-water regulations; and
- support for policies and programs to address local requirements and circumstances.³³

The Guidelines reaffirms the link between water and life and health, stating that safe drinking water is “essential to sustain life,” and leads to “tangible benefits to health.”³⁴ They narrowly target vulnerable populations, including infants and young children, persons with disabilities, and the elderly. The safety and quality of drinking water is affected by microbial, chemical, and radiological aspects in many specific circumstances, including climate change, rainwater harvesting, vended water, bulk water supply, desalination systems, dual piped water supply systems, disasters, buildings, health-care facilities, aircraft, airports and ships, packaged drinking water, and food production and processing.³⁵

The Guidelines, however, do not clearly clarify the meaning of “safety” in relation to drinking water. While they prioritize the maintenance of the quality of water to the highest possible level,³⁶ the WHO framework does not support the adoption of international standards for drinking water quality because it acknowledges different circumstances, needs, and regulatory capacities across localities.³⁷ This failure of the Guidelines to adopt universal principles for the maintenance of safe drinking quality may have weakened the human right to water of vulnerable populations in water-stressed countries.³⁸ States may adopt their own regulations and policies without considering the specific needs of water to vulnerable populations.³⁹

Access to water and water quality are also linked to sanitation, and the WHO is developing Guidelines on Sanitation and Health.⁴⁰ Appropriate sanitation, including proper san-

33 See World Health Organization, *Guidelines for Drinking-water Quality* (2011), http://apps.who.int/iris/bitstream/10665/44584/1/9789241548151_eng.pdf (last visited Feb. 15, 2017) [*hereinafter* Guidelines].

34 *Id.* at 1.

35 *See id.*

36 *Id.* at 3.

37 *Id.* at 2.

38 See *Ranking the World’s Most Water-Stressed Counties in 2040*, WORLD RESOURCES INSTITUTE (AUG. 26, 2015), <http://www.wri.org/blog/2015/08/ranking-world%E2%80%99s-most-water-stressed-countries-2040> (last visited Feb. 15, 2017).

39 *General Comment No. 15* (2002), *supra* note 1, at ¶ 6.

40 *Sanitation Guidelines*, WORLD HEALTH ORGANIZATION, http://www.who.int/water_sanitation_health/sanitation-waste/sanitation/sanitation-guidelines/en (last visited Feb. 15, 2017).

itation facilities, contributes to the prevention of water-borne diseases such as diarrhea, intestinal worms, schistosomiasis and trachoma.⁴¹ People living in low-income countries particularly suffer from the deficiencies in sanitation.⁴²

The quantity of water available must also be considered and included in the right to water, especially relating to sanitation. While the quality of water is critical to maintain the health and the life of the public, quantity is sometimes considered more important for hygiene.⁴³ However, no single factor should be determinant. Questions of quality, quantity, affordability and access to water should be holistically considered together when claiming the right to water; sacrificing one will unavoidably result in imminent risks to the health and life of the affected populations.

According to the World Health Organization, about 20 liters of water per person per day are needed to satisfy basic hygiene needs, and more water is needed for laundry and bathing.⁴⁴ Twenty liters of water per capita per day will only support short-term survival, which is considered a top priority to prevent starvation and disease.⁴⁵ For long term survival, people need more water—more than 70 liters per day for personal washing, washing clothes, cleaning, growing food, sanitation and waste disposal, business crops and livestock, gardens and recreation.⁴⁶ Poorer communities use less water because of far lower expectations concerning water availability⁴⁷ due to lack of accessibility, including appropriate facilities⁴⁸ and infrastructure, lack of resources to buy water, and climate change.⁴⁹

When claiming the right to water, advocates should also consider other accessibility-related factors, including freedom of access, equality, cost, distance, facilities, and information.⁵⁰ Access to water should be free from interference, not subject to arbitrary disconnections or contamination, and users should be served by an appropriate system of water supply and management.⁵¹ Physical access to water is “measured by the proportion of population with *access to an adequate amount of . . . water located within a convenient*

41 Gloria D. Sclar et al., *Assessing the Impact of Sanitation on Indicators of Fecal Exposure along Principal Transmission Pathways: A Systematic Review* (2016), 219 INT’L J. OF HYGIENE AND ENVTL. HEALTH 709, 722.

42 *See id.*

43 Edith Brown Weiss, *supra* note 8, at 312 (citing Patricia Billig, Diane Bendahmane, and Anne Swindale, *Water and Sanitation Indicators Measurement Guide*, United State Agency for International Development, 7 (1999)).

44 *What is the Minimum Quantity of Water Needed*, WORLD HEALTH ORGANIZATION, http://www.who.int/water_sanitation_health/emergencies/qa/emergencies_qa5/en/ (last visited Feb. 15, 2017).

45 *General Comment No. 15* (2002), *supra* note 1, at ¶ 6.

46 *How Much Water Is Needed in Emergencies*, WORLD HEALTH ORGANIZATION (July 2013), http://www.who.int/water_sanitation_health/publications/2011/WHO_TN_09_How_much_water_is_needed.pdf?ua=1 (last visited Feb. 15, 2017).

47 *Id.* at 9.1.

48 UNICEF & World Health Organization, *supra* note 7, at 45.

49 Water availability will be increasingly affected by climate change; in Africa, 250 million people will be subject to water stress. United Nations Development Programme, *Human Development Report 2015* 71, http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf (last visited Feb. 15, 2017).

50 *General Comment No. 15* (2002), *supra* note 1, at ¶ 12.

51 *Id.* at ¶ 10.

distance from the user’s dwelling. . . . “Access” is interpreted as actual use by the population.”⁵² The notion of access to “improved” water sources also involves consideration of the technology of access. While important improvements have been made in terms of human access to improved water sources, lack of access remains a problem. According to the WHO, between 1990 and 2010, an additional two billion people gained access to improved drinking water sources, globally.⁵³ Despite these improvements, as of 2015 approximately 663 million people were still drinking unimproved drinking water.⁵⁴ The sanitation challenge is even more serious as 2.4 billion people still lacked improved sanitation facilities, also as of 2015.⁵⁵

Additionally, in order to be accessible, water sources should be close to the home or near public facilities, and the cost of access to water should be affordable. Poverty and water access are closely related. People living in extreme poverty (with incomes of less than \$1.25 a day) typically lack access to water.⁵⁶ Furthermore, access to safe drinking water and sanitation is unequal between urban and rural areas, with urban dwellers generally enjoying providing much higher levels of access to quality water than people in rural areas.⁵⁷

Lastly, water also has a social and cultural meaning.⁵⁸ Water should be “adequate” for human dignity, and should not be simply treated as an economic good.⁵⁹ This is especially true for the indigenous people and local minority groups whose access to water and land has been thwarted by governments and multinational enterprises.⁶⁰ Indigenous people have complex social-ecological linkages—cultural, religious and recreational ties—to water both in developing and developed countries.⁶¹

52 United Nations Department of Economic and Social Affairs Population Division, *Charting the Progress of Populations* (2000), <http://www.un.org/esa/population/pubsarchive/chart/12.pdf> (last visited Feb. 15, 2017).

53 *Fast Facts: WHO/UNICEF Joint Monitoring Report 2012*, WORLD HEALTH ORGANIZATION, http://www.who.int/water_sanitation_health/monitoring/jmp2012/fast_facts/en (last visited Feb. 15, 2017).

54 *World Leaders Call for Action on Water*, THE WORLD BANK (Sept. 21, 2016), <http://www.worldbank.org/en/news/press-release/2016/09/21/world-leaders-call-for-action-on-water> (last visited Feb. 25, 2017).

55 UNICEF & World Health Organization, *supra* note 7, at 5.

56 *Human Development Report 2015*, *supra* note 50, at 61.

57 *Id.* at 59.

58 *General Comment No. 15* (2002), *supra* note 1, at ¶ 6.

59 *Id.* at ¶ 11.

60 See Eileen L. Lutz, *Indigenous Peoples and Water Rights*, 29-4 CULTURAL SURVIVAL QUARTERLY MAGAZINE, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/indigenous-peoples-and-water-rights> (last visited Feb. 15, 2017). See also Jootaek Lee, *Contemporary Land Grabbing, Research, and Bibliography*, 107 L. LIBR. J. 259 (2015).

61 Marcus Finn & Sue Jackson, *Protecting Indigenous Values in Water Management: A Challenge to Conventional Environmental Flow Assessments*, 14 ECOSYSTEMS 1232, 1233 (2011).

HUMAN RIGHTS PRINCIPLES AND STANDARDS REGARDING THE HUMAN RIGHT TO WATER

The foundational human rights documents, including International Bill of Rights—the Universal Declaration of Human Rights (“UDHR”),⁶² the International Covenant on Civil and Political Rights (“ICCPR”),⁶³ and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”) ⁶⁴—did not include specific reference to the human right to water. While multiple UN bodies affirmed the right to water with resolutions and General Comments in the first decade of this century, it was not until the United Nations General Assembly adopted Resolution 64/292 in July 2010 that a high level UN body formally recognized the human right to water. In September of that year, the Human Rights Council quickly followed suit, declaring that the human right to water is legally binding.

The key foundational documents of the international human rights system had not referred directly to a human right to water, but it is argued that water is so implicitly essential for human life that the framers of the Universal Declaration of Human Rights (“UDHR”) ⁶⁵ did not think about a need to explicitly include the right to water.⁶⁶ Similarly, the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) ⁶⁷ has been interpreted to include an implied right to water in Article 11, the right to an adequate standard of living,⁶⁸ and Article 12, the right to the enjoyment of health.⁶⁹ Article 6(1) of the International Covenant on Civil and Political Rights (“ICCPR”) ⁷⁰ provides an inherent right to life.⁷¹ As water is necessary to sustain a life, the right to life referred to in the ICCPR has been thought to include the right to water.⁷² The first human rights treaty, international Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) ⁷³

62 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

63 International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

64 International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

65 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

66 *See id.* at 21 (citing Peter H Gleick, *The Human Right to Water*, I(5) WATER POLICY 487 (1999); Stephen C. McCaffrey, *supra* note 8, at 223).

67 International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

68 ICESCR, *supra* note 65, at art. 11.

69 *Id.* at art. 12.

70 International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

71 International Covenant on Civil and Political Rights, *supra* note 64, art. 6(1).

72 Adele J. Kirschner, *The Human Right to Water and Sanitation*, 15 Max Planck Y.B. U.N. L. 445, 460-61 (2011); Particularly in custodial settings, it is possible to make the argument that the deprivation of water would constitute cruel, inhuman, or degrading treatment. International Covenant on Civil and Political Rights, *supra* note 64, art. 7; Riad and Idiab v. Belgium, 29810/03 Eur. Ct. H.R. (2008). 460-61; Tadevosyan v. Armenia, 41698/04 Eur. Ct. H.R. (2008).

73 International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter CERD].

prohibits racial discrimination in the exercise of the right to public health.⁷⁴ While all of these instruments can be interpreted to imply a right to water, the failure to directly address the right to water and to articulate affirmative and imminent steps to be taken by states have contributed to states' failure to systematically approach water issues from a rights perspective until the early 1990s.

While not general and systematic, there were a few efforts to address the right to water before 1990s. The Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") in 1979⁷⁵ was the first primary human rights instrument to explicitly reference the right to water. Under Article 14(2)(h) of CEDAW, in order to truly eliminate discrimination against women in rural areas, the state should "ensure to such women the right . . . [t]o enjoy adequate living conditions, particularly in relation to . . . sanitation, electricity and water supply . . ."⁷⁶ This right has been interpreted not to require equal access to water, but a right to clean water.⁷⁷ However, CEDAW's Article 14, however, only applies to rural women, and is not universally applicable.

Another treaty that addresses the right to water is the Convention on the Rights of the Child (CRC), which was adopted in 1989.⁷⁸ Article 24(1) of the CRC addresses water, recognizing the right of the child to the highest attainable standard of health.⁷⁹ Article 24(2) specifically imposes on State Parties a duty to "take appropriate measures [t]o combat disease and malnutrition . . . through the provision of . . . clean drinking water, taking into consideration the dangers and risks of environmental pollution . . ."⁸⁰ The CRC directly links safe drinking water to health and includes the right to water under the right to health.

Global action to press for state recognition of the human tragedy created by lack of water access accelerated in the 1990s. A number of statements and action plans for sustainable development of water resources started being adopted by representatives from governments and international organizations at various environmental conferences, including the New Delhi Statement,⁸¹ the Dublin Statement on Water and Sustainable Development,⁸² and Agenda 21.⁸³ These provide important evidence of state practices relating to

74 *Id.* at art. 5(e)(iv).

75 Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

76 *Id.* at art. 14(2)(h).

77 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 34 on the rights of rural women* III(a)(12), U.N. Doc. CEDAW/C/GC/34, (Mar. 4, 2016).

78 Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1557 U.N.T.S. 3 [hereinafter CRC]

79 *Id.* at art. 24(1).

80 *Id.* at art. 24(2)(c).

81 Global Consultation on Safe Water and Sanitation, New Delhi Statement, A/C.2/45/3 (1990).

82 *Dublin Statement*, *supra* note 26. While the Dublin Statement succeeded in raising concerns on water and its vulnerable status, it simply treated water as an economic good under Principle No. 4, and failed to recognize a right to water. *Id.*

83 *Agenda 21*, *supra* note 27. Agenda 21 also failed to recognize water as a right and Section 18.8 simply provides that

water, showing *opinio juris* among the states. The 1992 Dublin Statement, the cumulative statement from the International Conference on Water and the Environment in Dublin, states that the lack and misuse of water harms sustainable development and the environment.⁸⁴ While the Dublin Statement limits the definition of water to an economic good, it also recognizes the basic human right to water, particularly affordable water.⁸⁵ Despite its economic focus, the Dublin Statement affirms that water itself, as the source of life, merits protection.⁸⁶ Agenda 21,⁸⁷ part of the UN Programme of Action, created at the UN Conference on Environment and Development in Rio de Janeiro in 1992 toward achieving millennium development goals, includes *Chapter 18: Protection of the Quality and Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management and Use of Water Resources*.⁸⁸ Agenda 21 recognizes water is essential to life and an integral part of the ecosystem.⁸⁹ It emphasizes that the scarcity of water requires integrated water resource planning and management,⁹⁰ and sets specific goals to be reached by 2000 and 2025.⁹¹ The Agenda outlines appropriate activities and means of implementation for drinking-water supply and sanitation, and sustainable development. It recognizes water as a social and economic good.⁹² These goals were reviewed and updated at (1) the UN General Assembly special session—Rio+5 in 1997, (2) the World Summit on Sustainable Development—Rio+10 in 2002, (3) the World Public Meeting on Culture—Agenda 21 for Culture in 2002, and finally, (4) the United Nations Conference on Sustainable Development—Rio+20 in 2012.

These various actions by states and international organizations, and efforts by non-governmental activists culminated in the adoption of the General Comment No. 15⁹³ by the Committee on Economic, Social, and Cultural Rights in 2002. Recognizing the right to water is “indispensable for leading a life in human dignity,”⁹⁴ the General Comment No. 15 interpreted Articles 11 and 12 of the ICESCR to include a human right to water.⁹⁵ The General Comment No. 15 states that “including adequate food, clothing and housing” under Article 11(1) of the ICESCR is not exclusive; it identifies water as an essential element for an adequate standard of living, “one of the most fundamental conditions of survival.”⁹⁶

water is an economic, social, and life-sustaining good. *Id.*

84 *Dublin Statement*, *supra* note 26, at 1.

85 *Id.* Principle No. 4.

86 International Conference on Water and the Environment, *The Dublin Statement on Water and Sustainable Development*, Principle No. 4 (Jan. 31, 1992), <http://www.un-documents.net/h2o-dub.htm> (last visited Feb. 15, 2017).

87 *Agenda 21*, *supra* note 27.

88 *Id.*

89 *Id.* at Ch. 18.1. & 18.8

90 *Id.* at Ch. 18.3.

91 *Id.* at Ch. 18.11.

92 *Id.* at Ch. 18.15.

93 *General Comment No. 15* (2002), *supra* note 1.

94 *Id.* ¶1.

95 *Id.* ¶3.

96 *Id.*

The General Comment No. 15 also indicates that the right to water is inextricably connected to the right to health under Art. 12(1) of the ICESCR and the rights to adequate housing and adequate food under Article 11(1) of the ICESCR.⁹⁷ This General Comment is certainly the most important precursor of General Assembly Resolution 64/292, formally establishing the right to water.

Recent Global Measures in Support of Water Rights

Starting with the Millennium Declaration, the United Nations and its affiliated organizations such as the WHO, Food and Agriculture Organization,⁹⁸ International Labour Organization,⁹⁹ United Nations Environment Programme,¹⁰⁰ United Nations Development Programme,¹⁰¹ Economic Commission for Europe,¹⁰² United Nations Economic Commission for Latin America and the Caribbean,¹⁰³ United Nations Economic and Social Commission for Asia and the Pacific,¹⁰⁴ United Nations Educational, Scientific and Cultural Organization,¹⁰⁵ United Nations Economic and Social Commission for Western Asia,¹⁰⁶ United Nations Industrial Development Organization,¹⁰⁷ World Meteorological Organization,¹⁰⁸ human rights treaty-based bodies including CESCR, and NGOs are leading the movement to protect and enhance the right to water. The UN General Assembly declared the period from 2005 to 2015 as the International Decade for Action, “Water for Life.”¹⁰⁹ Most recently, the UN General Assembly declared safe and clean drinking-water and sanitation a human right essential to the full enjoyment of life and all other human rights.¹¹⁰ The following documents are important soft law produced by various institutions, arranged chronologically.

97 *Id.*

98 Food and Agriculture Organization, <http://www.fao.org/home/en> [hereinafter FAO].

99 International Labor Organization, <http://www.ilo.org/global/lang-en/index.htm> (last visited Feb. 24, 2017) [hereinafter ILO].

100 United Nations Environment Programme, <http://web.unep.org/about/> (last visited Feb. 24, 2017) [hereinafter UNEP].

101 United Nations Development Programme, <http://www.undp.org/> [hereinafter UNDP].

102 United Nations Economic Commission for Europe, <https://www.unece.org/mission.html> (last visited Feb. 24, 2017) [hereinafter UNECE].

103 United Nations Economic Commission for Latin America and the Caribbean, <http://www.cepal.org/en/> (last visited Feb. 24, 2017) [hereinafter UNECLAC].

104 United Nations Economic and Social Commission for Asia and the Pacific, <http://www.unescap.org/> (last visited Feb. 24, 2017) [hereinafter UNESCAP].

105 United Nations Educational, Scientific and Cultural Organization, <http://en.unesco.org/> (last visited Feb. 24, 2017) [hereinafter UNESCO].

106 United Nations Economic and Social Commission for Western Asia, <https://www.unescwa.org/> (last visited Feb. 24, 2017) [hereinafter UNESCWA].

107 United Nations Industrial Development Organization, <http://www.unido.org/> (last visited Feb. 24, 2017) [hereinafter UNIDO].

108 World Meteorological Organization, http://www.wmo.int/pages/index_en.html (last visited Feb. 24, 2017) [hereinafter WMO].

109 G.A. Res. 58/217 (Dec. 23, 2003).

110 G.A. Res. 64/292, *The Human Right to Water and Sanitation* (July 28, 2010).

- **Ministerial Declaration of the Hague on Water Security in the 21st Century (Mar. 22, 2000)**¹¹¹

The goal of this document is to provide water security in the 21st Century and to identify the main challenges including: meeting basic needs for access to safe and sufficient water and sanitation, sharing water resources, valuing water, and governing water wisely.¹¹² It proposes integrated water resources management as a solution, with an emphasis on collective action and inclusion.

- **United Nations Millennium Declaration (2000)**¹¹³

Heads of states gathered in New York in September 2000 reaffirmed UN efforts towards a peaceful, prosperous and just world.¹¹⁴ They resolved to halve the proportion of the world's people who are unable to access or to afford safe drinking water,¹¹⁵ and to eliminate the waste and misuse of water resources.¹¹⁶

- **We the Peoples: The Role of the United Nations in the 21st Century, Kofi Annan, (2000)**¹¹⁷

“We the Peoples” became known as the Millennium Development Report. It is former Secretary General Kofi Annan’s report on the status of the world in the year 2000. Water crises are cited across all six subject areas, each accompanied by an appeal from Annan for state action.

- **Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, South Africa (2002)**¹¹⁸

Recognizing the right to water as an economic and social right and specifying key obstacles to a healthy environment and poverty, this report launches the implementation plan on sustainable development to achieve the millennium development goal of safe drinking water. As a concrete measure, it sets a goal to halve the proportion of people without access to safe drinking water.¹¹⁹

111 World Water Council, *Ministerial Declaration of The Hague on Water Security in the 21st Century* (Mar. 22, 2000).

112 *Id.* at ¶3.

113 G.A. Res. 55/2, ¶ 19 (Sept. 8, 2000).

114 *Id.* at ¶ 1.

115 *Id.* at ¶ 19.

116 *Id.* at ¶ 23.

117 U.N. Secretary-General, *We the Peoples: The Role of the United Nations in the 21st Century (Millennium Report of the Secretary-General)*, The United Nations Department of Public Information (2000).

118 World Summit on Sustainable Development, *Plan of Implementation of the World Summit on Sustainable Development*, U.N. Doc. A/Conf.199/20 (Sept. 4, 2002).

119 *Id.* at ¶ 7.a.

- **Resolution adopted by the General Assembly [on the report of the Second Committee (A/55/582/Add.8)] 55/196. International Year of Freshwater¹²⁰**

This resolution proclaims that 2003 will be the “International Year of Freshwater.”¹²¹ It requests that the Subcommittee on Water Resources of the Administrative Committee on Coordination manage the year-long project and provide the General Assembly with proposals for activities and appropriate sources of funding.¹²²

- **Ministerial Declaration: Message from the Lake Biwa and Yodo River Basin 3rd World Water Forum. A/57/785.¹²³**

This declaration pledges renewed efforts towards the millennium development goals related to water, prioritizing water issues and sustainable action.¹²⁴

- **UN General Assembly Resolution 58/217, the International Decade for Action, “Water for Life” (2003)¹²⁵**

Following its resolution 55/196 in 2000, which proclaimed the year 2003 the International Year of Freshwater, the UN General Assembly proclaimed the period from 2005 to 2015 the International Decade for Action, “Water for Life.”¹²⁶

- **Human Rights Council Resolution 7/22: Human Rights and Access to Safe Drinking Water and Sanitation (Mar 28, 2008)¹²⁷**

This resolution appointed an independent expert on the issue of “human rights obligations related to access to safe drinking water and sanitation.”¹²⁸

- **UN General Assembly Resolution 64/292, The Human Right to Water and Sanitation (2010)¹²⁹**

The UN General Assembly, for the first time, adopted a resolution recognizing a human right to safe and clean drinking water and sanitation. It further calls upon states to support the realization of this right. It proclaims that this is a most vital right for the enjoyment of life and all other human rights

120 G.A. Res. 55/196 (Dec. 20, 2000).

121 *Id.* at ¶1.

122 *Id.* at ¶2.

123 World Water Council, *Ministerial Declaration: Message from the Lake Biwa and Yodo River Basin* 3rd World Water Forum, A/57/785 (Mar. 23, 2003).

124 *Id.* at pmb. ¶2, & ¶8.

125 G.A. Res. 58/217 (Dec. 23, 2003).

126 *Id.* ¶ 1.

127 Human Rights Council, 7/22: Human Rights and Access to Safe Drinking Water and Sanitation (Mar 28, 2008).

128 *Id.* ¶ 2.

129 G.A. Res. 64/292, *The Human Right to Water and Sanitation* (July 28, 2010)

- **Human Rights Council Resolution 15/9: Human Rights and Access to Safe Drinking Water and Sanitation (September 30, 2010)**¹³⁰

This resolution is a follow-up to General Assembly Resolution 64/292. It affirms and clarifies state obligations to work toward the realization of this right, both in practice and in law. It emphasizes the link between discrimination against disadvantaged groups and lack of access to water, and further identifies the right to health, life and human dignity as sources for the right to water. This resolution situates the right to water as deriving from the right to an adequate standard of living. As the right to water is derived from various human rights law instruments, including the ICESCR, CEDAW, and CRC, the resolution reaffirms that the human rights to safe drinking water and sanitation are essential for the full enjoyment of life and all human rights.¹³¹

- **Human Rights Council Resolution 16/2: The Human Right to Safe Drinking Water and Sanitation (Mar. 24, 2011)**¹³²

This resolution notes that the right to sanitation is a complement to the Committee on Economic, Social and Cultural Rights' Comment 15.¹³³ It also encourages the Independent Expert on the issue of human rights to promote the full realization of the human right to safe drinking water and sanitation.¹³⁴

- **World Health Assembly Resolution 64/24: Drinking-Water, Sanitation and Health (May 24, 2011)**¹³⁵

The WHO's primary decision making organ proclaimed, in this resolution, its adoption of resolutions GA 64/292 and HRC 15/19. It further urged states to make sure that their national health strategies contribute to the fulfillment of the water-and-sanitation-related Millennium Development Goals.

- **UN Human Rights Council Resolution 24/18 (September 27, 2013)**¹³⁶

This resolution reaffirms that “the right to safe drinking water and sanitation is derived from the right to an adequate standard of living.”¹³⁷ Additionally, the

¹³⁰ Human Rights Council, 15/9: Human Rights and Access to Safe Drinking Water and Sanitation, A/HRC/RES/15/9 (Oct. 6, 2010).

¹³¹ *Id.* at ¶ 2.

¹³² Human Rights Council, 16/2: The Human Right to Safe Drinking Water and Sanitation, A/HRC/RES/16/2 (Mar. 24, 2011).

¹³³ *Id.* at ¶ 3.

¹³⁴ *Id.* at ¶ 5.

¹³⁵ World Health Organization, Res. 64/24 (May 24, 2011).

¹³⁶ Human Rights Council Res. 24/18 (Sept. 27, 2013).

¹³⁷ *Id.* at ¶ 1.

accessible and affordable water and sanitation should be delivered for personal and domestic use, without discrimination.¹³⁸

- **UN Human Rights Council Resolution 27/7: The Human Right to Safe Drinking Water and Sanitation (September 25, 2014)**¹³⁹

This resolution adds the right to “sanitation in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.”¹⁴⁰

UN and other International Mechanisms

Various intergovernmental organizations (IGOs) and nongovernmental organizations (NGOs) have been working together to protect and promote the right to water. IGOs working on the right to water include the UN Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Commission on Sustainable Development, the World Health Organization, the Inter-American Court of Human Rights, the European Court of Human Rights, and the African Court on Human and Peoples’ Rights. NGOs include Water Lex, World Water Council, and Water for People.

- **UN Water**¹⁴¹

UN Water is an interagency mechanism supporting efforts to resolve freshwater and sanitation related issues. Its purpose is to coordinate all UN (and related) efforts concerning water.

- **UN Human Rights Committee**¹⁴²

The UN Human Rights Committee is in charge of overseeing the implementation of the International Covenant on Civil and Political Rights. Under its Optional Protocol, complaints of violations of the International Covenant on Civil and Political Rights are to be brought to the UN Human Rights Committee, which has upheld the Human Right to Water under various other cultural and political rights.¹⁴³

138 *Id.* at pmb1.

139 UN Human Rights Council Resolution 27/7: The Human Right to Safe Drinking Water and Sanitation, A/HRC/RES/27/7 (September 25, 2014).

140 *Id.* at 3.

141 U.N. Water, <http://www.unwater.org/home/ru/> (last visited Feb. 24, 2017).

142 U.N. Human Rights Committee, <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx> (last visited Feb. 24, 2017).

143 See ICCPR and international cases.

- **United Nations Committee on Economic, Social and Cultural Rights**¹⁴⁴

The UN Committee on Economic, Social and Cultural Rights (“CESCR”) monitors the implementation of rights put forth in the International Covenant on Economic, Social and Cultural Rights, and is also in charge of the general comments on the Covenant. See discussion of the right to water and the ICESCR.

- **Commission on Sustainable Development**¹⁴⁵

The Commission on Sustainable Development was established by the General Assembly to oversee the efforts to achieve sustainable development following the Earth Summit, Agenda 21, the Rio Declaration, and the Johannesburg Plan of Action. This commission takes the important step of framing the right to water under the right to development.

- **World Water Council**¹⁴⁶

The World Water Council is a network of stakeholders dedicated to hydro-diplomacy. It hosts the World Water Forum—a summit dedicated to discussions of global water issues and solutions. The World Water Council also puts forth materials on the right to water such as reports, media releases, and resolutions

- **World Water Forum**¹⁴⁷

The World Water Forum is a conference that convenes every three years to facilitate multi-sectoral discussion and awareness of pressing global water issues.

- **The World Health Organization**¹⁴⁸

The WHO is a specialized agency of the UN dedicated to solving health crises worldwide. Amongst its self-ascribed functions is ensuring the safety of the water people drink.

- **Latin American Water Tribunal (“TLA”—Tribunal Latinoamericano del Agua)**¹⁴⁹

This court seeks to provide alternative dispute resolution of water conflicts. Rather than issuing legally binding judgments it functions as an autonomous ethical tribunal.

144 United Nations Committee on Economic, Social and Cultural Rights, <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx> (last visited Feb. 24, 2017).

145 Commission on Sustainable Development, <https://sustainabledevelopment.un.org/csd.html> (last visited Feb. 24, 2017).

146 World Water Council, <http://www.worldwatercouncil.org> (last visited Feb. 24, 2017).

147 *Id.* See “forum” section.

148 The World Health Organization, <http://www.who.int/en/> (last visited Feb. 24, 2017).

149 Latin American Water Tribunal (TLA—Tribunal Latinoamericano del Agua), <http://tragua.com/> (last visited Feb. 24, 2017).

- **The Inter-American Court of Human Rights**¹⁵⁰

The Inter-American Court of Human Rights is an autonomous judicial body tasked with resolving regional disputes and upholding the American Convention on Human Rights. The Court has proven to be a receptive forum for the adjudication of regional disputes concerning the right to water.

- **The European Court of Human Rights**¹⁵¹

The European Court of Human Rights has mainly addressed a right to water in its provisions on the prevention of inhumane treatment. However, if a larger right were to be read into the European Convention on Human Rights, this would be the forum within which to assert it.

- **The African Court on Human and Peoples' Rights**¹⁵²

The African Court on Human and Peoples' Rights is tasked with interpreting and upholding the African Charter on Human and Peoples' Rights. The right to water may be inferred under the charter's provisions on the right to health, development, and life.

- **WaterLex**¹⁵³

WaterLex is an international development organization and UN Water Partner dedicated to promoting water rights through policy initiatives. It is an important source for legal research on the right to water.

¹⁵⁰ The Inter-American Court of Human Rights, <http://www.corteidh.or.cr/index.php/en> (last visited Feb. 24, 2017).

¹⁵¹ The European Court of Human Rights, <http://www.echr.coe.int/Pages/home.aspx?p=home> (last visited Feb. 24, 2017).

¹⁵² The African Court on Human and Peoples' Rights, <http://en.african-court.org/> (last visited Feb. 24, 2017).

¹⁵³ WaterLex, <http://www.waterlex.org/> (last visited Feb. 24, 2017)

ANNOTATED BIBLIOGRAPHY: SELECTED TREATISES, ARTICLES, REPORTS, AND DOMESTIC LAWS

Books and Journal Articles

*A New Constitutive Commitment to Water*¹⁵⁴

This article, using an empirical example of the Detroit water shutoffs in 2013 and Detroit’s Bankruptcy Court decision in the *Lyda* case, suggests that, while no constitutional right to water exists, access to water has attained near-constitutional status.¹⁵⁵ International human rights law provides normative guidance to this “new constitutive commitment,”¹⁵⁶ as represented by California Assembly Bill 685.¹⁵⁷

*Let Justice Roll Down: A Case Study of the Legal Infrastructure for Water Equality and Affordability*¹⁵⁸

This article discusses possible mechanisms to protect the right to water in the United States, a nation that does not recognize water access as an affirmative human right. It reviews a hypothetical analysis of the right using anti-discrimination laws and constitutional protections as well as the unique provisions cities are adopting to hold local policy to human rights standards. Unfortunately, the burden of proof in such mechanisms is high, and there exists a tension between remedial measures that rely on the proof of discrimination against a specific class and creating an affirmative right for all.¹⁵⁹ This article relies on a wide range of materials: legal texts, regulations, codes, constitutions, news articles, UN resolutions and reports, city resolutions and reports, case law, scholarly articles, and statistical reports.

*Stick to the Rivers and the Lakes That You’re Used To: A Lacey Act Amendment for Water Rights*¹⁶⁰

The article examines the “Lacey Act” as a model for a solution to international violations of water rights.¹⁶¹ If applied—principally in the US but potentially by other nations as well under reciprocity—the act would make all importation of water in

154 Sharmila L. Murthy, *A New Constitutive Commitment to Water*, 36 B.C.J.L. & Soc. JUST. 159 (2016)

155 *Id.* at 161-62.

156 *Id.* at 164.

157 *Id.* at 163.

158 Martha F. Davis, *Let Justice Roll Down: A Case Study of the Legal Infrastructure for Water Equality and Affordability*, 23 GEO. J. ON POVERTY L. & POL’Y 355 (2016).

159 *Id.* at 389-391.

160 Schuyler Lystad, *Stick to the Rivers and the Lakes That You’re Used To: A Lacey Act Amendment for Water Rights*, 28 GEO. ENVTL. L. REV. 335 (2016).

161 *Id.* at 344-353.

violation of home state subject to prosecution, subject to good faith and de minimus limitations.¹⁶² While the current political climate would make passage of such a law unlikely, it would effectively sanction some violations of the right to water that currently escape legal consequences due to jurisdictional limitations.¹⁶³ The article relies almost entirely on the Lacey Act and its history and political reception, but also draws from a similar act instituted to block illegal lumber practices in the EU, and explores some of the larger international violations of water rights relying on scholarly articles, news articles, and some foreign law.

GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES¹⁶⁴

This book deals with human rights cities which base their local policies on human rights, implementing the international human rights principles to its action plans and programs. Including articles analyzing experiences in the U.S, the Netherlands, Ghana, UK, and Mexico, the work highlights both the challenges and the opportunities before the human rights cities movement. There are many citations to human rights-inspired local regulations and ordinances. The chapter on Ghana specifically addresses the right to water.

*The Human Right to Water: A False Promise?*¹⁶⁵

This article discusses the emergence of a global human right to water. It claims that the right has emerged out of a series of non-binding legal instruments including UN resolutions and the international covenant on Economic, Social and Cultural Rights. It is a progressive right (becomes implemented over time under good faith), but with certain obligations that are intended to be effective immediately.¹⁶⁶ The article concludes that the right to water has not reached the level of customary international law because many states, including key donors, have abstained from its formal recognition.¹⁶⁷ Its primary sources are UN documents and national laws with their accompanying commentaries, as well as other scholarly articles addressing the topic.

THE HUMAN RIGHT TO WATER: SIGNIFICANCE, LEGAL STATUS AND IMPLICATIONS FOR WATER ALLOCATION¹⁶⁸

This book based on the author's doctoral thesis, the volume comprehensively deals with the human right to water issues based on extensive research. The work traces

¹⁶² *Id.* at 357.

¹⁶³ *Id.* at 357-358.

¹⁶⁴ GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES (Barbara Oomen, Martha F. Davis, and Michele Grigolo eds. 2016).

¹⁶⁵ See Stephen C. McCaffrey, *supra* note 8, at.

¹⁶⁶ *Id.* at 228-229.

¹⁶⁷ *Id.* at 231-232.

¹⁶⁸ Inga T. Winkler, THE HUMAN RIGHT TO WATER: SIGNIFICANCE, LEGAL STATUS AND IMPLICATIONS FOR WATER ALLOCATION (2012).

the origins of the human right to water, its emergence on the international stage, the right's component parts and the possible benefits to society of its implementation. The author suggests that the human rights approach encourages people to play a pro-active role in demanding their rights, and makes available judicial remedies at the local and international levels.

*The Impact of Law on the Right to Water and Adding Normative Change to the Global Agenda.*¹⁶⁹

This article examines the impact of the international norm that specifies “progressive realization” rather than immediate implementation as the framework of expectations for the enforcement of economic, social and cultural rights protections.¹⁷⁰ In the case of water, the author argues that the “progressivist regime” is essentially a license for states to completely ignore this most fundamental right.¹⁷¹ According to this argument, the South African case, *Mazibuko & Others v. The City of Johannesburg*, ultimately allowed for discrimination in water rights under the guise of non-action due to limited resources.¹⁷² Instead, since water access is quantifiable, the minimum amount of water necessary for life, as established by the WHO, should be the legal standard to which states are held.¹⁷³ If states fail, they can be publicly named and shamed, and if they truly lack the resources to provide this base, the international community can then step in.¹⁷⁴ The article relies fundamentally on the *Mazibuko* case.

THE RIGHT(S) TO WATER: THE MULTI-LEVEL GOVERNANCE OF A UNIQUE HUMAN RIGHT by Pierre Thielbörger.¹⁷⁵

This book takes a comprehensive look at the fundamental question of whether a right to water exists, or not. It explores domestic, regional, and international law, evaluating a mix of hard and soft law. The book organizes its conclusions into three overarching sections: (1) the development and current legal status of the right to water, (2) philosophical and conceptual approaches to water as a human right. and (3) mechanisms for the enforcement, protection, and monitoring of the right.¹⁷⁶ The author concludes that while awareness of and excitement about promoting a human right to water has increased in recent years, there is no cohesive, inclusive, and independent legal approach that actually creates, maintains, and binds states to this right.¹⁷⁷ The

¹⁶⁹ See Michael R. Ulrich, *The Impact of Law on the Right to Water and Adding Normative Change to the Global Agenda*, 48 GEO. WASH. INT'L L. REV. 43, 48 (2015).

¹⁷⁰ *Id.* at 44, 46.

¹⁷¹ *Id.* at 47, 52, & 66.

¹⁷² *Id.* at 64.

¹⁷³ *Id.* at 66, 71-73.

¹⁷⁴ *Id.* at 75-77.

¹⁷⁵ PIERRE THIELBÖRGER, *THE RIGHT(S) TO WATER: THE MULTI-LEVEL GOVERNANCE OF A UNIQUE HUMAN RIGHT* (2014).

¹⁷⁶ *Id.* at 3.

¹⁷⁷ *Id.* at 195-201.

book does, nevertheless, see potential for progress and ends with three questions that if answered might enable the human rights framework to be used to ameliorate the global water crises: “Firstly, how do we effectively identify violations of a human right to water? Secondly, how do we develop policies to improve compliance with a human right to water? And thirdly, what mechanisms can be put in place to counter those that still do not comply with the obligations under such a human right?”¹⁷⁸ Perhaps the most important contribution of this book is its comprehensive list of documents and sources including: UN documents, jurisprudence/case law from both national and international courts, directives/regulations/resolutions of the European Union, international treaties/conventions, scholarly articles, and communiqués.

Websites and Country Reports

*Recognition of the Human Rights to Water and Sanitation by UN Member States at the International Level*¹⁷⁹

This report examines the inconsistent support in the UN for the Right to Water, through General Assembly and regional actions. It painstakingly analyzes the content of the full range of UN and other multilateral declarations regarding water, as well as the positions of individual countries on those statements. In addition to clarifying changes over time in individual country positioning, the report enables informed analysis of whether or not there is sufficient support for the right among member states for it to be considered customary, in legal terms.

REALISING THE HUMAN RIGHTS TO WATER AND SANITATION: A HANDBOOK BY THE UN
SPECIAL RAPPORTEUR CATARINA DE ALBUQUERQUE¹⁸⁰

This nine volume handbook extensively covers the UN involvement with the human right to water and offers guidance for stakeholders seeking its realization. The volumes are: introduction, frameworks, financing, services, monitoring, justice, principles, checklists, and sources. For lawyers and policy makers, the two most relevant manuals are those concerning sources and justice. The volume on justice is especially helpful for finding cases and precedents from around the world, as well as all relevant legal mechanisms. The one on sources offers a basic bibliography for the report, providing many other essential primary and secondary sources.

¹⁷⁸ *Id.* at 201

¹⁷⁹ Amnesty Int'l & WASH United, *Recognition of the Human Rights to Water and Sanitation by UN Member States at the International Level* (Apr. 2, 2015).

¹⁸⁰ CATARINA DE ALBUQUERQUE, *REALISING THE HUMAN RIGHTS TO WATER AND SANITATION: A HANDBOOK BY THE UN SPECIAL RAPPORTEUR CATARINA DE ALBUQUERQUE* (O.H.C.H.R. 2014).

*Shutting the Spigot on Private Water: The Case for the World Bank to Divest.*¹⁸¹

This report discusses the current state of water privatization and the role of the World Bank and corporations in that process. It then launches into a call for divestment and a recommitment to public water as a way of ensuring protection of the right to water.

THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION IN LAW AND POLICY—
A SOURCEBOOK¹⁸²

This 282-page report examines all possible sources, specifically law and policy, of the right to water at the national, regional, and global level. It is truly a comprehensive guide to sources of water law.

THE HUMAN RIGHT TO WATER AND SANITATION MILESTONES¹⁸³

This UN report created for the UN Water for Life Decade program provides a timeline for the major UN milestones for the right to water from 1992-2010.

THE HUMAN RIGHTS TO WATER AND SANITATION IN COURTS WORLDWIDE¹⁸⁴

Because the right to water has yet to be addressed comprehensively at the international level, this report collects various regional and national court that have involved legal examination of the right to water. This is another important tool in the effort to determine whether there exists enough consensus to assign the right to water the status of custom.

Selected Cases from International and Regional Tribunals

*Liliana Assenova Naidenova et al. v. Bulgaria, Human Rights Committee, Communication No. 2073/2011, 14 November 2012*¹⁸⁵

In this case, the Committee considered the right to water under the right to life, the right to housing, and the prohibition against discrimination. It denounced the Republic of Bulgaria for allowing the Municipality of Sofia to cut off a Roma community's access to water.

¹⁸¹ Corporate Accountability International, *Shutting the Spigot on Private Water: The Case for the World Bank to Divest* (Apr. 2012).

¹⁸² WASH UNITED, FRESHWATER ACTION NETWORK & WATERLEX, *THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION IN LAW AND POLICY—A SOURCEBOOK* (2012).

¹⁸³ UNITED NATIONS OFFICE TO SUPPORT THE INTERNATIONAL DECADE FOR ACTION 'WATER FOR LIFE' 2005-2015/UN-WATER DECADE, *THE HUMAN RIGHT TO WATER AND SANITATION MILESTONES* (2011).

¹⁸⁴ WATERLEX & WASH UNITED, *THE HUMAN RIGHTS TO WATER AND SANITATION IN COURTS WORLDWIDE* (2014).

¹⁸⁵ *Liliana Assenova Naidenova et al. v. Bulgaria, Communication No. 2073/2011, Human Rights Committee* (Nov. 14, 2012).

*Ángela Poma Poma v. Peru, Human Rights Committee, Communication No. 1457/2006, 27 March 2009.*¹⁸⁶

The case concerned the diversion of water away from an indigenous community. The court held that the diversion of water away from the Aymara people effectively ruined their ecosystem and infringed upon their rights to cultural enjoyment under article 27 of the ICCPR.

*The Indigenous Community of Yakye Axa vs. Paraguay*¹⁸⁷

This case involves an indigenous land dispute brought before the Inter-American Court on Human Rights. The plaintiffs argued their right to life (as defined by the American Convention on Human Rights) was violated by poor living conditions, including a lack of access to safe-drinking water (and water, in general). They used, as part of their argument, a right to water as implicitly provided by the ICESCR. The court, in ruling in favor of the plaintiff, stipulated that as long as the Yakye Axa People remained landless the state must provide for them the basics goods and services required for survival (which presumably includes water)

*Inter-American Court of Human Rights Case Of The Xákmok Kásek Indigenous Community v. Paraguay*¹⁸⁸

In this case, the court actually defined the minimum necessary amount of water needed for true fulfillment of the right to a decent existence: while the state was providing the community 2.17 liters of water per person per day, the court determined that most people require 7.5 liters per person a day. The court also ruled that the state had failed in its obligation to provide the community access to potable water. While both this case and the one above ultimately derive their power from the special obligation of the state to ensure non-discriminatory treatment of indigenous peoples, both still invoke the right of these peoples to clean water, and the duty of the state to provide it, whether through access or direct provision.

*Riad and Idiab v Belgium*¹⁸⁹

This case considers whether detaining asylum seekers without adequate water for consumption and hygiene is in violation of the European Convention on Human Rights on inhumane treatment.

¹⁸⁶ *Ángela Poma Poma v. Peru*, Communication No. 1457/2006, Human Rights Committee, (Mar. 27, 2009).

¹⁸⁷ *The Indigenous Community of Yakye Axa vs. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 125, (June 17, 2005).

¹⁸⁸ *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 214, (Aug. 24, 2010).

¹⁸⁹ *Riad and Idiab v Belgium*, 29810/03 Eur. Ct. H.R. (2008).

*Tadevosyan v Armenia*¹⁹⁰

This case ruled that failing to provide a detainee adequate access to water and sanitation violates article 3 of the European Convention on Human Rights on inhumane treatment and punishment.

*Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v Sudan*¹⁹¹

In this case, which was among a series of allegations arising from the conflict in the Darfur region, the court held that the poisoning of wells and denial of access to water was a violation of the right to health as given by the African Charter on Human and People's Rights as well as CDESCR General Comment 14.

National Laws

The following nations include an explicit reference to the right to water in their constitutions: Ecuador,¹⁹² South Africa,¹⁹³ Uganda,¹⁹⁴ Uruguay,¹⁹⁵ DRC,¹⁹⁶ Slovenia.¹⁹⁷ The following selective national laws are arranged alphabetically.

Brazil 1997 Law on Water Resources¹⁹⁸

This national water policy provides that water is a public good, as well as a resource with economic value. Therefore, provides adequate water supply for personal use is of primary importance. The law also states that the national management system should include participation from not just the government, but from water users and communities as well. It includes a plan to preserve quantity and quality for citizens.

The Ghana Water Resources Commission Act 1996¹⁹⁹

The Ghana Water Resources Commission Act 1996 vests water resource management in the President, on behalf of the people, who are the true property owners of water

¹⁹⁰ *Tadevosyan v Armenia*, 41698/04 Eur. Ct. H.R. (2008).

¹⁹¹ *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v Sudan*, 279/03 & 296/05, African Commission on Human and Peoples' Rights [Afr. Cmm'n H.P.R.] (May 27, 2009),

¹⁹² Constitution of the Republic of Ecuador 2008, Sept. 28, 2008, art. 3(1), Ch.2§1, 2, 7.

¹⁹³ The Constitution of the Republic of South Africa, May 8, 1996, Ch. 2 § 27.

¹⁹⁴ Constitution of the Republic of Uganda, 1995 Oct. 8, 1995, Objective XIV, XXI.

¹⁹⁵ The Uruguayan Constitution, Feb. 15, 1967 (with 1989, 1994, 1996, and 2004 amendments), art. 47.

¹⁹⁶ Constitution of the Democratic Republic of the Congo, Feb. 18, 2006, art. 48.

¹⁹⁷ *Slovenia Adds Water to Constitution as Fundamental Right for All*, The Guardian, Nov. 17, 2016, <https://www.theguardian.com/environment/2016/nov/18/slovenia-adds-water-to-constitution-as-fundamental-right-for-all>.

¹⁹⁸ "National Water Resources Policy and the National Water Resources Management System," 9.433, de Jan. 8, 1997, Diário Oficial [D.O.U.], § 1: 470, 8.1.1997 (Braz.).

¹⁹⁹ Water Resources Commission Act (Act No. 552/1996) (Ghana).

as a public good. It created a Water Resources Commission, which deals with policy related to water and delegates grants of water rights.²⁰⁰

U.S. California Assembly Bill No. 685²⁰¹

California became the first state in the United States to explicitly recognize a human right to water. This bill resulted in a law that made it the established policy of California that every human being has the right to safe, clean, affordable, and accessible water. It prioritizes water for personal and domestic use over commercial and other uses, and sets water rights as a priority for California's relevant agencies and officials. Those officials are required to consider the right to water in all policy, programming, and budgetary activities. This bill received special accolades from the UN Special Rapporteur on the human right to safe drinking water and sanitation.²⁰²

U.S. Safe Drinking Water Act and its 1996 Amendments²⁰³

The Act sets minimums for drinking water quality in the US and requires yearly reports, directly to consumers, on contaminants and water-related health risks. It also puts in place mechanisms to ensure state responsibility for water quality as well as state accountability for violations of standards. All reports are made available to the public.

U.S. Senator Paul Simon Water for the World Act of 2014²⁰⁴

The 2014 Water for the World Act is an improvement upon the 2005 Water for the Poor Act, which was created to make water, sanitation, and hygiene a foreign policy priority for the United States. The 2014 version of this act refocuses resources and designates priority countries. It emphasizes creating efficiency through inter-departmental coordination.

National Right to Water Litigation

Matsipane Moselelhanyane and Ors v The Attorney General²⁰⁵

The Botswana court ruled the government's sealing of a water source violated the CKGR community's right to access water for domestic purposes. The court relied on three sources: (1) the Water Act (specifically section 9); (2) the UN Declaration of the

²⁰⁰ See Water Resources Commission of Ghana, <http://www.wrc-gh.org/> (last accessed Feb. 25, 2017).

²⁰¹ Cal. Water Code § 106.3 (West).

²⁰² INTERNATIONAL HUMAN RIGHTS LAW CLINIC UNIVERSITY OF CALIFORNIA, BERKELEY, SCHOOL OF LAW, *Foreword to THE HUMAN RIGHT TO WATER BILL IN CALIFORNIA, AN IMPLEMENTATION FRAMEWORK FOR STATE AGENCIES, I* (2013).

²⁰³ Safe Drinking Water Act of 1974, § 1401 et seq., 42 U.S.C.A. § 300f et seq.

²⁰⁴ Senator Paul Simon Water for the World Act of 2014, Pub. L. No. 113-289, 128 Stat 3283.

²⁰⁵ Matsipane Moselelhanyane and Ors v The Attorney General, [2011] Civil Appeal No. CACLB-074-10 (Bots.).

Rights of Indigenous Peoples, and the recognition, by the UN General Assembly and Economic and Social Council, that the right to safe drinking water is vital for securing the enjoyment of the right to life and all human rights (as well as the right to development); and (3) the Botswanan Constitution, from which it inferred the right to water from the provision protecting individuals from inhumane and degrading treatment. Further the court provided that this judgment applied to all members of the affected community, not just those who brought the original suit. While only a national case, the use of international law and direct implication of the right to water make this case an important step in the development of precedent regarding the right's enforcement.

*City of Cape Town v Strümpher*²⁰⁶

This South African case arose from a dispute regarding the city of Cape Town shutting off a resident's water when he failed to make payments. The court held that there was a constitutional right to water, as well as a duty to comply with the Water Act. Any limitation or termination of water services must meet the minimum threshold of "fair and equitable" action on the part of the city government.

*Mazibuko v. City of Johannesburg*²⁰⁷

The South African Constitutional Court held that the system of pre-paid meters and supplying of a minimum amount of water to customers was constitutional. They deferred to the legislature, claiming that despite the constitutional provision of a right to water, it is not the court's job to question a policy that legitimately came into place through the democratic process. It emphasized the limited resources available to realize this right. This case was a blow to advocates of a right to water, especially those using discrimination as a basis for a claim against government. It is an example of the challenges of litigating "progressive rights."

*Flor Enid Jimenez de Correa v. Empresas Públicas de Medellín*²⁰⁸

This case considered whether the disconnecting of a vulnerable person's water due to failure to pay constituted a violation of the right to water. The court applied the Colombian Constitution as well as the ICESR. Importantly, Comment 5 to the ICESR (not normally binding) was used as a legal basis for the prevention of discrimination in the delivery of water services.

²⁰⁶ City of Cape Town v Strümpher (2012) ZASCA 54 (S. Afr.).

²⁰⁷ Mazibuko and Others v City of Johannesburg and Others, (2009) ZACC 28 (S. Afr.).

²⁰⁸ Flor Enid Jimenez de Correa v. Empresas Públicas de Medellín (2007) C.C. T-270/07 (Colom.).

*Jorge Hernán Gómez Ángel v. Alcalde Municipal de Versalles – Valle del Cauca y el Gerente de la Empresa de Servicios Públicos de Versalles*²⁰⁹

In another Colombian water case, a community complained that the municipality was not providing water fit for human consumption. The court upheld this claim, and proclaimed that the constitution implied a right to safe and sufficient water under its recognition of the rights to life, human dignity, health and a healthy environment

*Delhi Water Supply v. State of Haryana*²¹⁰

In this case it was determined that in the case of the joint use of a river in Delhi, India, consumption and domestic use outweigh commercial water use. In its discussion, the court went to great lengths to discuss the sanctity of the right to water.

*Perumatty Grama Panchayat v. State of Kerala*²¹¹

The excessive use of groundwater resources by a Coca-Cola subsidiary in India violated the constitutional right to life when it caused a region-wide water shortage.

*Pilchen v. City Of Auburn, N.Y.*²¹²

A tenant brought an action arising from the termination of her water services. Among other judgments, the court held that requiring a tenant to assume her delinquent landlord's obligations was an undue burden, according to the State Constitution. While the court refused to address whether there was a constitutionally protected right to water supply, it did state that the right to water service could be subsumed under rights to property interests under state law.

²⁰⁹ Jorge Hernán Gómez Ángel v. Alcalde Municipal de Versalles – Valle del Cauca y el Gerente de la Empresa de Servicios Públicos de Versalles (2003) C.C. T-410/03 (Colom.).

²¹⁰ Delhi Water Supply & Sewage Disposal Undertaking & Anr. v. State of Haryana & Ors (1996) SCC (2) 572 (India).

²¹¹ Perumatty Grama Panchayat v State of Kerala [2003] High Court (2004) (1) KLT 731(India).

²¹² Pilchen v. City of Auburn, N.Y., 728 F. Supp. 2d 192, 197 (N.D.N.Y. 2010).

CONCLUSION

While water has existed since the beginning of the world, the recognition of water as a human right and states' efforts to treat it as such are recent events. Since the Cold War, scholars in Western countries have actively researched sensitive legal areas that had been largely ignored previously because of national security concerns. One of these areas is human rights, specifically the right to water in the context of economic, social, and cultural rights. These rights had been more emphasized in the Eastern bloc states, including Soviet Union, and in the Global South. While economic, social, and cultural rights provide new arguments for social justice, some Western constitutions like the Constitution of the United States do not even recognize these rights. Many areas such as health, education, labor and employment, food, water, housing and development, which were traditionally considered benefits provided by states are now approached from the perspective of human rights.

Research in economic, social, and cultural rights, especially the right to water, has increased dramatically over the twenty-five years since the Cold War ended. The development of new international bodies concerned with water, such as the Human Rights Council, the United Nations High Commissioner for Human Rights, and United Nations Women have accentuated this trend. Additionally, many international bodies, such as the United Nations, which have avoided mentioning economic, social, and cultural rights in the past, have begun to address these rights, and recognize the right to water as an independent human right, closely connected to the rights to an adequate standard of living, food, health, and life.

Comprehensive research with a holistic approach based on both quantitative and qualitative empirical evidence, considering various domestic policies and reflecting various international legal principles and mechanisms, provides important context to contemporary water issues. This research can help all relevant parties better understand issues related to water access, quality and affordability, whether they imply a progressive or imminent realization of the right to water.