

## ARTICLE

# The Sustainable Human Right to Water as Reflected in the Sustainable Development Goals

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In Sustainable Development Goal 6 (SDG6), also known as the 'water goal', one finds various (implicit) references to the internationally recognized human right to water. The aim of this paper is to further explore those linkages. More specifically, the main research question is the following: in what way does SDG6 facilitate local level implementation of the international human right to water, and does SDG6 call for a more sustainable interpretation of that human right? First, a brief overview is provided of the drafting process of SDG6, which took place in the period from 2013 to 2015, with a focus on suggested insertions into that SDG, of references to the human right to water and to local implementation. Then, the actual text of SDG6, as finally adopted in 2015, is analyzed in more detail. SDG6 is subjected to a textual analysis, in which the language of SDG6 is compared with authoritative codifications of the human right to water in the sources of international law, primarily treaties. This is followed by a brief and preliminary analysis of the monitoring and implementation process of SDG6, which began after its adoption in 2015, and will continue until the SDGs reach their expiration date in 2030. The paper ends with a conclusion.

**Keywords:** sustainable development goals; international water law; human right to water

## 1. Introduction

In Sustainable Development Goal 6 (SDG6), also known as the 'water goal', one finds various (implicit) references to the internationally recognized human right to water. The aim of this paper is to further explore those textual linkages. More specifically, the main research question is the following: in what way does SDG6 facilitate local level implementation of the international human right to water, and does the introduction of SDG6 call for a more *sustainable* interpretation of that human right?

A *textual* analysis of the sustainable human right to water and of SDG6 and its targets is provided, focusing on possibilities for cross-influence and cross-fertilization. The assumption is that such an analysis might help transform the human right to water into a *sustainable* human right to water, and provide guidance to national and local governments and other local stakeholders on how to implement this sustainable human right to water at the local level. Other papers in this Special Issue focus on the localization of the sustainable human right to water in a specific part of the world. See especially the paper by Tobias Schmitz and Bas Rensen, which focuses on the link between the human right to water and the Sustainable Development Goals in the Tunisian context.

The human right to water is a relatively new addition to the catalogue of internationally recognized human rights. At the international level, access to water was recognized as a human right at least since 2010, when both the Human Rights Council and the General Assembly of the United Nations affirmed its existence. Since then, the understanding of this right, and the obligations flowing from it, have deepened and become more sophisticated. At the same time, the importance of sustainability, as an ambition exceeding all sub-fields of international law, is increasingly recognized. Of course, an expected and unavoidable 'side-effect', so to speak, of the deepening, sophistication and wider recognition of both the human right to water and

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the concept of sustainability, is an increase in competing approaches and contestations of the *exact* meaning of this right and concept. The concept of sustainable development is normally broken down into three pillars: economic development, social development and environmental protection.<sup>1</sup> International human rights law traditionally focuses mostly on social aspects of development; and thus when a more *sustainable* human right to water is called for, this is essentially a call for an interpretation of the human right to water which pays a bit more attention to the third pillar of sustainable development (environmental protection).<sup>2</sup>

This paper does not purport to critically engage with the debate on what sustainability means.<sup>3</sup> It has more modest ambitions, namely: to examine the potential and actual impact of the Sustainable Development Goals on the evolving interpretation of the human right to water.

First, a brief overview is provided of the drafting process of SDG6, which took place in the period from 2013 to 2015, with a focus on suggested insertions, into that SDG, of references to the human right to water and local implementation (Section 2). Then, the actual text of SDG6, as finally adopted in 2015, is analyzed in more detail. SDG6 is subjected to a textual analysis, in which the language of SDG6 is compared with authoritative codifications of the human right to water in the sources of international law, primarily treaties (Section 3). This is followed by a brief analysis of the monitoring and implementation process of SDG6, which began after its adoption in 2015, and will continue until the SDGs reach their expiration date in 2030 (Section 4). The paper ends with a conclusion (Section 5).

It is not suggested that SDG6 is itself a source of international law. Instead, SDG6 can best be approached as the core of an aspirational framework through which States can effectively comply with their international legal obligation to ensure to everyone within their jurisdiction the enjoyment of his or her human right to water.<sup>4</sup> In other words, the aim of the SDG-process was to find a common language to further develop and implement human rights and sustainability ambitions. And since all of the SDGs focus on sustainable development, the SDG-framework is ideally suited to merge the human right to water and sustainability, leading to a true sustainable human right to water.<sup>5</sup>

When calling for a more sustainable interpretation of the human right to water, this paper does not mean to suggest that the human right to water, as recognized by the United Nations from 2010 onwards, makes no reference to sustainability *at all*. In General Comment 15, adopted by the United Nations Committee on Economic, Social and Cultural Rights in 2003 (more on this below, in Section 3), the Committee already insisted that '[t]he manner of the realization of the right to water must [...] be sustainable, ensuring that the right can be realized for present and future generations'.<sup>6</sup> However, we find very little detailed guidance on what such a sustainable interpretation might entail, and how this obligation is to be implemented at the local level. Moreover, SDG6 adds a compliance mechanism with a considerable level of detail and specificity.

This convergence of the human right to water and sustainability has already been researched in a more general sense by Daphina Misiedjan. On the role of the SDGs therein, she concluded as follows:

With the adoption of the Sustainable Development Goals, universal access [to water] has rightfully been placed within the context of water management. [The SDGs] can assist in the realization of the human right to water and can motivate States to adopt the required legislative, technical and

<sup>1</sup> See 'Johannesburg Declaration on Sustainable Development, in the Report of the World Summit on Sustainable Development (Johannesburg, South Africa, 26 August–4 September 2002), U.N. Doc. A/CONF.199/20, para 5.

<sup>2</sup> The exception to this rule – *i.e.* that human rights law tends to focus on the social pillar – is, of course, the human right to a healthy environment. On this, see *e.g.*, Otto Spijkers, 'The Urgenda case: A Successful Example of Public Interest Litigation for the Protection of the Environment?', in Christina Voigt and Zen Makuch (eds), *Courts and the Environment* (Edward Elgar Publishing, 2018) 305–344.

<sup>3</sup> See *e.g.*, Otto Spijkers, 'Sustainability and International Water Law', in Joseph W. Dellapenna and Joyeeta Gupta (eds), *Volume IX of the Elgar Encyclopaedia of Environmental Law: Water Law* (Edward Elgar Publishing, forthcoming).

<sup>4</sup> For more detailed analysis of this cross-fertilization between the SDGs and international law, see Otto Spijkers, 'The Cross-fertilization between the Sustainable Development Goals and International Water Law' (2016) 25(1) *RECIEL* 39.

<sup>5</sup> See also Rosana Garciandia Garmendia, 'Implementation of Sustainable Development Goals: Crosscutting Analysis', in Paloma Durán y Laguna, Cástor Miguel Díaz Barrado, and Carlos R. Fernández Liesa (eds), *International Society and Sustainable Development Goals* (Thomson Reuters 2016) 561.

<sup>6</sup> United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), adopted at the Twenty-Ninth Session on 20 January 2003, U.N. Doc. E/C.12/2002/11 (2003), para 11. See also para 7, in which the Committee 'note[d] the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food'; and para 26, in which 'the obligation to fulfil requires States Parties to adopt the necessary measures directed towards the full realization of the right to water [which includes] facilitating improved and sustainable access to water, particularly in rural and deprived urban areas'. And in para 34, it is stated that international assistance to other States in the realization of the human right to water should be sustainable, among many other things.

financial measures. The SDGs prove that environmental policy and the human rights framework are communicating back and forth on the issue of universal access.<sup>7</sup>

In the present analysis, the focus is on SDG6 *and its targets*. The Sustainable Development Goals consist of goals, targets and indicators. The goals define, in a general sense, the overall ambition. The water goal (SDG6) is to '[e]nsure availability and sustainable management of water and sanitation for all'.<sup>8</sup> Each goal has a handful of targets attached to it, that provide more concreteness to the goal. SDG6 has eight such targets, on access to drinking water (SDG6.1), access to sanitation (SDG6.2), improvement of water quality (SDG6.3), combating water scarcity (SDG6.4), encouraging transboundary cooperation in water management (SDG6.5) protecting freshwater ecosystems (SDG6.6), providing support to developing countries (SDG6.a), and on strengthening the participation of local communities in water management (SDG6.b). Each target is provided with one or more indicators, which outline how progress in meeting the target must be measured and monitored. For example, target SDG6.1, has one indicator (SDG6.1.1), obliging all States to report regularly on the 'proportion of the population using safely managed drinking water services'.<sup>9</sup>

Not all Targets of SDG6 are immediately related to the human right to water and local implementation thereof. The focus of the present analysis is on Target SDG6.1, in which States pledged to 'achieve universal and equitable access to safe and affordable drinking water for all'; SDG6.4, in which States pledged to 'substantially reduce the number of people suffering from water scarcity'; and on Target SDG6.b, in which States pledged to 'support and strengthen the participation of local communities in improving water [...] management'. Targets SDG6.3, SDG6.5 and SDG6.6 are more related to obligations under international water law; and SDG6.2 is about the right to sanitation, which is distinguished from the human right of access to water, and thus also falls outside the scope of the present analysis.<sup>10</sup>

The focus in this paper is on SDG6 and the targets listed above. The progress-*indicators* constitute an essential part of the SDG-framework, and thus it could be argued that they also deserve a more in-depth and detailed analysis than is provided in this paper (see Section 4). The main reason why the indicators receive less attention, is that the role of non-State actors in the drafting of the indicators was rather limited, and that there were less theoretical/fundamental debates on the link between the indicators and the human right to water.<sup>11</sup>

This paper's analysis is limited to *the text* of SDG6. It does not examine possibilities for cross-fertilization between human rights law and the SDGs in a general sense. Having said that, mention must be made of the general pledge all States made, when adopting the SDGs, 'that no one will be left behind'.<sup>12</sup> This meant that:

Recognizing that the dignity of the human person is fundamental, we wish to see the Goals and targets met for all nations and peoples and for all segments of society. And we will endeavor to reach the furthest behind first.<sup>13</sup>

This has later become known as the 'leaving no one behind' commitment, which further encourages a more human rights-friendly interpretation and application of all SDGs, including SDG6.

<sup>7</sup> Daphina Misiedjan, *Towards A Sustainable Human Right to Water: Supporting Vulnerable People and Protecting Water Resources* (Intersentia 2019) 218. On the role of the Sustainable Development Goals in water management, see also Anna Schulz, 'The Sustainable Development Goals in relation to Water Management: What Role for Legal Frameworks?', in Alistair Rieu-Clarke, Andrew Allan and Sarah Hendry (eds), *Routledge Handbook of Water Law and Policy* (Routledge 2017) 367.

<sup>8</sup> For the goals and targets, see Transforming our world: the 2030 Agenda for Sustainable Development, (2015) G.A. Res. 1, 70 GAOR, U.N. Doc. A/RES/70/1.

<sup>9</sup> For the indicators, see the Global Indicator Framework for The Sustainable Development Goals and Targets of The 2030 Agenda for Sustainable Development, (2017) annexed to G.A. Res. 313, 71 GAOR, U.N. Doc. A/RES/71/313.

<sup>10</sup> There is a lot of literature on whether the human right(s) to water and sanitation are two separate rights, or whether they are two aspects of one and the same right. There is more support for the first view. See *e.g.*, The Human Rights to Safe Drinking Water and Sanitation, (2015) G.A. Res. 169, 70 GAOR, U.N. Doc. A/RES/70/169.

<sup>11</sup> A special issue of the *Global Policy Journal* contrasted the role of non-State actors in the drafting of the SDG goals and targets, which was reasonably large, with the role of non-State actors in the drafting of the SDG indicators, which was rather small. See 'Special Issue: Knowledge and Politics in Setting and Measuring SDGs' (2019) 10(S1) *Global Policy Journal*.

<sup>12</sup> Transforming our world (n 8) para 4.

<sup>13</sup> *Ibid.*

## 2. Drafting of the SDGs

Let us begin with an analysis of the SDG-drafting process, *i.e.* the process that led to the adoption, in 2015, by the United Nations General Assembly, of the Sustainable Development Goals and accompanying targets. An examination of the role of non-State actors in the drafting of these goals and targets, constitutes the heart of this paper's research.<sup>14</sup>

Because the text of SDG6 is so short and succinct (see Section 3 below), it is essential to look in detail at the preparatory works (*travaux préparatoires*) of SDG6, and the circumstances of its conclusion, in order to add the necessary depth, context and sophistication to a literal reading of SDG6. In our analysis of the *travaux*, we look in particular at references to the human right to water, placing this right in a sustainability-context; and at ideas on how to implement this sustainable human right to water at the local level.

The drafting process was very complex and inclusive: many entities participated in it. Participation was not limited to State representatives only.<sup>15</sup> In what follows, the focus is on the input of ideas relating to the human right to water.

At the end of the United Nations Conference on Sustainable Development, held in Rio de Janeiro in 2012, the world, represented by State delegates, adopted an outcome document entitled *The Future We Want*.<sup>16</sup> The document noted that the Millennium Development Goals (MDGs) were about to reach their expiration date in 2015, and that new goals for the post-2015 age needed to be set.<sup>17</sup> The decision was made to focus these successor goals entirely on sustainable development, hence the *Sustainable Development Goals*. In the *Future We Want*, we find an explicit recognition 'that water is at the core of sustainable development', and 'the critical importance of water [...] within the three dimensions of sustainable development' is underlined.<sup>18</sup> This is a reference to the economic, social, and environmental dimension of the concept of sustainable development. States committed themselves to the 'progressive realization of access to safe and affordable drinking water [...] for all',<sup>19</sup> and reaffirmed their commitment to the human right to safe drinking water, 'to be progressively realized for our populations'.<sup>20</sup> To do justice to these remarks, the SDGs-to-be had to include strong references to the (human) right of universal access to water, and this is indeed what happened.

Two different work streams can be distinguished in the SDG-drafting process. One was coordinated by the United Nations Secretary-General (UNSG) and involved a great variety of actors and input. The other was more State-centered: this was the work stream of the Open Working Group on the Sustainable Development Goals.

### 2.1. Workstream coordinated by the United Nations Secretary-General

Let us look first at the UNSG-led work stream. The UN Secretary-General first asked for input from his own Advisory Board on Water and Sanitation. In January 2013, the Advisory Board formulated an SDG on water.<sup>21</sup> It recommended that the Water Goal should set targets to achieve, *inter alia*, the objective of 'achieving universal access to sustainable [...] drinking water that is really safe'.<sup>22</sup> Access to water was clearly approached as a human right. For example, we read in the report that

In 2010, the UN General Assembly and the Human Rights Council recognized clean drinking water and safe sanitation to be a human right essential to the full enjoyment of life and all other human rights. Setting a goal for universal access is the next logical step for the global community to take with an emphasis on reaching the poorest and most vulnerable.<sup>23</sup>

<sup>14</sup> This explains the length of this section (section 2), compared with the other sections in the paper.

<sup>15</sup> For a detailed analysis, see Otto Spijkers and Arron Honniball, 'Developing Global Public Participation: Shaping the Sustainable Development Goals' (2015) 17(3) ICLR 251.

<sup>16</sup> *The Future We Want*, (2012) G.A. Res. 288, 66 GAOR, U.N. Doc. A/RES/66/288, Annex.

<sup>17</sup> For a more detailed analysis of the linkages between the MDGs and the SDGs, see Arron Honniball and Otto Spijkers, 'MDGs and SDGs: Lehren aus der öffentlichen Beteiligung an der Ausarbeitung der UN-Entwicklungsziele' (2014) 62(6) Vereinte Nationen 251.

<sup>18</sup> *The Future We Want* (n 16) para 120.

<sup>19</sup> *Ibid* para 121.

<sup>20</sup> *Ibid*.

<sup>21</sup> United Nations Secretary-General's Advisory Board on Water and Sanitation (UNSGAB), *Water and Sanitation for All: Securing our Future, Preserving our Planet*, UNSGAB's call for a Post-2015 Global Goal on Water, January 2013, <[https://sustainabledevelopment.un.org/content/documents/1817UNSGAB\\_post2015\\_brief.pdf](https://sustainabledevelopment.un.org/content/documents/1817UNSGAB_post2015_brief.pdf)>

<sup>22</sup> *Ibid* i and ii.

<sup>23</sup> *Ibid* iii.

The Board also had some suggestions on how to localize this right. In the Board's view, the 'collection of used water, separation of polluted water from less polluted waters, prevention and management of wastewater pollution including treatment of used water are increasingly important to protect populations and ecosystems as well as to facilitate economic development'.<sup>24</sup> Such measures can only be taken at the local level.

In March of 2013, the UN Global Compact and the World Business Council for Sustainable Development prepared their first report to the Secretary-General, with the support of the World Economic Forum and the High-level Panel's business representatives.<sup>25</sup> The representatives of the corporate world suggested to include a specific goal on water. They saw access to water as a 'basic need' and a 'cross-sector issue'.<sup>26</sup> We do not find in this report an explicit reference to a rights-based approach to access to water. We find plenty of references to the importance of local action. It is said that the challenge of providing access to water can only be met through 'collective action', *i.e.* 'uniting multilateral organizations, governments, civil society, and business'.<sup>27</sup> In the proposed *Architecture for Implementation*, various ways through which business can contribute to implementation are proposed, including through 'further development of country-level business networks and efforts that are working to advance sustainable development and build capacity within a national context'.<sup>28</sup>

Already in July 2012, the UN Secretary-General had established a High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, to assist him in his work. The panel produced a final report in May 2013, in which it proposed to include a separate SDG on water, Goal 6, on 'Achiev[ing] Universal Access to Water'. One of the targets was to 'provide universal access to safe drinking water at home, and in schools, health centers, and refugee camps'.<sup>29</sup> The first sentence of the explanatory text to Goal 6 states clearly and unambiguously that 'access to water is a basic human right'.<sup>30</sup> And 'ensur[ing] universal access to safe drinking water at home, and in schools, health centers and refugee camps [is considered] a global minimum standard that should be applied to everyone—regardless of income quintile, gender, location, age or other grouping'.<sup>31</sup> Such global minimum standard can only be implemented at the local level, and thus requires the contribution of local stakeholders. For this reason, the Panel held that 'perhaps the most important transformative shift' that was required, was the shift 'towards a new spirit of solidarity, cooperation, and mutual accountability that must underpin the post-2015 agenda'. More concretely, the Panel called for the forging of a new global partnership, involving 'governments but also includ[ing] others: people living in poverty, those with disabilities, women, civil society and indigenous and local communities, traditionally marginalized groups, multilateral institutions, local and national government, the business community, academia and private philanthropy'.<sup>32</sup>

The Sustainable Development Solutions Network, a group of scientists, provided their input to the Secretary-General in June 2013.<sup>33</sup> The scientists did not propose a separate water goal; instead, they saw access to water as 'a cross-cutting requirement for all goals'.<sup>34</sup> In other words, 'providing access to safe water [and] sound management of freshwater resources [were seen as] inter-related priority challenges of sustainable development that must be met for other goals and targets to be achieved'.<sup>35</sup> The scientists also believed human rights protection 'cut across all priorities', like access to water.<sup>36</sup> But these two cross-cutting goals

<sup>24</sup> *Ibid* iv.

<sup>25</sup> UN Global Compact and the World Business Council for Sustainable Development with the support of the World Economic Forum and the High-Level Panel's Business Representatives, *Joint Report to the High-Level Panel of the Post-2015 UN Development Agenda*, March 2013 <[https://www.unglobalcompact.org/docs/issues\\_doc/development/Joint\\_Report\\_HLP.pdf](https://www.unglobalcompact.org/docs/issues_doc/development/Joint_Report_HLP.pdf)> accessed 28 May 2020.

<sup>26</sup> *Ibid* 5.

<sup>27</sup> *Ibid* 1.

<sup>28</sup> *Ibid* 5.

<sup>29</sup> High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development*, 30 May 2013 <<https://sustainabledevelopment.un.org/content/documents/8932013-05%20-%20HLP%20Report%20-%20A%20New%20Global%20Partnership.pdf>> accessed 28 May 2020.

<sup>30</sup> *Ibid* 42.

<sup>31</sup> *Ibid*.

<sup>32</sup> *Ibid* Executive Summary.

<sup>33</sup> Leadership Council of the Sustainable Development Solutions Network, *An Action Agenda for Sustainable Development, Report for the UN Secretary-General*, slightly revised, 5 May 2014 (original version of 6 June 2013) <<https://unstats.un.org/unsd/broaderprogress/pdf/130613-SDSN-An-Action-Agenda-for-Sustainable-Development-FINAL.pdf>> accessed 28 May 2020.

<sup>34</sup> *Ibid* 40, Annex 3 (under Question 25).

<sup>35</sup> *Ibid*.

<sup>36</sup> *Ibid* xi and 8.

were not explicitly merged into a human right to water. They did stress the importance of involving local actors in the implementation of the SDG-agenda, as follows:

Today's problems will expand dangerously without an urgent and radical change of course. The world needs an operational sustainable development framework that can mobilize all key actors (national and local governments, civil society, business, science, and academia) in every country to move away from the Business-as-Usual (BAU) trajectory towards a Sustainable Development (SD) path.<sup>37</sup>

In June 2013, the UN Global Compact published its Design for Sustainable Development Goals, including Goal 6 on 'Water and sanitation for all'.<sup>38</sup> Proposed targets for Goal 6 included providing 'universal access to affordable and safe fresh water'.<sup>39</sup> In the report accompanying this Design, the UN Global Compact identified 'three areas that come to the fore in business discussions', and these were 'water/sanitation, energy, and food/agriculture'.<sup>40</sup> Each of these three areas, so we are told, 'meets a primal human need'.<sup>41</sup> In the part of the report specifically on water and sanitation, the focus was on the importance of water for the business sector itself. Being a 'major water user', 'embracing the new, holistic concept of corporate water stewardship' by industry and agriculture is considered 'critical'.<sup>42</sup> At the same time, respect for human rights was seen as an 'enabling factor[...] important enough to be elevated to [a] worldwide goal[...]'; but in the part of the report on human rights, access to water is not mentioned.<sup>43</sup> Even though access to water and respect for human rights are thus treated as different issues in most parts of the report, there is one explicit reference to the human right to water. The UN Global Compact believes the pricing of access to water should not be an obstacle to access by all to fresh, safe water, 'consistent with the established human right to water'.<sup>44</sup> This is an important remark, because oftentimes the human right to water is considered inconsistent with, or at best in tension with, the privatization of water resource access. Here, the Global Compact appears to suggest that this need not necessarily be the case. This tension, which is felt at the local level, is explored in more detail in the paper by Pedi Obani, which deals with the localization of the human right to water in Lagos, Nigeria, and also addresses issues relating to the privatization of water resources.

The Secretary-General invited the world's citizens to share their opinion. 'We' – *i.e.* all the world's citizens – were asked to select six priority issues out of a list of sixteen in the online *MyWorld* survey.<sup>45</sup> A total of 9,736,484 votes were cast, and access to clean water ranked seventh. It is perhaps interesting to say a few words here about the demographics of this voting process.<sup>46</sup> As could be expected of an online consultation, more than half of all votes (more than 5 million) were cast by people between 16–30 years of age. There was no significant difference in the number of votes cast for access to clean water by male and female voters, or by high- and low-educated people, or by young and old people. They all considered access to water to be of more or less the same importance in comparison with the other priority areas. A good education was, by the way, the absolute winner of this online survey, followed by healthcare, job opportunities, honest and responsive government, affordable food, and protection against crime and violence. Surprisingly, at the very bottom of the list was action taken on climate change.

The Secretary-General also invited experts to provide input relating to their area of expertise. One of the thematic consultations was on water.<sup>47</sup> The report on the findings of this consultation contained a section

<sup>37</sup> Ibid viii.

<sup>38</sup> United Nations Global Compact, *Corporate Sustainability and the United Nations Post-2015 Development Agenda: Perspectives from UN Global Compact Participants on Global Priorities and How to Engage Business Towards Sustainable Development Goals*, Report to the United Nations Secretary-General, submitted 17 June 2013 <[https://www.unglobalcompact.org/docs/news\\_events/9.1\\_news\\_archives/2013\\_06\\_18/UNGC\\_Post2015\\_Report.pdf](https://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2013_06_18/UNGC_Post2015_Report.pdf)> accessed 28 May 2020, 15.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid 9.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid 10.

<sup>43</sup> Ibid 2.

<sup>44</sup> Ibid 23.

<sup>45</sup> My World: United Nations Global Survey of a Better World, <<http://www.myworld2015.org>> accessed 28 May 2020.

<sup>46</sup> My World <<http://data.myworld2015.org>> accessed 28 May 2020; there is a detailed analysis of this data.

<sup>47</sup> The Post 2015 Water Thematic Consultation, 9 August 2013 <[https://sustainabledevelopment.un.org/content/documents/7266Final9Aug2013\\_WATER\\_THEMATIC\\_CONSULTATION\\_REPORT.pdf](https://sustainabledevelopment.un.org/content/documents/7266Final9Aug2013_WATER_THEMATIC_CONSULTATION_REPORT.pdf)> accessed 28 May 2020.

specifically on the ‘human rights approach to safe drinking water’.<sup>48</sup> From the consultations devoted to that approach, ‘it became clear [...] that secure access to water must be recognized as a fundamental right for all, which can’t be taken away’.<sup>49</sup> Interestingly, this report proposes to recognize this right also for future generations, making it a true *sustainable* human right to water:

To ensure the sustainability and the uninterrupted and long-term enjoyment of rights related to water, it is essential not only that present generations enjoy the benefits of water and sanitation, but also that future generations are catered for.<sup>50</sup>

This leads the water-experts to the following recommendations:

The human right to water [...] should be explicitly recognized as fundamental to the implementation of the new development agenda.

[And there should be included an obligation to] ensure both present and future generations sustain and enjoy the uninterrupted and long-term human rights related to water [...].<sup>51</sup>

The UN Secretary-General tried to summarize this plurality of input and opinions in a synthesis report, which was published on 31 December 2014.<sup>52</sup> Strangely enough, access to water was hardly mentioned at all. The synthesis report was thus not a very useful contribution to the debate. This is unfortunate, because the report thereby failed to accurately reflect the wealth, creativity, and variety of ideas relating to the relationship between access to water and sustainability, and its local implementation, referred to above. The synthesis report did not thereby annul or undo all the input provided. The contributions referred to above remain just as much part of the preparatory works of SDG6 as they would have been if the Secretary-General’s synthesis report would have done them justice.

From all the input provided, we can conclude that there was a consensus that access to water constituted a basic human need, and that it was a cross-cutting concern, and that it could only be implemented effectively with the help of local stakeholders. Not all input explicitly labeled access to water as a human right, but nowhere do we read anything suggesting any opposition to such a human rights-based approach.

## **2.2. Workstream of the Open Working Group (OWG) on the Sustainable Development Goals**

With the help of all this input from a great variety of actors, all brought together by the UNSG, the Open Working Group (OWG) on the Sustainable Development Goals worked on their draft of the SDGs. Only States were allowed as members of this group. The OWG sent their report to the UN General Assembly in August 2014,<sup>53</sup> and based on that report the Assembly adopted the SDGs in the autumn of 2015.

Let us now look at the role of the OWG in the SDG-drafting process. To facilitate the work of the OWG, an issues brief on water and sanitation was circulated beforehand.<sup>54</sup> The brief *did* refer explicitly to the ‘human right to safe drinking-water’; but there was no comprehensive analysis, in the brief, on whether the water goal should be approached from a human rights perspective or not.<sup>55</sup> The analysis in the issues brief focused on the question whether there should be a stand-alone goal on water, or whether it should be seen as a cross-cutting issue. It did call for a ‘vertical integration of policies (from national to subnational and municipal levels)’ to address challenges relating to access to water, and noted that ‘improving implementation

<sup>48</sup> Ibid 20–22.

<sup>49</sup> Ibid 5.

<sup>50</sup> Ibid 21.

<sup>51</sup> Ibid 22.

<sup>52</sup> The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet, Synthesis Report of the UN Secretary-General on the Post-2015 Sustainable Development Agenda, (2014) U.N. Doc. A/69/700.

<sup>53</sup> Report of the Open Working Group of the General Assembly on Sustainable Development Goals, (2014) U.N. Doc. A/68/970.

<sup>54</sup> *TST Issues Brief: Water and Sanitation* <<http://sustainabledevelopment.un.org/content/documents/1801tstissueswater.pdf>> accessed 28 May 2020.

<sup>55</sup> Ibid 2.

capacity and stakeholder participation [was] perceived as a major challenge by many countries'.<sup>56</sup> And thus, the brief proposed to consider the following:

Governments play a key role in securing water for competing demands, and also in protecting resources and ecosystems in a long-term perspective. However, the quest for a water secure world is a joint responsibility and can only be achieved through water cooperation at local, national, regional and global level and through partnerships with a multitude of stakeholders ranging from citizens to policy makers to the private sector. People must be able to participate in decisions on water and sanitation that affect their lives.<sup>57</sup>

The third session of the OWG was devoted to water. The focus of this weeklong discussion was again on the decision whether to have a stand-alone water goal or approach it as a cross-cutting issue. The rights-based approach was only discussed briefly on the Friday afternoon. In this debate on the rights-based approach, 'speakers continually emphasized the importance of water as a critical element for health and food security, for sustainable ecosystems, as a social good, and for all life'.<sup>58</sup> But the added value of a rights-based approach was not discussed at a more technical/legal level.

In June 2014, the Open Working Group published its Zero-Draft of the SDGs, with a list of 17 Proposed Sustainable Development Goals to be attained by 2030. The list included Goal 6, on securing water for all for a sustainable world.<sup>59</sup> The first target of Goal 6 was to provide, by 2030, 'universal access to safe and affordable drinking water [...] for all'.<sup>60</sup> There was no explicit reference to a *human right* to water in SDG6. The importance of respect for all human rights was reaffirmed in a general sense in the introductory text to *all* the SDGs, and there we find an explicit reference to 'the right to development and the right to an adequate standard of living, including the right to food [...]'.<sup>61</sup> At the time, there was no explicit reference to the right to water. Of course, from General Comment 15 of the CESCR, we understand that a human right to water can be derived from the right to an adequate standard of living, as codified in Article 11 ICESCR. But the *human right* to water could have been claimed with more confidence, by people all over the world, if it were mentioned explicitly in the SDGs. As we shall see immediately below, the people got what they wanted: a reference to the 'right to water' was later added to this phrase, at the request of various non-State actors, the Women's Group in particular.<sup>62</sup>

The twelfth session of the Open Working Group on Sustainable Development Goals took place after the Zero Draft was published and everybody – both State and non-State actors – could provide feedback. Morning hearings were devoted to meetings of the OWG Members with representatives of Major Groups and other Stakeholders. These morning meetings were not *formally* part of the OWG workstream, but they did *in fact* influence the drafting of the SDGs – which was formally done only by the States Members of the OWG – quite a lot. Representatives of non-State actors used these morning meetings to propose a rewording of Goal 6 so that it referred explicitly to a human right to water. In view of a huge consortium of non-State groups,<sup>63</sup>

<sup>56</sup> Ibid 4.

<sup>57</sup> Ibid 7.

<sup>58</sup> Co-Chair's Summary of the Third Meeting of the Open Working Group of the General Assembly on Sustainable Development Goals <<https://sustainabledevelopment.un.org/owg3.html>> accessed 28 May 2020, 11. See also the Co-Chairs' Summary bullet points from OWG-3, available on the same website, according to which 'the importance of a rights-based approach to [...] water [...] was highlighted'. And see the Concluding Remarks of the Co-Chairs of OWG3, dated 24 May 2013, where we read that 'many [...] stressed the importance of a rights-based approach to [...] water [...], as these are recognized as fundamental human rights'.

<sup>59</sup> Open Working Group on Sustainable Development Goals, *Introduction and Proposed Goals and Targets on Sustainable Development for the Post-2015 Development Agenda*, 2 June 2014 <<https://sustainabledevelopment.un.org/content/documents/4528zerodraft12OWG.pdf>> accessed 28 May 2020.

<sup>60</sup> Ibid 7.

<sup>61</sup> Ibid 1.

<sup>62</sup> This paper does not seek to analyze the political battles relating to the phrasing of SDG6, that took place in various conferences, stakeholder meetings, etc., or attempt to explain why some groups were more successful in their lobbying efforts than others. The focus of this paper is on a *textual* analysis: which proposals ended up in the text of SDG6 (and which ones did not).

<sup>63</sup> The proposals were made on behalf of the Women's Major Group, Blue Planet Project, Mining Working Group at the UN, End Water Poverty, WECF International and Temple of Understanding; and endorsed by the Indigenous Peoples Major Group, NGO Major Group, Children and Youth Major Group, Workers and Trade Unions Major Group, ETC Group, Institute for Agriculture and Trade Policy, Food and Water Watch, Food and Water Europe, Ingeniería Sin Fronteras, Public Services International, Transnational Institute, WEDO, Sisters of Mercy, Loretto Community, and Franciscans International.



SDG6 should be about 'ensur[ing] the human right [to] water and sanitation for all for a sustainable world'.<sup>64</sup> In line with this suggested change of language, they proposed to reword the first target as follows: 'by 2020, ensure the human right to water [...] by providing universal access to safe, sufficient, affordable, acceptable and accessible potable water'.<sup>65</sup> The Women's Group explained the need for such an explicit reference to a human right to water, as follows:

We call for the human right to water [...] to be recognized explicitly within SDG6. Universality is insufficient, and we are not satisfied with the approach of mainstreaming. The human right to water [...] must be explicitly recognized in order to ensure that vulnerable and marginalized groups are targeted and that inequalities are addressed. The Human Right to Water [...] was recognized by the UNGA. We would consider it a major setback for the OWG to settle for less within the SDG agenda. A letter was sent by 300 NGOs making this appeal to the OWG.<sup>66</sup>

These proposals were not adopted, and no explicit reference to a human right to water was eventually included in SDG6. From the *travaux préparatoires* of SDG6, including the reports of the OWG-meetings, it does not become clear why this proposal was not taken up. But we do find such reference in the introductory text. At the part where the importance of respect for all human rights to achieving *all* the SDGs was emphasized, we find an explicit reference to 'the right to development and the right to an adequate standard of living, including the right to food *and water*' (emphasis added).<sup>67</sup> The latter two words we did not yet find in the Zero Draft. It can be safely assumed that this reference to the right to water was motivated, at least in part, by the call of the Women's Group, referred to just above (but there is no direct evidence of such a causal link).

It was also at this very last stage, that language on public participation rights was suggested to be included into the Water Goal. The non-State actors proposed to insert the following target: to 'implement people-centered democratic, participatory and accountable water resources management'.<sup>68</sup> The Major Group Business and Industry, as well as Women, called for participatory water governance.<sup>69</sup> The former proposed a target to 'strengthen equitable, participatory and accountable water governance in all countries'.<sup>70</sup> The Women's Group proposed something similar, and explained the need for an explicit reference to participation as follows:

If not developed under a human rights framework and a participatory approach, [Integrated Water Resources Management] has the potential to reduce policymaking to multi-stakeholder processes that lower the accountability of governments and relinquish decision-making to local water user entities where communities must compete for entitlements with corporate users. This often marginalizes indigenous communities and noncommercial users including landless communities and subsistence farmers, the majority of whom are women.<sup>71</sup>

The final version of the proposal for the SDGs took some – but certainly not all! – these suggestions on the importance of local and inclusive implementation into account.<sup>72</sup> The first Target of SDG6 was to 'achieve

<sup>64</sup> Morning Hearings with Major Groups and other Stakeholders: Twelfth Session of the Open Working Group on Sustainable Development Goals, 16–20 June 2014, compilation of amendments to goals and targets <<https://sustainabledevelopment.un.org/owg12.html>> accessed 28 May 2020, 19.

<sup>65</sup> Ibid 19. Note that it was also suggested to move the due date forward by ten years.

<sup>66</sup> Women's Major Group, Blue Planet Project, Mining Working Group at the UN, End Water Poverty, WECF International and Temple of Understanding, Inputs for SDG6 <<https://sustainabledevelopment.un.org/content/documents/10464Karanunanathan.pdf>> accessed 28 May 2020.

<sup>67</sup> Ibid 7.

<sup>68</sup> Ibid 19.

<sup>69</sup> On the role of the SDGs in both global and local governance, see more generally Steven Bernstein, 'The United Nations and the Governance of Sustainable Development Goals', in Norichika Kanie and Frank Biermann (eds), *Governing through Goals: Sustainable Development Goals as Governance Innovation* (MIT Press 2017) 213; and Stephen Browne, *Sustainable Development Goals and UN Goal-Setting* (Routledge 2017).

<sup>70</sup> Business and Industry, *Proposed Revisions by Focus Area*, Working Document for 16–20 June Session of the Open Working Group <<http://sustainabledevelopment.un.org/content/documents/10489business.pdf>> accessed 28 May 2020, 10.

<sup>71</sup> Comments prepared by the Women's Major Group on the zero-draft presented by the OWG co-chairs on 2 of June 2014, 15 June 2014 <<https://sustainabledevelopment.un.org/content/documents/10419women.pdf>> accessed 28 May 2020, 13.

<sup>72</sup> Report of the Open Working Group of the General Assembly on Sustainable Development Goals, (2014) U.N. Doc. A/68/970, 14–15.

universal and equitable access to safe and affordable drinking water for all'; and the last target was to 'support and strengthen the participation of local communities in improving water and sanitation management'.<sup>73</sup> We can safely assume that the insertion of the latter target into SDG6 was motivated by the suggestion of the Women's Group.

The General Assembly adopted the final version of the SDGs in a resolution in October 2015.<sup>74</sup> The text of this resolution is analyzed in the next section (Section 3).

### 3. Human right to water in the SDG text

The purpose of this section is not to analyze the internationally recognized human right to water – such analysis has been done elsewhere, for example by the International Law Association,<sup>75</sup> and in scholarship<sup>76</sup> – but to compare the wording of SDG6 to the wording of the human right to water as recognized in international law. The focus in this comparison is again on the sustainability dimension of the human right to water, and on the localization of this right.

Through the adoption of SDG6.1, States pledged to 'achieve universal and equitable access to safe and affordable drinking water for all' by 2030.<sup>77</sup> The emphasis on providing access to water *for all* is supported in treaties which require of States to secure access to water also to the most vulnerable within society. For example, Article 14(2) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), requires of States to take all appropriate measures to provide women in rural areas with adequate living conditions, particularly in relation to water supply. And according to Article 24 of the UN Convention on the Rights of the Child (CRC), States must make efforts to ensure children enjoy the highest attainable standard of health, which includes access to clean drinking water. Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD), obliges States to ensure equal access to clean water services to persons with disabilities. So far, we have been referring to multilateral conventions. One also finds references to the importance of providing access to safe and affordable drinking water *for all* in various soft law documents.<sup>78</sup> See, for example, the United Nations Principles for Older Persons, in which States committed themselves to providing older persons with access to adequate water.<sup>79</sup> And the Standard Minimum Rules for the Treatment of Prisoners require of States to make drinking water available to 'every prisoner whenever he needs it'.<sup>80</sup>

And finally, as is well-known, the Committee on Economic, Social and Cultural Rights (CESCR), the independent body of experts elected by States to interpret the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>81</sup> has clarified in their General Comment 15, on the human right to water, adopted on 20 January 2003, that the right to water is essential for 'the right of *everyone* to an adequate standard of living', as contained in Article 11(1) of the ICESCR, and the right to health in Article 12 ICESCR.<sup>82</sup> Both the

<sup>73</sup> Ibid 14.

<sup>74</sup> Transforming our world (n 8).

<sup>75</sup> See, e.g., International Law Association (Committee on the Role of International Law in Sustainable Natural Resource Management for Development), *Report to the Johannesburg Conference (2016)* <<https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1551&StorageFileGuid=f9337875-261b-4937-b0ab-f18c04e1aa79>> accessed 28 May 2020, 4–11. The section on Freshwater was prepared by the ILA Committee Members Yongmin Bian (China), Maki Nishiumi (Japan), and Otto Spijkers (The Netherlands).

<sup>76</sup> See further Stephen McCaffrey, 'The Human Right to Water', in Edith Brown Weiss, Laurence Boisson de Chazournes and Nathalie Bernasconi-Osterwalder, *Fresh Water and International Economic Law* (Oxford University Press 2005); Emilie Filmer-Wilson, 'The Human-Rights-Based Approach to Development: The Right to Water' (2005) 23(2) NQHR 213; Erik Bluemel, 'The Implications of Formulating a Human Right to Water' (2004) 31(4) Ecology Law Quarterly 957.

<sup>77</sup> Ibid SDG6, Target 6.1.

<sup>78</sup> For an overview, see the website of the Office of the High Commissioner for Human Rights <<https://www.ohchr.org/en/issues/waterandsanitation/srwater/pages/internationalstandards.aspx>> accessed 28 May 2020; and see the report of WASH and Amnesty International, *Recognition of the human rights to water and sanitation by UN Member States at the international level*, 2 April 2015, Index number: IOR 40/1380/2015 <<https://www.amnesty.org/download/Documents/IOR4013802015ENGLISH.PDF>> accessed 28 May 2020. The latter report also provides an overview of the position that 77 States have taken in resolutions and declarations on the human right to water. And for an overview of relevant caselaw at all levels, see WaterLex and WASH United, *The Human Rights to Water and Sanitation in Courts Worldwide: a Selection of National, Regional and International Case Law* <[http://www.waterlex.org/?post\\_type=post\\_publications&p=2817](http://www.waterlex.org/?post_type=post_publications&p=2817)> accessed 28 May 2020.

<sup>79</sup> United Nations Principles for Older Persons, (1991) G.A. Res. 91, 46 GAOR, U.N. Doc. A/RES/46/91.

<sup>80</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>81</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in New York on 16 December 1966, entry into force 3 January 1976, United Nations, *Treaty Series*, vol. 993, para 3.

<sup>82</sup> General Comment No. 15 (n 6).

General Assembly and the Human Rights Council have since adopted the Committee's interpretation of the ICESCR.<sup>83</sup> And the Special Rapporteur on the human right to safe drinking water and sanitation has done the same.<sup>84</sup> The importance of providing *everyone* an adequate standard of living, including access to water, has been interpreted by the Committee as requiring of States to 'give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees'.<sup>85</sup> That accords nicely with the many references to the right of access to water in the treaties and resolutions on children, women, disabled people, old people, and prisoners. Similarly, the Human Rights Council called upon all States, when implementing the human right to water, 'to pay particular attention to persons belonging to vulnerable and marginalized groups, including by respecting the principles of non-discrimination and gender equality'.<sup>86</sup>

Target SDG6.1 further refers to *equitable* access to water. The Committee has read such requirement also into the right to water as derived from the ICESCR, with the consequence that

Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.<sup>87</sup>

SDG6 as finally adopted, also does justice to the calls for paying special attention to local problems. For example, the ambition to end 'open defecation, paying special attention to the needs of women and girls and those in vulnerable situations' is mentioned explicitly (Target SDG6.2). This can be achieved, *inter alia*, by ensuring the availability of 'hand-washing facility[ies] with soap and water' (Indicator SDG6.2.1).

Through Target SDG6.b, States further pledged to 'support and strengthen the participation of local communities in improving water [...] management'.<sup>88</sup> One way to achieve this, is by increasing the 'proportion of local administrative units with established and operational policies and procedures for participation of local communities in water and sanitation management' (Indicator SDG6.b.1).

The Committee derived a similar obligation from the ICESCR:

The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, program or strategy concerning water. 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>89</sup>

Similarly, the Human Rights Council called upon States to ensure 'the active, free and meaningful participation of the concerned local communities and relevant stakeholders' in the provision of safe drinking water.<sup>90</sup>

In General Comment 15, the Committee also urged States to recognize the human right to water in their domestic law, as this would 'significantly enhance the scope and effectiveness of remedial measures'.<sup>91</sup> After all, individuals could then more easily invoke the human right to water against their own government before a domestic court. It would thus 'enable[...] courts to adjudicate violations of the right to water'.<sup>92</sup> If the human right to water is recognized as a domestic right – especially when it is seen as a constitutional right – it can also lead to a paradigm change, *i.e.* it can alter traditional attitudes and approaches relating to water management (often of an administrative law type), and turn them into a more rights-based approach.

<sup>83</sup> Most notably, The human right to water and sanitation, (2010) G.A. Res. 292, 64 GAOR, U.N. Doc. A/RES/64/292; and Human rights and access to safe drinking water and sanitation, (2010) H.R.C. Res. 9, 15, U.N. Doc. A/HRC/RES/15/9.

<sup>84</sup> Catarina de Albuquerque, *Promotion and Protection of All Human Rights*, U.N. Doc. A/HRC/12/24 (2009) 33–37. The report is mostly about the right to sanitation.

<sup>85</sup> General Comment No. 15 (n 6) para 16.

<sup>86</sup> Human rights and access to safe drinking water and sanitation, H.R.C. Res. 9, 15, U.N. Doc. A/HRC/RES/15/9 (2010) para 8(c).

<sup>87</sup> General Comment No. 15 (n 6) para 27.

<sup>88</sup> SDG6, Target 6.b.

<sup>89</sup> General Comment No. 15 (n 6) para 48.

<sup>90</sup> Human rights and access to safe drinking water and sanitation, (2010) H.R.C. Res. 9, 15, U.N. Doc. A/HRC/RES/15/9 para 8(b).

<sup>91</sup> General Comment No. 15 (n 6) para 57. See also paras. 8, 46, 50, and 55.

<sup>92</sup> *Ibid.*

The pledge contained in Target SDG6.4 is about ‘address[ing] water scarcity and substantially reduc[ing] the number of people suffering from water scarcity’. Water scarcity occurs when there is a lack of sufficient available water resources to meet vital human water needs. Target SDG6.4 thus urges States to give special regard to the requirements of vital human water needs. Here, the link with the human right to water is perhaps less obvious. This priority on satisfying vital human water needs seems more based on Article 10 UN Watercourses Convention (WCC).<sup>93</sup> This Article requires that, in the event of a conflict between competing uses of an international watercourse, ‘special regard is given to the requirements of vital human needs’.<sup>94</sup> In determining ‘vital human needs’, the International Law Commission believed that ‘special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation’.<sup>95</sup> It is important to keep in mind that ‘water needs’ are defined both in quantitative terms (sufficient amount of water) and qualitative terms (water of sufficient quality, i.e. not polluted etc.). Of course, the focus on satisfying basic water needs of individual people does remind one of the language of international human rights, which generally aims to secure minimum standards for individuals. But it must be kept in mind that the WCC is not a human rights treaty, and thus it must not be assumed too easily, that the reference to ‘vital human needs’ is an implicit reference to the internationally recognized human right to water. This is all the more so since Article 10 WCC was drafted in 1994 by the International Law Commission, long before the human right to water was affirmed by the Human Rights Council and General Assembly (this was done in 2010). Moreover, the ILC’s Commentary to Article 10 WCC makes no reference whatsoever – explicit or implicit – to human rights.<sup>96</sup>

#### 4. Progress monitoring framework of the SDGs

It would, of course, be worthwhile to examine in detail the *travaux préparatoires* of the indicators. These *indicators* were developed at a later stage, by the so-called Inter Agency and Expert Group on Sustainable Development Goal Indicators; and then adopted by the UN General Assembly in 2017.<sup>97</sup> And it would be interesting to examine in detail how the institutions that monitor compliance with SDG6, using the SDG6 indicators as their yardstick, and the institutions that monitor compliance with the human right to water, using international human rights treaties as their yardstick, work together. One could, for example, look at references to the human right to water in the Integrated Monitoring Initiative developed under the auspices of UN-Water.<sup>98</sup> Or one could look for references to SDG6 in the Concluding Observations of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), which monitors compliance with, *inter alia*, Article 11 ICESCR, generally considered the legal basis of the human right to water.<sup>99</sup> Such a detailed analysis is beyond the scope of this paper, but might be a welcome topic for future research. In this brief section, the relevant indicators are listed, and the link with human rights is touched upon.

As an indicator for progress in the achievement of Target SDG6.1, the proportion of the world population using safely managed drinking water services is measured.<sup>100</sup> This is done by the World Health Organization

<sup>93</sup> Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted in New York on 21 May 1997, entry into force 17 August 2014, U.N. Doc. A/51/869.

<sup>94</sup> *Ibid* Article 10.

<sup>95</sup> International Law Commission (ILC), Convention on the Law of the Non-Navigational Uses of International Watercourses: Report of the Sixth Committee convening as the Working Group of the Whole, (1997) U.N. Doc. A/51/869 para 8. The ILC was responsible for drafting the text of the UN Watercourses Convention, before its adoption by the UNGA.

<sup>96</sup> International Law Commission (ILC), Draft articles on the law of the non-navigational uses of international watercourses and commentaries thereto and resolution on transboundary confined groundwater [1994] II *YILC* 109–110.

<sup>97</sup> See the Global Indicator Framework (n 9).

<sup>98</sup> In two reports of the World Health Organization, published in 2017, we do find some evidence of such cross-references. See World Health Organization, *Safely Managed Drinking Water – Thematic Report on Drinking Water 2017* <<https://apps.who.int/iris/bitstream/handle/10665/325897/9789241565424-eng.pdf>> accessed 28 May 2020; and World Health Organization and United Nations Children’s Fund, *Progress on Drinking Water, Sanitation and Hygiene: 2017 Update and SDG Baselines* <[https://www.unwater.org/app/uploads/2020/04/WHOUNICEF-Joint-Monitoring-Program-for-Water-Supply-Sanitation-and-Hygiene-JMP-%E2%80%932017\\_ENG.pdf](https://www.unwater.org/app/uploads/2020/04/WHOUNICEF-Joint-Monitoring-Program-for-Water-Supply-Sanitation-and-Hygiene-JMP-%E2%80%932017_ENG.pdf)> accessed 28 May 2020. For more information on the UN-Water Integrated Monitoring Initiative for SDG6 <[https://www.unwater.org/publication\\_categories/integrated-monitoring/](https://www.unwater.org/publication_categories/integrated-monitoring/)> accessed 28 May 2020.

<sup>99</sup> General references to the SDGs we find, for example in Committee on Economic, Social and Cultural Rights, Concluding Observations On The Seventh Periodic Report Of Ukraine, distributed 2 April 2020, U.N. Doc E/C.12/UKR/CO/7, para 50. The exact same recommendation we also find in the Committee’s Concluding Observations On The Fifth Periodic Report Of Belgium, distributed 26 March 2020, U.N. Doc E/C.12/BEL/CO/5, para 58.

<sup>100</sup> UN Water, *Integrated Monitoring Guide for Sustainable Development Goal 6 on Water and Sanitation: Targets and global indicators*, version of 14 July 2017 <<http://www.unwater.org/publications/sdg-6-targets-indicators/>> accessed 28 May 2020, SDG6, Indicator 6.1.1, 8.

(WHO) and the United Nations Children's Fund (UNICEF).<sup>101</sup> According to UN Water's Integrated Monitoring Guide, Target SDG6.1 'builds on' the MDG target on drinking water, and 'responds directly to the human right to safe drinking water'.<sup>102</sup> This Indicator (Indicator SDG6.1.1), is most clearly related to the human right to water.

Progress in achieving SDG6.b is measured by looking at stakeholder participation, *i.e.* at the 'proportion of local administrative units with established and operational policies and procedures for participation of local communities in water and sanitation management'.<sup>103</sup> This is done by the WHO, the United Nations Environment Programme (formerly UNEP, now UN Environment), and the Water Governance Initiative of the Organization for Economic Cooperation and Development (OECD).

Progress in achieving SDG6.4 is done by measuring freshwater withdrawal as a proportion of the total available freshwater resources. There appears to be no clear link with the human right to water there.<sup>104</sup> Measuring progress in achieving SDG6.4 is done by the Food and Agriculture Organization of the United Nations (FAO).

If we look at how these SDG6 progress indicators are interpreted, we see that this interpretation is influenced by the way the human right to water is interpreted and applied. For example, the term 'access' in SDG6.1 is interpreted as requiring that 'sufficient water to meet domestic needs is reliably available close to home', and access 'for all' means the water must be 'suitable for use by men, women, girls and boys of all ages, including people with disabilities'.<sup>105</sup> And if we look at the normative interpretation of Target SDG6.4, we see that the obligation to 'substantially reduce the number of people suffering from water scarcity' implies 'targeting physical and economic water scarcity to reduce its impact on people'.<sup>106</sup> And finally, in Target SDG6.b, the term 'participation' refers to a 'mechanism by which individuals and communities can meaningfully contribute to decisions and directions on water [...] planning that affect[s] them or can be affected by them'.<sup>107</sup> The report highlights the importance of public participation, as follows: 'defining the procedures for participation of local communities in policy or law is vital to ensuring that the needs of everyone in the community are met, including the most vulnerable'.<sup>108</sup>

## 5. Conclusion and suggestions for further research

The aim of this paper was to demonstrate that various phrases in SDG6, the 'water goal', can be interpreted as encouragements, directed at States, to comply with their obligations to respect, protect and fulfil the internationally recognized human right to water, and interpret this right in a more sustainable manner. This is supported by the *travaux préparatoires*, from which we concluded that the drafters of SDG6 deliberately used language that reminds us of internationally recognized human rights. Because the SDGs focus on sustainable development, efforts to comply with the international human right to water undertaken within the SDG framework will encourage States to adopt a sustainable development-friendly interpretation of that right, considering also the interests of future generations and the environment itself.

We also looked at references to the importance of local implementation of this sustainable human right to water, and suggestions on how this ought to be done. In this way, we hope to have demonstrated in which way SDG6 might facilitate the implementation at the local level of the international human right to water, and how national and local governments and other local stakeholders can implement this sustainable human right to water at the local level. Most importantly, we saw that, in the preparatory documents, there were plenty of references to the importance of involving local stakeholders, and also to the importance of resolving local problems relating to access to water (in schools, refugee camps, slums, etc.). SDG6, as finally adopted, does reflect this, by referring explicitly to such local problems, and by emphasizing the importance of local participation in achieving the SDG6 targets.

<sup>101</sup> The progress report can be found on the SDG Monitoring website <<http://www.sdg6monitoring.org/indicators/target-61/indicators611/>> accessed 28 May 2020.

<sup>102</sup> UN Water, *Integrated Monitoring* 7.

<sup>103</sup> Ibid SDG6, Indicator 6.b.1, 34 <<http://www.sdg6monitoring.org/indicators/target-6b/indicators6b1/>> accessed 28 May 2020.

<sup>104</sup> Ibid SDG6, Indicator 6.4.2, 19 <<http://www.sdg6monitoring.org/indicators/target-64/indicators642/>> accessed 28 May 2020.

<sup>105</sup> Ibid 8.

<sup>106</sup> Ibid 18.

<sup>107</sup> Ibid 34.

<sup>108</sup> Ibid.

This paper ends with some suggestions for further research. First, as mentioned above (Section 4), a logical next step would be to undertake a detailed textual analysis of the 'compliance mechanisms' of SDG6 and the human right to water, and see if we find traces and/or opportunities of cross-fertilization therein.<sup>109</sup>

Second, it might be interesting to assess whether a human rights-based approach to SDG6, and to access to water more generally, might distort the balance between the three pillars of sustainable development (ecological, social and economic), by focusing too much on the social pillar. It remains an open question whether a *sustainable* human right to water restores this balance to an acceptable degree. Indeed, the ecological implications of a rights-based approach could be quite dramatic. After all, the rights-based approach prefers the social pillar of sustainable development over the others, and prefers the satisfaction of immediate water needs of the present generation over the needs of future generations and of the environment itself. We do see trends in scholarship moving in a different direction, for example by focusing on possibilities for granting legal rights and interests to the freshwater resource itself.<sup>110</sup>

A third issue that merits further research, is the influence of online polls on the drafting of aspirational documents like the SDGs. The MyWorld 2030 survey is currently underway, a successor to the earlier MyWorld Survey, referred to above.<sup>111</sup> In this new online survey, individuals can rank the SDGs, as adopted, in order of priority. SDG6 is somewhere in the middle. And then there is the UN75 Global Conversation, initiated to mark the 75<sup>th</sup> anniversary of the United Nations in 2020. According to the accompanying UN website, this Global Conversation 'promises to be the largest and furthest-reaching global conversation ever on building the future we want'.<sup>112</sup> When the UN is banging the big drum like that, it can expect critical scholars to provide comments.

## Competing Interests

The author has no competing interests to declare.

<sup>109</sup> See Alistair Rieu-Clarke, 'Can reporting enhance transboundary water cooperation? Early insights from the Water Convention and the Sustainable Development Goals reporting exercise' (2020) RECIEL 1.

<sup>110</sup> This prioritizing raises all sorts of new questions, including those relating to any legal rights and/or interests of the river itself. There is a growing literature and case law on this theme. See e.g. a Special Issue of Water International on this theme, with Cathy Suykens, Herman Kasper Gilissen and Marleen van Rijswijk as guest editors, (2019) 44(6–7) Water International. And see Erin O'Donnell, *Legal Rights for Rivers: Competition, Collaboration and Water Governance* (Routledge, 2018).

<sup>111</sup> My World 2030 <<http://about.myworld2030.org/results/>> accessed 28 May 2020.

<sup>112</sup> UN75 Global Conversation <<https://www.un.org/en/un75/join-conversation>> accessed 28 May 2020.

**How to cite this article:** Otto Spijkers, 'The Sustainable Human Right to Water as Reflected in the Sustainable Development Goals' (2020) 16(2) Utrecht Law Review pp. 18–32. DOI: <https://doi.org/10.36633/ulr.560>

**Published:** 30 October 2020

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