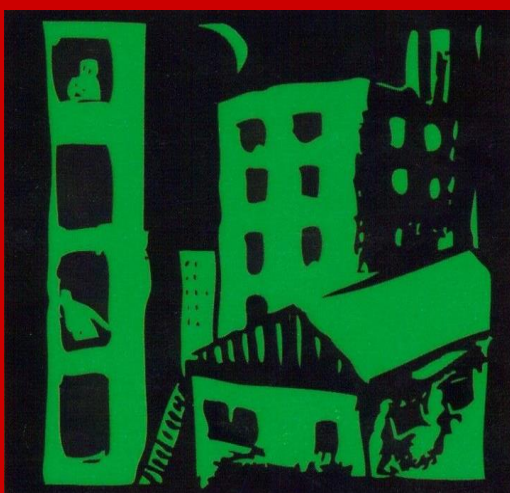


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**The potential
influence of
Sustainable
Development Goal
6.1 in the South
African legislative
context**

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ABSTRACT

Water is at the very core of sustainable development, as it is critical for a thriving people and planet. However, limited water access has for long plagued many parts of the world, South Africa included. In recent years, there have been increasingly urgent warnings of a global water crisis because humanity consistently uses more safe water than is sustainably available. From an international perspective, the most recent development dealing with water access, conservation and management is Sustainable Development Goal 6 (SDG 6), which forms part of the 2030 Agenda for Sustainable Development. SDG 6 covers the entire water cycle, including the management of water, wastewater and ecosystem resources, and places water at the centre of sustainable development. This critical goal can be achieved if it is

properly pursued in national settings. Thus, this article focuses on the domestic implementation of SDG 6.1 against the backdrop of current South African legislation dealing with water access and management. The aim of the article is to analyse SDG 6.1 and determine if and how it can be incorporated into South African water legislation in order to give effect to it and grant it legal legitimacy in the domestic context.

Keywords: sustainable development; Sustainable Development Goals; Sustainable Development Goal 6; Millennium Development Goal 7; National Water Act 36 of 1998; Water Services Act 108 of 1997; water access; water quality; water rights; soft law.

1 INTRODUCTION

The United Nations (UN) Sustainable Development Goals (SDGs) seek to be a blueprint for ensuring worldwide peace and prosperity for present and future generations. Few would deny that reliable access to fresh water supplies has become a pressing global problem, as estimates suggest that by 2030 the world's water supply would need to be nearly double what it was in 2005, an estimate which exceeds current reliable water supply levels by 40 per cent.¹ In view of the recent Covid-19 pandemic, the need for reliance on water for purposes of hygiene, sanitation, and prevention of the spread of disease is all too apparent,² given that the entire world population depended on clean water for sanitising and washing hands in an effort to curb the transmission of the coronavirus.

With the freshwater crisis having been recognised as the new environmental crisis of the 21st century,³ policies have to be adopted in order to address it. The SDGs consist of 17 individual goals that span across various sectors, ranging from poverty alleviation and better education to environmental and governance issues. Indeed, the SDGs are a set of ideals with the potential to enhance human life and overall sustainability in significant ways. From an environmental perspective, the environmental cluster, as identified by Scholtz and Barnard, also has the potential to enhance human life in relation to the environment. The cluster consists of SDGs 6 (water and sanitation), 13 (climate action), 14 (life below water), and 15 (life on land).⁴ The goals were determined on the basis of decades of work in pursuit of human and environmental cohesion and sustainability.

¹ McIntyre O "International water law and SDG 6: Mutually reinforcing paradigms" in French D & Kotze L (eds) *Sustainable Development Goals: Law, theory and implementation* United Kingdom: Edward Elgar Publishing (2018) at 200.

² See the World Health Organization (2020) *Water, sanitation, hygiene, and waste management for SARS-CoV-2, the virus that causes COVID-19: Interim guidance* available at <https://www.who.int/publications/i/item/WHO-2019-nCoV-IPC-WASH-2020.4> (accessed 15 February 2022).

³ Weiss EB *International water law for a water-scarce world* Martinus Nijhoff Publishing (2013) at 1.

⁴ Scholtz W & Barnard M "The environment and the sustainable development goals: We are on a road to nowhere" in French D & Kotze L (eds) *Sustainable Development Goals: Law, theory and implementation* United Kingdom: Edward Elgar Publishing (2018) at 222–249.

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The SDGs have been touted as anything from soft law to political aspirations to matters with no legal bearing at all.⁵ However, the normative value of the SDGs and what they seek to achieve cannot be understated and should not be undervalued by mere denomination or categorisation as conventional hard law. Thus, the attainment of the ideals contained within the SDGs is important to explore, as the latter have the potential to influence domestic laws for the better, in line with a united vision for the world.

Against this background, the purpose of this article is to highlight the potential links between SDG 6, on water and sanitation, and the Constitution of the Republic of South Africa (1996), as well as selected current South African water legislation, namely the National Water Act 36 of 1998 and the Water Services Act 108 of 1997. The aim is to see how the ideals and targets of SDG 6.1 fit in with current South African water legislation and explore whether there is a scope for integration of the aims of all the aforementioned instruments, particularly in view of questions raised by the Covid-19 pandemic.

2 GLOBAL GOALS AND WATER

On 12 August 2014, the UN General Assembly received the Report of the Open Working Group of the General Assembly on Sustainable Development Goals (UN A/68/970). After the “Rio+20” conference on Sustainable Development in June 2012, the UN aimed to establish an inclusive and transparent intergovernmental process on sustainable development goals which is open to all stakeholders, with a view to developing global sustainable development goals to be agreed upon by the General Assembly.⁶

The global agenda on development goals had been brought to the fore previously via the Millennium Development Goals (MDGs), but enhancement was required to sustain humanity for future generations and address new problems. This was done in accordance with the outcome document of Rio + 20.⁷ In essence, the SDGs build upon the widely acknowledged success of the MDGs, which for the first time established at the global level a set of quantifiable, ambitious, yet realistic targets for sustainable development which were non-binding in character and relied solely upon the political commitment of states and other actors.⁸ The SDGs came into effect on 1 January 2016 and are intended to stimulate collective action and guide the developmental decisions of

⁵ Duvic-Paoli LA “From aspirational politics to soft law? Exploring the international legal effects of Sustainable Development Goal 7 on affordable and clean energy” (2021) 22(1) *Melbourne Journal of International Law* at 2–3.

⁶ United Nations General Assembly A/RES/66/288: *The future we want* available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_66_288.pdf (accessed 19 January 2022).

⁷ Palmer E “The Sustainable Development Goals” (2015) 11(3) *Journal of Global Ethics* at 3.

⁸ See McIntyre (2018) at 173.

state actors over the next 15 years by allowing for an extensive and participative process that aims to achieve a set of 169 sustainable development targets.⁹

The SDGs are multifaceted and aimed at achieving targets spanning across various sectors and disciplines. Overall, there are aims to ensure: (1) no poverty, (2) zero hunger, (3) good health and well-being, (4) quality education, (5) gender equality, (6) clean water and sanitation, (7) affordable and clean energy, (8) decent work and economic growth, (9) industry innovation and infrastructure, (10) reduced inequalities, (11) the creation of sustainable cities and communities, (12) responsible consumption and production, (13) climate action, (14) the conservation and sustainability of life below water, (15) the protection and sustainability of life on land, (16) the promotion of peace, justice and strong institutions, and (17) partnerships for the goals.¹⁰

The then MDGs and the current SDGs both expressly mention water as part of their goals and targets, thereby indicating acknowledgement of the fact that water is essential for sustaining human life and development, as well as formal acknowledgement of the importance of all of humanity having access to water. Yet it is useful to show how the MDG on water differs from the SDG on water and what the evolution of this goal means. The recognition of water as an important global human need, and as a resource that must be conserved and properly managed indeed elevates this natural resource to the status of essential for the purposes of growth and human development. Water plays an important role in most facets of human life. It is a component in the food production process as well as in the process of human development; conversely, lack of water and lack of access to it have dire consequences of human life and sustainability. Thus, an exploration of the goals regarding water is indeed imperative.

2.1 Millennium Development Goal 7.C

MDG 7 called for ensuring environmental sustainability, and dealt with water through MDG 7.C, which aimed to halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.¹¹ This provision is in line with the “right” to water and sanitation contained in the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.¹² Since 1990, the proportion of the population without access to improved drinking water has been cut in half in Eastern Asia, Latin America and the Caribbean, South-Eastern

⁹ McIntyre (2018) at 173.

¹⁰ Sustainable Development Goals 1–17 as per the official SDG United Nations website available at <https://sdgs.un.org/goals> (accessed 19 January 2022).

¹¹ The Millennium Development Goals available at <http://www.un.org/millenniumgoals/> (accessed 19 January 2022).

¹² In articles 11–12, the International Covenant on Economic, Social and Cultural Rights implicitly mentions the right to a good standard of health and living, which would call for access to safe drinking water for its realisation; in article 24(c), the Convention on the Rights of the Child explicitly mentions clean drinking water as a prerequisite for attaining the highest standard of health.

Asia, Southern Asia and Western Asia.¹³ This is regarded as a visible improvement in terms of the achievement of the goal, as well as a sign of acceptance of the positive effects that the goals can have worldwide.¹⁴ It also underlines the fact that the collective human network for fulfilling basic human rights and needs can sometimes reap major results, even on as grand a world-scale as this.

The acceptance of so-called “soft-law” principles has an overall impact on the greater scheme of things. It allows for positive results if human beings are willing to ensure the fulfilment of human needs, as evidenced by the success of achieving improved access to water via MDG 7.C. As per the MDG findings, the world met the target of halving the proportion of people without access to improved sources of water five years ahead of schedule.¹⁵ Between 1990 and 2015, 2.6 billion people gained access to improved drinking water sources. Also, worldwide, 2.1 billion people gained access to improved sanitation. Despite this progress, though, 2.4 billion were still using unimproved sanitation facilities, including 946 million people who were practising open defecation.¹⁶

Sub-Saharan Africa fell short of the MDG target. In 2015, it was estimated that 663 million people worldwide still used unimproved drinking water sources, including unprotected wells and springs and surface water.¹⁷ Nearly half of all people using unimproved sources live in sub-Saharan Africa, while one-fifth live in South Asia.¹⁸ Also, MDG 7.C did not consider water quality, which relates to pathogens and chemicals that can cause disease. Rather, safe drinking water was defined as an “improved source”, which includes piped water on premises and channels such as public taps and hand pumps.¹⁹ Access to safe water and sanitation is essential for all development outcomes across the life course. It ensures healthy growth and prevention of water- and food-borne diseases causing diarrhoea, which contributes to stunting in children. Contaminated and stagnant water also contributes to the global burden of trachoma and

¹³United Nations *Millennium Development Goals Report* (2015) available at <http://www.un.org/en/development/desa/millennium-development-goals.html> (accessed 19 January 2022) at 58.

¹⁴The United Nations “MDG 7.C.: Findings” (2022) available at <http://www.un.org/millenniumgoals/enviro.html> (accessed 19 January 2022).

¹⁵ See United Nations “MDG 7.C.: Findings” (2022).

¹⁶ See United Nations “MDG 7.C.: Findings” (2022).

¹⁷ *Millennium Development Goals Report* (2015).

¹⁸ *Millennium Development Goals Report* (2015) at 58.

¹⁹ WHO/UNICEF (2013) *Progress on sanitation and drinking-water: 2013 update* available at http://apps.who.int/iris/bitstream/10665/81245/1/9789241505390_eng.pdf (accessed 19 January 2022) at 4–5.

vector-borne diseases.²⁰ Worldwide, 165 million children with stunted growth risk being compromised in their cognitive development, physical capability, and future school performance, a situation which results in a less productive generation with unfulfilled potential to contribute to the workforce and the economy.²¹

MDG 7 prompted authors to argue that the goal placed too “little emphasis on environmental issues”, in particular climate change.²² Some suggest that MDG 7.C overlooked local challenges, including infrastructure, distance, security, costs, contamination, as well as a basic understanding of hygiene and sanitation.²³ The goals were called “overambitious” or “unrealistic”, and it was believed that the MDGs ignored limited local capacities, especially in regard to governance.²⁴ Goal 7 in particular makes no mention of the human rights dimensions of the issue of water, whether in relation to the status of the human right to clean water or in regard to the role of human rights in securing such access.²⁵

Global goals for low- and middle-income countries fell short because they were too ambitious for some countries and not challenging enough for others.²⁶ However, one must consider the good of these goals as well. According to the UN *Millennium Development Goals Report*, in 2015, 91 per cent of the global population was using an improved drinking water source, compared to 76 per cent in 1990. Also, of the 2.6 billion people who gained access to improved drinking water since 1990, 1.9 billion gained access to piped drinking water on premises.²⁷ In addition, more than half of the global population (58 per cent) now enjoys this higher level of service. Globally, 147 countries met the drinking water target, 95 countries met the sanitation target, and 77 countries met both.²⁸ This would not have been possible without the platform of the MDGs and the global collective effort that it initiated.

²⁰ Asael A “Water and sanitation: Addressing inequalities” (2014) 383(9926) *The Lancet* available at [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60665-6/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60665-6/fulltext) (accessed 19 January 2022) at 1.

²¹ Asael A “Water and sanitation: Addressing inequalities” (2014) at 1.

²² McMichael AJ & Butler CD “Climate change, health, and development goals” (2004) 364(9450) *The Lancet* at 2005.

²³ Dar OA & Khan MS “Millennium Development Goals and the water target: Details, definitions and debate” (2011) 16 *Tropical Medicine and International Health* 540 at 541.

²⁴ Mishra US “Millennium Development Goals: Whose goals and for whom?” (2004) 329(7468) *British Medical Journal* 742 at 742.

²⁵ Alston P “Ships passing in the night: The current state of the human rights and development debate seen through the lens of the Millennium Development Goals” (2005) 27(3) *Human Rights Quarterly* 755 at 792.

²⁶ Fehling M, Nelson BD & Venkatapuram S “Limitations of the Millennium Development Goals: A literature review” (2013) Global Public Health E-Publication available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3877943/> (accessed 01 November 2022) at 1.

²⁷ See *Millennium Development Goals Report* (2015) at 58.

²⁸ See *Millennium Development Goals Report* (2015) at 58.

2.2 Sustainable Development Goal 6 (SDG6)

SDG 6 on water, sanitation and hygiene holds significant promise and addresses many of the shortcomings of the former MDGs. Whereas the MDG target called for halving the proportion of people without access to water and sanitation, the new SDG 6 requires achieving universal access.²⁹ SDG 6 is divided into various sub-categories, each aiming to achieve various goals in relation to water access and sustainability. SDG 6(1) aims to achieve universal and equitable access to safe and affordable drinking water for all.³⁰ It is thus much more ambitious than the water target set out in MDG 7, which called only for improvements in access to improved water supply.³¹ SDG 6(1) therefore has a wider scope than its predecessor, as it includes concepts such as water quality and affordability.

It is important to deconstruct the wording of SDG 6(1) in order to obtain a better understanding of what it means. The term “universal”, in the general sense, implies all exposures and settings, including households, schools, health facilities, workplaces, and all general human dwellings and settings. This means that the goal includes every single human being on a global scale. “Equitable” implies progressive reduction and elimination of inequalities between population sub-groups.³² This term relates to the “equitable utilisation” concept articulated in the 1997 Watercourses Convention, which has its basis in international freshwater law, and ensures that much-needed attention is given to the fact that water itself is a human need for all.

As for “access to water”, it implies that sufficient water to meet domestic needs is reliably available close to home. “Access” would also refer to physical accessibility, economic accessibility, non-discrimination, and information accessibility.³³ Physical accessibility entails that there should be adequate water facilities and services within safe physical reach for all sections of the population. In addition, economic accessibility entails that water and water facilities and services must be affordable to all, while the requirement of non-discrimination dictates that water and water facilities and services

²⁹ Winkler I & Roaf V “SDG series: Progress on water, sanitation and hygiene through SDG 6? Only if the focus shifts to eliminating inequalities” 2015 *Health and Human Rights Journal* available at <https://www.hhrjournal.org/2015/09/sdg-series-progress-on-water-sanitation-and-hygiene-through-sdg-6-only-if-the-focus-shifts-to-eliminating-inequalities/> (accessed 16 December 2021).

³⁰ Sustainable Development Goals 1–17 as per the official SDG United Nations website available at <https://sdgs.un.org/goals> (accessed 19 January 2022).

³¹ See Dar & Khan (2011) at 541.

³² UN Water “Sustainable Development Goal 6: Synthesis report 2018 on water and sanitation” (2018) available at https://www.unwater.org/sites/default/files/app/uploads/2018/12/SDG6_SynthesisReport2018_WaterandSanitation_04122018.pdf (accessed 1 November 2022).

³³ See McIntyre (2018) at 179.

must be accessible to all, including the most vulnerable or marginalised sections of society.³⁴

The term “safe drinking [water]” does not have a universally accepted definition, but may refer to water that does not represent any significant risk to health over a lifetime of consumption; it implies water which is free at all times from pathogens and elevated levels of toxic chemicals, and which is derived from a safe water source.³⁵ In order for water to be affordable, payment for services of water should not present a barrier to access or prevent people from meeting other basic human needs. “Drinking water” refers to water used for drinking, cooking, food preparation and personal hygiene, while the stipulation that water must be for all means that it must be suitable for use by men, women, and girls and boys of all ages, including people living with disabilities – in short, by all of mankind.³⁶

The various elements of SDG 6(1) already serve as an indication of the complexities that can arise in realising this goal. Indeed, an effective water governance system is the best way to progressively realise the goal, as its sole purpose would be overseeing and running all water-related matters, on a global scale, with proper procedures and protocols as implemented.

SDG 6(2) aims to allow for access to adequate and equitable sanitation and hygiene for all individuals and to end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.³⁷ SDG 6(3) aims to improve water quality by reducing pollution, eliminating dumping, and minimising release of hazardous chemicals and materials, halving the proportion of untreated wastewater, and substantially increasing recycling and safe reuse globally.³⁸ This is an important goal, as it aims to address one of the main scourges that are faced when it comes to global water reserves. It is a promising sign that a goal dealing with the eradication of water pollution exists, as it indicates that the global agenda has taken cognizance of global water issues and is aiming to address it proactively.

SDG 6(4) aims to substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity.³⁹ Indeed, this is an imperative step in ensuring proper water conservation for the present and the

³⁴ See McIntyre (2018) at 179

³⁵ Dinka MO “Safe drinking water: Concepts, benefits principles and standards” in Glavan M (ed) *Water challenges from an urbanising world* E-Book intechopen.com/books/6157 (2018).

³⁶ World Health Organization “Methodological note: Proposed indicator framework for monitoring SDG targets on drinking-water, sanitation, hygiene and wastewater” (2017) available at https://www.unwater.org/app/uploads/2017/05/Methodological-note-6a-and-6b_7-March-2017.pdf (accessed 19 January 2022).

³⁷ SDGs 1–17.

³⁸ SDGs 1–17.

³⁹ SDGs 1–17.

future. It is also a goal that attempts to address the issue of water scarcity that plagues so many. Hence, once again, it is evident that these goals seek to address long-standing global water issues by galvanising collective effort to eradicate them. SDG 6(4) can be said to be in line with the overarching concept of sustainable development and sustainable water management as well. The term “water-use efficiency” implies that water is used in a manner that takes its own reserves into consideration. It implies that the supply of water will be in line with practices of sustainable development, ensuring that there is not only enough for the present but for the future as well.

SDG 6(5) aims to implement integrated water resources management at all levels, including through trans-boundary cooperation as appropriate.⁴⁰ This goal is important in the sense that it, too, is aligned with the overarching principles of sustainable development. Integrated water resources management seeks to ensure cohesion and uniformity in information, as well as equitable use of and access to water. It also allows for mutual cooperation in realising the objective of the goal itself, as well as for mechanisms that seek to sustain water resources for the future. Since water is already a scarce commodity, its effective and sustainable management is of vital importance.

SDG 6(6) aims at expanding international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies by 2030; in addition, it aims to protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, by 2020.⁴¹ It is important to note that the progressive realisation of the SDGs in general requires cooperation by states involved in the undertaking. This goal reiterates that point and acknowledges that assistance must be given to those countries that are more in need than others. It allows for and encourages the use of water-related programmes to ensure that access to water is achieved, and it goes a step further in trying to fast-track the protection and restoration of natural water sources and resources, as these are indeed sources of water for humanity and the earth at large.

SDG 6(7) aims to support and strengthen the participation of local communities in improving water and sanitation management.⁴² Thus, this goal is proactive in the sense that it aims to ensure that management responsibilities exist not only at the global level (as these global goals suggest), but also at a localised level, such that most people can be educated about water conservation and management and such that mechanisms for ensuring water conservation and management are implemented from the ground up, so to speak.

In relation to the goals and water, SDG 6 can be seen as more in-depth and fuller in scope than its predecessor. MDG 7, which aimed at environmental sustainability, had

⁴⁰ SDGs 1-17.

⁴¹ SDGs 1-17.

⁴² SDGs 1-17.

merely one target dedicated to water, namely MDG 7.C, whereas SDG 6 has eight dedicated targets, seven of which expressly mention water. Indeed, MDG 7.C aimed at halving the proportion of the population without sustainable access to safe drinking water and basic sanitation,⁴³ whereas SDG6.1 aims at achieving universal and equitable access to safe and affordable drinking water for all.⁴⁴ The shift in the magnitude of the targets is apparent, and can be regarded as ambitious. However, considering the success in achieving MDG 7.C, it is a sign of progress that SDG 6.1 has taken the all-inclusive approach of seeking accessible safe water for all. The terms “universal” access for “all” reflect recognition of the importance of water and its necessity for humankind. Seeking to ensure access to water for all thus underlines that water is required by all for survival and is integral to human life, development and progress.

In addition, SDG 6 tackles issues of water quality, water-use efficiency, integrated water resources management, protection of water resources, international cooperation in water-related matters, and community participation in water management.⁴⁵ MDG 7.C did not touch on these matters and was concerned simply with access to water. The shift evident in SDG 6 is refreshing, as cognizance has been taken of the various factors affecting water itself. Indeed, while the overall aim is to ensure that every human being has access to water, the type of water which is being accessed is of great importance. The focus on the quality of water is a positive development, as MDG 7.C did not address this issue at all. Access to polluted or tainted water can be just as harmful as having no access to water at all, given the risk of succumbing to water-borne diseases. Thus, improving water quality by way of SDG 6.3 allows for better quality of life, as water would then be fit for human consumption. Incorporating mechanisms for efficient management and usage of water also helps ensure the longevity of use of this natural resource. This is especially important when fulfilling the obligation of ensuring that there is enough water for future generations. In addition, by increasing international cooperation in water-related matters, especially in the case of developing countries, the progressive realisation of not only water management but sustainable development can occur.

3 THE SOUTH AFRICAN WATER-LEGISLATION NEXUS

It is of utmost importance to analyse how international instruments fit into the domestic setting and whether the ideals of the international instruments can be realised regionally, taking into consideration the different challenges faced from region to region. South Africa is a country that was subjected to policies of inequality and unfairness under apartheid. Access to water was also affected by apartheid, as many citizens living in rural communities struggled to find clean potable water for daily use. Since the apartheid regime fell, policies have been put into place to reverse the devastating effects of the past not only generally but in relation to water as well.

⁴³ The MDGs.

⁴⁴ SDGs 1-17.

⁴⁵ SDGs 1-17.

3.1 The Constitution of the Republic of South Africa (1996)

South Africa has incorporated a right to water in its legislation. This shows that the highest recognition is given to people's access to water. The fact that access to water is included as a constitutional right in South Africa is further evidence of the importance of water for human life and sustainability, and an indication of the efforts made to redress the injustices of the past. The right to access water is contained in section 27 of the South African Constitution, which states that "everyone has the right to have access to health care services, including reproductive health care;⁴⁶ sufficient food and water;⁴⁷ and social security, including, if they are unable to support themselves and their dependants, appropriate social assistance".⁴⁸ The Constitution also provides that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights⁴⁹ and that no one may be refused emergency medical treatment.⁵⁰

The Constitution contains an "environmental right" in section 24. It states that everyone has the right to an environment which is not harmful to his or her health or well-being,⁵¹ and to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation.⁵² The Constitution also promotes conservation⁵³ and seeks to secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.⁵⁴

If we analyse this particular right, especially through section 24 (b)(i), (ii) and (iii), it is safe to say that water, and water resources, can and should be included within the scope of what these subsections refer to, given that the preservation of water is necessary to ensure a healthy and sustainable environment for present and future generations. If water resources are destroyed, or pollution occurs in our oceans, rivers and streams, ecological degradation will occur, which is in contravention of section 24 of the Constitution. Without water, section 24(a) cannot be upheld either, as water is regarded as one of the basic elements of health and nutrition. Therefore, the realisation of section 27 is important, as it is integral to the realisation of other rights as well. The water right can be seen as an extremely complex right, as it incorporates not only water access and sustainable development but other fundamental constitutional rights, such as the right

⁴⁶ Section 27(1)(a) of the Constitution of the Republic of South Africa (1996).

⁴⁷ Section 27(1)(b) of the Constitution.

⁴⁸ Section 27(1)(c) of the Constitution.

⁴⁹ Section 27(2) of the Constitution.

⁵⁰ Section 27(3) of the Constitution.

⁵¹ Section 24(a) of the Constitution.

⁵² Section 24(b)(i) of the Constitution.

⁵³ Section 24(b)(ii) of the Constitution.

⁵⁴ Section 24(b)(iii) of the Constitution.

to equality,⁵⁵ the right to human dignity,⁵⁶ and the right to life.⁵⁷ The water right encompasses an array of other rights, and thus if one's access to water is infringed, this could easily infringe upon some of the constitutional rights mentioned above.⁵⁸

Upon closer inspection of section 27(1)(b), it is evident that what it required is not only access to water per se but access to sufficient water. The wording may give rise to debate as to what can be regarded as "sufficient". As regards the access requirement, this provision is fairly simple to understand. If someone is in a position where he or she is unable to access safe drinking water, then his or her constitutional rights may indeed have been violated. The backlog of people without such access is being addressed by means of the provision of access to water, either by direct provision of water to houses, or provision of access to water within a reasonable distance from people's dwellings.⁵⁹ Regulation 3 of the June 2001 regulations under the Water Services Act⁶⁰ provides, in essence, that the minimum standard for basic water supply is a minimum quantity of potable water⁶¹ of 25 litres per person per day or six kilolitres per household per month.⁶² In terms of the Free Basic Water Policy of the government, it is recommended that 6,000 litres of clean water be provided for households per month, which amounts to about 30 full 200-litre drums.⁶³

This policy is aimed mainly at poor households and it shows that the government has been trying to redress the wrongs of the past by allowing everyone access to safe water. However, Gleick states that five litres should be allocated for drinking, 20 litres for sanitation services, 15 litres for bathing, and 10 litres for food preparation.⁶⁴ This suggests that the government's determination of a basic water supply of 25 litres per day may not be sufficient to meet the right of access to a basic water supply as envisaged by section 27 of the Constitution. Despite having water available, a person's right of access to sufficient or adequate water may be infringed upon.⁶⁵

⁵⁵ Section 9 of the Constitution.

⁵⁶ Section 10 of the Constitution.

⁵⁷ Section 11 of the Constitution.

⁵⁸ Kidd MA "Not a drop to drink: Disconnection of water services for non-payment and the right of access to water" (2004) 20(1) *South African Journal on Human Rights* 119 at 122–123.

⁵⁹ Kidd M *Environmental law* (2nd ed) Cape Town: Juta (2011) at 90.

⁶⁰ Water Services Act 108 of 1997.

⁶¹ Suitable for drinking.

⁶² Department of Water Affairs and Forestry, GNR.509 of 8 June 2001: Regulations relating to compulsory national standards and measures to conserve water, Regulation 3.

⁶³ Department of Water Affairs and Forestry Free Basic Water 2006.

⁶⁴ Gleick PH *Water in crisis: A guide to the world's freshwater resources* Oxford: Oxford University Press (1993) at 487.

⁶⁵ See Kidd (2011) at 91.

3.2 The National Water Act 36 of 1998

The purpose of the National Water Act 36 of 1998, as per section 2, is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which, among other things, take the following into account:

(a) meeting the basic human needs of present and future generations; (b) promoting equitable access to water; (c) redressing the results of past racial and gender discrimination; (d) promoting the efficient, sustainable and beneficial use of water in the public interest; (e) facilitating social and economic development; (f) providing for growing demand for water use; (g) protecting aquatic and associated ecosystems and their biological diversity; (h) reducing and preventing pollution and degradation of water resources; (i) meeting international obligations; (j) promoting dam safety; (k) managing floods and droughts, and for achieving this purpose, to establish suitable institutions and to ensure that they have appropriate community, racial and gender representation.⁶⁶

The overall purpose of this piece of legislation is to ensure that water is accessible to all individuals in South Africa. The inclusive right aims to tackle past injustices in order to redress past inequalities in relation to water access. Indeed, by incorporating this aim into legislation, the legislature has made a concrete commitment to ensuring equitable access to water for all. In addition, the incorporation of sustainable development principles in water law to ensure equitable access bodes well for redress, as it can be viewed as a progressive step. However, the implementation of theoretical precepts is not always easily achievable.

3.3 The Water Services Act 108 of 1997

As per section 2 of the Water Services Act 108 of 1997, the objectives of this Act are to provide for:

(a) the right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health and well-being; (b) the setting of national standards and norms and standards for tariffs in respect of water services; (c) the preparation and adoption of water services development plans by water services authorities; (d) a regulatory framework for water services institutions and water services intermediaries; (e) the establishment and disestablishment of water boards and water services committees and their duties and powers; (f) the monitoring of water services and intervention by the Minister or by the relevant Province; (g) financial assistance to water services institutions; (h) the gathering of information in a national information system and the distribution of that information; (i) the accountability of water services providers; and (j) the promotion of effective water resource management and conservation.⁶⁷

⁶⁶ Section 2 of the National Water Act 36 of 1998.

⁶⁷ Section 2 of the Water Services Act 108 of 1997.

The Water Services Act 108 of 1997 is seen to share the same themes as the Constitution and the National Water Act 36 of 1998. Again, the crux of the matter is to ensure equitable access to water for all individuals in South Africa. These pieces of legislation have much in common in terms of their overall purpose, in that they are aimed at propelling South Africa forward in relation to water access and water equality. The aims are to ensure that South Africa redresses the inequality of the past in regard to water and charts a new path towards water sustainability and equity for all. The overarching themes of the legislation concern water accessibility, the eradication of discrimination, and the sustainable development of water for all. This is of utmost importance, as it shows that the legislature has placed water security and sustainability at the core of the enabling legislation related to water.

4 SDG 6 AND SOUTH AFRICAN WATER LEGISLATION

As stated before, SDG 6 is aimed at ensuring universal access to safe water for all. Thus, domestic acknowledgement of, commitment to, and implementation of this goal is crucial for achieving the target of Goal 6.1. Indeed, when this goal is considered in relation to South African water laws and policies, many similarities emerge, suggesting that access to water is recognised as essential not only regionally but globally. The Constitution, National Water Act, and Water Services Act call for access to water for all, which is thus a common theme that underpins all of the main pieces of South African water legislation. SDG 6.1, which was developed and implemented on an international scale some time after the enactment of this legislation, is also underpinned by the notion of ensuring safe water access for all.

The glaring issue, however, is the fact that legislative (and policy) provisions are not easily translated into practice. South Africa still suffers from the effects of previous inequalities, and the process of redress is not an immediate one. The progressive realisation of a right to access water then becomes essential. However, given that water is essential to human life, how long should progressive realisation take? SDG 6.1, with its shared aims and objectives, can easily be implemented as an international policy instrument in the South African water-legislation nexus: at its core, it aims at water access and water sustainability, aims which are inherent to the South African legislation. The integration of SDG 6 in local domestic policy would potentially revive the access-to-water conversation which is desperately in need of momentum to ensure further progress. Conversations around access to water can never be regarded as over, and access to water itself can never be regarded as having been achieved, if there are still people without the ability to easily access the clean and safe water which is essential for everyday existence and development.

SDG 6 can thus provide the occasion and impetus for reviewing the South African water situation in terms of whether the relevant laws and policies are being put into practice and whether their aims are being achieved. But since the SDGs are more aspirational or political than legal in nature, securing their domestic acceptance and implementation may be difficult. As such, there should be a shift in mind-set that facilitates acceptance of the goals and commitment to achieving them.

The decision in the *Mazibuko*⁶⁸ case is a clear reminder of the difficulties involved in ensuring proper implementation of legislative provisions relating to water versus redressing past injustices in relation to water from a socio-economic standpoint. The access aspect, especially since it is constitutionally entrenched, leads one to reasonably believe that each and every person in the country is entitled to access water for his or her daily needs and sustenance. The aforementioned case involved applicants who were residents in one of the poorest areas in Johannesburg, South Africa, namely Phiri, Soweto. The city authorities had decided to supply six kilolitres of water per month free to every account-holder in the city. The applicants challenged the constitutionality of this decision on the ground that the section 27(1)(b) of the Constitution provides that everyone has the right of access to sufficient water. Thus, if the reserved water were used before the month ended, residents would be left with no water to get by, unless they had money to top-up their pre-paid water meters.

The issue here is the fear of not being able to top-up these meters, taking into consideration the socio-economic status of the residents of this community. However, the Constitutional Court stated that the right of access to sufficient water does not require that the state provide every person, upon demand, with sufficient water, nor does the obligation confer on any person a right to claim sufficient water from the state immediately.⁶⁹ The constitutional right requires instead that the state take reasonable legislative and other measures, progressively and within the state's available resources, to realise the achievement of the right of access to sufficient water.⁷⁰

A decision of this nature by the highest court in South Africa leaves much to be desired when viewed through the lens of redressing past injustices. In relation to the progress of the country as a whole in respect of redressing past racial inequalities and ensuring equity and fairness, this case may have been the ideal opportunity to allow for progress rather than regression. Even though the decision aligns with the wording of section 27 of the Constitution in regard to progressive realisation, a concerted effort to make a decision upholding the banner of socio-economic rights should have been considered. In relation to water itself, a judgement of this nature stifles the vision of equal access to this precious resource for all citizens by placing obstacles in the path of those finding themselves in an underprivileged situation. Indeed, socio-economic factors must be taken into account when dealing with a commodity such as water, given its importance to the survival and well-being of human beings.

Thus, the integration of SDG 6.1 and SDG 6 as a whole would reignite the conversation pertaining to access to water for all. The goal, much like the vision of the South African constitutional right and legislative provisions relating to water, has the potential to rectify issues regarding the application of water laws in that it brings to the fore the

⁶⁸ *Mazibuko and Others v City of Johannesburg and Others* (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) (8 October 2009).

⁶⁹ See *Mazibuko* (2009) at para 57.

⁷⁰ See *Mazibuko* (2009) at para 50.

global perspective of ensuring equal and equitable access to water for all human beings. The fact that a recently developed global goal still deals with issues of access to water is a startling indictment of the lack of progress that has been made in actuality in ensuring access to water for all.

5 CONCLUSION

SDG 6 should be viewed as an ambitious aspiration that will be challenging to achieve given that it may require major changes in water management among many nations in order to harmonise governance, policies regarding data collection and sharing, and the use of models and tools. In essence, this would mean that governance policies would have to be explored to ensure that water resources are properly utilised, be it for access, drinking or agriculture. This will then require full national and stakeholder commitment, as well as possible changes in infrastructure and policies. Thus, a change in mind-set is important. If uniform mechanisms are implemented in relation to global freshwater law, then achieving SDG 6 becomes feasible. Uniformity in terms of mechanisms and processes for freshwater law is related in turn to uniform governance procedures. In short, the optimistic view is that SDG 6 can play a pivotal role in enhancing current domestic and international water laws and norms in general.

In South Africa, SDG 6.1 can provide for a basis for decisive collective action to address the water issues that affect parts of the country, especially those parts plagued by past injustices and socio-economic strife. With its links to sustainable development and its intentions geared towards the common good of humanity, SDG 6.1 can go a long way in ensuring access to water for current and future generations not only in South Africa but globally as well. As Spijkers notes, the underlying idea is that the concrete political commitments relating to water contained in the SDGs, and SDG 6 in particular, can add substantive flesh to the otherwise abstract skeleton of general international water law. At the same time, the SDGs would be elevated from purely political commitments into legally relevant obligations if they come to be “attached” to the norms of international water law. In short, there is potential for true cross-fertilisation, with a global legal framework and global environmental policy strengthening each other.⁷¹ Indeed, this “attachment” would ensure progress in the international water law sphere. The issue that arises is that this might cause further complications in the hard-soft law debate which the SDGs stir up.

The SDGs hold enough weight on their own to be granted soft-law status, as they call for obligations, commitment, implementation and monitoring. The comprehensiveness of the goals as a whole suggests that they are able to rouse the collective conscience of mankind and bring humanitarian and environmental issues to the fore. The crux of the matter remains that the SDGs are a much-needed development that can aid in ensuring sustainable human development. The evolution from MDG 7.C to SDG 6 is indicative of the recognition of the various factors, over and above simply access, that affect water.

⁷¹ Spijkers O “The cross-fertilisation between the Sustainable Development Goals and international water law” (2016) 25(1) *Review of European, Comparative and International Environmental Law (RECIEL)* 39 at 39.

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Access to safe drinking water remains essential, as it is imperative for human survival, but the protection and conservation of all other elements related to water are just as crucial. The fact that SDG 6 extends to including matters of quality, conservation, management and co-operation in regard to water is indicative of the fact that SDG 6 aims to ensure the development of long-term measures to handle the impending water crisis. MDG 7.C can be seen as having been a good stepping-stone in regard to the issue of access to water; however, SDG 6.1 seeks to ensure that more is done in relation to the protection and delivery of this essential natural resource. It can therefore be viewed as a sign of progress within this sphere, the importance of which was highlighted by the sanitary hand-washing protocols that were adopted worldwide during the Covid-19 pandemic.

From a South African perspective, the integration of the principles of SDG 6.1 into the South African nexus of water legislation seems feasible, as the targets of the goal and the aims of the country's water laws are indeed similar. There is no suggestion of a need to reword our principles; the need is rather to make a concerted effort to use SDG 6.1 as a new driving force to advance the realisation of section 27 of the Constitution and the aims of South Africa's water legislation. In view of these similarities, SDG 6.1 can be used as a catalyst for a true progressive realisation of section 27 of the Constitution.

Thus, SDG 6 and SDG 6.1 have the potential to shape not only current international water law but various domestic water policies and regimes. It would be safe to assume that countries that are progressively inclined would want to use SDG 6 and SDG 6.1 as the impetus for updating their water policies, so as to align them with current international standards, as well as for integrating aspects of these goals into their own policies, even if only as benchmarks. If most (and hopefully all) countries were to follow this trend, it would ensure the realisation of the goal itself. It is a goal that can advance human progress, given that humanity depends on water for its survival. A goal with so much persuasive value should not be overlooked in domestic settings, as it has the potential to bring the issue of access to water to the forefront of the political and socio-economic agenda, not only in South Africa but the world over.

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