



INSTITUTE FOR INTERNATIONAL LAW & HUMAN RIGHTS

Legislative Options for Water Law in Iraq

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EXECUTIVE SUMMARY

The human rights to clean water and sanitation have been formally and informally recognized in a number of different forums at both the national and international level for decades. Several United Nations General Assembly resolutions, as well as bilateral and multilateral treaties, recognize the complexities in ensuring widespread access to water resources and water quality around the world and strive to implement these rights by addressing both quality and quantity of water. These resolutions and treaties have been incorporated into domestic legislation in all regions of the world to implement the human rights to water and sanitation more effectively at the national level.

As one of the countries most affected by climate change, Iraq's ongoing water crisis is predicted to drastically worsen over the coming years. Although there is a constitutional requirement on the part of the federal and regional governments to legislate on how water is allocated at the national level, Iraq has not yet developed a unified water law to implement the relevant constitutional provisions. Such a law is not only necessary from a constitutional perspective, but also a human rights and environmental imperative, given the scarcity and reduced quality of water resources nationwide.

With ongoing governmental efforts directed toward legislating on the topic of water quality and quantity, legislators may consider best practices from other countries in similar situations around the world. Several countries have already accounted for human rights considerations in domestic laws and regulations. These laws and regulations can provide a basis for consideration by legislators in Iraq to ensure that human rights form an integral part of any unified national water law. Legislators may consider how human rights can shape the legislative process by incorporating the following into law to ensure sufficient quality and quantity of water for all in Iraq, with particular focus on ensuring access to clean water for marginalized groups:

- ❖ Inclusion of enforceable safe drinking water protections, including provisions aimed at ensuring reliable access to clean drinking water for the most marginalized in Iraq;
- ❖ Prioritization of domestic and individual use and environmental safeguards over industrial and commercial use of water;
- ❖ Development and implementation of a financial mechanism to facilitate access of water and sanitation for those in rural areas and marginalized or vulnerable demographics; and
- ❖ Effective enforcement measures that can ensure all legislative provisions are implemented with maximum efficacy.

The Institute for International Law and Human Rights (IILHR) stands ready to provide additional assistance and support needed to move forward to develop legislation that can protect the rights of Iraqi citizens to clean water and a healthy environment.

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I. CONTEXT AND MAIN ISSUES

A. International Context for the Human Rights to Water and Sanitation

The **International Covenant on Economic, Social and Cultural Rights** is often perceived as one of the first modern steps toward an international acknowledgement of the right to water.¹ Article 11.1 of the Covenant obliges States Parties to “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” The same article also obliges States Parties to “take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

Although Article 11.1 of the Covenant does not explicitly mention the right to water as one of the enumerated fundamental rights, subsequent analysis of the Article by the UN Economic and Social Council clarified that the language of Article 11 implicitly includes water as a human right. In its **General Comment No. 15 (2002)**, the Committee on Economic, Social and Cultural Rights stated:

*Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. **The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.***²

The same General Comment also recognized that **water is a prerequisite to many other rights**, including the right to life and right to human dignity, right to adequate food and housing, right to some cultural practices, and right to the highest attainable standard of health as none of these rights can exist in the absence of water.³

¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 by UN General Assembly Resolution 2200A(XXI)). Available online:

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4

² UN Committee on Economic, Social and Cultural Rights, “General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)” at para. 3. Available online: <https://digitallibrary.un.org/record/486454?ln=en>

³ UN Committee on Economic, Social and Cultural Rights, “General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)” at paras. 3-6. Available online: <https://digitallibrary.un.org/record/486454?ln=en>.

As part of the obligations imposed on States under the Covenant, the General Comment sets out several legal obligations, including obligations to respect; obligations to protect; and obligations to fulfil the right to water.

The **obligation to respect** requires States to refrain from interfering with the enjoyment of the right of water, including through engaging in any practice that limits equal access to water.⁴

The **obligation to protect** requires States to prevent third parties (such as individuals, groups or corporations) from interfering with the enjoyment of the right to water. This obligation includes **requiring States to adopt legislative measures to restrain third parties from denying equal access to water** and polluting or inequitably extracting from water resources, including natural sources and wells.⁵

The **obligation to fulfil** requires States to take positive measures to allow everyone to enjoy the right to water, such as by ensuring appropriate education on water use and hygiene, how to protect water sources and ways of minimizing water waste.⁶ This obligation also encompasses the obligation for States to adopt legislative measures toward the full realization of the right to water, as well as a national water strategy and plan of action. The General Comment states that the water strategy must:

- Be based upon human rights law and principles (including the principles of non-discrimination and people's participation);
- Cover all aspects of the right to water and corresponding obligations of States Parties;
- Define clear objectives;
- Set targets or goals and corresponding timeframes for achievement; and
- Formulate adequate policies and corresponding benchmarks and indicators.⁷

General Comment 15 further outlines several particularly vulnerable demographics that should receive special attention in relation to water rights and urges States to take steps to protect the water rights and water access of these groups. In particular, the vulnerable groups include:

- Women, given their disproportionate burden in collecting water;
- Children;
- People living in rural and deprived urban areas, including homeless people and those living in informal settlements;
- Indigenous peoples on ancestral lands;

⁴ General Comment No. 15 at paras. 20-22.

⁵ General Comment No. 15 at paras. 23-24.

⁶ General Comment No. 15 at paras. 25-29.

⁷ General Comment No. 15 at para. 47.

- Nomadic and traveler communities;
- Refugees, asylum-seekers and internally displaced persons and returnees, whether in camps or in urban or rural areas. Further, refugees should be granted the same right to water as nationals;
- Prisoners and detainees, taking note of international humanitarian law and the UN Standard Minimum Rules for the Treatment of Prisoners; and
- Groups facing difficulties with physical access to water, such as elderly, persons with disabilities, victims of natural disasters, those in disaster-prone areas, and those living in arid or semi-arid areas.⁸

In addition to the implicit acknowledgement of the right to water enshrined in the International Covenant on Economic, Social and Cultural Rights, several other treaties exist that explicitly acknowledge the right to water and sanitation or certain vulnerable demographics. Pursuant to Article 24(2)(c) of the **Convention on the Rights of the Child**, States Parties are required to take appropriate measures to “combat disease and malnutrition, including within the framework of primary health care, through...the provision of clean drinking-water, taking into consideration the dangers and risks of environmental pollution.”⁹

Similarly, the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** obliges States Parties to ensure women in rural areas have the right “to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”¹⁰

Following this backdrop in recognizing the human rights to water and sanitation, the United Nations General Assembly crystallized the rights to water and sanitation in **UNGA Resolution 64/292**, recognizing “**the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.**”¹¹

Shortly after this recognition by the UNGA, the **UN Human Rights Council in 2010 affirmed in Resolution 15/9** that the human rights to safe drinking water and sanitation are derived from the right to an adequate standard of living and is linked to other rights, including the right to life and human dignity. Resolution 15/9 further calls upon States to

⁸ General Comment No. 15 at para. 16.

⁹ Convention on the Rights of the Child (adopted 20 November 1989 by UN General Assembly Resolution 44/25), Article 2(c). Available online: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en

¹⁰ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979 by UN General Assembly Resolution 34/180) at article 14(2)(h). Available online: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=en.

¹¹ United Nations General Assembly, “Resolution 64/292: The human right to water and sanitation” (Adopted 28 July 2010) at para. 1. Available online: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F64%2F292&Language=E&DeviceType=Desktop&LangRequested=False>.

“develop appropriate tools and mechanisms, which may encompass legislation, comprehensive plans and strategies for the sector, including financial ones, to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation, including in currently unserved and underserved areas”.¹²

In 2015, the **United Nations General Assembly further affirmed in Resolution 70/169** that the human right to safe drinking water and the human right to sanitation are separate but related rights that form critical components of the right to an adequate standard of living.¹³

Further elaborating on the rights to clean drinking water and sanitation, the **UN Human Rights Council affirmed in 2018 in Resolution 39/8** that:

- The human right to safe drinking water entitles everyone, without discrimination, to have access to safe, acceptable, physically accessible and affordable water for personal and domestic use; and
- The human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.¹⁴

More recently, **UN Sustainable Development Goals (SDGs)** set out several targets directed at clean water and sanitation in SDG 6. These targets are designed to work toward universal access to drinking water, sanitation, and hygiene by 2030. SDG 6 targets include, among others:

- Achieving universal and equitable access to safe and affordable drinking water for all by 2030;
- Achieving access to adequate and equitable sanitation and hygiene for all, paying special attention to the needs of women and girls and those in vulnerable situations;
- Improving water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally;

¹² United Nations Human Rights Council, “Resolution 15/9: Human rights and access to safe drinking water and sanitation” (Adopted 30 September 2010) at para. 8. Available online: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/15/9.

¹³ United Nations General Assembly, “Resolution 70/169: The human rights to safe drinking water and sanitation” (17 December 2015) at paras. 1-2. Available online: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F70%2F169&Language=E&DeviceType=Desktop&LangRequested=False>.

¹⁴ United Nations Human Rights Council, “Resolution 39/8: The human rights to safe drinking water and sanitation” (27 September 2018) at para. 1. Available online: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F39%2F8&Language=E&DeviceType=Desktop&LangRequested=False>.

- Implementing integrated water resources management at all levels, including through transboundary cooperation; and
- Expanding international cooperation and capacity-building support in water and sanitation-related activities and programmes.¹⁵

Finally, although not directly on the topic of water, the United Nations General Assembly, in July 2022, recognized “the right to a clean, healthy and sustainable environment as a human right” in **UNGA 76/300** with 161 Member States (including Iraq) voting yes and no Member States voting in the negative.^{16,17} The same resolution also notes that the right to a clean, healthy and sustainable environment is related to other rights as well as existing international law and affirms the importance of full implementation of existing multilateral environmental agreements under the principles of international environmental law.

Other rights that overlap with the right to water can include both individual rights and collective rights. Individual rights that overlap with the right to water include the right to food and right to health. Collective rights that overlap with the right to water include the right to participation in cultural and political life, the right to self-determination of indigenous peoples in the use of natural resources according to traditional beliefs, and the right to intergenerational equity (ensuring the rights of present and future generations).¹⁸

B. International Context for Protection and Management of Transboundary Water Resources

In recognition of the fact that approximately 80% of global freshwater flow is found in transboundary basins, with approximately 40% of the world’s population living in these basins,¹⁹ two major treaties were developed by the United Nations to address how best to govern these shared resources in an equitable and sustainable manner.

The first global international treaty, adopted in 1997, is the **Convention on the Law of Non-Navigational Uses of International Watercourses** (also called the UN

¹⁵ United Nations Sustainable Development Goals, “Goal 6: Ensure access to water and sanitation for all”. Available online: <https://www.un.org/sustainabledevelopment/water-and-sanitation/>.

¹⁶ United Nations General Assembly, “Resolution 76/300: The human right to a clean, healthy and sustainable environment” (Adopted 28 July 2022) at para. 1. Available online: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F76%2F300&Language=E&DeviceType=Desktop&LangRequested=False>.

¹⁷ Although there were no votes in the negative, eight countries abstained from the vote (Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, the Russian Federation, and Syria).

¹⁸ E. Fantini, “An Introduction to the human right to water: Law, politics and beyond” (9 July 2019) *WIREs Water*, p.2. Available online: <https://wires.onlinelibrary.wiley.com/doi/full/10.1002/wat2.1405>.

¹⁹ Food and Agriculture Organization of the United Nations, “Transboundary Waters” (2023). Available online: <https://www.fao.org/land-water/water/water-management/transboundary-water-management/en/>

Watercourses Convention).²⁰ The UN Watercourses Convention sets out a framework to establish minimum standards of cooperation between States that share watercourses. These standards are based on apportionment of resources with a view to equitable and reasonable utilization and participation in use, development and protection of those international watercourses.²¹ Iraq acceded to the UN Watercourses Convention on 09 July 2001, prior to its entry into force on 17 August 2014 with the deposit of the thirty-fifth instrument of ratification.

Before the adoption of the UN Watercourses Treaty, the United Nations Economic Commission for Europe adopted the **Convention on the Protection and Use of Transboundary Watercourses and International Lakes** (also called the UNECE Water Convention).²² The UNECE Water Convention also addresses shared water resources, including surface and groundwater reserves that are shared between two or more States. However, one notable area of distinction of the UNECE Water Convention is its focus on preventing, controlling or reducing any “transboundary impact” on shared water resources. Transboundary impacts under the Convention could include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments.²³

The UNECE Water Convention obliges its States Parties to be guided by three main principles:

- **The Precautionary Principle**, which emphasizes high caution when undertaking any potential release of hazardous substances into transboundary waters. In other words, the Convention states that action to avoid transboundary impact of release of hazardous substances should not be postponed due to a lack of scientific research proving a link between the hazardous substance and a transboundary impact;
- **The Polluter Pays Principle**, in which the cost of pollution prevention, control and reduction shall be borne by the polluter; and
- **Sustainable development**, in which water resources should be managed so that the needs of the present generation can be met without compromising on the ability of future generations to meet their own needs.²⁴

²⁰ Convention on the Law of Non-Navigational Uses of International Watercourses (UN Watercourses Convention) (Adopted on 21 May 1997 by UN General Assembly Resolution 51/229). Available online: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-12&chapter=27&clang=en.

²¹ See Article 5 of the UN Watercourses Convention.

²² Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention) (Adopted on 17 March 1992). Available online: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-5&chapter=27&clang=en.

²³ Article 1(2) of the UNECE Water Convention.

²⁴ UNECE Water Convention, article 5.

Although the UNECE Water Convention was initially only open for ratification by countries in the European Region, its regional success led to the Convention being amended in 2016 to allow all UN Member States to accede to it.

On 24 March 2023, Iraq acceded to the UNECE Water Convention, making history as the first country in the Middle East and North Africa (MENA) Region to join and the first country in the region to join both the UN Watercourses Convention and the UNECE Water Convention.²⁵

C. Domestic Legal Recognition of the Human Right to Water and the Human Right to Sanitation

The rights to water resources and sanitation have been incorporated into the Constitutions of many countries around the world in some manner or another, as has the right to sanitation. These fundamental guarantees ensure that individuals in those countries with a right to water and sanitation can be assured that no law may be enacted in the country that diminishes these rights. For example, in **Egypt**, the **2019 revision of its 2014 Constitution** guarantees each citizen “the right to healthy, sufficient amounts of food and clean water.”²⁶ **Kenya’s 2010 Constitution** guarantees every person in Kenya “the right to clean and safe water in adequate quantities.”²⁷ The Kenyan Constitution also places on the State an obligation to put in place affirmative action programmes to ensure minorities and marginalized groups have reasonable access to water.²⁸ The **2021 Revision of Ecuador’s 2008 Constitution** states in Article 12, “The human right to water is essential and cannot be waived. Water constitutes a national strategic asset for use by the public and it is unalienable, not subject to a statute of limitations, immune from seizure and essential for life”.²⁹

Although Iraq has not explicitly incorporated the human right to water in its Constitution, Article 33 (First) establishes the right of every individual to live in safe environmental conditions. Similarly, Article 33 (Second) obliges the State to undertake the protection and preservation of the environment and its biological diversity. Finally, Article 110 (Eighth) grants the federal government exclusive authority over planning policies related to water sources from outside Iraq while Article 114 (Seventh) grants

²⁵ UNECE, “Iraq’s accession to UN Water Convention opens new opportunities to strengthen transboundary water cooperation in the Middle East” (24 March 2023). Available online: <https://unece.org/environment/press/iraqs-accession-un-water-convention-opens-new-opportunities-strengthen>.

²⁶ 2014 Constitution of Egypt (rev. 2019) at article 79. Available online: https://www.constituteproject.org/constitution/Egypt_2019.

²⁷ 2010 Constitution of Kenya at article 41(1)(d). Available online: https://constituteproject.org/constitution/Kenya_2010.

²⁸ 2010 Constitution of Kenya at article 56(e).

²⁹ 2008 Constitution of Ecuador (rev. 2021). Available online: https://constituteproject.org/constitution/Ecuador_2021.

shared responsibility to the federal and regional authorities to formulate and regulate internal water resources in Iraq, including an obligation to develop a law to regulate water resources in a way that ensures their just distribution.³⁰

Importantly, despite the lack of a clear recognition of the right to clean water as a human right in Iraq's Constitution, this does not prevent development of future laws that recognize such a right, particularly given the proximity between the existing Constitutional right to a clean environment and the right to clean water. Constitutional rights are often said to be a floor, not a ceiling in that they represent the lowest acceptable rights and protections in a country. In this sense, legislators may consider developing laws that afford additional protections that complement or go above those rights prescribed in the Constitution.

For example, **South Africa's Water Services Act, 1997** emphasizes in its preamble the right of access to a basic water supply and basic sanitation as necessary to ensure sufficient water and an environment not harmful to health or well-being.³¹ This recognition is reiterated in the operational provisions, with Article 3 stating:

- (1) *Everyone has a right of access to basic water supply and basic sanitation.*
- (2) *Every water services institution must take reasonable measures to realise these rights.*
- (3) *Every water authority must, in its water services development plan, provide for measures to realise these rights.*

The South Africa law also sets out in Article 4 a list of conditions for the provision of water services to operationalize the right to water.

Similarly, the **Uganda Water Act (1997)** states that one of its main objectives is "to promote the provision of a clean, safe and sufficient supply of water for domestic purposes to all persons".³²

This recognition can be incorporated in laws and regulations explicitly or implicitly. For example, rather than explicitly stating that individuals living in a country may have a right to water, a law may instead state that water resources must be allocated in a specific order of priority, wherein individual and domestic uses are a higher priority than industrial, export or agricultural uses. However, explicit recognition in legislation of access to clean water as a human right reinforces the right and entrenches the right in enforceable law, strengthening the likelihood of widespread access to clean water and sanitation nationwide.

³⁰ 2005 Constitution of Iraq, available online: https://www.constituteproject.org/constitution/Iraq_2005.

³¹ South Africa, Water Services Act, 1997 (Law No. 108 of 1997). Available online: <https://www.gov.za/documents/water-services-act>.

³² Article 4 of Uganda Water Act (1997). Available online: <https://www.mwe.go.ug/library/water-act-cap-152>.

D. National Context for Water Rights and Resources in Iraq

The need for effective and implementable laws relating to water resources is particularly important in Iraq. The United Nations has assessed Iraq as the fifth most vulnerable country in the world to water scarcity, high temperatures due to climate change, and food shortages.³³

Up to 98% of surface water in Iraq originates in the Euphrates and Tigris Rivers, both of which flow through multiple countries before entering Iraq.³⁴ The country's dependence on these two rivers also underscores the importance of recognizing the vulnerability of both river systems and their impact on the livelihood of all Iraqis. Some estimates say that the total amounts of water in the Tigris and Euphrates Rivers could decrease by 60% and 30% by the end of the century.³⁵

Of the water that is withdrawn in Iraq, approximately 80-90% is used for agricultural purposes.³⁶ Further, the water that is withdrawn for agricultural purposes is often used for traditional methods of irrigation, such as gravity irrigation (e.g. flood irrigation). This method of irrigation is notoriously inefficient, with some estimates noting that this method results in only 20% or less of the applied water reaching crops, with the remaining water being lost to evaporation or runoff.³⁷ In addition to the low level of efficiency, flood irrigation also contributes to increased salinization and waterlogged soil when compared to other irrigation methods.³⁸ Iraq continues to rely on this method of irrigation despite several notable benefits of diversifying irrigation methods. For comparison, some countries have doubled water productivity by modernizing their irrigation systems to include and focus on sprinkler or drip irrigation methods.³⁹

As a result of several factors, including climate change-induced drought, transborder water-sharing difficulties and ongoing water-use inefficiency, Iraq is facing a critical climate emergency in relation to water. The United Nations has estimated that Iraq will have the capacity to meet only 15% of its water demands by 2035 and noted that 90% of

³³ UNEP, *Global Environmental Outlook 6: Regional Assessment for West Asia* (2016), p.45. Available online: <https://www.unep.org/resources/report/geo-6-global-environment-outlook-regional-assessment-west-asia>.

³⁴ N.A. Zawahri, "Stabilising Iraq's Water Supply: What the Euphrates and Tigris rivers can learn from the Indus" (2006) *Third World Quarterly* 27:6, p.1041. Available online: <https://www.jstor.org/stable/4017739>.

³⁵ F. Lorenz and E.J. Erickson, *Strategic Water: Iraq and Security Planning in the Euphrates-Tigris Basin* (2013) Marine Corps University Press. Available online: <https://www.usmcu.edu/Outreach/Marine-Corps-University-Press/Books-by-topic/MCUP-Titles-A-Z/Strategic-Water/>.

³⁶ FAO Aquastat Database, (2017 – 2020). Available online: <https://data.apps.fao.org/aquastat/?lang=en>.

³⁷ FAO Investment Centre, *Iraq: Agriculture Sector Note* (2012) p.21. Available online: <http://www.fao.org/3/a-i2877e.pdf>.

³⁸ FAO Investment Centre, *Iraq: Agriculture Sector Note* (2012) p.41. Available online: <http://www.fao.org/3/a-i2877e.pdf>.

³⁹ World Bank, "Iraq Country Climate and Development Report" (November 2022) p.18. Available online: <https://www.worldbank.org/en/country/iraq/publication/iraq-country-climate-and-development-report>.

Iraq's rivers are polluted while up to 7 million people are currently suffering from reduced access to water.⁴⁰

This increased water scarcity has been identified as a major factor in several human rights matters at the national and international level. A 2022 study examining the effects of water scarcity on human migration estimated that the potential for drought-induced migration will increase by approximately 200% under the current international climate policy scenario (i.e. in relation to the current targets set by the Paris Agreement). Further, these predicted rates of migration are estimated to increase to approximately 500% in the event of failure of international cooperation on climate change policy.⁴¹

The same study also identified Iraq as one of the countries estimated to have the highest rates of monthly human displacement (international and internal combined) by the end of the century in a business-as-usual scenario.⁴²

In addition to drought-induced migration, drought has also been identified as a contributing factor in conflicts in many countries in the Middle East and Africa. The Global Early Warning Tool on Conflict Forecasting from the Water Peace and Security (WPS) Partnership identifies several countries in which drought or water scarcity have been the cause of conflict in recent years. As a result of its continuous drought since 2020 as well as increased social tensions related to water scarcity, this tool has specifically identified Iraq as one of the main countries in which drought-related conflict is likely to occur in the next 12 months (described as a country where the model predicts the likelihood of at least 10 fatalities in the next 12 months with linkages to water challenges).⁴³

Despite the clear importance of regulating water supply and quality, there is currently no unified water law in Iraq. The current domestic water and sanitation systems are managed by a complex institutional framework involving a number of ministries working with and delegating to the municipalities and governorates in implementing a variety of laws, strategies and policies.⁴⁴ Further, for those instances in which laws exist to regulate

⁴⁰ UN Iraq, "Briefing to the UN Security Council, SRSG Jeanine Hennis-Plasschaert – 18 May 2023).

<https://iraq.un.org/en/232119-briefing-un-security-council-srsg-jeanine-hennis-plasschaert-18-may-2023>.

⁴¹ O. Smirnov et al, "Climate Change, Drought, and Potential Environmental Migration flows under different policy scenarios" (7 April 2022) *International Migration Review* 57:1. Available online:

<https://journals.sagepub.com/doi/full/10.1177/01979183221079850>.

⁴² Smirnov et al, "Climate Change, Drought, and Potential Environmental Migration flows under different policy scenarios" (7 April 2022) *International Migration Review* 57:1 at Table 3. Available online:

<https://journals.sagepub.com/doi/full/10.1177/01979183221079850>.

⁴³ Water Peace and Security, "WPS Global Early Warning Tool May 2023: Quarterly Analysis" (02 May 2023). Available online: <https://waterpeacesecurity.org/info/global-tool-update-may-2023>

⁴⁴ World Bank, "Decentralization and subnational service delivery in Iraq: Status and the way forward" (2016) at p.48. Available online: <https://openknowledge.worldbank.org/entities/publication/4b64eba4-2370-5691-9245-4563d4fc846c>.

water resource allocation and quality, there are often issues around effective implementation of these laws.⁴⁵

II. LEGISLATIVE OPTIONS FOR WATER LAWS

Laws addressing water can broadly be divided into two main areas: laws that regulate water as a resource to be allocated in sufficient quantities and laws that relate to water quality. However, there is no clear distinction between these broad categories as some laws, such as laws protecting wetlands, may incorporate components that address both the quantity and quality of water.

Similarly, laws that dictate rights of ownership and use of water (also called riparian rights) generally overlap with the subjects of both quality and quantity of water as they may state that the holder of the right also has the right to undiminished quality of water, rights related to access and use, and rights related to continued flow. Riparian rights also generally come with obligations to ensure that water is not reduced in quantity or quality by the rights-holder in order not to affect the rights of others.⁴⁶

One major complexity with legislating in relation to water as a human right relates to the overlap of water with many other areas of law. For example, water use and quality can be accounted for in unified water laws, laws on agriculture, laws on construction or infrastructure, laws on fisheries, or general environmental laws. Accordingly, the following section examines some of the more common elements of legislation directed at ensuring sufficient quality and quantity of water for individuals within the country in the context of human rights.

A. Framework laws and other primary legislation

Countries may opt for different methods legislating water resources. Two common, similar methods involve enactment of a comprehensive unified water resource law or a framework water resource law. Either of these approaches involves developing a primary law or directive that sets minimum standards by which all future related laws, policies or standards must align with. Primary laws allow for a clear baseline to be set and can facilitate predictability of outcome by ensuring that stakeholders can rely on the minimum standards set by the primary law in order to be in compliance with the law.

⁴⁵ *Ibid.* See also Clingendael, “Water Governance in Iraq: Enabling a Gamechanger” (September 2022), p.11. Available online: <https://www.planetarysecurityinitiative.org/news/water-governance-iraq-enabling-gamechanger>.

⁴⁶ For example, see UK Environment, “Owning a Watercourse” (15 February 2018). Available online: <https://www.gov.uk/guidance/owning-a-watercourse>.

With a framework law, legislators will pass a law that broadly sets out the subject matter and topics that will be accounted for under the framework, stipulating that the specific details of the framework law will be clarified in subsidiary legislation (such as regulations). The legislators will then enact various pieces of subsidiary legislation that align with the framework law in order to implement the provisions of the framework.

With a unified law, legislators may aim to include more details within the single primary piece of legislation, adding these details into the body of the law as well as various annexes and schedules. A unified law is generally significantly longer than a framework law given the amount of detail that needs to be included.

The **European Union Water Framework Directive (Dir. 2000/60/EC)**, along with its subsidiary directives, is one example of a water law to establish the primary legal framework for protection of surface water, transitional water, groundwater and coastal water in the EU.⁴⁷ This Directive sets out a framework with the aim of preventing and reducing pollution, promoting sustainable use of water, protecting and improving the aquatic environment, and mitigating the effects of droughts and floods. As with all framework laws, the Directive is accompanied by several targeted directives to facilitate its implementation. These targeted subsidiary directives include:

- The Groundwater Directive;
- The Drinking Water Directive;
- The Bathing Water Directive;
- The Nitrates Directive;
- The Urban Waste Water Treatment Directive;
- The Environmental Quality Standards Directive; and
- The Floods Directive.

Each of these subsidiary directives assists in comprehensively implementing the overall purposes of the main directive, and each subsidiary directive is applied only in a manner that accords with the overall purpose of the main directive.

To simplify implementation of the **EU Water Framework Directive** at the national level, the Dutch Government passed the integrated **Water Act 2009**, recognizing that water is a single, unified system that generally makes no practical distinction between groundwater and surface water.⁴⁸ Upon its enactment, it replaced a patchwork of eight existing laws to unify how water quality and quantity are regulated. It was developed for the purposes of:

- Preventing and, where necessary, limiting flooding, swamping and water shortage;

⁴⁷ European Union, *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy*. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0060>.

⁴⁸ Netherlands, *Water Act (2009)*. Available online: <https://www.helpdeskwater.nl/secundaire-navigatie/english/legislation/>.

- Protecting and improving the chemical and ecological status of water systems; and
- Allowing water systems to fulfil societal functions.

The **Dutch Water Act** comprehensively sets out provisions mandating the development of standards related to water quality, water quantity and fulfilment of functions related to water management. It empowers provincial authorities to develop and implement these standards and sets out obligations and powers of a designated water authority. This unified law allows implementing authorities and the regulated community to be more easily aware of any rights and responsibilities related to domestic water resources and help to reduce the amount of legislative instruments, minimizing the chance for redundant or duplicative laws and increasing transparency.

The **Lesotho Water Act 2008** also provides a framework for the “effective management, conservation and protection of water resources” by giving effect to a number of principles, including:

- Sustainable utilization of water resources;
- Intergenerational equity;
- Integrated water resources management;
- Equitable distribution of water and sanitation services;
- Public participatory approach;
- The Precautionary Principle;
- Polluter Pays Principle;
- Integration of environmental and social issues into water resources management, including HIV/AIDS and gender mainstreaming; and
- A sector-wide approach to water resources management.⁴⁹

These principles in Lesotho’s law establish the groundwork for the content and implementation of a water and sanitation strategy mandated by the law. The law also has further detailed provisions on several topics related to water, including formation of a water tribunal, catchment area management, determination of a water reserve, wetlands protection and rehabilitation, construction permits, pollution control and prevention of flood risks. This broad law attempts to unify the complex field of water resource and quality management to set minimum standards and principles by which any further subsidiary laws must abide.

A country may also opt to not have a designated framework law solely for water but rather choose to incorporate some aspects of protecting water quantity and quality in some other related laws, such as a framework environmental protection law. Further, it is also an option for a country to develop a series of laws and policies related to water quality and quantity, each dealing with a specific area of water resources. One notable

⁴⁹ Lesotho, *Water Act No. 15 of 2008*, art. 3. Available online: <https://www.water.org.ls/download/lesotho-water-act-no-15-of-2008/>.

risk of this approach is that there is a higher likelihood of conflicts, overlaps and gaps between laws when there is no overarching law. In such a system, with no primary law, there may be no clear indication of how to reconcile these gaps, overlaps or conflicts, leading to stakeholders having an unclear picture of their rights and obligations.

B. Topics addressed in water laws: Safe drinking water protections

As a component of broader protections on ensuring the quality of water, many generalized water laws will often contain annexes or separate regulations that relate to specific allowable limits of contaminants in water. These allowable limits may be determined through the best available science or other means and help ensure available water is fit for human consumption.

For example, **Kenya's Environmental Management and Coordination (Water Quality) Regulations 2006** contain maximum allowable limits of various chemicals, elements and substances that can be discharged into water.⁵⁰ These regulations contain maximum limits for faecal coliforms, lead, oil and grease, lead, and mercury, among many others. These regulations also contain lists of substances that must be reported in regular water tests by industry, listing different standards for discharge from cement factories, hotels and many other facilities.

C. Topics addressed in water laws: Environmental protections for existing waterbodies (surface water / groundwater / marshes)

In Iraq, as with many countries, waterbodies can present as both water resources for humans as well as fragile ecosystems that require environmental protections to ensure their sanctity. These waterbodies can have surface water and groundwater components and may require different protections based on their proximity to human settlements, industry or agricultural areas.

A law on water resource protection may consider including elements of protection for these vulnerable ecosystems, recognizing their role both in the sustenance of human life and maintenance of biodiversity. Such provisions may appear in the form of effluent and runoff standards in general or may be specifically directed at the protection of water bodies through regulation of certain activities.

The **Rwanda Law on Environment (2018)** sets out 16 enumerated prohibited activities that may harm wetlands and other similar protected areas, including dumping of wastes into streams, rivers, ponds, lakes or surroundings; damaging the quality of surface or

⁵⁰ Kenya, *The Environmental Management and Co-Ordination (Water Quality) Regulations, 2006*. Available online: http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2006/LN120_2006.pdf.

groundwater; dumping or spilling any materials into nature that may cause or increase water pollution; building agricultural or livestock installations closer in proximity to watercourses; or piling soil or any other materials in wetlands.⁵¹

The **2007 Cambodia Water Law** in Article 22 prohibits the disposal, discharge or deposit into water of polluting substances which are likely to deteriorate the quality of water or endanger human, animal or plant life.⁵² The law further stipulates that the Ministry may designate certain protected water-use zones or temporary areas for situations in which surface or ground water sources are seriously threatened in their quantity, quality or ecological balance, or when a watershed is undergoing degradation by human activities or nature.

D. Addressing access to water supply and sanitation through legislation

A key aspect of water resource laws as they relate to human rights is the legislated effort to ensure reliable access to water and sanitation for all individuals living in the country. Such provisions may take a variety of forms but often have a human-centric focus. The provisions generally focus on ensuring sufficient water resources are allocated primarily for domestic use and on ensuring that any allocated water resources for domestic use are not polluted.

The **Water Act of 2011 in Zambia** incorporates the human right to water through characterizing the definitions and provisions in a manner that prioritizes human consumption.⁵³ In Article 2, the Act defines “primary use” as “the use of water for domestic purposes and the support of animal life). This definition is used in Article 8, which states that “Any person shall have the right to primary use of public water which is found in its natural channel or bed at such places to which access may be lawfully had”.

The **2007 Water Law of Cambodia** similarly grants access to water resources for all in Article 11.⁵⁴ This article states:

***Article 11.** Everyone has the right to use water resources in an amount not exceeding the basic need for drinking, washing, bathing and other purposes including the feeding of*

⁵¹ Rwanda, *Law No. 48/2018 of 13/08/2018 on Environment*, Art. 42. Available online: <https://waterportal.rwb.rw/node/2031>.

⁵² Cambodia, *Law on Water Resources Management of the Kingdom of Cambodia*, (2007). Available online: [https://portal.mrcmekong.org/assets/v1/documents/Cambodian-Law/Law-on-Water-Resources-Management-\(2007\).pdf](https://portal.mrcmekong.org/assets/v1/documents/Cambodian-Law/Law-on-Water-Resources-Management-(2007).pdf).

⁵³ Zambia, *Water Resources Management Act, No. 21 of 2011*. Available online: <https://www.parliament.gov.zm/node/6544>.

⁵⁴ Cambodia, *Law on Water Resources Management of the Kingdom of Cambodia*, (2007). Available online: [https://portal.mrcmekong.org/assets/v1/documents/Cambodian-Law/Law-on-Water-Resources-Management-\(2007\).pdf](https://portal.mrcmekong.org/assets/v1/documents/Cambodian-Law/Law-on-Water-Resources-Management-(2007).pdf).

domestic animals and buffaloes, fishing and the irrigation of gardens and orchards, while avoiding the impacts on other people.

Cambodia further qualifies the above by stating that such water use shall not require any license. Article 12 then states that other forms of water resource use, such as agricultural or industrial purposes, are subject to a license or permit. Further, activities that may disrupt water resources, such as filling of watercourses, construction projects near water courses, or diversion of water resources, are subject to various administrative requirements such as permits, Ministry approval or authorization from the National Assembly.

The **1996 Water and Water Resources Law of Laos** also prioritizes domestic and individual use over other use by highlighting in the objectives that underground is principally reserved for drinking and personal use, while other uses are subject to approval.⁵⁵ The law further reinforces individual access to water supplies by setting out three categories of water use rights. The first category, small-scale water use, encompasses residential use for the benefit of the general household; water for fishing or raising fish; use in agro-forestry and livestock-raising for basic family use; and collecting dirt, rocks, mud or vegetation in and around a water source. The other categories, being medium-scale and large-scale, encompass construction projects, irrigation, installations of water pumps not for family use, and industrial uses, as well as other uses for tourism or athletic businesses. The law states that small-scale uses do not require prior government approval while all medium- and large-scale uses must first be approved, registered and formalized by an agreement.

In **Namibia**, the **Water Resources Management Act, 2013** ensures continued reliable access to water resources by empowering the Minister to reserve all or part of the flow of a watercourse, groundwater resource or water in a dam or lake in order to meet the requirements for domestic water use or to reasonably protect and maintain aquatic and wetland ecosystems.⁵⁶

By prioritizing individual and domestic use in all water resource-related activities, a country can signal its intention to reinforce the human right to water and sanitation and ensure available resources to its citizens before allocating these scarce resources to commercial or industrial use.

E. Addressing agricultural uses of water resources through legislation

⁵⁵ Lao People's Democratic Republic, *Decree of the President of the Lao People's Democratic Republic on the Promulgation of the Law on Water and Water Resources*, (1996). Available online: <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC007478/>.

⁵⁶ Namibia, *Water Resources Management Act, 2013 (Law No. 11 of 2013)* at Article 37. Available online: <https://www.lac.org.na/laws/2013/5367.pdf>.

As noted earlier, agricultural activities in Iraq are responsible for up to 90% of all water withdrawals nationwide. Similarly, other countries also experience high rates of water withdrawal due to agriculture and have legislated requirements and restrictions around this sector to conserve limited water resources and ensure quality is maintained for individual and domestic use.

Accounting for water use in agricultural contexts can take several forms in legislation or policy. Legislative or policy provisions may address the quantity of water used, such as by requiring permits for some activities, or may limit the methods by which water is used in agricultural activities, such as by banning or restricting less-efficient forms of irrigation. For example, in reaction to the amount of water used in flood or gravity-irrigation, some countries have mandated the use of drip irrigation in certain types of agricultural practices.

Namibia's **Water Resources Management Act, 2013** empowers the Minister to require bulk water users to develop and adopt water services plans, including water conservation and water demand management strategies for the purposes of improving water efficiency.⁵⁷

Further, many countries that prioritize individual and domestic use over commercial or industrial use do so by requiring water-use permits for industrial or commercial practices, with requirements set out in these permits to ensure water efficiency or continued water quality. In Laos, **Article 18 of the Water and Water Resources Law of 1996** states that any large-scale uses of water, including large-scale reservoirs for the purposes of irrigation, must have a permit and be accompanied by a feasibility study, social impact assessment statement and a specific means to resolve any identified impacts.⁵⁸

F. Addressing financial mechanisms through law

One notable barrier to effective implementation of a well-drafted law may arise due to low financial resources allocated specifically for matters related to ensuring adequate water quality and quantity. A possible approach to addressing this could involve designation of a specific national fund that can only be used for executing projects related to implementing the water law.

Sections 55-60 of **Tanzania's Water Supply and Sanitation Act 2019** act as enabling provisions to establish a National Water Fund, including by designating sources of

⁵⁷ Namibia, *Water Resources Management Act, 2013 (Law No. 11 of 2013)* at Article 90. Available online: <https://www.lac.org.na/laws/2013/5367.pdf>.

⁵⁸ Lao People's Democratic Republic, *Decree of the President of the Lao People's Democratic Republic on the Promulgation of the Law on Water and Water Resources*, (1996). Available online: <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC007478/>.

funding and specific functions of the Fund.⁵⁹ In addition to generally mobilizing financial resources necessary for fulfilment of the Act, the fund is also designed to issue loans on favorable terms to implementing agencies for investments in water service provisions and facilitate capacity-building of implementing agencies to improve and enhance their ability in execution and management of water projects.

The implementing regulations (**National Water Fund Regulations 2019**) further set out the details of the Fund, including specific circumstances in which loans may be granted and the operational guidelines of the Water Board established under the law.⁶⁰

Similarly, **Kenya's Water Act, 2016** also establishes a financial mechanism in order to provide grants toward “assisting in financing the development and management of water services in marginalized areas”.⁶¹ Article 114 of the law states that the object of the Water Sector Trust Fund is to facilitate:

- Community-led initiatives for the sustainable management of water resources;
- Development of water services in rural areas not considered to be commercially viable for provision of water services by licensees;
- Development of water services in the underserved poor urban areas; and
- Research activities in the area of water resources management and water services, sewage and sanitation.⁶²

G. Ensuring effective implementation of water laws

As with ensuring success of most forms of environmental law, ensuring efficacy of water laws does not stop with enactment of a strong law. One of the most significant issues in environmental law is not the lack of strong legislation, but rather irregular, incomplete, or ineffective enforcement and implementation of those laws. This issue, known as the “Implementation Gap,” is a recurrent issue in environmental law and may arise at either the institutional level or at the legislative level (for example, when laws are enacted that lack necessary mandates or have unclear standards).⁶³

This Implementation Gap is often broadened as many environmental laws are based on the laws of other countries without factoring in the unique circumstances of the country

⁵⁹ Tanzania, *The Water Supply and Sanitation Act, 2019*. Available online: <https://www.maji.go.tz/uploads/publications/sw1562329366-THE%20WATER%20SUPPLY%20AND%20SANITATION%20ACT,%202019.pdf>.

⁶⁰ Tanzania, *The National Water Fund Regulations, 2019*. Available online: <https://www.maji.go.tz/uploads/publications/sw1579858843-GN.%20No.%20891%20dated%2013%20Dec%202019%20National%20Water%20Fund%20Regulations,%202019.pdf>.

⁶¹ Kenya, *The Water Act, 2016*. Available online: <https://wasreb.go.ke/downloads/Water%20Act%202016.pdf>.

⁶² Kenya, *The Water Act, 2016* at article 114.

⁶³ UNEP, *Environmental Rule of Law Report, 2019*, p.3. Available online: <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>.

that is legislating the law. Further, although framework laws are routinely used around the world, improper drafting of these laws may result in key operative sections being left out or drafted in an unclear manner (such as by not specifying concrete outcomes or objectives of the laws to measure performance), meaning the laws are unable to be properly carried out.⁶⁴ The UN has also recognized that, although regulations exist in many countries, these regulations may not be enforced for various reasons. One common cause of weak enforcement arises when multiple institutions have a mandate to regulate the same service with no clear indication of any line of authority between these institutions.⁶⁵

Legislators must draft laws with implementation in mind. Although water resources are best protected through legislation, unimplementable legislation may hinder progress more than it helps. Legislation can be more easily implementable when it is well-written, clear, and easy to understand, including clear objectives and specific responsibilities for designated authorities.

Further, following enactment of clear and implementable legislation, enforcement systems must be set up to ensure the judiciary and enforcement officers are sensitized to the nature of environmental matters, such as by giving specialized training to these individuals. This will help ensure that laws are effectively enforced, given the often-complex nature of water and environmental law.⁶⁶

III. CONCLUSION

The human rights to water and sanitation are inextricably linked to the right to an adequate standard of living. The severe effects of climate change-induced drought on Iraq indicate that legislators must consider how to legislate these rights to ensure adequate standards of quality and quantity of water for all in Iraq.

When developing laws to regulate quality and quantity of water domestically, legislators should consider the lessons learned from other countries that have dealt with water scarcity in the past in order to enshrine international human rights standards more effectively at the national level.

⁶⁴ *Ibid.*

⁶⁵ United Nations, *Blueprint for Acceleration: Sustainable Development Goal 6 Synthesis Report on Water and Sanitation 2023*, p.51. Available online: <https://www.unwater.org/publications/sdg-6-synthesis-report-2023>.

⁶⁶ *Ibid* at p.189.

IV. About the Institute for International Law and Human Rights

The Institute for International Law and Human Rights (known as IILHR) is a non-profit charity registered in Washington, D.C., Belgium, and Iraq. IILHR helps states in the early stages of democracy develop the capacity to strengthen the rule of law and build respect for human rights. With a staff of diplomats, parliamentarians, human rights activists, jurists, and attorneys, IILHR has a strong track record of implementing successful programs that help local partners strengthen support for human rights and the rule of law.

IILHR has been a strong, supportive presence in Iraq since July 2005. It collaboratively engages with leaders of both the Iraqi government and civil society to strengthen approaches to human rights issues by a) developing draft legislation; b) working to enact that legislation; c) helping local partners in and out of government to develop the capacity to advocate about specific issues as well as to assess, develop and draft legislation; and d) building consensus on priorities, tactics and strategies for achieving stronger systems of law and human rights protection. IILHR partners with leading civil society leaders, jurists, academics, legislators and policy makers to ensure that its work is built on a foundation of Iraqi jurisprudence and practice.

Examples of IILHR's work include extensive participation in drafting more than 100 different analyses of legislative and constitutional issues. IILHR has also provided commentary on approaches to a broad spectrum of issues, including Constitutional Review, Gender Law, Iraq's Human Rights Commission, Social Safety Net development, Freedom of Expression and Information, Accountability, Transitional Justice, and Minority Rights. IILHR also works closely with Iraq's judiciary and executive branch.