



United Nations Association in Canada
Association canadienne pour les Nations Unies

IMPLEMENTING THE HUMAN RIGHT TO WATER IN CANADA

A DISCUSSION PAPER

By Lynda M. Collins

March 2007



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IMPLEMENTING THE HUMAN RIGHT TO WATER IN CANADA: A DISCUSSION PAPER

Foreword

This paper was commissioned by the United Nations Association in Canada as part of an innovative partnership with the Department of Foreign Affairs and International Trade to inform a seminar on the “Right to Water”. We would like to thank its author, Lynda Collins, for her flexibility and skill in working in this new and essential kind of partnership.

UNA-Canada would like to thank the UN Development Programme (David Morrison, Olav Kjørven and Susanne Schmidt), Brenda Lucas and the Walter and Duncan Gordon Foundation, and Alistair Edgar of the Academic Council on the UN System for their support. We would also like to thank Adèle Dion, Director General of the Human Security and Human Rights Bureau at the Department of Foreign Affairs and International Trade for her forward-looking and inclusive thinking in seizing an opportunity to create one seminar with a shared objective when we discovered that both DFAIT and UNA-Canada were planning roughly parallel events.

I would also like to commend both Tania Gamache, Senior Policy Officer at DFAIT and Joan Broughton, Public Information Officer at UNA-Canada who were the “thinking and doing” partners in facilitating this seminar.

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IMPLEMENTING THE HUMAN RIGHT TO WATER IN CANADA: A DISCUSSION PAPER

Executive Summary

More than one billion people around the globe lack access to sufficient, clean drinking water. Worldwide, thousands of children die every day as a result of water-borne illness, women spend hundreds of hours per year transporting water, and many regions face chronic water shortages.¹ In response to this global water crisis, civil society, states, and United Nations organizations have called for the recognition of a human right to water.

There is no explicit right to water in any Convention to which Canada is a signatory. However, the UN Committee on Economic, Social and Cultural Rights has asserted that the human right to water is an aspect of rights enshrined in the *International Covenant on Economic, Social and Cultural Rights* and entitles everyone to access to an adequate supply of safe drinking water sufficient to meet basic human needs.² A number of like-minded states (including the United Kingdom and France) have recognized the right to water, and the Committee has requested that Canada review its position on the human right to water.

Canada has already achieved a high degree of compliance with the obligations inherent in the human right to water. Access to drinking water in Canada is universal, drinking water quality is highly regulated by federal, provincial, and territorial governments, and all levels of government have also enacted strong environmental legislation sufficient to protect drinking water sources. Canadian governments are also committed to continuous improvement consistent with the progressive realization of the human right to water.³ Challenges remain to the full realization of the right to water in Canada, including threats to both water quantity and quality, but viable solutions have been identified and should be pursued.⁴

This paper recommends that Canada officially recognize the human right to water. In particular, Canada should recognize that the right to water is implicit in the rights to health and to an adequate standard of living contained in the *International Covenant on Economic, Social, and Cultural Rights*, that the right is subject to progressive realization, and that it includes a minimum core obligation of non-discrimination.

¹ See generally *Human Development Report 2006, Beyond scarcity: power, poverty and the global water crisis* (New York: United Nations Development Programme, 2006).

² See Committee on Economic, Social, and Cultural Rights, *General Comment 15: the right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11.

³ See Part 3.1, *infra*.

⁴ See Parts 3.2 *et seq.*, *infra*.

IMPLEMENTING THE HUMAN RIGHT TO WATER IN CANADA: A DISCUSSION PAPER

By Lynda M. Collins⁵

This paper is an examination of the human right to water and possible mechanisms for its implementation in Canada. Although the right to water may encompass access to water for a variety of uses including irrigation, navigation, and fisheries, the present discussion will focus on the human right to drinking water. The right to drinking water is generally understood to include to the right to access to safe drinking water and sanitation for basic human needs. The present analysis will focus primarily on the implementation of the human right to water within Canada.

1. Introducing the Human Right to Water

Worldwide, more than 1 billion people lack access to clean drinking water; thousands of children die every day as a result of water-borne illness.ⁱ In the face of these dire circumstances, the international community has mobilized to recognize the fulfilment of basic water needs as a fundamental human right.

1.1 Sources

There is no explicit mention of a human right to water in any of the core international human rights documents comprising the International Bill of Rights.ⁱⁱ However, several international Conventions to which Canada is a party do recognize human rights obligations in relation to water. Article 24 of the *Convention on the Rights of the Child*, for example, provides that States Parties shall “pursue full implementation” of children’s right to the highest attainable standard of health, in particular “through the provision of ...clean drinking water, taking into account the dangers and risks of environmental pollution.” Similarly, Article 14(2) of the *Convention on the Elimination of All Forms of Discrimination Against Women* provides that the States Parties shall ensure to women in rural areas the right “to enjoy adequate living conditions, particularly in relation to...water supply”.ⁱⁱⁱ Nonetheless, there is no explicit recognition of a universal human right to water in any binding Convention to which Canada is a party; the question is whether or not it is possible to recognize an implicit right to water from existing obligations. In this context, Canada has not recognized a universal human right to water to date.

The human right to water may be viewed as an aspect or derivative of various recognized international human rights, including the right to life, the right to food, the right to an adequate standard of living, and the right to health.^{iv v} The latter two provide perhaps the strongest bases for the recognition of a human right to water.

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In General Comment 15 (“GC 15”), the UN Committee on Economic, Social, and Cultural Rights (“the Committee”) describes the right to water as an aspect of the right to an adequate standard of living, guaranteed by Article 11, paragraph 1 of the International Convention on Economic, Social and Cultural Rights (“the ICESCR”). The Committee further asserts that:

The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.^{vi}

In its 2006 Concluding Observations to Canada,^{vii} the Committee “strongly recommend[ed] that the [Canada] review its position on the right to water, in line with the Committee’s General Comment no. 15 (2002) on the right to water, so as to ensure equal and adequate access to water for people living in [Canada], irrespective of the Province or Territory in which they live or the community to which they belong.”^{viii}

In addition to GC 15, numerous other non-binding international law instruments recognize some formulation of the human right to water, and support for the human rights approach to water is clearly growing in the international sphere.^{ix} The United Nations Development Programme’s 2006 Human Development Report, for example, states that “[t]he starting point and the unifying principle for public action in water and sanitation is the recognition that water is a basic human right.”^x Most recently, the UN Human Rights Council has requested the Office of the High Commissioner for Human Rights “to conduct a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments.”^{xi}

A significant number of States in Europe, Latin America, and Africa have formally recognized the human right to water.^{xii} The European Parliament has likewise recognized that “access to water for all without discrimination is a right” and further that “the 145 countries that have ratified the *International Covenant on Economic, Social and Cultural Rights* have an obligation to ensure that everyone has access to water, equitably and without discrimination.”^{xiii}

The United Kingdom recently announced its formal recognition of the human right to water in response to the release of the 2006 UNDP report, taking the position that the human right to water is “an element” of the right to an adequate standard of living under Article 11 of the ICESCR.^{xiv} The UK further asserts that the right to water is *not* an independent right, a right in customary international law, nor a derivative of any other international human right, including the right to life.^{xv} France has also recently recognized the human right to water through legislation,^{xvi} and is currently preparing an official articulation of its position with respect to the nature of this right.

1.2 Content

General Comment 15 describes the human right to water as follows: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”^{xvii} There is general agreement that this

right entails the provision of a sufficient quantity of water that is free of radiological, chemical, microbiological, and physical contamination.^{xxviii} Moreover, drinking water resources must be provided on a non-discriminatory basis, with particular concern for constituencies who face barriers in their access to sufficient, high quality water including people living in rural areas, indigenous peoples, and people living in poverty.^{xxix}

1.3 Scope

According to the Committee on Economic, Social, and Cultural Rights, the human right to water entails corresponding obligations on the part of States to respect, protect, and fulfil the right.^{xx} The obligation to respect precludes the State from disconnecting or arbitrarily impeding citizens' access to water, while the obligation to protect requires the State to prevent others from polluting, depleting (e.g. through industrial extraction, groundwater "mining", or bulk water export) or otherwise interfering with water resources. The obligation to fulfil may be subdivided into the obligations to facilitate, promote, and provide,^{xxi} and requires States to take affirmative steps towards full realization of the right, through the promulgation of policy and legislation, the implementation of national and local water strategies, and the ongoing monitoring of progress.^{xxii}

Although developed nations may facilitate the realization of the human right to water through the provision of water-related technical and financial assistance to developing nations, *the human right to water does not require any trans-boundary sharing of water resources.*^{xxiii} The human right to water does, however, imply a duty to conserve water resources so as to protect the right for future generations.^{xxiv}

2. Implementing the Human Right to Water: Lessons from the International Community

2.1 The UK

In November of 2006, the United Kingdom announced its official recognition of the human right to water in response to the release of the UNDP's 2006 Human Development Report. The UK takes the position that "states have a duty to take whatever steps they can to ensure that everyone enjoys the right to water, without discrimination."^{xxv} In particular, the UK opines that states "must seek to increase service delivery beyond those reached by existing networks; cannot ignore more remote communities and must seek to address lagging regions and neglected rural communities..."^{xxvi} Consistent with GC 15,^{xxvii} the UK recommends that each state adopt a national water and sanitation plan, establish a single water and sanitation coordinating group, and identify one lead UN body for water and sanitation at the national level.^{xxviii}

At the international level, the UK has recommended a streamlined governance structure to efficiently identify and meet the water and sanitation needs of the poorest communities in the developing world. In particular, it recommends "one annual report to monitor progress towards achieving the water and sanitation M[illennium] D[evelopment] G[oals] targets" and "one high-level global annual meeting to decide on action".^{xxix} In addition to stream-lining and optimizing international coordination, the UK asserts that a substantial increase in water-related aid is necessary in order to realize the right to water in the developing world.^{xxx} Accordingly, the UK has committed to "doubling its [water-related]

support in Africa to £95 million (\$179 million) a year by 2008 and then doubling it again to £200 million (\$378 million) a year by 2011.^{xxxxi}

The UK's announcement of its support for the right to water did not include any mention of domestic measures that would be taken to ensure the right to water for its own citizens. However, the UK has achieved universal access to drinking water and sanitation^{xxxii} and its 1998 Water Act ensured access to water for the poor by prohibiting water companies from disconnecting customers' water supply for non-payment.^{xxxiii}

There is no doubt that Canada could make a major contribution to realising the human right to water by taking the UK approach of increasing water-related official development assistance and working for better international coordination in this area. However, as noted above, this discussion paper will focus on the implementation of the right to water within Canada.

2.2 *Europe*

At the regional level, the European Union has both recognized the human right to water and enacted legislation to ensure its realization.^{xxxiv} Under the auspices of the UN Economic Commission for Europe, twenty-one European nations have also ratified the London *Protocol on Water and Health*^{xxxv} which states, in Article 5, that “[e]quitable access to water, adequate in terms of both quantity and quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion.”

In addition to the UK, a number of other European states have formally recognized the right to water, including Belgium, Spain, France, Luxembourg, Norway, and Romania. In France, for example, article 1 of the recently promulgated *loi sur l'eau et les milieux aquatiques* provides that “chaque personne physique, pour son alimentation et son hygiène, a droit d'accéder à l'eau potable à des conditions économiquement supportables”.^{xxxvi} All European nations have also taken legislative, policy, and pragmatic steps to ensure that the basic water needs of their citizens are met (consistent with the right to water) and have enjoyed varying degrees of success in this regard.^{xxxvii}

2.3 *Africa and Latin America*

Several multilateral conventions in both Africa and Latin America recognize the human right to water and/or state obligations to provide citizens with access to clean drinking water.^{xxxviii} A number of countries in Africa and Latin America (including South Africa, the Democratic Republic of the Congo, Ethiopia, Gambia, Colombia, Uruguay and others) have codified the human right to water in their domestic constitutions.^{xxxix} Implementation in the field varies from nation to nation, but constitutional approaches may be effective when supported by appropriate legislation and policy initiatives. In South Africa, for example, constitutionalization of the right to water has been accompanied by specific implementing legislation and action on the ground that has led to a 20% increase in the proportion of the population having access to basic water services.^{xl}

3. A Canadian Approach to the Human Right to Water

To a large degree, Canada is already in compliance with the human right to water. Canada enjoys an almost unparalleled abundance of freshwater resources,^{xli} and access to drinking water (through municipal water supplies, private wells, and/or trucked-in water) is universal in Canada.^{xlii} Robust legislation exists at both the federal and provincial/territorial levels to enable regulators to protect source waters,^{xliii} and the provinces and territories also closely regulate drinking water treatment and distribution.^{xliv} Consistent with GC 15, the federal, provincial, territorial, and municipal governments monitor progress in drinking water quantity and quality,^{xlv} and standards are continuously upgraded.^{xlvi} Also in keeping with GC 15, Canada has committed substantial resources to the development of a National Water Strategy.^{xlvii}

However, in order to ensure the full realization of the human right to water, Canada needs to address several key challenges. In some areas (notably the southern Prairies, the northern Territories, and some parts of southern Ontario), the right to an adequate quantity of water is threatened by problems of water scarcity. In the majority of the country, water *quality* poses the more serious threat to the human right to water. Health Canada estimates that unsafe drinking water may cause as many as 90, 000 illnesses and 90 deaths per year in Canada.^{xlviii} Threats to water quality exist in both rural^{xlix} and urban^l areas, and are particularly serious and widespread in First Nations communities.^{li}

Fortunately, Canada enjoys an unparalleled depth in water science and policy expertise, and pragmatic and effective solutions to the threats to both water quantity and quality have already been developed by a variety of credible scientific, governmental, and non-governmental organizations. Fully realizing the right to water in Canada merely requires that these solutions be implemented expeditiously and effectively.

The remainder of this paper will focus on the specific actions that Canada can take to fully implement the right to water:

3.1 *Recognizing the Human Right to Water*

Celine Dubreuil of the World Water Council identifies five value-added aspects to a human rights-based approach to water. She argues that recognizing a human right to water provides (among other things): priority for those lacking basic access to water and sanitation, “preventi[on] of discrimination and neglect of vulnerable and marginalised communities”, “empower[ment] [of] communities living in poverty to fully take part in decision-making processes”, and accountability for governments, the international community, and the private sector.^{lii} Other experts in the area agree that official recognition of the human right to water is a significant step towards its realization on the ground.^{liii}

Since Canada is already compliant with the right to water in many respects (and is committed to continuously improving its water-related law and policy), recognizing the human right to water would entail little additional effort or cost. On the other hand, formally recognizing the right to water would bring Canada in line with like-minded countries and would be consistent with citizens’ vision of Canada as a human rights defender and good global citizen. Recognizing the right to water would also address Canadians’ heightened expectations regarding the imperative of maintaining safe

drinking water systems domestically, and would contribute to the growing international momentum towards the realization of the MDG water and sanitation targets worldwide.

3.2 Ensuring Sustainability and Equity in Water Availability

The majority of Canadians currently have access to an adequate *quantity* of water to meet the basic requirements of the human right to water.^{liv} However, certain regions of the country (notably the interior of British Columbia, the southern prairies, the northern territories, and some densely populated off-lake areas in Southern Ontario) already face serious water scarcity challenges, and these are likely to increase as climate change progresses. Dr. David Schindler, Canada's pre-eminent expert in the area explains:

To a water expert, looking ahead is like the view from a locomotive, 10 seconds before the train wreck. Sometime in the coming century, the increasing human demand for water, the increasing scarcity of water due to climate warming, and one of the long droughts of past centuries will collide, and Albertans will learn first-hand what water scarcity is all about. Water scarcity will become one of the most important economic and environmental issues of the 21st century in the western prairie provinces.

But there is much that we can do to manage the problem. An average Canadian consumes about 326 litres of water per day at home, about twice the per-capita water use of Europeans, and many times that of people in Middle Eastern countries. Metering water and punishing high-water use with high cost would be a good start. The options already used in water-scarce parts of the USA could be copied—Xeriscaped lawns, low-water toilets, low-flow shower heads, reuse of gray water for lawns and gardens, and many other such practices.^{lv}

Current levels of water scarcity in water-stressed areas of Canada require an immediate and assertive program of domestic and industrial water conservation measures.^{lvi} In areas that depend upon groundwater resources, sustainability necessitates the prohibition of groundwater “mining” or the extraction of more water than is naturally replenished each year.^{lvii}

More profoundly, ensuring adequate water quantity to meet the human right to water of Canadians in future decades requires the federal and provincial governments to fully participate in international efforts to reduce, mitigate, and reverse climate change.^{lviii}

3.3 Increasing Drinking Water Quality in First Nations Communities

General Comment 15 specifically underlines the importance of state governments ensuring the realization of the right to water in marginalized sectors of society, and, in particular, indigenous communities. In Canada, undoubtedly the most serious and long-standing violations of the human right to water occur in First Nations communities. In her 2005 report to Parliament, the federal Commissioner of the Environment and Sustainable Development concluded that “[w]hen it comes to the safety of drinking water, residents of First Nations communities do not benefit from a level of protection comparable to that of people who live off reserves...”^{lix} Moreover, the Commissioner noted that approximately 75% of water systems in First Nations communities pose a significant risk to the quality or safety of drinking water.^{lx}

The Commissioner made detailed and specific recommendations which could, if implemented, lead to the full realization of the human right to water in First Nations communities. Alternative approaches may be developed by First Nations governments, but it appears that federal financial and technical assistance will be crucial in implementing the right to water for First Nations in Canada.

3.4 Enforcing Federal and Provincial Environmental Laws

It is generally accepted that the most effective manner of ensuring the safety of drinking water is the so-called “multi-barrier” approach which includes not only treatment and decontamination of drinking water, but also the protection of water at its source. In particular, given that only a small percentage of synthetic chemicals are regulated in Canadian drinking water management, it is all the more important that governments prevent such chemicals from entering water sources in the first place. Indeed, General Comment 15 specifically provides that States parties should protect drinking water sources from pollution by third parties.^{lxi}

In Canada, federal and provincial governments have enacted environmental legislation that is generally well-equipped to protect Canadian waters from contamination. Unfortunately, both federal and provincial governments in Canada have frequently failed to enforce existing environmental laws.^{lxii} Ontario’s enforcement record for the years 1992 to 2004, for example, shows that only a tiny fraction of documented pollution infractions were prosecuted to conviction during that period, and more than 95% of discharging facilities were never even inspected.^{lxiii} (Note that Ontario has since strengthened the enforcement powers of its Ministry of Environment.^{lxiv})

One of the most straightforward and effective ways to ensure the full realization of the human right to safe drinking water in Canada would be to effectively enforce our existing provincial, territorial and federal environmental laws (as well as pertinent municipal by-laws). The federal government regulates the use and testing of synthetic chemicals and pesticides,^{lxv} as well as emissions into and habitat modifications to fish-bearing waters,^{lxvi} while the provinces and territories enjoy wide-ranging environmental and water protection statutes.^{lxvii} Each level of government should take responsibility for ensuring the vigorous enforcement of its environmental legislation, in order to protect the sources of our drinking water.^{lxviii}

3.5 Optimizing Provincial Drinking Water Law & Policy

In 2002, the Walkerton Commission of Inquiry released its Part II Report, summarizing the findings of one of the most comprehensive and rigorous examinations of drinking water regulation in Canadian history.^{lxix} The Walkerton Commission endorsed a multi-barrier approach to drinking water protection including the following five pillars: source water protection, drinking water treatment, protection of distribution systems, monitoring programs, and effective responses to adverse conditions.^{lxx} The Commission made 93 specific recommendations covering areas including standards for drinking water quality, water treatment, water quality testing, regulation and accreditation of water purveyors and testers, and transparency and accountability.

As of 2006, no province or territory had implemented all of the recommendations of the Walkerton Commission of Inquiry; many water systems fall far short of the standard set out in the Walkerton Report.^{lxxi} However, as noted by the Sierra Legal Defence Fund,

“there is at least one, and [in some cases] several provinces [in which] each of the individual aspects of drinking water protection is done well...Putting the best examples from across Canada together in one system would provide world-class drinking water protection.”^{lxxii} Again, raising standards across all of the disparate water systems operating throughout the country would clearly require strong federal leadership.

Because of the exceptionally credible and well-researched work done by the Walkerton Inquiry, federal and provincial governments have clear and pragmatic guidance as to the most effective ways to ensure full realization of the human right to safe drinking water. Implementing the Commission’s 93 recommendations across the country – including in First Nations communities – would be the single most important step that could be taken towards effectuating the right to water in Canada.

3.6 *Ensuring Affordability of Domestic Water Supplies*

General Comment 15 states that “[t]o ensure that water is affordable, States parties must adopt the necessary measures that may include, *inter alia*: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements.”

Drinking water is relatively affordable in Canada compared to other regions of the world. Indeed, “Canadians pay, on the average, about one quarter of European and about three quarters of American domestic and industrial water prices.”^{lxxiii} To the extent that real-cost pricing achieves the conservation imperative inherent in the right to water, it is consistent with that right. However, care must be taken to ensure that fiscal measures encouraging conservation do not interfere with the basic water needs of the poor:

With regard to the pricing of drinking water, it is increasingly necessary to discourage excessive consumption and distinguish between basic needs and other uses. It is therefore highly advisable *to minimize the fixed charge component* in water tariffs to ensure that small consumers do not pay excessive prices for the water used for basic needs, and *to raise the unit price of water for high levels of consumption...*(emphasis in original).^{lxxiv}

Ensuring the affordability of drinking water supplies is particularly important where the privatization of water services is under consideration.^{lxxv} Federal and provincial governments should consider mandating the provision of low-cost water sufficient to meet the requirements of the human right to water, while setting rates for more intensive consumption at levels that encourage water conservation. As an interim or alternative measure, governments should consider promulgating legislation limiting or prohibiting the disconnection of residential water supplies for non-payment. Numerous other countries have enacted such legislation, including the UK, France, Finland, Australia, New Zealand, South Africa, and a number of states in Mexico.^{lxxvi}

4. **Conclusion and Recommendations**

Relative to their counterparts around the globe, Canadians are fortunate to live in a country in which access to abundant and safe drinking water is widespread and continuously improving. As noted above, Canada has already achieved an advanced

degree of conformity with the human right to water, and solutions to the challenges that remain are clear and readily available.

In keeping with its international reputation as a leader in human rights and environmental protection, *Canada should publicly recognize the human right to water as an implicit right contained within the International Covenant on Economic, Social, and Cultural Rights*. In its announcement, Canada should note that the human right to water is to be realized progressively, and includes a minimum core obligation of non-discrimination. Canada should also move quickly to implement access to safe drinking water in First Nations communities as a paramount priority. The remaining challenges identified in this paper should be addressed (and in many cases are being addressed) by governments at all levels across Canada.

Bibliographical Notes

ⁱ See UN Water, “2007 World Water Day: Coping with water scarcity”, on-line: <http://www.unwater.org/wwd07/downloads/documents/escarcity.pdf> at 20.

ⁱⁱ The International Bill of Rights is composed of the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social, and Cultural Rights*.

ⁱⁱⁱ See also arts. 20, 26, 29 and 46 of the *Geneva Convention relative to the Treatment of Prisoners of War*, of 1949; arts. 85, 89 and 127 of the *Geneva Convention relative to the Treatment of Civilian Persons in Time of War*, of 1949; arts. 54 and 55 of Additional Protocol I thereto of 1977; arts. 5 and 14 Additional Protocol II of 1977.

^{iv} See Peter H. Gleick, “The human right to water” (1998) *I Water Pol’y* 487 at 490-493.

^v The right to water may also be viewed as an aspect of the emerging human right to environment. See generally, Luis E. Rodriguez-Rivera, “Is the Human Right to Environment Recognized Under International Law? It Depends on the Source” (2001) *12 Colo. J. Int’l Envtl. L. & Pol’y* 1; Lynda M. Collins “Are We There Yet? The Right to Environment in International and European Union Law” (2007) *McGill J. Int’l J. Sustainable Dev’t L. & Pol’y* (forthcoming).

^{vi} Committee on Economic, Social, and Cultural Rights, *General Comment 15: the right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11. GC 15 is not a binding legal document, but is a persuasive authority on the correct interpretation of the rights codified in the ICESCR.

^{vii} The Committee issues its Concluding Observations in response to each country’s mandatory reporting under the ICESCR. See generally <http://www.ohchr.org/english/bodies/cescr/>.

^{viii} *Concluding Observations of the Committee on Economic, Social, and Cultural Rights*, (May 19, 2006), E/C.12/CAN/CO/5 at para. 64.

^{ix} See e.g. preamble, Mar Del Plata Action Plan of the United Nations Water Conference; para 18.47 of Agenda 21, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1))* (United Nations publication, Sales No. E.93.I.8), vol I: *Resolutions adopted by the Conference*, resolution 1, annex II; Principle No. 3, The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112); Principle No. 2, Programme of Action, *Report of the United Nations International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; paras. 5 and 19; *Resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water*. See also the *Report on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation* (E/CN.4/Sub.2/2002/10) submitted by the Special Rapporteur of the Sub-Commission on the right to drinking water supply and sanitation, Mr. El Hadji Guissé.

^x *Human Development Report 2006, Beyond scarcity: power, poverty and the global water crisis* (New York: United Nations Development Programme, 2006) at 60. See also, Henri Smets, *The Right to Water in National Legislations* [sic] (l’Agence française de Développement, 2006) at 16 (“Explicit acknowledgement that the right to water is a fundamental right is an important act with strong symbolic and legal value. It provides proof of the importance that government authorities give to water for health and of their consideration for the desires of users who do not have access to drinking water”).

^{xi} See

http://www.worldwatercouncil.org/fileadmin/wwc/News/WWC_News/News_2006/Resolution_eng.doc.

^{xii} See Smets, *supra* note x at 31.

^{xiii} *European Parliament resolution on the Commission communication on water management in developing countries and priorities for EU development cooperation*, COM (2002) 132, 4

September 2003. See also See respectively *Recommendation of the Committee of Ministers to member states on the European Charter on Water Resources*, Council of Europe, 17 October, Rec. (2001) 14.

^{xiv} See UK DFID, “The Human Right to Water”, on-line: <http://www.dfid.gov.uk/pubs/files/human-right-water.pdf>.

^{xv} *Ibid.*

^{xvi} See Part 2.2, *infra*.

^{xvii} GC 15, *supra* note xi at para. 2.

^{xviii} See Celine Dubreuil, *The Right to Water: From Concept to Implementation* (Marseilles: World, Water Council, 2006) at 8. See also Randy Christensen, *Waterproof 2: Canada’s Drinking Water Report Card* (Vancouver: Sierra Legal Defence Fund, 2006) at 17.

^{xix} GC 15, *supra* note vi at paras. 13-16.

^{xx} See *Ibid* at paras. 20 *et seq.*

^{xxi} *Ibid* at para. 25.

^{xxii} *Ibid* at paras. 25-28, 37.

^{xxiii} See Dubreuil, *supra* note xviii at 13.

^{xxiv} GC 15, *supra* note vi para. 28.

^{xxv} See UK DFID, *supra* note xiv at para. 8.

^{xxvi} *Ibid* at para 11.

^{xxvii} See GC 15, *supra* note xiv at para. 26.

^{xxviii} United Kingdom Department for International Development, “Why we need a global action plan on water and sanitation”, on-line: <http://www.dfid.gov.uk/pubs/files/global-action-plan-water.pdf>.

^{xxix} *Ibid* at 8.

^{xxx} *Ibid* at 3.

^{xxxi} Hilary Benn, on-line:

http://www.britainusa.com/sections/articles_show_nt1.asp?d=0&i=41063&L1=0&L2=0&a=45232.

^{xxxii} See WHO/UNICEF, “Joint Monitoring Program for Water Supply and Sanitation – Coverage Estimates, Improved Sanitation, UK”, on-line: http://www.wssinfo.org/pdf/country/GBR_san.pdf

^{xxxiii} Emanuele Lobina, *UK Water Privatization: a briefing*, (Greenwich: Public Services International Research Unit, 2001) on-line: <http://libcom.org/library/uk-water-privatisation>.

^{xxxiv} See note viii, *supra* and the *EU Drinking Water Directive*, on-line:

http://ec.europa.eu/environment/water/water-drink/index_en.html.

^{xxxv} See http://www.unece.org/env/water/status/lega_wh.htm.

^{xxxvi} The *loi n°2006-1772 sur l’eau et les milieux aquatiques* was promulgated on 30 December 2006 (J.O. du 31/12/2006). For the full text of the Act, see http://www.ecologie.gouv.fr/IMG/pdf/loi_eau_milieux_aquatiques_301206.pdf.

^{xxxvii} See Smets, *supra* note x at 31, 33, 43, 47; see generally Water Information System for Europe, on-line: <http://www.eea.europa.eu/themes/water>.

^{xxxviii} See Smets, *supra* note x at 24 (summarizing the relevant Conventions).

^{xxxix} Smets, *supra* note x at 44. See also Dubreuil, *supra* note y at 17-19 (explaining that, in addition to its constitutional protection for the right to water, South Africa has national strategies on water and sanitation, as well as implementing legislation – the *Water Services Act*, and the *National Water Act*, and the government has invested significant resources into making the right to water a reality. Government figures indicate that between 1994 and 2004 the proportion of the population having access to basic water services rose from 60% to 86%).

^{xl} Dubreuil, *supra* note xviii at 19.

^{xli} Canada has more renewable freshwater than any other country in the world with the exception of Brazil and Russia. See Environment Canada, *Freshwater Facts – How much do we have?* on-line: http://www.ec.gc.ca/water/en/info/facts/e_quantity.htm.

^{xlii} See Environment Canada, *2004 Municipal Water Use Report* (Ottawa: Environment Canada, 2004) at 2; see also <http://www.cwwa.ca/legislation/faqs/private.htm>.

^{xliii} See e.g. <http://www.atl.ec.gc.ca/legal.html> (for a list of federal environmental legislation).

^{xliv} For a survey and comparison of provincial drinking water requirements, see *Waterproof*, *supra* note xviii at 49-58.

^{xlv} See Health Canada, *Guidance for Safe Drinking Water in Canada – from Intake to Tap*, on-line: http://www.hc-sc.gc.ca/ewh-semt/pubs/water-eau/guidancetotap-document/management-gestion_e.html.

^{xlvi} See generally http://www.hc-sc.gc.ca/ewh-semt/water-eau/drink-potab/fpt/index_e.html; See also *Waterproof*, *supra* note xviii at 5 (noting that since 2001, “protections for drinking water have improved noticeably in areas such as water treatment, binding contaminant limits, operator certification and public transparency”).

^{xlvii} Environment Canada, “Canada’s New Government Marks World Water Day with National Water Strategy”, on-line: <http://news.gc.ca/cfmx/view/en/index.jsp?articleid=285779&>. Budget 2007 commits \$93 million to the development of the National Water Strategy.

^{xlviii} Tom Edge, *et al.*, “Waterborne Pathogens” (Health Canada, 2003), on-line: <http://www.nwri.ca/threatsfull/ch1-1-e.html>.

^{xlix} An estimated 20 to 40 percent of rural wells have concentrations of nitrate and/or coliform bacteria that exceed applicable drinking water guidelines. *Ibid.*

^l A study of drinking water-related illness in Montreal concluded that approximately one third of gastrointestinal illnesses in that city were caused by contaminated tap water. Similarly, in Vancouver, illnesses resulting from contaminated drinking water accounted for 17, 500 physician visits and 85 hospital admissions between the years 1992 and 1998. See *Waterproof* at 9.

^{li} See Part 3.3, *infra*.

^{lii} Dubreuil, *supra* note xviii at 15, citing “Clean Water for the Poor: Making the Right to Water a Reality” (COHRE and German Federal Foreign Office, 2005).

^{liii} See e.g. Smets, *supra* note x at 16-17.

^{liv} Indeed, Canadians use more water per capita than any other nation in the world with the exception of the United States. See Environment Canada, *Threats to Water Availability in Canada* (Burlington, ON: National Water Research Institute, 2004) at xi (“Second only to Americans in their demands, Canadians use about 1650 cubic metres of freshwater per capita each year... more than double the average European rate”).

^{lv} David Schindler, “The Myth of Abundant Canadian Water”, online:

<http://www.innovationcanada.ca/21/en/articles/myth.html>.

^{lvi} See *Ibid.* See also Environment Canada, “Water Conservation/Efficiency”, on-line:

http://www.ec.gc.ca/water/en/manage/effic/e_weff.htm.

^{lvii} See Environment Canada, “Water – In Canada”, on-line:

http://www.ec.gc.ca/water/en/info/pubs/primer/e_prim06.htm#a5 (noting that “[e]ven in the Great Lakes basin, the world’s largest freshwater lake system, some off-lake areas in southern Ontario experience periodic and even chronic water shortage, and groundwater ‘mining’ takes place (i.e., more water is taken out of the aquifer than is being recharged”).

^{lviii} For a discussion of the impact of climate change on water resources in Canada, see “Threats to Water Availability in Canada”, *supra* note liv.

^{lix} Commissioner of Environment and Sustainable Development, *Drinking Water in First Nations Communities* (Ottawa: CESD, 2005) at 1.

^{lx} *Ibid.*

^{lxi} GC 15 at para. 23.

^{lxii} See David Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003) at 237-238:

[C]riticism of Canada’s ongoing failure to enforce its environmental laws is widespread. The OECD has repeatedly chided Canada for its lax enforcement regime... An audit by the commissioner of the environment and sustainable development concluded that “within existing budgets, departments are struggling to meet legislated responsibilities, policy commitments, and international obligations and, in many cases, are failing to do

so.” Environment Canada itself admits that overall enforcement efforts are “falling short of fulfilling departmental responsibility, and...not providing adequate protection to the public, the environment or wildlife.

^{lxiii} See Sierra Legal Defence Fund, *Polluters’ Haven* (Toronto: Sierra Legal Defence Fund, 2002); Sierra Legal Defence Fund, *Cracking Down on Polluters* (Toronto: Sierra Legal Defence Fund, 2003); Ontario Ministry of Environment, “Environmental Compliance Reports” online: <<http://www.ene.gov.on.ca/envision/compliance/compliance.htm>> (covering 2000-2004). See also “Environmental Compliance Reports”, *supra*. See also Environmental Commissioner of Ontario, *Annual Report 2005-2006: Neglecting Our Obligations* (Toronto: Environmental Commissioner of Ontario, 2006) at 4 (“The ministry’s current resources allow inspections of only about 1-2 per cent of facilities with any kind (air, waste, water, etc.) of environmental approvals per year, and some facilities have never had an inspector on-site. Moreover, it is estimated that up to 40 per cent of facilities may be operating without required permits”). *Id.* at 93.

^{lxiv} See <http://www.ene.gov.on.ca/envision/general/penalties/index.htm>.

^{lxv} Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33; R.S.C. 1985, c. P-9.

^{lxvi} *Fisheries Act*, R.S.C. 1985 c. F-14, ss. 35-36.

^{lxvii} See e.g., in Ontario, *Ontario Water Resources Act*, R.S.O. 1990 c. O-40; *Environmental Protection Act*, R.S.O. 1990 c. E-19.

^{lxviii} In his comprehensive analysis of Canadian environmental law, Professor David Boyd further argues that environmental legislation in all Canadian jurisdictions should be amended to make enforcement mandatory rather than discretionary. See Boyd, *supra* note lxii at 231 *et seq.*

^{lxix} See *Waterproof* at 47.

^{lxx} *Ibid* at 12. See also The Honourable Dennis R. O’Connor, *Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water* (Toronto: Ontario Ministry of the Attorney General, 2002).

^{lxxi} *Waterproof* at 42.

^{lxxii} *Ibid* at 45.

^{lxxiii} Environment Canada, “Water – How we use it”, on-line: http://www.ec.gc.ca/water/en/info/pubs/primer/e_prim03.htm#a10.

^{lxxiv} Henri Smets, “Implementing the Right to Drinking Water in OECD Countries”, ENV/EPOC/GEP(99)13 at 132.

^{lxxv} See generally Lobina, *supra* note xxxiii; Matthias Finger & Jeremy Allouche, *Water Privatisation: Transnational corporations and the re-regulation of the global water industry*, (Spon Press, 2002).

^{lxxvi} Smets, *supra* note x at 53-54.