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## ANALYSES AND RECOMMENDATIONS FOR LEGAL REGIMES OF CHILDREN'S RIGHT TO SAFE DRINKING WATER

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### ABSTRACT

Studies which discussed the groundwater quality and, management have been duly published. However, little or no attention is paid to on how policy and standard affect the children's access to portable water in Nigerian hydrogeological literature. Considering contamination, depletion and unequal distribution of water, about 1.8 million children die of diarrhea and other water-borne diseases every year. Unfortunately, water has not been clearly stated as a human right though, it sits at the very essence of the right to life and other fundamental human rights. The right to water needs be recognized in a wide range of international documents, including treaties, declarations and other standards. The textual study of literature, and legislation to appropriate lawful endorsement of water to satisfy the needs of the children population were made use of in this study. The main focus is on children's entitlement to water facilities under international laws. It also incorporates broader water-related rights in a more holistic interpretation of existing international human rights law. Access to safe water and basic sanitation is recommended to be a legal entitlement, rather than a commodity or service provided on a charitable basis. In addition, hydrogeological contribution for technical support of legal regimes will better provide children with portable water supply. The right to water should clearly fall within the category of fundamental human rights essential for securing an adequate standard of living for children, particularly as one of the most essential conditions for survival.

Keywords: Right: Water: Children: Treaties: Declarations: Hydrogeological

### INTRODUCTION

Water has since been known to be the source of all life. Lindsay (2003) reiterates water as a contributing element to nearly every bodily function, as the human body cannot survive for more than a few days without it. The availability and quality of freshwater resources is a growing world concern (Calow *et al.*, 2002.). Safe drinking water and sanitation are indispensable to sustain life and health of all. Today, more than a billion people lack safe drinking water and almost two and half billion live without access to sanitation system

(UNDP, 2006). UNHRC (2009) traced the main cause of the current water and sanitation crisis to poverty, and exacerbation by social and environmental challenges such as accelerating urbanization, climate change, increasing pollution and depletion of water resources. About 2.5 billion people still do not have access to safe sanitation UNICEF and WHO, 2008). Ironically, according to George (2008), the water sources of the world are one of the most abundant natural resources, making the notion of water scarcity even more confounding. The



amount of available fresh water in the world decreases in quality and quantity. According to WHO and UNICEF (2013), 768 million people lack access to an improved water source, and more than 80 % of these people live in rural areas globally. Poor water access is associated with many water-related illnesses, food insecurity, lost productivity, and poor school attendance, especially for children. It is no doubt that water-related disease, most commonly attributed to water scarcity, have taken more children's lives in the last ten years than the combined deaths of those lost in armed combat worldwide over the last sixty years. Daily access to clean water is essential to satisfy basic needs of drinking, cooking, washing, and bathing—i.e., domestic uses of water. Lack of access to water also impedes the enjoyment of health and other human rights such as right to education, right to adequate standard of living, right to food. So, the right to water is indispensable for leading a life in human dignity, sadly this is often denied in developing countries. Every year, some 1.8 million children die of diarrhea and other diseases caused by unclean water and poor sanitation (WHO, 2009). Unsafe drinking water coupled with inadequate sanitation and poor hygiene contributes to 88% of diarrhoeal disease. Collecting water from distant water points also has severe health implications, notably for women and children. Besides the heavy burden of carrying water, women and children are also exposed to water contact diseases such as schistosomiasis. In rural areas, it is the women and children that do the bulk of the water collecting, this

affects the children's education and the women other productive activities. If water and sanitation are not provided within the home, privacy and physical security are also an issue. As a result, they lack privacy and security, and are therefore vulnerable to harassment, attacks, violence or rape. Access to safe drinking water and sanitation is also crucial for those who are deprived of their homes due to war and insurgency, for example the internally displaced persons (IDPS). Such access is required to ensure that IDPs and refugees are treated with humanity and with respect for their inherent dignity.

Women and children do most of the water collecting if drinking water is not available on the premises. It is common for women to spend several hours per day walking, queuing and carrying water, time that could be put to productive activities or housework and childcare. Most time of the water collected is often dirty and from unprotected sources. Children are the most susceptible to illness. UNHRC (2009) affirmed that sanitation and water-related diseases account for up to twenty-five percent of all deaths of children under the age of five; thus, "[e]very eight seconds a child dies from drinking contaminated water." The World Health Organization has estimated that "88 per cent of diarrheal disease is caused by unsafe water and sanitation. Children's health, educational advancement and overall well-being are greatly influenced by their access to basic services, including safe drinking water and



sanitation. In emergency, displaced children such as refugees, asylum-seekers and IDPs usually face challenges to access safe drinking water and sanitation, which can have life-threatening consequences on them.

Water has not been clearly stated as a human right though, it sits at the very essence of the right to life and other fundamental human rights. Specific obligations in relation to access to safe drinking water and sanitation have also increasingly been recognized in core human rights treaties, mainly as part of the right to an adequate standard of living and the right to health. Although water has not been explicitly recognized as a self-standing human right in international treaties, international human rights law entails specific obligations related to access to safe drinking water. These obligations require States to ensure everyone's access to a sufficient amount of safe drinking water for personal and domestic uses, defined as water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene (ILO, 1985). States are required to progressively ensure access to adequate sanitation, as a fundamental element for human dignity and privacy, but also to protect the quality of drinking-water supplies and resources.

Water is a natural resource which is fundamental for life and health. UNCESCR (2003) General Comment No.15 clearly states that the right to water emanates from and is indispensable for an adequate standard of living as it is one of the most fundamental conditions for survival.

“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, reduce the risk of water-related disease and provide for consumption, cooking, personal and domestic hygienic requirements”.

UNGA 2010 and Lee and Best (2017) advocated that a right to water is the right to access sufficient water, with the term 'access' also includes economic accessibility, that is affordability. The direct and indirect costs and charges associated with securing water must be affordable. And the term 'sufficient' referring to both quality and quantity of water necessary to meet basic human needs (Scanlon *et al.*, 2004). No individual or group should be denied access to safe drinking water because they cannot afford to pay. When water is too expensive, people will resort to going to contaminated and garbage-filled rivers to meet their domestic water needs. The right to water therefore covers access to water to sustain life and health and to meet basic needs. According to WHO, between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met and few health concerns arise. Access to 20-25 litres per person per day represents a minimum, but this amount raises health concerns because it is insufficient to meet basic hygiene and consumption requirements



(Howard and Bartram, 2003). These amounts are indicative as they might depend on a particular context and might differ for some groups depending on their health status, work, climate conditions or other factors. Breastfeeding mothers, pregnant women or persons living with HIV/AIDS would need more than 50-100 litres of water per day. At any one time, half of the world's hospital beds are occupied by patients suffering from waterborne diseases. States' obligations to access to safe drinking water and sanitation have been recognized specifically or impliedly in core human rights treaties as part of the right to an adequate standard of living and the right to health.

#### Legal Framework of Right to Water

The right to water has been recognised in a wide range of international documents, including treaties, declarations and other standards.

The right to water in international human rights law

Universal Declaration of Human Rights (UDHR) (UN 1948).

Article 25:(1) "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services,..."

International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN 1966b).

Article 11: "The States Parties to the present Covenant 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"

According to Langford (2005) and Langford (2008), both the UDHR and ICESCR use the word "including" prior to listing constituent elements of the right to an adequate standard of living. The word "including" shows that the elements listed were not meant to be exhaustive, expanding the meaning for the inclusion of other fundamental elements such as water, sanitation, clean air, and food, which are all needed to achieve an adequate living standard therefore it arguably, includes a right to water derived from an incorporated interpretation of the rights to water, food, and standard of living. The UN Committee on Economic, Social, and Cultural Rights (CESCR) in its General Comment No. 15 considers the legal bases of the right to water through Articles 11 and 12 of the ICESCR. General Comment No.15 clearly states that the right to water emanates from and is indispensable for an adequate standard of living as it is one of the most fundamental conditions for survival. It provides that;

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, reduce the risk of water-related disease and provide for consumption, cooking,



personal and domestic hygienic requirements.

Convention on the Rights of the Child (CRC) (UN 1989) on the other hand, made a clear connection between water and the "highest attainable standard of health" It provides as follows:

State Parties shall pursue full implementation of this right (i.e. the right of the child to the enjoyment of the highest attainable standard of health) and, in particular, shall take appropriate measures...

- a) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking –water, taking into consideration the dangers and risks of environmental pollution...

Other International human rights treaties entailing specific obligations related to access to safe drinking water and sanitation include, The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 (art. 14 (2)), International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services, adopted in 1985 (art. 5) and The Convention on the Rights of Persons with Disabilities, adopted in 2006 (art. 28).

Regional declarations have also recognized the right to water. At the regional level, both the African Charter on

the Rights and Welfare of the Child of UNICEF (1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) contain explicit human rights obligations related to access to safe drinking water and sanitation. ACRWC provides:-

- (1): Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.  
2) State Parties to the present Charter shall undertake... c) to ensure the provision of adequate nutrition and safe drinking water.

Apart from international human rights instruments entailing States' obligations related to access to safe drinking water and sanitation there are also declarations and international summits where Heads of State and Government declared that they would promote the right of their citizens to have access to clean and safe water, they are not legally binding so they are not enforceable. In practice, however, even though a legal framework may exist, the right to water is often not applied for a variety of reasons: lack of resources, absence of political will, or simply people and governments are not aware of the existence of the right or they don't know how to implement it.

Non - legally binding instruments on right to water

Mar Del Plata Declaration of the United Nations Water Conference (1977)

Its preamble provides:

All peoples whatever their stage of



development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.

The Mar del Plata conference led to an Action Plan that called for what became the International Drinking Water Supply and Sanitation Decade (1981–1990), which brought international attention and resources to expand access to drinking water supplies and sanitation services in developing regions.

World Summit for Children Plan of Action (1990)

It calls for a concerted national action and international co-operation to strive for the achievement in all countries, of 'universal access to safe drinking water and to sanitary means of excreta disposal' for the survival, protection and development of children by the year 2000. Sadly, universal access to safe drinking water and to sanitary has not yet been achieved (UNICEF, 1990).

UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)

It is obligated that clean drinking water should be available to every juvenile at any time. In essence, clean drinking water must be available to all children including children in incarceration without discrimination (UNGA, 1990).

The Protocol on Water and Health to the United Nations Economic Commission for Europe's 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

provides that States parties must take appropriate measures to provide access to drinking water and sanitation and to protect water resources used as sources of drinking water from pollution. Also the African Convention on the Conservation of Nature and Natural Resources (2003) also provides that its contracting States shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water.

Right to water in national constitutions

In Africa, several national constitutions protect the right to water or outline the general responsibility of the State to ensure access to safe drinking water and sanitation for all. The right to water has been recognised in constitutions and national legislations, including; Ethiopia (1998) Const. Art 90(1): Every Ethiopian is entitled, within limits of the country's resources, to clean water. Gambia (1996) Const. Art. 216(4): The State shall endeavor to facilitate equal access to clean and safe water. South Africa Section 27(1)(b) : Everyone has a right to have access to sufficient water Zambia (1996) Art 112: The State shall endeavor to provide clean and safe water. Also the right to healthy environment which implicitly include right to clean unpolluted water are protected in the constitutions of countries such as; Greece Constitution Art. 24: Constitution recognizes a right of the people to healthy environment. Hungary Constitution (1990) Ch.1 S.18: The Republic of Hungary recognizes and enforces everyone's right to a healthy environment. Mali Constitution Art 15:



Every person shall have a right to a healthy environment. Spain Constitution Art 45: Every person shall have a right to enjoy an environment suitable for the development of the person.

#### Judicial Decisions and Communications

There have been expansions of the right to life regarding environmental aspect of the right to life by Courts from various legal systems. Courts have adjudicated cases related to the enjoyment of the right to water, covering issues such as the pollution of water resources, arbitrary and illegal disconnections, or lack of access to sanitation. Recent decisions show that recognition of a human right to water is an emerging trend. In the decided South African case of *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*, the South African High Court found that disconnecting a water supply represented a prima facie breach of the State's constitutional duty to respect the right to water. In *L.K.Koolman v. State of Rajasthan and others*, the Supreme Court of India held that the right to life was a fundamental right under article 21 of the Constitution, and it included the right to enjoy pollution-free water for the full enjoyment of life. In Nigeria, in 1988, toxic waste in 561 containers was shipped through MV BARULUK and was dumped at the Koko Port in Delta State Nigeria. Court held that the people's right to a healthy environment was at stake and ordered that 39.7 million Naira be paid to the victims of the waste dump.

In the communication brought before the Commission of African Charter on Human

and People's Rights (ACHPR) by *Social and Economic Rights Action Centre (SERAC) and another v. Nigeria* (2001). The communication alleges that the oil consortium has exploited oil reserves in Ogoniland with no regard for the health or the environment of the local communities. There has been contamination of water soil and air as a result of the oil spill by Shell Petroleum Development Corporation. The right of the people to a satisfactory environment favourable to their development as obligated under Article 24 of the African Charter on Human and Peoples' Rights have been breached. The Commission urged the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland. From the various jurisprudence discussed, it can be inferred that though there are no expression recognition of the right to water in some cases, the courts have been creative and liberally expand the interpretation of existing provisions of the laws. This shows that the right to water has been recognized as an integral part of several fundamental human rights such as the right to life.

#### Hydrogeological Contribution

Asseez (1972) and UNICEF (1990) recognised the sanitary condition of the water used for domestic purposes, as one of the greatest problems in water supply particularly in the rural village areas. Groundwater is widely distributed under the ground, and it's a replenishable resource unlike other resources of the earth. Naturally, groundwater is free from microbial pollution, and atomic attacks



(Raghunath, 2006). The technical capacity required for exploring portable water is therefore, a function of the interaction between groundwater movement and geology. This affords the opportunity to address questions related to the quantity and quality of groundwater.

Despite large amounts of fund expended on many water projects, a great failure is usually recorded. Robins *et al.*, (2006) reiterated lack of considerable research, which defines the different manner in which groundwater occurs under complex geological conditions as the reason responsible for water project failures. It is no doubt therefore, that geological expertise has a significant role to play in provision portable water to the public especially, in the rural area. It makes use the knowledge requiring interplay of the multi-component, varying hydrogeological conditions and the knowledge-base of different water-bearing units at both the experimental and theoretical levels. The challenge is more than little expertise in difficult terrains, but mastery of technology, software and hardware to locate the zones of groundwater occurrence and recharge. UNICEF and WHO (2002) and (WHO and UNICEF, 2013) elucidated the present challenge, calling for successfully developing groundwater resources sustainably and cost-effectiveness on the scale required to help achieve the Millennium Development Goals (MDG).

## CONCLUSION AND RECOMMENDATION

Right to water need be clearly defined in international law and be expressly

recognised as a fundamental human right. Till date, it is interpreted as being implicit component of either existing fundamental rights or included in non-binding instruments. The human right to water is fundamental to the right to life, health, and food. The Vienna Declaration of Human Rights proclaimed human rights as universal, indivisible and interdependent and interrelated. Therefore, human right to water does exist as water is the most essential element of life.

Hydrogeological participation would provide up-to-date benchmarking and advice to both planners and policy makers. In particular, local institutions and NGOs are to be tasked with UNICEF, to provide technical support for rural water supplies. This move would enhance sustainability, decentralisation and control over borehole drilling and construction standards.

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