

FINDING A SOLUTION TO NIGERIA'S DOMESTIC WATER CHALLENGES*

ABSTRACT

Although many states have since recognised access to water as an issue of national concern and have as such considered it a right to which nations must strive to ensure that their citizens enjoy same, access to water in Nigeria still faces legal and social challenges. These legal and social challenges have made water availability and accessibility a herculean task for many Nigerians. However, if the major challenges of access to water is identified and addressed the immeasurable hardship the unavailability or inaccessibility it causes to many, would be reduced. Women and children bear the brunt of the brutality that is associated with the hardship of access to water as they have the responsibility of ensuring that there is water in the home. Finding a solution to the challenges of access to domestic water in Nigeria may be done through identifying and addressing the issues along international human rights guidelines and promising practising from other nations. Structured in various parts, this article analyses the challenges of domestic water access in Nigeria and identifies nations that have promising practising from which Nigeria may take a cue.

Keywords: Water, Domestic Challenges, Solution, Nigeria

1. Introduction

Realising water for domestic use in Nigeria has basically been an individual duty, this individual duty is what sees a majority of Nigerians drilling wells and boreholes to extract water for their domestic use. While not many homes are reticulated by the government people rely on streams and rivers for their daily survival, while others buy water from tankers without knowing the source of the water. Keen on addressing the problems of water for domestic use in Nigeria, the Nigerian government, through the Federal Ministry of Water Resources¹ (FMWR), developed the National Water and Sanitation Policy² and the National Water Policy.³ These policies were aimed at addressing the inadequacies of the Nigerian Water Resources Act,⁴ which made no provision for water for domestic use. In spite of these policies, many Nigerians still do not have access to sufficient water for domestic use.⁵ According to the 2012 update on the progress on drinking water and sanitation, UNICEF and WHO reported that approximately 66 million Nigerians (47% of the population) do not have adequate access to potable water. Various authors and organisations have varied this figure. As such it is unclear how many people in fact lack access to water or have access to insufficient water or unimproved water resources. The Nigerian Constitution although makes provision for safeguarding water⁶ it also makes it impossible to make a case for access to water where there is no access or inadequate access to water.⁷ Even though water is a socio-economic right,⁸ such rights are non-justiciable in Nigeria.⁹ These rights are embedded in the 1999 Constitution as 'fundamental objectives and directive principles of state policy'.¹⁰ Fundamental objectives and directive principles are objectives towards which the nation strives, while directive principles lay down the policies to help realise these objectives.¹¹ Although the courts are beginning to find a way around the non-justiciability of socio-economic rights, access to water cannot be said to be a human right in

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¹ Hereafter referred to as FMWR.

² National Water Sanitation Policy (draft final) Department of Water Supply and Quality Control Nov 2004 at http://www.nwri.gov.ng/userfiles/file/National_Water_Sanitation_Policy-Final_Draft.pdf accessed 12 March 2014.

³ National Water Policy July 2004 Federal Republic of Nigeria at <http://awdrop.org/uploads/3/1/7/8/3178681/national-water-policy.pdf> accessed 6 June 2013.

⁴ Act 101 of 1993 (WRA).

⁵ UNICEF & WHO at www.unicef.org/media/files/JMPPreport2012.pdf accessed 21 May 2013. Furthermore, 83% of Nigerians source their drinking water privately (see Nnodim, 2013) at www.punchng.com/business/industry/47-of-nigerians-lack-access-to-clean-water-report/ accessed 18 February 2014.

⁶ Section 20 Constitution of the Federal Republic of Nigeria 1999

⁷ -justiciable is a term used for issues that Ibe S 'Beyond justiciability: Realising the promise of socio-economic rights in Nigeria' (2007) 7 *African Human rights Law Journal* p225 at p230

⁸ D Brand 'Introduction to socio-economic rights in the south African constitution' in Brand & Heyns (Eds) *Socio-economic Rights in South Africa* (Pretoria University Law Press, 2005) p3.

⁹ Sec 6 (6) (c) of the CFRN 1999 states that 'the judicial powers [...] shall not [...] extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.'

¹⁰ See Chapter II CFRN 1999.

¹¹ Le Roux-Kemp (2014) 2 *African Nazarene University Law Journal* 119-at 132; See generally Okere 'Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution' (1983) 31 *International and Comparative Law Quarterly* p 214.

Nigeria. Access to domestic water is also not sufficiently protected under any Nigerian law. Water as a right has never been adjudicated upon by any court in Nigeria, except in cases where rivers or wells were being polluted.¹²

Academic research on the issue of access to water in Nigeria is written from an environmental perspective with a focus on pollution.¹³ While some suggest methods of acquiring water for domestic use, which include rainwater harvesting,¹⁴ others have conducted research and written on the quality of groundwater in Nigeria.¹⁵ These sources, rainwater and ground water, are the major sources that many Nigerians rely on for their domestic use. According to Ojukwu-Ogba and Enabulele, ground water is the largest portion of water supply for domestic use and in Benin City in Nigeria, the capital of Edo State, Nigeria, the majority of the populace have resorted to boreholes.¹⁶ Research conducted on the quality of groundwater has shown that these waters are polluted.¹⁷ There are not adequate laws protecting the use and abuse of groundwater under Nigerian pollution legislation and policy. The most important law on water in Nigeria is the Water Resources Decree of 1993,¹⁸ which researchers have argued does not address the present challenges of access to water for domestic use; nor does it mete out appropriate punishment to water polluters.¹⁹

2. Challenges to Domestic Water Access

First and foremost, Nigerians depend largely on surface water and ground water for their domestic use.²⁰ The Water Resources Act of Nigeria also endorses the use of surface water for domestic use.²¹ Many of these surface waters are, however, polluted, and not fit for human consumption.²² Mombeshora et al. for example, in their study of surface water in Ibadan, Oyo State Nigeria, state that it would be unwise to use this water for drinking.²³ Eruola et al. also studied hand-dug wells in two areas in Ogun State of Nigeria, and concluded that the pollution in these hand-dug well are unfit for human consumption.²⁴ Furthermore, the Ogunpa River in Ogun State was examined over two weather seasons, where results showed that the river is polluted along the river course, which poses health risks to several rural communities who rely on this river as their primary source of domestic water.²⁵ Unfortunately, the Nigerian WRA provides that these waters may be abstracted and used for domestic purposes.²⁶ The challenges of access to water in Nigeria are numerous and these challenges can be classified under two major challenges which are legal and social. These challenges are expounded below:

Legal challenges

Legal problems in this discourse, refers to the absence of adequate legal provisions at both federal and state levels that might adequately cover current issues of access to domestic water, such as considering water as a

¹² An example is the case of *Gbemre v SPDC* (2005) AHRLR 151.

¹³ Mombeshora et al (1983) 9 *Environment International* 81-84; Ojukwu-Ogba et al (2009) 3 *Malawi LJ* 273-302; Omalu et al (2010) 9 *OJHAS* 1-3; Longe et al (2010) 12 *JSDA* 35-44; Eruola et al (2011) 1 *Res J ChemSci* 1-5.

¹⁴ Ishaku HT, Majid MR, Ajayi AP and Haruna A, 'Water supply dilemma in Nigerian rural communities: looking towards the sky for an answer' (2011) 3 *Journal of Water Resource and Protection*, 598

¹⁵ Jaji MO, Bamgbose O, Odukoya OO and Arowolo TA, 'Water Quality Assessment of Ogun River, South West Nigeria' (2007) 133 *Environmental monitoring and assessment*, 473-482.

¹⁶ Ojukwu-Ogba NM and Enabulele AO 'The Legal Protection of Groundwater Resources in Nigeria' (2009) 3 *Malawi Law Journal* 273.

¹⁷ Jaji et al (2007) 133 *EMA* 473-482.

¹⁸ This decree was put into effect by the then military government of Nigeria. Under this decree the right of ownership and power of administration of water resources was tied to land ownership. See sec 2 (iii) of this decree and Longe EO, Omole DO, Adewumi IK and Ogbiye SA, 'Water resources use, abuse and regulations in Nigeria' (2010) 12 *Journal of Sustainable Development in Africa*, 38 Water Resources Decree is now referred to as the the Water Resource Act (2004) by virtue of section 315 of the 1999 Nigerian Constitution. See also D Olowu, *An integrative rights-based approach to human development in Africa* (Pretoria University Law Press, 2009) p113 fn 548.

¹⁹ See sec 18 (i) WRA. This section punishes anyone who fails to comply with the provision of the Act with a fine of 2000 Naira.

²⁰ Ojukwu-Ogba & Enabulele (2009) 3 *MLJ* 278.

²¹ Sec 2 (1) WRA.

²² Jaji et al (2007) 133 *EMA* 481.

²³ Mombeshora et al (1981) 5 *Environment International* 53.

²⁴ AO Eruola, GC Ufoegbune, JA Awomeso & SA Abhulimen, 'Assessment of Cadmium Lead and Iron in Hand Dug Wells of Ilaro and Aiyetoro Ogun State South-Western Nigeria' (2011) 1 *Research Journal of Chemical Sciences*, 4.

²⁵ Jaji et al (2007) 133 *EMA* 481.

²⁶ See Sec 2 (a) (i) WRA.

human right and implementing concrete laws and an institutional framework that can be monitored by law. For example, one of the problems of access to water in Nigeria is the quality of the accessible water, which is usually polluted. The streams and the rivers are the major sources of domestic water supply for people living in rural areas and development activities from industries, who have been known to contribute to the challenges not adequately protected against or prevented by law. Virtually all the rivers and streams in Nigeria have been identified as 'unfit for drinking,' yet the law provides that such water can be abstracted for domestic use.²⁷ The challenges of domestic water supply and indeed access to water stem from the law-making process and the provisions of the law through to the attitude of the court in providing a deeper interpretation of the laws. There exist inadequate normative frameworks on domestic water supply in Nigeria. The provisions of the federal laws, such as the River Basins Development Act, and the Water Resources Act, have not made any meaningful provision on domestic water supply. At federal level, domestic water supply is not recognised as a federal concern, nor is there a provision of law prioritising domestic water supply. Federal laws of water resources, such as the River Basin Development Authority, prioritise water for irrigation and agriculture,²⁸ while domestic water is left at the mercy of the various state governments.²⁹ Unlike the 1996 South African Constitution, and the 2010 Kenya Constitution, which guarantees the right to water, the 1999 Constitution does not guarantee any right of this sort.

In Nigeria, domestic water supply follows an economic approach, where a default in payment at the state level is treated as a criminal offence, which may attract imprisonment for a year or the payment of fine. There is heavy and uncontrolled groundwater exploitation in Nigeria. The groundwater is a source of water for most Nigerians. As a result of the inadequate provision of domestic water by the government, Nigerians have resorted to sourcing for water privately. This is done through digging private wells and boreholes, especially in urban areas of the country. The Nigerian water laws at both federal and state level do not provide adequately for domestic water supply. None of these laws concretely endorses a human rights framework to potable water supply in Nigeria. At the federal level, the duty of government, through its various parastatals, such as the River Basins and the Ministry, is to formulate concrete laws and policies that would protect Nigerian waters, as well as address current discourses on water. The extant laws are still military laws, both at state and federal level, which do not cover issues of domestic water. Approaches to water governance in Nigeria remain fragmented and uncoordinated. Another challenge is the approach to international treaties. Nigeria operates according to a dualist approach, where, if an international treaty is not incorporated in the national legislation; such a treaty cannot be directly applicable by the Nigerian courts.³⁰ Nigeria is a signatory to some of the international treaties that have recognised a human right to water.³¹ These international instruments have been signed and ratified by the Nigerian government, but have not been domesticated. International laws have been known to influence national laws directly, or indirectly.³² Nigeria has, however, incorporated the African Charter on Human and People's Rights.³³ The ECOWAS court interpreted the right to life and human dignity as including the right to a clean, poison free, pollution free environment, noting that the Constitutional 'directive principle' provision of the right to environment has been made active by the domestication of the African Charter.³⁴ Aside from this, there is no judicial activism on the parts of the judges to give in-depth meaning or life to issues that can be related to socio-economic rights found under Chapter Two of the Nigerian Constitution. As previously introduced, there is a dearth of academic writing and research on water law in Nigeria and especially domestic water. Scholarship on domestic water supply in Nigeria usually emanates from environmentalist, engineers and geographers, where there is a need for legal

²⁷ Sec 2 WRA.

²⁸ Sec 4 (1) (a) River Basin Development Authority Act.

²⁹ Although the CFRN does not explicitly state that water services is the duty of the State Government, it mentions, however, that the State Government is responsible for the provision of adequate facilities for goods and services to the people. Sec 15 (3) CFRN 1999.

³⁰ Sec 12 (1) CFRN; (2000) 77 LRCN 1255. In this case, the court cited with approval the case of *Higgs & Anor v Minister of National Security & Ors*, the Times of December 23, 1999; where the Privy Council opined that Treaties formed no part of the domestic law unless enacted by the legislature. See also Duru 20-21 at http://www.academia.edu/5185447/INTERNATIONAL_LAW_VERSUS_MUNICIPAL_LAW_A_CASE_STUDY_OF_SIX_AFRICAN_COUNTRIES_THREE_OF_WHICH_ARE_MONIST_AND_THREE_OF_WHICH_ARE_DUALIST accessed 18 September 2015.

³¹ Such as ICESCR and CEDAW.

³² Killander (2013) 17 *Law Democracy and Development* 386.

³³ Oba (2004) 4 *AHRLJ* 277.

³⁴ *AHRLR* (2005) 151 5 (2) & (3).

writings on access to water and an analysis of laws and policies in this field. Such scholarship would inform law and policy makers on the areas that need to be focused on in water resources.

Social challenges

Social challenges in this regard refer to societal or organisational problems of realising water for domestic use and in particular the attitude of individuals to realising access to water for their domestic use. Inadequate national planning and demographic challenges are one of the issues facing domestic water supply in Nigeria. In the North-Eastern part of Nigeria for example, about 80 percent of households do not have access to improved water supply.³⁵ It is difficult to ascertain the percentage of people without access to potable water in Nigeria as a whole.³⁶ As Biswas would put it 'it is not uncommon for countries to provide biased information. Some tend to provide overoptimistic assessments, to indicate to the outside world that they are more 'developed' than they are and in contrast, others may present pessimistic data, hoping this will increase the flow of external aid.'³⁷ The Nigerian government, however, estimates that by 2015, 75% of Nigerians would have access to water³⁸ and currently in 2019 there is still no visible improvement in this regard. The United Nations, on the other hand, as represented by their agencies,³⁹ reported in 2010 that Nigeria (amongst ten other countries) has the largest population of people without access to an improved drinking water source.⁴⁰ The proportion of people with improved sanitation in Nigeria was projected to be less than 50%, where the report showed that 109 million people in Nigeria do not have access to improved sanitation.⁴¹ Climate change and global warming should be taken into consideration by those drafting the water laws. The rainy season period in Nigeria extends for more months than the dry period. The Northern part of Nigeria is more drought-prone than any other area in Nigeria. Nigeria is currently undergoing a change in rain pattern, as 2015 recorded more rain in the Northern part of the country.

There is also the need for credible records and statistics of the people with access to public water, and people without access at all. There is also the issue of different water laws not synchronising or complementing each other in the same way that, for example, South African water laws can be seen to do. Nigeria, unlike South Africa, does not have a developed system of data collection or statistics. The Nigerian legal system makes heavy use of estimates, where there are bureaus responsible for the data collation both under census and other areas, however, either as a result of manpower, financial constraint or corruption, this area is not addressed. Other social challenges that should be addressed include water education, where water users in rural, peri-urban and urban areas are educated on water quality, cost and wastages. Arguably, people refuse to pay water tariffs, due to their perception that water should be free.⁴² There is also the issue of corruption and poor infrastructure, and insufficient budgetary allocation, an example of which can be found in the case where the government of President Jonathan slashed the water budget.⁴³ The challenges of access to water in Nigeria are both legal and social in nature. The legal challenges of access to water in Nigeria range from inadequate legal provisions ensuring or promoting a human right to water, the absence of domestic water law at federal level, to the economic provisions at state level, which criminalises non-payment for domestic water use. Under social challenges, reference is made to demographic challenges, lack of water education, inadequate statistics and record-keeping as contributing to the challenges of access to water.

3. Promising Practices from Some Other Jurisdictions

To realise clean water for domestic use, the international understanding is that water for domestic use must be adequate, accessible, affordable and of good quality.⁴⁴ These characteristics are what form the minimum

³⁵ Ishaku *et al* (2012) 26 *Water Resource Management* 298.

³⁶ See Biswas (1981) 60 *Fall Council on Foreign Relations* 152.

³⁷ Biswas (1981) 60 *Fall Council on Foreign Relations* 152.

³⁸ Akpe at <http://www.businessdayonline.com/NG/index.php/analysis/features/35265-president-promises-water-slashes-budget> This can also be found at <http://pulitzercenter.org/reporting/nigeria-water-sanitation-millennium-development-goals-budget-cuts-president-goodluck-jonathan> accessed on the 9 October 2013.

³⁹ UNICEF and the World Health Organisation are some of the Agencies of the United Nations.

⁴⁰ UNICEF and WHO (2012) at www.unicef.org/media/files/JMPreport2012.pdf accessed on the 21 May 2013.

⁴¹ UNICEF and WHO 2012 Report 19 Fig 20.

⁴² Information gathered from discussions had with water officials in Oyo State and Kwara State during a research visit.

⁴³ Akpe (2012) found at <http://pulitzercenter.org/reporting/nigeria-water-sanitation-millennium-development-goals-budget-cuts-president-goodluck-jonathan> accessed 12 March 2013.

⁴⁴ Cano (1981) 51 *Journal of Hydrology* 385-387. G Cano, 'The Recommendations of the United Nations Water Conference (Mar Del Plata, 1977) and Related Meetings on National Water Laws', (1981) 51 *Journal of Hydrology* 381.

acceptable standard for finding a solution to the water challenges in Nigeria. The quality of water is an issue of concern in Nigeria particularly because with the abundance of water resources in Nigeria, the quality of the water endorsed for domestic use by the Federal government (such as the rivers), are largely polluted.⁴⁵ South Africa, Kenya, India and Colombia offer promising practises capable of improving access to domestic water in Nigeria if emulated.

South Africa

South Africa is considered an important jurisdiction where domestic water is concerned, because of the proliferation of scholarship available, and the well-structured legal framework. The experience of South Africa ranges from the legal and regulatory framework, to case law and implementation, as well as monitoring mechanisms of a human rights-based approach to water. South Africa has a laudable legal and regulatory framework when it comes to the realisation of access to water.⁴⁶ The 1996 Constitution is anchored in human rights, and guarantees the right of everyone to have access to water.⁴⁷ Subsequently the National Water Act⁴⁸ and the Water Services Act⁴⁹ were adopted by the South African parliament. These laws spell out in clear terms the expectations of duty bearers and right holders. The WSA is focused on potable water and sanitation services. It also contains rules about how municipalities should provide water supply and sanitation. Also, the Water Services Act under section 3 states that every person has a right to basic water supply and every water services institution must take reasonable measure to realise these rights. It also provides that all water services authority must set out the development plan and measures to realise the right to water. The National Water Act deals with water resources such as rivers dams and groundwater. It contains rules about how these waters are protected used and controlled in an integrated manner. The Act ensures that water for basic human need is reserved before water is allocated for other uses.⁵⁰ The provisions of South African water law are anchored on a human rights-based approach to water. Section 27(1) read with section 27(2) of the Constitution states that 'everyone has the right to have access to water and the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation' of the right to water. There may be wide failures in the actual delivery of water, especially in many poor urban areas; however it cannot be denied that South Africa has made remarkable progress in realising access to water.⁵¹ Although the failure in actual delivery shows that there is a divide between the provisions of the law and the actual access of the people to water in South Africa, this does not mean that the law recognising the human right to water is insufficient to address water challenges, rather, a monitoring and implementation framework is necessary to address this issue. A human rights-based approach mitigates these failures by bringing to fore a monitoring and implementation framework. South Africa is a pioneer country in Africa on the right to water, and has an enviable legal framework, as well as extensive scholarship and judicial pronouncements, all of which form strong reasons for choosing South Africa as a jurisdiction for comparison, from which Nigeria might learn.

Some Other Jurisdictions

Like many African countries, Kenya is not exonerated from the problems of access to water.⁵² In view of these problems, Kenya has also adopted a human rights-based approach to access to water following the recognition of a human right to water in the Kenyan Constitution.⁵³ Also India and Colombia have made an impression globally on realising domestic water for its citizens. Colombia and India have been commended for the way in which these countries have respectively pursued access to water, which involve activities of civil society organisations and judicial activism (particularly in India) in securing access to water. Although India has not constitutionalised the human right to water, the India courts have recognised the human right to water as a derivative of the right to life. In other words, without considering water as a human right like South Africa and without a constitutional recognition of water as a right, these two countries have developed an alternative means of addressing access to domestic water for their citizens.

⁴⁵ Jaji *et al* (2007) 133 *EMA* 481.

⁴⁶ Dugard J, 'Urban Basic Services: Rights Reality Resistance' 275 in Langford M Cousins B Dugard J and Madlingozi T (2014) *Socio-Economic Rights in South Africa Symbols or Substance?* (Cambridge University Press: New York, 2014) p275.

⁴⁷ Sec 27 1996 Constitution.

⁴⁸ Act 36 of 1998 (NWA).

⁴⁹ Act 108 of 1997 (WSA).

⁵⁰ For a detailed explanation see generally the Guide to the National Water Act published by the Department of Water Affairs and Forestry.

⁵¹ Dugard in Langford *et al* (eds) (2014) 275-276.

⁵² Marshall (2011)2 *Global Majority E-Journal* 31-45 at 31-32.

⁵³ Art 43 (1) (d) 2010 Kenya Constitution.

4. Proposed Solution to Nigeria's Domestic Water Access

The Nigerian government has tried unsuccessfully to improve access to domestic water to her citizens. Unsuccessfully, since the only provision of the Nigerian government are hand-operated boreholes and wells. There is usually no follow up to these provisions of wells and hand-operated boreholes, which eventually break down in mere months, and people are usually found to revert back to their previous ways of sourcing for water.) The measures put in place by the Nigerian government have not served sufficiently or efficiently, as some of the wells and boreholes provided yield little to no water during the dry season, and some of these machines even break down, where usually no repairs are carried out on them.⁵⁴ Sourcing privately for domestic water especially in rural areas sometimes leads to disease, and even death, in extreme cases,⁵⁵ especially where water is sourced from an unimproved means. It has been reported that about 97000 children die yearly from diarrhoea caused by unsafe water and poor sanitation.⁵⁶ While states or nations do not need to provide the actual water for individuals it is necessary that states provide the institutional, economic and social environment necessary to help individuals realise this right.⁵⁷ According to Gleick, states ought to provide only the actual right for individuals who otherwise cannot access this right as a result of age, poverty, disaster or economic deprivation.⁵⁸ His argument leans towards a rights-based approach (the principle of non-discrimination), which emphasises that 'water and water facilities and services should be accessible to all and especially the poor and vulnerable should be considered.'⁵⁹

Recognising water as a human right does not actually provide the water or make water accessible to everyone. It however is a first step towards ensuring everyone has access to water. The recognition of a human right to water under a national law empowers the people, since they are aware of their right to water and have the tool (law) to demand for the enforcement of this right when it is made a law. However, if water is not considered as a human right on its merit, it should be considered as a right of an individual stemming from the right to life as no individual can survive without access to clean water for domestic use. The 1977 water conference recommends that there should be legislation enacted towards a coordinated approach to water planning, and all provisions on water resources management should be combined in a unitary legal instrument, namely, the Constitution.⁶⁰ In Nigeria, the Water Resources Act does not guarantee domestic water supply, nor does it recognise water as a human right. The various states laws on water also do not recognise water as a human right; rather, water is considered from an economic perspective albeit insufficiently. Considering water as a human right in a Constitution is the highest level in which a government of a nation can show its commitment towards ensuring the right to water. This is argued in line with the provision of the Nigerian Constitution, which states that any law incompatible with the provisions of the Constitution is ruled as void.⁶¹

Furthermore, the Constitution is the supreme law to which all other laws are required to conform.⁶² Unlike the South African Constitution (and its water laws), the Nigerian Constitution has not aligned itself with this recommendation of the United Nations conferences,⁶³ nor the provisions of General Comment 15, which expansively discusses the human right to water and states four elements of the right to water which are quantity, availability, quality and affordability.⁶⁴ One proposal to solving domestic water issues in Nigeria is

⁵⁴ Ishaku *et al* (2012) 26 *WRM* 298.

⁵⁵ One of the measures the Nigerian government has put in place to contribute to access to water in Nigeria is a creation of boreholes in rural parts of the country. When this machines break down, people resort to the unimproved surface waters such as the rivers and stream. A majority of these streams have been reported to be polluted and unfit for human consumption. Polluted water too has been known to cause a variety of illness in Nigeria, and even death.

⁵⁶ Black *et al* (2003) 361 *Lancet* 2226-2234 also at www.who.int/maternal_child_adolescent/documents/pdfs/lancet_child_survival_10mill_dying.pdf accessed 8 April 2016. Also, about 111 million people, which is about a two third of the population of Nigeria, do not have sanitation at www.wateraid.org/ng accessed 18 February 2014.

⁵⁷ Gleick (2003) 9 *Water Nepal* 117 at 123.

⁵⁸ Gleick (2003) 9 *Water Nepal* 123.

⁵⁹ General Comment 156; see also Miller (2010) 14 *IJHR* 917.

⁶⁰ Cano (1981) 51 *Journal of Hydrology* 385.

⁶¹ Sec 1 (3) of the CFRN states that other laws found inconsistent with the provisions of the law shall be void.

⁶² See Bilchitz in Woolman & Bilchitz (eds) (2012) 269.

⁶³ There are several water laws in Nigeria and the only section in the 1999 CFRN, which talks about water, is Section 20. It provides that 'the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.' There are other Federal laws on water to which the Constitution does not make reference. In other words, there is no harmonisation of Nigerian water laws.

⁶⁴ General Comment 15 E/C.12/2002/11 5-6; see also Cano (1981) 51 *Journal of Hydrology* 385-387.

to consider it as a right and to adopt a human rights-based approach. This suggested approach is considered useful for two reasons. Firstly, because access to water raises human rights concerns, such as the right to health and the right to life,⁶⁵ and secondly because a human rights-based approach provides the basic principles against which a sustainable access to water may be analysed. The key principles of a human rights-based approach (or PANEL principles of participation, accountability, non-discrimination, empowerment and legal redress) establishes the claims and the obligations to 'respect, protect and fulfil',⁶⁶ commits all water management systems towards the guarantee of the basic human need for water, and provides water users with the instrument to enforce this interest.

A human rights-based approach, is also proposed because it considers the steps or range of systems necessary, both at the national and international level, to protect, respect and ensure the enjoyment of a human right to water by all people, since water is a basis for human development.⁶⁷ This approach also incorporates human rights standards into national law, and integrates human rights principles into public administration and education in human rights and responsibilities.⁶⁸ Human rights are interrelated, and access to water is related to a number of other rights.⁶⁹ Although water has been resolved to be a human right under international human right law, water is not considered to be a human right in Nigeria (even though the Nigerian government has an obligation under international law to recognise such a right).⁷⁰ There is a need to take a step further than an ordinary legislative provision, if the problems of access to domestic water are to be sufficiently reduced and progressively realised. Arguably, legislative provisions anchored on a human rights-based approach may improve access to water in Nigeria. The discussion on access to water is vital, and particularly sensitive, where a variety of conflicting reports exist on what pertains in jurisdictions like Nigeria, as statistics and data records are inconsistent, or not easily accessible to the public. A proposal for the adoption of a human rights-based approach to water in Nigeria, which is both theoretical and practical, would involve a combination of approaches that would include the analytical and the comparative.

5. Conclusion

The purpose of this study was to examine the ways in which the challenges of access to water in Nigeria may be addressed, by considering positive factors in selected jurisdictions that have progressively sought to improve domestic water supply. It is a known fact that access to water is a global concern. Of concern here are the challenges of access to water in Nigeria specifically, as a country that it ought to be noted has water resources in abundance. This study examined the challenges of domestic water in Nigeria and explored the possibility of the national recognition of the human right to water and the adoption of a human rights-based approach to water in Nigeria would address the challenges of access to water in the country. Nigeria was amongst those countries that assented to the international recognition of water as a human right, and despite having water in abundance; Nigeria has inadequate laws, an inadequate institutional framework and a population without adequate access to improved water sources. The state of water governance in Nigeria, particularly domestic water is poor. A major contributory factor to this water poverty is both legal and social in nature. The existing Nigerian laws it is argued is inadequate in the guarantee of access to water for Nigerians. Arguably, the current constitutional provision on water is ambiguous and vague and evidently is a contributory factor to the challenges of domestic water supply and access in Nigeria.

⁶⁵ It has been variously established that no human being can survive without a substantial amount of clean water. Furthermore, access to water can promote a life of human dignity UN doc E/C 12/2002/11 Para 1; Heleba S 'Realising the right of access to sufficient water in South Africa: feature' (2009) 10 *Economic and Social Rights Review: Economic and Social Rights in South Africa* 7

⁶⁶ On the obligations to respect protect and fulfil, the laws and policies must harmonise with human right law, there must be no violation by non-state actors and adequate provision for redress but be provided. Also, adequate measures such as legislative, judicial and budgetary must be developed and implementable.

⁶⁷ J Hausermann, 'A human rights approach to development: some practical implications for water aid's work' (2003) 10 *Water Nepal* 131

⁶⁸ Hausermann (2003) 9 *Water Nepal* 131.

⁶⁹ Access to water can promote a life of human dignity UN doc E/C 12/2002/11 Para 1; see also Heleba (2009) 10 *ESR Review* 7.

⁷⁰ United Nations General Assembly Resolution A/RES/64/292 28 July 2010.