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ENHANCING THE EFFECTIVE AND SUSTAINABLE ENJOYMENT OF THE RIGHT TO WATER UNDER CAMEROONIAN LAW*

Christopher F. TAMASANG**

1. Introduction

1.1. Background and rationale

Generally speaking, water, which is one of the tangible natural resources the world over, features as the most indispensable. The well known adage, "water is life" confirms such a general conception. A global good in essence, 17 percent of humankind (1.5 billion people) has no access to clean water, 2.6 billion people do not enjoy sanitation facilities and 5000 children die every day contaminated by water.¹ The African continent, said to be rich in natural resources, water inclusive, do face the hydrological stress on a somewhat serious note. Statistics point to the fact that 25 percent of contemporary African population come under water stress while 69 percent live in relative abundance.² Unfortunately, this relative abundance does not take into consideration such other factors as portability, accessibility as well as quality for health. There have been considerable efforts at the international level between 1990 and 2000 to improve on this situation. This notwithstanding, only 62 percent of

* This article is a revised paper which the author presented during a workshop held in Geneva on water reforms organised by the International Environmental Law Research Centre in Geneva.

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¹ See UNDP (2006), Human Development Report- Beyond scarcity : Power, Poverty and the Global Water Crisis, New York, p v.

² Vorosmarty, C.J. *et al* (2005), Geospatial indicators of emerging water stress : An application to Africa, *Ambio*, 34(3), in ; Bates, B.C., Kunderzewicz, S. Wu and J. P. Palutikof (ed) (2008), Climate change and water, technical document no 7, IPCC, Geneva, p 94

African population, that of Cameroon not excluded, had access to better water conditions.³ What is more? It is projected that by 2025 many more people will be subjected to the water stress.⁴ One may want to add that the climate change phenomenon is likely to aggravate the water stress situation if a strong and promising global legal regime on the climate change saga is not adopted and put into immediate implementation. In fact, the above picture justifies the requirement for the right to water and explains why the right to water is increasingly recognized, albeit in a general, diverse and disjointed manner, at the global, regional and national level as a fundamental and inalienable right of the human person which states are called upon to recognize and enforce in their internal legal order with the cooperation of the international community.

Forming part of economic and social rights, the right to water means that everyone without discrimination, must have access to water in quality and quantity sufficient to meet his/her basic needs. The right to water consists in the provision of sufficient, physically accessible and at an affordable cost, clean and quality water acceptable for personal and domestic use of everyone.⁵ The right to water has also been defined as the right of everyone regardless of his economic standard, to possess a minimum quantity of water of good quality which is sufficient for his life and health.⁶ Consequently, rights linked to water are those rights enabling the use of a certain amount or quantity of water rather than rights of ownership of the resource itself. However, it is important to underscore at the outset of this debate that the right to water which is limited to personal and domestic uses exclude water for agricultural, industrial and commercial activities. Similarly, it does not concern additional water from rainfall for instance, which by its very nature has a

³ OMS/UNICEF (2000), in ; Bates, B.C., Kunderzewicz, S. Wu and J.P.Palutikof (ed), *ibid.*

⁴ Bates, B. C., Kunderzewicz, S. Wu and J. P. Palutikof, *ibid.*, at p 96

⁵ United Nations Committee on Economic, Social and Cultural Rights, The Right to Water, General Comment, No. 15 ; UN DOC. E/C.123/11, 29th Session, (2002).

⁶ Smets, H. (2000), Le Droit à L'eau. www.academie-eau.org, p. 1.

low marginal utility.⁷ In fact, water quantity for fundamental needs is a human right while additional quantity of water is hardly guaranteed and may not be accessible to marginalized people.⁸ Finally, the right to water may not imply gratuitous provision of water or any quantity of it.

The right to water is also of capital importance in the ongoing battle against poverty.⁹ In this regard, it relates more to the social categories of poor or vulnerable people in the rural areas but also those in the urban setting as well. Indeed, the poor are those most affected or essentially deprived of the right to portable water basically as a result of their economic and physical inaccessibility.¹⁰

In spite of the importance of the right to water enunciated at the national and international levels, a cross-section of the population continues to be deprived of such right in Cameroon. Within the territorial boundaries of a sovereign state, water is a *res communis* or *res nullius* at least as far as portable water is concerned. In fact, portable water is rare in Cameroon. Access to portable water remains a nightmare to the local population of the rural areas, indigenous people¹¹ as well as

⁷ At this moment in the history of humankind where environmental challenges, air pollution in particular is increasing by the day, the quality of rain water is more and more questionable and its effect on the human system may be dangerous. Water from acid rain (an increasing environmental challenge) may even be more disastrous to human life.

⁸ Smets, H., *op cit*, note 6, p 10

⁹ See for example, FAO, World Food Day ; Water : Source of Food Security (2005). See also the Millennium Development Goals, in particular, Goal 1.

¹⁰ *Ibid*.

¹¹ Indigenous peoples as a minority group have been identified across different regions of the world and have been clearly distinguished from local people and other minority groups not from a linguistic perspective but from cultural, social and other tenets. Indigenous people have generally been considered by art 1 (a) and (b) of Convention on Indigenous and Tribal Peoples, 1989, to be :

-Tribal people in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations ;

those urban and semi-urban populations in Cameroon with women and children bearing the grunts. Atemengue, J. N.¹² documents that of 11000 villages in Cameroon, only 5000 have access to more or less portable water and adds that of the 15 million people, only 3 million have direct access to more or less portable water. Today, three years after the above author's estimates, the situation is certainly more critical as census results¹³ put Cameroon at 19.406.100 people, an increase of close to 4.5 million inhabitants not matched by a proportionate increase in the provision for portable water.

Cameroon is one African country with territorial pieces of legislation in general and water reform legislation in particular. This is explained by the fact that the country operates two systems of laws ; to wit, the Common Law and the Civil Law.¹⁴ This bi-jural character of Cameroon

-Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. In Cameroon, they have been identified as the pygmies and the Mbororos. The current debate on their rights as a minority and marginalised people, has not excluded their right to water. A majority of municipal laws of countries of the world, Cameroon inclusive, have not clearly recognize the rights of indigenous people as a marginalised minority notwithstanding the UN Declaration of 2007 calling upon states to recognize the rights of indigenous people. For an exhaustive catalogue of the rights of indigenous people at the global level, see Convention 169 of the International Labour Organisation, which many African countries in general and Cameroon in particular, have signed but have not ratified.

¹² (2008), *La Nature Juridique de l'eau, " Patrimoine Commun de la Nation", au Cameroun, Cahiers Juridiques et Politiques, Revue de la Faculté des Sciences Juridiques et Politique, Université de Ngaoundere, Vol 1, p 242.*

¹³ See Xinhua, available at <http://www.google.fr/search?hl=fr&source=hp8q=INS-Cameroun8meta=> visited on 25/09/2011

¹⁴ It may be mentioned here that the administration of what is today Cameroon, began with the Germans (1896-1916). After having been defeated during the First World War by France and Britain, these two powers took over the territory from the Germans and partitioned the same between themselves. This was in the Treaty of Versailles in 1919. From then, Cameroon was under the Mandate System until 1945. Thereafter, the country became a Trust territory under the Trusteeship System of the United

is a result of two major world cultures inherited from Britain and France when the country came under the administration of these great powers. The bi-jural nature which makes for the application of the Common Law in the English speaking Regions and the Civil Law¹⁵ in the French speaking Regions of the country is gradually being mitigated since independence in 1961, by the harmonization of legal reforms across the country.¹⁶ One of such harmonisation reforms in the area of environmental law is in water law,¹⁷ although some writers¹⁸ take the view that water issues as placed under land law, ought to assume a specific legal regime which should be reconstructed in Cameroon.

1.2. Theoretical/conceptual framework and methodology to the study

This paper is underpinned by the theory of rights. A good number of writers¹⁹ have dealt with the question of rights distinguishing between natural/human rights, liberty rights, immunity, claimed rights, and

Nations. For more on this, see Tamasang, C. F. (2008), Sustainable Development : Some Reflections with regard to the new Constitutional dispensation in Cameroon, The African Law Review, vol 5, No 1, FSJP, University of Yaounde II- Soa, Cameroon, p 147

¹⁵ For quite a long time after independence, that is, before the harmonization of water legislation, the Civil Code was applicable in Former East Cameroon. In particular, article 714 provides that “ *il est des choses qui n'appartient a personne et dont l'usage est commun a tous. Des lois de police règlement la manière d'en jouir*”. Understandly, reference is made to water. For a detailed development on the subject, see Cassin, R. et al (2003-2004), *Etudes et documents du Conseil d'Etat : L'eau et son droit, Conseil d'état, Paris*, p 52.

¹⁶ There are many other areas where harmonisation of legal reforms has already taken place such as criminal law, land law, labour law, environmental law, business laws, criminal procedure, and investment law, just to name these few.

¹⁷ Until fairly recently, water law was closely related to property or land law but because of its unique features (mobility, variation from season to season, location, simultaneously use by many users), it has become the province of modern environmental law.

¹⁸Notably, Atemengue, J.N. *op cit*, p 257

¹⁹ See for instance, Follesdal A. & Maliks R. (2014) (Editors), *Kantian Theory and Human Rights*, Routledge, (210 pges) ;

power. This paper builds on the Hohfeldian²⁰ first order jural relations where a right which is normatively protected by the state must not be interfered with by whosoever. It equates such a right to a human right as posited by many leading legal philosophers such as Jeremy Bentham, H.L.A. Hart, Emmanuel Kant and others. There is therefore a correlative duty to ensure the enjoyment of such a right.

The methodology to this study consisted in the collection of data and in the treatment of such data. Secondary data was gathered through desk research and these included consulting existing literature on the subject. Primary data was gathered from field visits which elicited information on the number of people seeking connection to portable water and in the process, visited on several occasions, *Camerounaise des Eaux* billing and payment centres in the city of Yaounde ; from statutory instruments and also from court decisions. In treating these categories of data, we utilised the contents approach to critically analyse the information from the field visits, the statutory instruments, and court decisions to find out how they enhance the protection of human rights in the theories of rights as propounded by Bentham and Hohfeld and in relation to the protection afforded to the sustainable enjoyment of the right to water.

From the foregoing, it is therefore important to examine the sources of the right to water under Cameroonian law ; the nature of the right to water ; the contents of the right to water ; national mechanisms for enhancing and enforcing the right to water ; the hurdles or challenges, as well as some reform proposals to the effective and sustainable enjoyment of the right to water.

2. The Prescriptions on the Right to Water under Cameroonian law

The right to water has been recognized in international as well as in national legal instruments.

²⁰ See generally for exposition and analysis of Hohfeldian Theory of Rights, for instance, Lazarev, N. (2005), *Hohfeld's Analysis of Rights: An Essential Approach to a Conceptual and Practical Understanding of the Nature of Rights*, Murdoch University Journal of Law, Murdoch.

2.1. International Legal Instruments

At the international level, two categories of legal instruments are discernible ; to wit : non-conventional and conventional instruments. It must be mentioned, however, that recognition of the right to water in these instruments is either explicit or implicit and in a general rather than a specific context.

2.1.1. Non-conventional or Non-binding Sources

The water crisis and its strategic importance have probably aroused the concern of the international community. In attempting to respond to the crisis, legal paradigms have been crafted at the international level in the direction of sustainably managing the *res publica* and to ensure that basic needs of the people of the world are met both of the present and future generations. In this regard therefore, one can decipher quite a litany of international legal instruments albeit non-binding in character, which provide for the right to water in a scattered and disjointed way as a fundamental right of the human person. The Universal Declaration of Human Rights²¹ for instance, recognizes a wide range of social, economic and civil rights²² which are today inextricably linked to the right to water.

The genesis of global interest to water as indispensable for human wellbeing attracted international concern in Stockholm with the Stockholm Declaration, 1972. The Declaration recognizes the fundamental right to 'an environmental of quality that permits a life of dignity and well-being.'²³ That global instrument adds that '[t]he natural

²¹ The Universal Declaration of Human Rights was adapted by the General Assembly of the United Nations on 10th December 1948.

²² Some of such rights include the right to life, the right to health, the right to work, the right to housing, the right to feeding, the right to adequate standard of living, just to mention these few.

²³ See Principle 1 of the Declaration which provides that, " Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality... and he bears a solemn responsibility to protect and improve the environment.

resources of the earth including ...water...must be safeguarded for the benefit of the present and future generations...'²⁴

By the mid-1970s, the UN began to take particular interest in water perhaps because of its increasing scarcity and degrading quality. In Mal del Plata in Argentina, a Declaration was made in 1977 sanctioning the end of the UN Conference on Water. In its preamble, firm commitments were taken to safeguard water resources and enhance the right to water by all human beings across the globe stating that all people have the right to water in quantities and of a quality equal to their basic needs.²⁵

About one and a half decades after Mal del Plata, legal instruments relating to general environmental protection still under the auspices of the UN provided for the right to water within the context of the rights of the person. This was in the Agenda 21 Programme of Action²⁶ following the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992. In the same year, a Declaration was adopted in Dublin at the end of the International Conference on Water and Development. That Declaration underscored the right to water as the cornerstone of development. The Dublin Statement which clearly adopts a holistic or comprehensive and multidisciplinary approach ranging from environmental, social, political and economic perspectives²⁷, states explicitly with regard to the human right to water that 'it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price'²⁸

²⁴ See Principle 2 which provides on its part that "... air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."

²⁵ See Report of the United Nations Water Conference, Preamble, Mar Del Plata, March 14-25, 1977, No E77II A 12, United Nations Publications, N.Y.

²⁶ Agenda 21 is a blueprint for the implementation of the Rio outcomes and for the enhancement of sustainable development. See with regard to water, paragraph 18.47.

²⁷ For a detailed exploration of the principles, see Fitzmaurice, M. (2007), *The Human Right to Water*, 18 *Fordham Environmental Law Review* 587 at p 546

²⁸ See Principle 4.

Again, from a general perspective, a Programme of Action²⁹ was adopted in the report of the International Conference on Population and Development held in Cairo in September 1994 which mentioned the right to water. Also within a general environmental context, the World Summit on Sustainable Development which held in Johannesburg in 2002³⁰ mentioned in the Johannesburg Declaration and Plan of Action that a pertinent crisis facing mankind today is the right of access to water and that governments from around the world should adopt appropriate measure of ensuring that this right is available to all citizens.

The most ambitious of the non-conventional instruments is undoubtedly the Millennium Declaration adopted by the General Assembly of the United Nations³¹ after the Millennium Summit in New York. Their objectives are expressed in a number of chapters. The following commitment was taken :

...To reduce to half by 2015 the proportion of the world's population whose income is less than a dollar per day and that of people suffering from hunger, and to reduce to half within the same period, the proportion of people who have no access to portable water or who lack the means to procure it.³²

Humanity is barely a year away from the D-year and the question for which one may be eager for an answer is whether such commitment is going to be met given that the proportion of people without access to portable water is on the rise or to say the least, is unlikely to be reduced to half by 2015 as there are more indicators that access to water is more and more difficult compounded by the impact of climate change.

It was also firmly promised in the same Declaration, to put an end to the irrational exploitation of water resources by formulating strategies at the regional, national and local levels to enable the guarantee of equitable

²⁹ See principle 2.

³⁰ See U.N.Doc. A/CONF.199/20

³¹ See Resolution 55/22 of August 2002.

³² See Chapter III on Development and Poverty Elimination.

access and adequate provision.³³ To date, how many African countries have mounted strategies to meet the MDG commitments with respect to access to portable water? Not many and prove is that the water stress is on the increase.

Cameroon has participated in most, if not all of the above international meetings and has appended her signature to the legal instruments translating the intentions of the government to ensure an effective and sustainable enjoyment of the right to water. It must be mentioned, however, that the instruments highlighted above generally have a non-binding legal status in international law.³⁴ States can therefore, hardly be obliged to comply with or enforced them even if they have signed them. They are usually referred to as soft law instruments. But we have argued that compliance with and enforcement of international legal instruments in general is much a matter of political will of the parties taking the commitment or expressing their wishes.³⁵ We used the Central African Sub-region as a barometer to test the veracity of this position and demonstrated that in the last ten years, the Central African leaders have relied heavily on soft law instruments (Declarations for instance) to protect the Congo Basin forest and other natural resources, water inclusive.³⁶

³³ See Chapter IV entitled : Protecting our Common Environment.

³⁴ Hunter D., J. Salzman, and D. Zaelke, International Environmental Law, Foundation Press, New York, 1998, pp. 258-64.

³⁵ See Tamasang, C.F. (2011), Legislation for Sustainable Forest Management in the Central African Sub-Region : What Prospects for Effective Implementation ? in, Paddock, L. et al (editors), Compliance and Enforcement in Environmental Law : Towards a more Effective Implementation, IUCN Academy of Environmental Law series, Edward Elgar Publishing Inc, Cheltham, pp 501-519.

³⁶ *Ibid.* It is however believed by some people that the success in the effective implementation of the Yaounde Declaration is grounded on the Resolution of the General Assembly of United Nations (Resolution 54/314 of February 2000) supporting the adoption of the Yaounde Declaration and urging the international community to give it a wide recognition. But it must be noted that such a Resolution did not and cannot add any strength to the soft law instrument for it is itself a soft law instrument. If the General Assembly Resolution accounted in any way to the effective implementation of the Declaration, it was a moral booster.

Besides, the proliferation of these instruments at the regional and global level is the fact that the right to water is in a way a universally recognized right of the human person even if it fits itself into a large spectrum of matters falling within the ambit or province of the environment and related disciplines.

2.1.2. Conventional Legal Instruments

a) At the Global Level

At the international level, traditional sources (conventions, treaties, protocols, charters, Pacts, and covenants) of the right to water feature either explicitly or implicitly in the legal instruments. Firstly, express reference to the right to water has been made in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).³⁷ It is therein provided that "State parties...shall ensure to women the right...to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply."³⁸

Explicit reference to the right to water is equally made in the Convention on the Rights of the Child.³⁹ This Convention provides with regard to the right of the child to water that :

State parties recognize the right of the child to the enjoyment of the highest attainable standard of health...and pursue full implementation of this right and shall take appropriate measure...through the provision of clean drinking water...⁴⁰

The two Conventions just mentioned above appear discriminatory in addressing questions relating to the right to water as emphasis is made only on women and children. The reason may be simple. Women and children have generally been regarded as vulnerable social classes but also marginalised groups in decision making processes. This probably also

³⁷ The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly Resolution 34/180 of 8th December 1979.

³⁸ See Article 4(2) (h).

³⁹ The Convention on the Rights of the Child was adopted by General Assembly Resolution 44/25 of 20th November 1989.

⁴⁰ See Article 24(1), (2) (c).

explains why the international community has had to consider a separate legally binding instrument for them. Noting this with keen interest, the World Bank posits that women [and children]⁴¹ should be involved in decisions relating to water management as they are the managers of water in their domestic circles.⁴² While we submit to such an authoritative view, we suggest that the involvement in decision making should not be limited to women but extended to children as they are the major collectors of water for domestic use in the developing countries, Cameroon inclusive.

Explicit reference to the right to water as a fundamental right of the human person had long been made but more so within the context of humanitarian law. The Geneva Convention of 1949⁴³ and its Additional Protocols II of 1977⁴⁴ on the treatment of prisoners of war, and on the protection of victims of non-international armed conflict, respectively, have clearly imposed on states the obligation to implement the right to water even during war situations.

In fact, there are several Conventional legal instruments at the global level alluding to the right to water but with differing weight of obligations on the state parties. The New York Convention of 1997, for instance, on the use of International Waters for purposes other than Navigation is contented with a simple invitation of states to be particularly diligent when it concerns the satisfaction of basic needs of their respective population.⁴⁵ This does not seem to impose succinct and concrete obligations on state parties. On the contrary, we find that the three Conventions and Protocols just discussed above actually provide for clear and firm obligations on the part of states as concerns the right to water. The question now is whether these legal obligations have been translated to practical realities on the ground by various countries.

⁴¹ Emphasis is mine

⁴² Banque Mondiale (1993), *Gestion des Ressources en Eau : Document de Politique Générale de la Banque Mondiale*, Washington, D.C. p 17

⁴³ See Articles 20, 26, 29 and 46.

⁴⁴ See Articles 5 and 14.

⁴⁵ See Article 10, paragraph 2.

In the case of Cameroon, it may be important to note that she has signed and ratified the above Conventions.⁴⁶ It is debatable whether Cameroon operates a single or two-step procedure⁴⁷ in relation to the application of international legal instruments. As far as fundamental rights are concerned, it may be argued that the country is of the monist regime as matters relating to fundamental rights are set out in the Constitution which is applicable without necessarily domesticating the provisions of the international legal instrument by way of a legislative Act. But in other areas, notably natural resources, a legislative Act must be taken; rendering the dualist argument for Cameroon a strong one. This implies that the right to water contained in these instruments is recognised in Cameroon if one were to go by its dualist character. But if the right to water is a related right to the right to life, to health etc, then of course, it is still recognized by reason of its monist conception. As to whether this right is enjoyed by the population is quite another question which shall be examined later in this paper. But a question which begs for answer at this juncture is whether the right must be explicit for it to impose obligations.

There are also implicit references to the right to water at the global level which impose implied obligations. The most important in this regard is the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁸ This Covenant recognises the economic and social rights of the human person to an adequate standard of living, to sufficient feeding and a right to health. The right to water is an integral

⁴⁶ Convention on the Elimination of All Forms of Discrimination against Women was ratified on 15th July 1988 by Law No. 88/11; Convention on the Rights of the Child ratified on 17th July 1991, by Law No. 91/006 and the Geneva Convention ratified on 16th September 1963; Protocol II of 1977 ratified on 16th March 1984.

⁴⁷ The two-step procedure as opposed to the single step procedure (the monist approach) is one where signature of an international legal instrument and ratification does not suffice for it to be applicable in the home or signatory country. Signature and ratification must be followed by domestication process within the internal legal order which then injects the legal instrument's provision into the internal legal order making it to become hard domestic law. It is usually referred to as the 'dualist approach'.

⁴⁸ Cameroon ratified the Covenant on Economic, Social and Cultural Rights on 24th June 1984

part of these rights universally recognised or which could be considered as indispensable components to the enjoyment of existing social and economic rights.

Within the framework of implementation of the Covenant, the UN Committee on Economic, Social and Cultural Rights recognizes⁴⁹ that access to water is a fundamental right as contained in Article (11) (1) of the ICESCR. However, a more detailed coverage is afforded by the same Committee in its General Comment No. 15⁵⁰ on the right to water. It defines the right to water, delimits its boundaries and spells out the obligations which are expected from states in this regard. It should be noted that provisions of the Committee are not binding as the status of General Comment has been considered as soft law and hence non-binding on states.⁵¹ However, there is no doubt that its provisions are insightful to the understanding and enforcement of the right to water.

Implicit reference to the right to water has also been made by the International Covenant on Civil and Political Rights.⁵² The Covenant recognizes the right to life.⁵³ The right to life cannot be enjoyed without the right to water. The right to water is, therefore, a prerequisite for the enjoyment of the right to life. Although implicit, the right to life and hence the right to water are recognized in Cameroon by dint of the fact that the Covenant on Civil and Political Rights has been ratified⁵⁴ by Cameroon.

b) At the Regional Level :

The discussion here will be limited to the African continent for obvious reasons. Cameroon is in the African continent and is often referred to as Africa in miniature. Explicit reference to the right to water

⁴⁹ General Comment, No. 6

⁵⁰ See *Supra*, Note 5

⁵¹ *Supra*, Note 33

⁵² The International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16th December 1966

⁵³ Article 6

⁵⁴ The Covenant on Civil and Political Rights was ratified on 12th June 1984.

in African continental instruments is found in the African Charter on the Rights and Welfare of the Child.⁵⁵ The Charter stipulates that “State parties to the present Charter...shall ensure the provision of adequate nutrition and safe drinking water...”⁵⁶ The fact that Cameroon has also signed and ratified⁵⁷ this charter implies that the right to water of the Cameroonian child is recognized under Cameroonian law as a matter of principle. One may want to know if such right of the African child is really enforced in the Cameroonian municipal law. Such a worry would be addressed subsequently.

Another legal instrument at the African continental level with explicit reference to the right to water is the revised African Convention on Conservation of Nature and Natural Resources now referred to as the Maputo Convention.⁵⁸ It is therein provided that state parties shall endeavour to guarantee to the population a sufficient and continuous flow of clean water.⁵⁹ Although this convention is not yet in force, we may applaud the initiative of having given a place to the right to water in the continent. In fact, given this reason together with the wide ambit of the Convention, we take the view that the Maputo Convention is a framework Convention for Africa although not labelled as such.⁶⁰

⁵⁵ OAU DOC. CAB/LEG/24.9/49 (1990).

⁵⁶ See Article 14(1) (2) (c).

⁵⁷ Cameroon ratified the African Charter on the Rights and Welfare of the Child on December 17, 2004.

⁵⁸ Signed by 33 states in Maputo in 2003, this Convention has not yet entered into force. The original Convention was signed in Algiers in 1968. Unfortunately, it was short of a number of issues which were included in the revised version in 2003. These include a clear adherence to global multilateral environmental agreements (MEAs); modern approach to nature conservation; clear reflection of African realities by way of cultural, traditional and indigenous concerns; greater consideration to the poverty-environment nexus; introduction of stronger institutional mechanisms in particular the COP for dialogue and cooperation, and financial mechanisms; etc. Such additions not only make the Convention complete but also render it a modern Convention.

⁵⁹ See Article 7(2)

⁶⁰ Framework Convention because it generally touches on every aspect of contemporary African environment leaving it a challenge to the continent's legislators to eventually craft continental legislations by way of Protocols, Covenants, Pacts, and others to address in details specific domains of the environment gathering inspiration, of course,

We may also note implicit reference to the right to water in the African Continent in the African Charter on Human and Peoples Rights⁶¹ which protects the right to health⁶² and the right to a clean environment.⁶³ In fact, some writers⁶⁴ have argued that drastically changing environmental and social factors make the issue of water as a human right more significant. As already argued with regard to global implicit references, the implementations of these rights also imply the recognition and enforcement of the right to water in the continent, Cameroon belonging to it.

2.2. National Prescriptions on the Right to Water

2.2.1. The Constitution

The Constitution of the Republic of Cameroon⁶⁵ does not explicitly provide for the right to water. However, it has a number of preambular provisions relating to economic and social rights.⁶⁶ Since it is admitted above that the right to water is an integral part of economic and social rights,⁶⁷ it could, therefore, be submitted that the Constitution makes implicit reference to the right to water through its provisions for economic and social rights. As an integral part of environmental rights,⁶⁸

from the framework Convention. Whether a convention is framework legislation or not does not really depend on its being labeled as such. Rather, it should be deciphered from its scope and content. It is for this reason that we also opine that the Convention on Biodiversity 1992, albeit not titled as a framework convention, is indeed one.

⁶¹ This Charter on Human and Peoples Rights was signed in 1986.

⁶² See Article 16.

⁶³ See Article 24.

⁶⁴ Scanlon, J., A. Casar, and N. Noemi (2004), *Water as a Human Right?*, IUCN, Gland and Cambridge, p 15.

⁶⁵ Law No. 2008/001 of 14 April to amend and supplement some provisions of Law No. 96/06 of 18th January 1996 to amend the Constitution of 02 June 1972.

⁶⁶ For instance, see paragraphs 4, 12, 18, 21 and 22.

⁶⁷ The South African Constitution of 8th May 1996 provides for the right to water as part of the lengthy list of economic and social rights. For more, see Gowlland-Gualtieri, A. (2007), *South Africa's Water Law and Policy Framework: Implications for the Right to Water*, IELRC Working Paper No 3, International Environmental Law Research Centre, Geneva, p 1-2.

⁶⁸ See *Supra*, Note 17.

the right to water has a comfortable foundation in the Constitutional provisions. It is provided in the preamble that every person has a right to a healthy environment, that the protection of the environment shall be the duty of every Cameroonian, and that the state shall ensure the protection and improvement of the environment.⁶⁹ Therefore, in this light, and in relation to the other lengthy economic and social rights enshrined in the Constitution, we can safely state that there is, in principle, an implicit commitment to protect and improve on the right to water.

2.2.2. The Water Code⁷⁰

Just like the Constitution, earlier pieces of legislation on the environment have not made any express provision on the right to water. However, probably inspired by the Constitutional provision on the right to a healthy environment and the other bundle of economic and social rights, the Cameroonian legislator passed the Water Code within the respect of environmental management principles and public health protection. In it, it is expressly provided that water is a public good or utility which the state ensures its protection and management and facilitates access to all.⁷¹ From this provision, one can venture to state that the Cameroonian Water legislation is both supply and demand driven. This means that the legislator considers that it is incumbent on the state to ensure the supply of water to the population and that this is driven by the increasing demand for portable water by the population in seeking to enjoy their right to water.⁷² We can equally aver, reading

⁶⁹Preambular paragraph 21. See also TAMASANG, C.F. (2008), Sustainable Development : Some Reflections with regard to the New Constitutional Dispensation in Cameroon. *The African Law Review*, Vol. 5, No. 1, FSJP, University of Yaounde II-Soa, pp. 152-153.

⁷⁰ Law No. 98/005 of 14th April 1998 to lay down the Water Code and its Enabling Statutes.

⁷¹ See Article 2.

⁷² There are legislations in other African countries which have been demand driven rather than supply driven or both. A glaring example is the South African Water legislation. For more, see Movik, S. and De Jong, F. (2011), *Licence to Control* :

through the code, that the Cameroonian Water legislator has envisaged the application of the public trust doctrine.⁷³ In addition, measures of protection are clearly spelled out in the Code⁷⁴ and violators come under heavy criminal sanctions⁷⁵ without prejudice to civil claims. To ensure conservation, protection and sustainable utilization, the Code institutes a National Water Committee,⁷⁶ an institution placed under the Ministry in charge of water resources. With the above as the major sources of the right to water in Cameroon, a question that further springs to mind is what is the nature of the right to water?

3. The Nature of the Right to Water in Cameroon

A crucial question here is whether the right to water which is, under normal circumstances, a human right, considered a specific right or has been treated as relating to or intricately intertwined with other rights under existing legislation. In dealing with this question, some writers⁷⁷ take the view that issues touching on water in Cameroon require a specific legal regime rather than being tied to other traditional legal regimes like land law or [environmental law].⁷⁸ As we have noted above,

Implications of introducing Administrative Water Use Rights in South Africa, 7/2 Law, Environment and Development Journal, London, New Delhi, p 70.

⁷³ The public trust doctrine owes its origin to the ancient Roman Empire. At that time, the doctrine rested primarily on the principle that certain resources like the air, seas, forests and water are of such capital importance to the people that it would be wholly unjustified to make them a subject of private ownership. When the doctrine was received in England, it was first limited only to certain traditional uses such as navigation, commerce, and fishing. Today, its application has been extended to all natural resources for public use and enjoyment. In America, the Supreme Court of California has also manifested its interest in the application of the doctrine to American ecological important lands, water among others. For details, see Tamasang, C.F. (2008), Community forest Management Entities as Effective Tools for local Level participation under Cameroonian Law : A Case Study of Kilum/Ijim Mountain Forest, PhD thesis, Faculty of laws and Political Science, University of Yaounde II-Soa, p. 4

⁷⁴ See Articles 4-7

⁷⁵ See Articles 19-20

⁷⁶ Article 26(1)

⁷⁷ Notably Atemengue, J.N., *Supra*, note 12, p 257.

⁷⁸ Emphasis is mine

Cameroon like many other countries of the world has not expressly provided for the right to water in its Constitution. This may be explained by the fact that only one traditional international binding instrument in the field of human rights⁷⁹ has made express provisions to the right to water from which countries could easily be inspired or be obliged upon signature and/or ratification. But, there again, we notice that the provision is more in connection with access without discrimination than right *per se*. So the right to water had only been treated as a health-related right until the Water Code of 1998 explicitly recognised access by all to water. But is this to be taken to mean that access to water is a human right in Cameroon? By the wordings of Article 2(1) of the Water Code ; “*L'eau est un bien du patrimoine national dont l'état assure la protection et la gestion et en facilite l'accès à tous.*”

From the provisions of the sub-section above, the state ensures protection and management of water but only facilitates rather than ensures or guarantees access to it by all Cameroonians. This interpretation of the vaguely worded provision of the law may lead one to a conclusion that access to water is not a human right on which citizens can rely to bring an action where access is denied or not enjoyed by the individual(s).

This kind of ambiguous provisions in the law may justify the need for a global Convention for water⁸⁰ which would emphasize on the human right character of the right to water so as to better protect, develop and ensure access and enjoyment of it. We may also subscribe to the argument by some writers⁸¹ that the right “to” water envisaged as a fundamental human right different from the right “of” water which refers to the sovereign right of states over their territorial waters, to justify

⁷⁹ See *Supra*, Note 37.

⁸⁰ See Bär, R. (2004), Why we need an International Water Convention, Alliance Sud, Berne p. 4. See also Water As Human Right, Chapter 1 at http://www.who.int/water_sanitation_health/rtwrev.pdf accessed on May 21 2011.

⁸¹ Notably, Dupuy, J.M. *Le Droit à l'eau : Un Droit International*, EUI Working Papers, Law No. 2006/06, Badia Fiesolana (2006), p. 3. See also Smets, H., Note 6, *Supra*

why access to water in Cameroon should have been treated explicitly as a *human right* and not as it appears from the law, a sovereign right. However, the weight of authority seems to swing in the direction of equating, 'facilitating access to water,' to the right to water. This is evident from the provisions of many international instruments and Constitutions⁸² which have expressly recognised the right to water. However, a majority of the Constitutions across the globe allude to the right to a 'healthy', 'favourable', 'balanced', etc environment and therefore leaving it to subsequent legislative and regulatory instruments to define the nature of 'healthy', 'favourable', 'balanced' environment in each sphere of the environment⁸³ including the domain of water.

Having now understood the nature of the right to water in Cameroon, it is equally important to find out the components that may guarantee the effective and sustainable enjoyment of the right to water.

4. Contents of the Right to Water in Cameroon

Assuming that facilitating access to water by all is intended to mean the right to water, what criteria may be used to guarantee the enjoyment of or access to it? If access to water for domestic and personal use is to be sustainable, this must entail water, sufficient, safe, acceptable and accessible. The effective and sustainable enjoyment of the right also entails water which is affordable.

4.1. Access to Sufficient Quantity of Water

The right to water implies that everyone has access to water in sufficient quantity to enable satisfaction of his/her domestic and personal needs. The question has arisen as to what constitute domestic and personal use. Unfortunately, the Cameroonian water legislator does not

⁸² The Constitutions of Ethiopia (Const, 90(1)); Gambia (Const, art 216(4)); Namibia (Const, 2001); South Africa (Const, sect 27); Zambia (Const, art 112), etc.

⁸³ For the constitutions of African countries referring to such wordings as explicitly encapsulating the right, we catalogued those of Benin (Const, art 27); Burkina Fasso (Const, art 31); Cape Verde (Const, art 70); Congo (Const, art 46); Eritrea (Const, art 10); Mali (Const, art 15); Togo (Const, art 41).

afford a clear definition of water supply for domestic purposes.⁸⁴ Nonetheless, water supply for domestic and personal use may be understood to mean water for household use which include drinking, preparation of food, bathing etc.⁸⁵ Of course, within the context of the right to water, water supply should be understood to mean a system of providing to a community for meeting its requirement for drinking and other domestic and personal uses.⁸⁶

Access to sufficient quantity equally implies that availability of water should not only be sufficient but also must be continuous.⁸⁷ The question has been asked as to what amount of water is considered sufficient and in what context? In answering the first part of this question, reference must be made to the World Health Organisation (WHO) guidelines. By these guidelines, everyone must have at his/her disposal at least 20 litres of portable water per day.⁸⁸ With regard to context, it is estimated that normally in urban settings, sufficient access to water should be 50 litres per person per day and may even go up to

⁸⁴ Neither the Water Law nor its Enabling Statute brings out clearly the definition of domestic and personal use of water to which is hinged the right to water.

⁸⁵ Such definition excludes water supply for purposes of trade, business, fountains, swimming baths, public baths or tanks or any ornamental or mechanical purpose, for gardens or irrigation, for building, for animals where they are kept for sale or hire or for sale of their produce, for consumption and use at a restaurant or by inmates of a hotel, boarding house or residential club, for consumption and use by persons resorting to theatres and cinemas, for watering streets, or for washing vehicles where they are kept for sale or hire.

⁸⁶ It excludes supply for industry, recreation, and various public uses.

⁸⁷ It is important to note that although Cameroon is largely endowed with this natural resource, the geographical distribution is disproportionate. For instance, the extended Sudano-sahelian zone of Northern part of the country is largely less endowed with the hydraulic resource than the southern part. Consequently, it will be difficult to talk of sufficient and continuous supply of portable water especially in that part of the country. However, there exist resource potential which need to be developed and distributed and the major limitation here is appears to be the huge sums of money required for water development. But the fact that access to this resource for domestic and personal needs is indispensable militates in favour of the argument to prioritize access to portable water by all.

⁸⁸ *Supra*, Bär, R., note 76, p. 12.

100 litres.⁸⁹ It must be noted that some individuals and groups may require additional water due to health, climate and work conditions.⁹⁰ However, an African consumes on the average 30 litres of water a day.⁹¹

Cameroon generally adheres to the WHO guidelines on availability of drinking water but on the ground, it is difficult to find persons in urban areas in general and marginalised people in particular having access to 20 litres of water per day. How then can we talk of sufficient but also continuous supply of drinking water for the sake of enjoyment of the right to water when water disruptions even in urban areas are frequent?⁹² The government argues that within its limited means, the present rate of portable water supply is all it can afford in the struggle to facilitate access to water by all Cameroonians within the meaning of Article 2(1) of the Water Code. Whether or not this argument is founded, is subject to debate. On the one hand, the state may really not possess adequate

⁸⁹ Smets, H. (2005), *Le droit à l'eau dans les Législations Nationales*, Académie de l'eau, AESN Nanterre, p 11.

⁹⁰ *Supra*, Note 9, p. 2.

⁹¹ WHO/UNICEF Joint Monitoring Programme on Water Supply and Sanitation : Assessment Report (2000), p 7

⁹² Such is the case in Yaounde, the political capital of the country, Douala, the economic capital, and Ngaoundere, the capital of Adamawa region. Garoua and Maroua, headquarters of the North and Far North regions respectively are not to be mentioned as they are permanently in very short supply of portable water. In fact, water disruptions have been so frequent and continuous especially in the nation's capital where some quarters-quartier Damas and others, for instance have gone without portable water for a period of three years such that the Head of State himself in 1999 had to summon the managers of the lone water provision company (Societe Nationale des Eaux – SNEC, now Camerounaise des Eaux – CDE, a Moroccan Consortium in charge of supplying portable water in the country) to take urgent measures to reestablish portable water having been interrupted for more two weeks.

In the East regional capital of Bertoua, the situation of non-connectedness to portable water and water disruptions have been acute and continuous that upon being interviewed by journalist, managers of the CDE were heard to say that they are unable to supply portable water to the growing population. They equally added that sometimes the water disruptions are deliberate because they have to ration the supply. This is really regrettable, yet 'water is live' ; this was the only time the populations of these regions could recall this adage.

resources to enforce the right to water but given that the right to water impacts seriously on health which no other thing can surpass, it ought to be a priority issue for the government such that more resources may be deployed from other sectors to enhance a more effective enjoyment of the right especially given that it is incumbent upon the government to do so.⁹³ On the other hand, it may actually be a question of lack of political will to comply with the right and the government relies on the provisions of Article 2 of the Covenant on Economic, Social and Cultural Right which states that, “states are obliged...to take steps...to the maximum of available resources with the view to achieving progressively the full realisation of the right...”

The enjoyment of the right to water means that people are entitled, besides sufficient and continuous availability of water, to adequately safe water. What this means is that drinking water for household uses must be of quality standard. To be acceptable, such water must be safe and therefore free from micro organisms, chemical substances, physical and radiological hazards that constitute a threat to people’s health and sanitation. Acceptable standard of quality water must also consider colour, odour and taste. These quality standards are important because the death toll of people especially children ; from diarrhoea (2 million in 1998) resulting from poor water supply and sanitation⁹⁴ has continued to increase. To minimize this humanitarian scandal and safe succeeding generations, governments are required to adopt measures for developing

⁹³Although public authorities enjoys certain rights in connection with the supply of portable water, their obligations in the direction of providing sufficient quantity of water for the purpose of enhancing the enjoyment of the right to water include *inter alia* the obligation to establish and protect priority for domestic uses ; ensure protection of water collection points and drinking water quality ; create a positive legal framework for investments and for operation of water services ; identify those who do not have access to water supply and sanitation and to take corrective measures ; ensure sustainable coverage of cost for water supply and sanitation ; ensure proper maintenance and renovations of installations and evaluate the quality of water supply and sanitation ; promote information for and participation of users ; and to ensure fulfillment of contracts with the private sector.

⁹⁴ *Supra*, note 89

and implementing drinking water quality set out in the "WHO Guidelines for Drinking Water Quality."

In Cameroon, one thing has remarkably caught the attention of the water legislator. Even if access to water in sufficient quantity has not been guaranteed, at least, in principle, a wide array of legal provisions have been envisaged for ensuring the quality standard of water for health. In fact, before judicial measures are resorted to, preventive measures⁹⁵ are envisaged in the Code. This perhaps explains why the Code has provided for water agents charged with inspection and control of water quality.⁹⁶ The Water Code has proscribed a number of acts⁹⁷ which may directly or indirectly impact on water quality. These are accompanied by heavy criminal sanctions.⁹⁸

The importance in Cameroon, of the quality of water has been impressive with regard to criminal sanctions as it is provided in the law that such sanctions attract no mitigating circumstances.⁹⁹ All these are intended to protect the quality of water for domestic and personal use and ensure public health as provided in Article 7. In this regard, provisions have been inserted in the Code dealing with protection of the sources of water such that land within the perimeter of protection of sources of water is reserved for public use.¹⁰⁰ In fact, to reinforce the

⁹⁵ Of all the measures of protecting environmental resources, the preventive measure is most encouraged for the simple reason that most environmental damage may not be repairable by the award of damages. And in fact, in this context, lack of access to water in sufficient quantity and quality may cause irreparable damage to human beings like death or terminal illnesses arising therefrom.

⁹⁶ See Article 1(3) of Decree No. 2001/162/PM of 8th May 2001, Fixing the Modalities of Designation of Agents for Surveillance and Control of Water Quality.

⁹⁷ See Articles 4-9.

⁹⁸ Articles 15-18, see also S. 82(1) of Law No. 96-12 of August 1996 relating to Environmental Management and in particular, sanctions for non-compliance with provisions for quality of water, air and subsoil. See further, Law No. 65-LF-24 of 12th November 1965 and Law No. 67-LF-1 of 12th June 1967 instituting a Penal Code for the Republic of Cameroon, in particular S. 261 on infringement of Public Health.

⁹⁹ See in particular Article 18.

¹⁰⁰ See Article 7(2). Of course, this makes sense because what is public is, in principle managed by government for the interest of all.

guarantee for water quality and ensure public health, an enabling statute is in place in this connection.¹⁰¹ Whether or not these measures are adequately implemented is quite another question to be examined subsequently in this paper.

4.3. Accessibility

This right to water may not be enjoyed simply because there is sufficient, safe and acceptable water for domestic and personal use. The right to water makes sense where water and water services are accessible to everyone within the jurisdiction of the state, Cameroon for instance. Salient ingredients of accessibility include physical, information accessibility and non-discrimination.

Physical accessibility in this context relates to water, its facilities and services being within safe reach of the population. It is also defined as "within the immediate vicinity of households, educational institutions and workplace."¹⁰² Collection of water from distant sources imports both direct and indirect risk to health.¹⁰³ As already argued above, women and children are most affected in this sense because they are the major collectors of water for domestic and personal use.

In Cameroon, ensuring physical accessibility to water remains one of the legislator's major objectives. In the urban areas, although with intermittent frequent disruptions, this problem is not as acute as it is in the rural areas where the supply of portable water is almost non-existent.¹⁰⁴ However, there are continuous attempts by the government to facilitate physical access within the available financial resources.

¹⁰¹ See Decree No. 2001/163/PM of 8th May 2001 regulating the Perimeter of Protection of the Sources of Water and Treatment of Water Stored for portable use.

¹⁰² *Supra*, Note 5.

¹⁰³ *Supra*, Note 76, Chapter 2, p. 15.

¹⁰⁴ It may be important to note that the supply of portable water in the semi-urban and rural areas of the country is entirely the result of self-help initiatives of the village development committees or it is partly the initiative of international NGOs or governments of some western nations. In the Adamawa region, the North West and South west regions, and the Centre region for instance, one finds the commitment of international NGOs like HELVETAS, SCAN WATER, etc all from the Nordic

It is also necessary, in attempting to enforce the right to water, that the population should be able to seek, receive and impart information concerning water. The long and short of all these is the participation of the population in the various stages of decision-making and policy design, construction, implementation, monitoring and evaluation. Such is a fundamental right of the population especially regarding their right to water.¹⁰⁵ There is ample evidence that national legislations¹⁰⁶ across the world recognize the right of the population to participate in states affairs, water issues inclusive. The advantage of participation of the population is that the right to water and public health would be largely improved upon and implementation is unlikely to meet with many difficulties. Nevertheless where there are difficulties or blames, these would be shared between the state as the guarantor of the right to water and the population which seeks to enjoy and sustain the utilization of water and together they can conveniently and comfortably begin a search for viable solutions to improve on the right to water.

Unfortunately, this salient ingredient has been overlooked by the Cameroonian water legislator as no specific legal safeguards have been crafted to ensure compliance and implementation of such condition. The consequence is that the population is deprived of information concerning the provision and protection of the right to water. Meanwhile, participation of all stakeholders in the decision-making process and planning is crucial for an integrated water management for the purpose

countries, in the supply of portable water for the semi urban and rural populations with the aim of enhancing the enjoyment of the right to water.

¹⁰⁵ It is one of citizen's fundamental rights to water to be informed, consulted and to participate in the conception, construction and implementation of water projects and to initiate actions where these rights and others are violated by public authorities who have the responsibility to guarantee that the above rights and others are enjoyed by the citizens.

¹⁰⁶ For instance, the Water Service Act (119, 2001, S.16) in Finland, Loi N° 2002-276 du 27 Février 2002 relative à la démocratie de proximité en France ; Local Government Act of New Zealand, S.83-84 ; Utility Act 2000, N° 65, 2002, S.36 in Australia, Loi N° 10-95 sur l'eau, Article 101 in Morocco ; Loi N° 002-2001/AW du 8, Février 2001 portant loi d'orientation relative à la Gestion de l'eau au Burkina Faso.

of facilitating the enjoyment of the right to water.¹⁰⁷ The state is, therefore, failing to meet its obligation to respect, protect and fulfil the right to water under existing international law prescriptions.

Finally, the right to water is non-discriminatory. Both in law and in fact, the right of access to water should not be based on any of the prohibited grounds: race, colour, sex, religion, political or other opinions, national or social origin, birth and others. The law in Cameroon has not alluded to any of these grounds as inhibiting access to water. However, there are factual situations in Africa in general and Cameroon in particular where access to water has been discriminated upon.

After the fall of the Berlin Wall, the collapse of Communism and the end of the Cold War, the wind of change began blowing across Africa. Many dictators fought to remain in power through every means. They found ways of stifling their political opponents and their followers or supporters. One of such ways was discrimination on access to water. They suffered from prolonged interruption¹⁰⁸ for no just cause especially during the period of the state of emergency declared in the North West Region of the country in 1992 where the main opposition leader is based. It must however be emphasized that it was much a matter of fact than law anyway.

4.4. Affordability

To adequately enjoy the right to water, government must ensure that water is affordable by all. The right to water, therefore, does not imply that water is free of charge. The general principle is that everyone is obliged to contribute to the cost of supply and treatment of water although this contribution may vary depending on the capacity of individual users¹⁰⁹ and may be made directly or indirectly. But, for the

¹⁰⁷ See Global Water Partnership (2000), Integrated Water Resources Management, TAC background Papers, No 4, Stockholm, p 31

¹⁰⁸ This kind of prolonged interruption was possible as water privatization was not yet part of Government policy.

¹⁰⁹ *Supra*, note 79, p. 51.

right to water not to be illusory, the contribution must be made moderate and affordable, not exorbitant. Affordability must be taken to include rates payable to access water networks such as connecting water to homes or public taps, and the rates payable for consuming the water.¹¹⁰

Although, it is well settled a principle of law with respect to accessibility that there should be no discrimination, it must be admitted that certain circumstances may justify discrimination. When it relates to water charges, commonsense, logic and natural justice support discrimination which we may qualify as positive discrimination. This implies that the less privileged, marginalised, deprived population and those incapacitated should benefit from preferential rates than other segment of the population without these characteristics. This would ensure that the right to water is respected, protected and fulfilled. For this to happen, government will generally need to monitor the water and take appropriate action to ensure that all can access a minimum service through such mechanisms as pricing policy and tariff regulation.¹¹¹

In Cameroon, a cross-section of the population does not enjoy access to water either because the cost to connect the water and/or the cost per metre cube is too high (the cost per metre cube has risen from 339 francs CFA/m³ to 470 francs CFA/m² – about one US dollar/m³). Given the general financial situation of the people, such amount is too high and this partly explains why water cuts for failure to pay or delays to pay are significantly many. Access to portable water in Cameroon is equally not guaranteed because of unnecessary and prolonged delays by the water enterprise to connect numerous applicants to portable water even where

¹¹⁰ *Ibid*, p 29.

¹¹¹ In fact, it is one of the duties of public authorities to set up water prices taking into account user's capacity to pay ; cut of supply of water to those who are able to pay but choose not to do so ; to subsidize service operators and water utilities companies where there is privatization in the proper sense of the word so that such companies and service providers can charge lower rates to marginalized and vulnerable population without running out of service.

they have fulfilled the tedious conditions.¹¹² From the foregoing, one may safely conclude that the enjoyment of the right to water in the country under study is not only hinged on the inability to meet the financial requirements in connection to access but on unnecessary, unexplained and prolonged delays in connecting the demanding population to portable water as well.

5. Mechanisms for the Guarantee of Implementation or Enforcement of the Right to Water under Cameroonian Law

For quite a long time now, the problem in Africa in general and in Cameroon in particular is to translate theoretical legal issues or principles into realities on the ground.¹¹³ In most areas, the environment in particular, there are a chunk of legal instruments regulating its management. But these instruments hardly find themselves into implementation. If laws cannot find their ways into implementation, it would be the same like having a right without a remedy which, as it is often said, 'is a vain thing.' And the question may be asked whether it is consequential upon the absence of enforcement mechanisms or the fact that such enforcement mechanisms do exist but are perhaps weak or again the lack of procedural rights (right to information, public participation, just administrative action, right to justice, etc) necessary complements to a substantive human right to water? In most cases, the problem is that the enforcement mechanisms are weak. It is thus important to dissect and diagnose the mechanisms in Cameroon for the enforcement of the right to water. Legal and policy, administrative institutional and judicial frameworks are some of the mechanisms in

¹¹² Of 30 persons randomly chosen out of about 52 queued up in the CDE (former SNEC) office in Melen quarter in Yaounde, 18 told us that they came in respect of repeated appointments given them by the water enterprise to connect them to portable water. 12 of them indicated that they had been chasing their application files for many months. In a similar study carried out in Nkol-Ndongo quarter in Yaounde, of 22 persons out of about 40 randomly interviewed, 13 of them equally stated that they came to check the evolution of their application files for water connection which had kept several months in spite of the fact that they had paid the fabulous connecting charges. Interviews conducted in July 2011.

¹¹³ See UNEP (2006), *Africa Environment Outlook 2*, Nairobi, p. 126.

place to enforce the right to water. It is thus noteworthy that Cameroon manifested her willingness to respect international commitments whether of the so-called hard law or soft law portfolio in keeping with the *pacta sunt servanda* principle to which she equally adheres.¹¹⁴

5.1. Legal and Policy Frameworks

From our discussion above, there is no doubt that there are attempts to lay down a framework that recognises and guarantee the right to water and its enforcement. The texts of laws are implemented more easily when there is a clear policy. In this connection, there are enabling instruments¹¹⁵ detailing the manner of enforcement of the right to water. The problem with these is that some are usually in contradiction with the law itself, in contradiction with other related enabling statutes, are obscure and having ambiguous provisions or again are full of vacuums. All these render the enforcement of the law difficult hence making it a weak regulatory tool.

5.2. Administrative Institutional Framework :

The major institution in charge of overseeing the implementation of the right to water is the Ministry of Water and Energy. This is the government's eye on issues relating to water. Technical expertise on water issues is offered by this Ministerial Department. In fact, it is this Department and decentralised administrative institutions¹¹⁶ that facilitate the understanding and practical implementation of the right to water to the population. Ministerial Departments and other institutions, whose activities relate to or have implications on the right to water,¹¹⁷ liaise with the Minister of Water and Energy. This may explain why the Water

¹¹⁴ See generally, MINFOF & MINEP (2001), *Rapport Nationale du Cameroun sur l'Environnement et le Developpement Durable, Rio + 10*, 88 pages.

¹¹⁵ See *Supra*, note 93 and 98 for instance.

¹¹⁶ See Article 2(2) of the Water Code.

¹¹⁷ For instance, the Ministries of Finance, Health, Environment and Protection of Nature, Forestry and Wildlife, Territorial Administration and Decentralization, Lands and Housing, Urban Affairs, Regional Development, Agriculture, Industry, Mines and Technological Development, Concessional Services for Water and Energy Supplies and Mayors.

Code institutes a National Water Committee¹¹⁸ bringing together representatives from every Ministerial Department whose activities directly or indirectly relate to water resources management. The competence, organisation and functioning of the National Water Committee is dictated by a Prime Ministerial Decree.¹¹⁹

Collaborative institutions which enhance the enjoyment of the right to water are concessionaires of water supply and treatment. They enter into contracts with the Ministry of Water Resources and Energy. Where they do not meet their concession agreements notably the regularity and quality of water according to "WHO Guidelines" the Minister can propose the withdrawal of authorisation to operate in the water sector. To date, the Ministry of Water and Energy has done no more than made serious warnings to the lone company supplying drinking water (CDE).¹²⁰

In its mission, the Ministry of Water also plays the role of an arbitrator.¹²¹ Out of Court arrangements or compoundment can be made by the Minister with the author of an offence relating to the right to water. So therefore, the Ministry is an arbitration centre. This may partly explain why court cases on the right to water are difficult to come by.

5.3. The Human Rights Commission

Considering that the right to water is a human right, it may therefore, be protected by human rights institutions. In Cameroon, the human rights institution is the National Commission on Human Rights and Freedoms (NCHRF).¹²² The Commission was created to protect and promote human rights of Cameroonians, the right to water forming an

¹¹⁸ See *Supra* Article 26(1).

¹¹⁹ See Decree No. 2001/161/PM of 8th May 2001, fixing the Competence, Organisation and Functioning of the National Water Committee.

¹²⁰ This is information which we gathered from the Sub-Director in charge of water for domestic and personal use in the Ministry in charge of water and energy in an interview he granted us.

¹²¹ See Articles 22 and 23 of the Water Code.

¹²² This Commission was created by Law No. 2004/016 of 22nd July 2004. this law relates to Creation, Organisation and Functioning of the Commission.

integral part of these rights. Unfortunately, the Commission is tilted towards the protection and promotion of civil and political rights thereby paying little or no attention to economic, social and cultural rights, the right to water being a crucial component.

Even in the enforcement of Civil and Political rights, their interpretation does not consider that the right to life being a civil and political right includes the right to water for life. Consequently, first aid measures in respect to the effective and sustainable enjoyment of the right to water which ought to have been provided by the Commission are not available to the population suffering from abuses relating thereto. The only option in the phase of such a disappointment is resort to the courts.

5.4. The Role of the Judiciary Power

The role of the judiciary is crucial in the enforcement of the right to water. It is the reference of last resort providing a basis for enforcement and redress in the case of abuse. Some jurisdiction in Africa¹²³ have long recognised in their national constitutions and legislative instruments, and enforced in the courts, the right to water as a specific and not a related right. In Asia,¹²⁴ some jurisdictions upheld the right to water not as a specific and separate right but as a right under the right to life.

Unfortunately, there is paucity in Cameroon, of judicial decisions on the enforcement of the right to water whether as a right *per se* or a right in relation to the right to health, to life, or to a healthy environment. The question is what accounts for this situation. One may argue that for a considerably long time in Cameroon, the right to water was not explicitly recognised but was only tied to other rights like the right to life. Even so, the right to life was a preambular provision¹²⁵ and as

¹²³ In South Africa, for instance, in the case of *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*, High Court (Witwatersrand Local Division), Case No. 12312(2001).

¹²⁴ In India, for instance, in the case of *Attakoya Thangal v. Union of India*, High Court (Kerala), 1990.

¹²⁵ See *Supra*, Preambular paragraph 17 of the 1996 Constitution as amended on April 14, 2008.

generally acknowledged, preambular provisions are non-justiciable. However, fairly recently, the legal value of the preamble was recognised in the new Constitutional dispensation of 1996 as amended on April 14, 2008.¹²⁶ The preamble is now part and parcel of the Constitution.¹²⁷ But then, since 1996, what has been the trend? Many human rights like the right to water, for instance, needs to be more specifically set out in legislative texts so as to spur litigation for purposes of enforcing the enjoyment of such a right. With regard to the right to water, legislative recognition came in 1998 but the Enabling Instruments were passed only in 2001. Such a state of affairs probably explains reluctance to litigate on the right to water. This notwithstanding, the Court of Appeal of Yaounde¹²⁸ did not hesitate to uphold the decision of the High Court of Mfoundi which in a summary trial requested the appellant Water Corporation – SNEC (as it then was) to proceed with an immediate effect to reconnect water to the benefit of a certain Mr SENDE Jean Victor who brought an action against the Water Corporation for having disrupted water flow for reasons of fraud on his part. The Court of Appeal held that even in cases of fraud to access water, the corporation could address same in another way but not by disrupting water supply to the defendant given that the right to water is a human right. The court emphasized the summary nature of the trial stating that access to portable water is a vital and fundamental need for human beings that no one has to temper with.

The decision in this case could be praised for at least two reasons. That in the Cameroonian context, whether there is local legislation on the issue or not¹²⁹, the judges consider the right to water as a fundamental human right, the breach of which may not be tolerated. In the second place, that the courts are willing to uphold the right either as

¹²⁶ See Law No 2008/001 Of 14 April to amend supplement some provisions of Law 96/06 of 18 January 1996 to amend the Constitution of 1972.

¹²⁷ *Ibid*, see Article 65.

¹²⁸ See C.A. Arrêt N° 390/Civ du 28 juillet 2000, *Affaire la Société Nationale des Eaux du Cameroun (SNEC) c/ SENDE Jean Victor*.

¹²⁹ Note should be taken of the fact that at the time the decision was handed down the enabling instrument to the Water Code had not come into force.

a right *per se* or a right closely related to the right to life, to health, to a healthy environment, to food, housing enumerated in the preamble of the Constitution. But that notwithstanding, our submission here is that in addition to ordering immediate reconnection of the water, the court could also award damages for damage or inconvenience suffered in the meantime. In spite of this, it must also be acknowledged that a vast majority of Cameroonians are generally reluctant to seek redress for the abuse of their human rights especially economic, social and cultural rights as the promotion and protection of this class of rights are near peripheral issues in the Cameroonian context.

6. Hurdles or Challenges to the Effective and Sustainable Enjoyment of the Right to Water under Cameroonian law

The effective enjoyment of the right to water in Cameroon is hampered by a number of factors including interruptions of supplies, imprecise legal protection, human resources problem among others.

6.1. Interruption of Water Supplies

A major problem affecting the right of the population to water in Cameroon is frequent interruption of water supplies. Interruption here may take two dimensions. Firstly, interruptions may be for some sections of the communities and could last for several months.¹³⁰ Some questions frequently asked are whether it is load shedding or a collapse of the distribution system? Unfortunately, these questions usually do not receive appropriate answers as no one is usually informed either in advance or during the interruptions of water of what is happening. Consequently, the population is deprived of water for basic human needs.

Secondly, interruptions may also be for non-payment or delays in paying water bills. It happens in the vast majority of cases of interruptions that the persons affected have not paid their bills. We have argued earlier that although the right to water does not mean free water, it does not however, imply that failure to pay should automatically result

¹³⁰ See *supra*, the examples in note 108.

to interruption of supply without investigation of the cause of such comportment. Although such argument may sound lame because interruption is grounded on failure to respect the clauses of the water contract¹³¹ (express or implied) with the company in charge of supplying water, it however impinges on a basic and fundamental right – the right not only to water but to a continuous supply of it or sustainable enjoyment. The interruption for non-payment or delays is also explained by the exorbitant rates¹³² charged per metre cube of water. Worse still, delay in paying bills attracts ‘penalty’ usually higher than the amount of the bill itself.¹³³ If a household has been unable to secure an amount of a water bill less than such penalty, how would one reasonably expect such a household to afford an amount more than the bill by way of a penalty in addition to the amount of the bill? In our humble opinion, such a fine is tantamount to implicitly denying the enjoyment of the right to water and should be reduced drastically. This seems to prioritize and treat water as an economic commodity or good than a basic need for the human survival. This state of affairs constitutes a hurdle to the sustainable enjoyment of water.

6.2. Imprecise Legal Protection

The effective implementation of the right to water under Cameroonian law is also hampered by imprecision in the recognition of the right. The Water Code has failed to spell out succinctly that access to water is a human right. Moreover, by that law, the state only facilitates access to water but this does not in any way and can hardly impose clear obligations on the state to provide water to all. A litigant cannot, therefore, rely exclusively on the provision of the Code but must invoke his right to water as arising from the ratification of international legal instrument relating to the right to water as a human right. In fact, there

¹³¹ The contract is usually a standard form contract. The individual or family seeking water supply does not negotiate the terms. It is a “take it or leave it” contract with all what this entails for the weaker party, the individual or the family.

¹³² See *Supra*, discussions on affordability.

¹³³ The fine for delay is a fixed amount of four thousand five hundred francs (4500) FCFA, the equivalence of about 10 US dollars.

is ambiguity in the Code which makes the human right character to water a doubtful one. Squaring this dilemma is crucial for the sustainable utilisation of water for domestic and personal needs.

6.3. Human Resource Capacity

Human resource capacity is a huge problem militating against the effective and sustainable enforcement of the right to water. The law provides that the *surveillance and control of water quality* is ensured by Water Inspectors and their Assistants.¹³⁴ It is provided that such officials must be appointed by the Minister of Water to control the quality of water, research and establish offenders and should institute proceedings acting as Judicial Police Officers against the said persons.¹³⁵ Although these inspectors have a *crucial role to play for the purpose of protecting the right to water and its sustainability*, they are not only few but also many of them are not specialists in water matters. What is more? Regrettably, some of them facilitate the Commission of water offences or fraternise with the offenders for their personal gains. The quality of water is compromised and the right to water jeopardized.

7. Conclusion and Recommendations

From the foregoing, it is clear that the right to water is a fundamental human right recognised explicitly and implicitly in many global non binding and regional legal instruments of binding and non binding character in response to the well founded legal theories on human and natural rights enunciated above albeit not specifically on the right to water. It is also clear that the reception and implementation of such right remain country specific. In Cameroon, the right to water is recognised in the Constitution as a *related right to other human rights* but legislative instruments on which we rely heavily to clearly set out the right as a specific right with emphasis on the human rights character, has failed to do so. Besides, the implementation of the right as provided in the Water Code meets many challenges.

¹³⁴ See Article 19 of the Water Code.

¹³⁵ See *Supra*, Note 51.

However, at the national level, we recommend that to surmount the hurdles to the effective and sustainable enforcement of the right to water and guarantee its sustainable enjoyment, governments should subsidise heavily the sector where the provision of water for domestic and personal uses has been privatised. This way, the rates will be reduced and the affordability ingredient of the right would be guaranteed¹³⁶. This is not asking too much from the government. It is not a farfetched matter if the government is truly committed to build a strong and healthy leadership and a just and sustainable society. Alternatively, it could shy away from privatisation and provide water for domestic and personal needs simply by prioritising the sector for obvious reasons. This way, water is not an economic good but the basic need for human survival. Finally, effective realisation of the quality of water so well emphasised in the Code and its Enabling Statutes can only be adequately guaranteed by building capacity of those in charge of surveillance and control and also sufficiently motivating them to avoid them getting involved in corrupt practices. The population and civil society organisations should be involved in the process of decision-making relating to the right to water.

The generalisation, diversity, and segregated style with which the global and regional community, legal systems and even countries address the issue of the right to water may equally lead us to ground the argument in favour of the need, at the global level, of a legal framework (charter, convention, or treaty, Pact, etc), encapsulating all the provisions on the right to water in all domains and to all the social categories. In this regard therefore, we recommend a revolting and aggressive lobby for a globally binding human right framework on the right to water. Of course, this does not exclude the possibility of crafting an African

¹³⁶ In some advance countries, Britain for instance, the British Utilities have learnt that privatization cannot mean they are free to conduct their business as they wish. Because water supply is a natural local monopoly and privatization requires a strong and permanent public regulator. In a sense, privatization is a misnomer. The water remains under government control; tariffs and services remain tightly regulated; and even if assets and sewers are transferred to a private company, their use is circumscribed, and the companies are licensed to operate only for 25 years. For details on this, see Fitzmaurice, M. *supra*, note, 25.

regional legal instrument on the right to water given the peculiarities of the continent in many regards *including the water stress*. This way, there would be accent on the human right character of the right to water and countries, Cameroon inclusive, will be enjoined to elaborate more comprehensive and *specific legislations* that guarantee the effective and sustainable enjoyment of the right to water, guided of course, by the global or regional agreement on the subject.