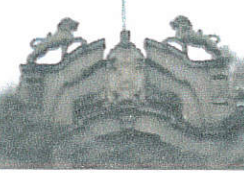


Addis Ababa  
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**ADDIS ABABA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE STUDIES SCHOOL  
OF LAW**

**THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK ON THE HUMAN RIGHT  
TO WATER**

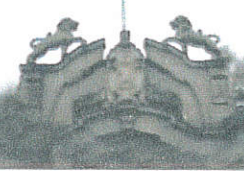
By: Ifa kenea Ayana

Advisor: Tadesse Kassa Woldetsadik (Ph.D)

A Thesis Submitted to Addis Ababa University College of Law and Governance studies school of law in  
Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Human Rights Law

June, 2014, Addis Ababa, Ethiopia

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Approval Sheet by the Board of Examiners

THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK ON THE HUMAN RIGHT TO WATER


Approved by Board of Examiners

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**DECLARATION**

Ifa kenea, hereby declare that this research paper is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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## **ACRONYMS**

ACHPR: African Charter on Human and people's Rights

ACRWC: African Charter on the Rights and Welfare of the Child

CESCR: Committee on Economic, Social and Cultural Rights

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CRPD: Convention on the Rights of Persons with Disabilities

CRC: Convention on the Rights of the Child

ESC: Economic Social and cultural

FDRE: Federal Democratic Republic Ethiopian

ECHR: European Convention on Human Rights

HRW: human right to water

IACHR: Inter-American Convention on Human Rights

ICESCR: International Covenant on Economic Social and Cultural Right

MDGs: The Millennium Development Goals

P. : Page

Para. : Paragraph

UDHR: Universal Declaration of Human Right

WHO: World Health Organization

## ABSTRACT

The right to water is one of the fundamental human rights and it is a road map for the realization of other human rights. It is a recently evolved area of human rights. No international bill of human rights that has explicitly recognized the right to water. The non-explicit recognition of the human right to water does not mean that there is no human right to water in contemporary human rights law because it is supported by the declarations and states practice. However, there is no adequate legal framework in this regard. In similar vein, gradually it was recognized as an international issue, the lack of sufficient access and availability of water necessitates that action would be a driving force in regards to both recognizing the existence of the human right to water and defining its content. First and foremost an explicit and full recognition of the human right to water is required in order to enable individuals and communities to claim their right to water needs and to impose on states the obligations to supply the minimum quantity and quality of water for all. Arguably, therefore, the justiciability of the human right to water will explore with due attention to local legal framework through direct and indirect approach. Then issues affecting the realization of the human right to water and the subsequent failure to implement in Ethiopia are also discussed through qualitative methods of data collection with some interviews. Finally, the thesis wrap up that the human right to water is in no way aspirational, but rather imposes real obligations on states, for which they will be subjected to international and national accountability. So, the incorporation of the human right to water in the domestic Constitution can be justified not only from the perspective of enforcing human rights but also for ongoing sustainable development. It is recommend that implementing the human right to water will often require a review of states legislation and policy related to its services regulation; overall it is management and citizen's complaints institutions.

**Keywords:** Federal Democratic Republic of Ethiopian (FDRE), International Covenant on Economic Social and Cultural Rights (ICESCR), the right to water

## CHAPTER ONE

### INTRODUCTION OF THE STUDY

#### 1.1. Background of the study

Throughout the history of mankind, water has been a central element of human progress, allowing the improvement and development of agriculture, household and industry.<sup>1</sup> Putting the matter otherwise, it is part and parcel of sustainable development from the time immemorial. It is essential for life, crucial for relieving poverty, hunger and it is a backbone of economic development.<sup>2</sup> Water which has this much importance and significance logically demands full legal protections through incorporation into legal instruments. Such incorporation of the right to water is directly linked also to the needs to protect other human rights which subsequently increase the need for immediate protection of the human right to water.

In 2000, a global population of water supply was 93 percent and 70 percent in urban and rural areas respectively.<sup>3</sup> In addition, as of 2002, over one billion persons worldwide lack access to a basic water supply.<sup>4</sup> In similar vein, in the year 2010 approximately 884 million people lacked access to safe drinking water and more than 2.6 billion did not have access to basic sanitation.<sup>5</sup> Due to these fact approximately 1.5 million children less than 5 years of age died and many of school days were losing each year as a result of water related diseases.<sup>6</sup> The shortage of water is an international problem, at the same time there is no adequacy of law governing water supply

<sup>1</sup> Maria Adelaide (2010) The right to water: dimension and opportunities., Journal of international law, Colombia EAFIT Vol. 1, 01, p.70

<sup>2</sup> Schreiber William(2008) Realizing the Right to Water in International Investment Law: An Interdisciplinary Approach to BIT Obligations, Natural Resource Journal vol. 48 springs, p. 433 see also Tripathy Abhishek and Mohapatra Prajna R., Right to water: Debating the human rights perspective, NUJS law review 2NUJS L. Review p.305, see also Jimmy L. Verner, Jr. (2006), The Right to Water in the Courts of India, Water law in India, Verner, and Document hosted at <http://www.jdsupra.com/post/documentViewer.aspx?fid=990f0795-2861-4052-9fa1-29620eec07c9> ,p.11

<sup>3</sup> Tully (2005), Human right to Access to water, Journal Netherlands Quarterly of human rights, vol.23/1 p. 46

<sup>4</sup> CESCR, General comment No.15(2002), Substantive issue arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN committee on Economic, Social and Cultural Rights, para.1,

<sup>5</sup> General Assembly Adopts Resolution(2010) recognizing access to clean water, sanitation as human right, by recording vote of 22 in favor, none against ,41 abstentions

<sup>6</sup> WHO/UNICEF (2004), Meeting the MDG Drinking Water and sanitations Targeted

across the sphere. Water supply services as used in this thesis shall mean the provision of water services to support human life such as drinking, washing and personal hygiene.

The importance of water to all forms of life is undisputable, yet half a billion people suffer from severe water shortages and more than one billion people did not have access to safe drinking water.<sup>7</sup>In 1998, Guisse as Special Rapporteur on the right to water affirmed that drinking water is a vital resource for humanity; therefore, it is basic necessity of human rights.<sup>8</sup>In 2000, he defined out that the right to drinking water means the right of every individual to have access to the amount of water required to meet his or her basic needs at every instance. In the new Millennium Development Goals, international community have brought attention to the inevitable future water shortages; and the immediate need to modify the way we administer this valuable resource.<sup>9</sup> However, as an idea, a human right to water has expressly appeared at international environmental conferences, in response to water justice struggles around the world.<sup>10</sup> Later on, framing of water as a human right can be understood as an affirmation of the fundamental importance of water for human dignity, and as a response to global water service problems.<sup>11</sup> In spite of this, there are no legally binding effect instruments that recognize in explicit term within universal manner the right to water across the world.<sup>12</sup>

There are three international legal instruments that have explicitly enshrined the right to water for certain groups of peoples.<sup>13</sup> These are CEDAW, CRC and CRPD. In 2002 with the same trend under the General Comment, CESCR recognized the right to water under article 11(1) of the ICESCR.<sup>14</sup> By the same token, the General Assembly in 2010 has passed remarkable resolution acknowledging of the human right to water as human rights.<sup>15</sup> Countries such as South

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<sup>7</sup>Zettel M. The GATS(2006)Privatization and Water Services - an overview of legal aspects Maastricht Faculty of Law Working Paper/9,p.5

<sup>8</sup>The Right of Access of Everyone to Drinking Water Supply and Sanitation Services(1998)

<sup>9</sup> Juan Miguel P. Juan, (2003)The Right to Water in Argentina, Prepared for Rights and Humanity

<sup>10</sup> United Nations Water Conference(1977),Mar del Plata, Arg., Report of the United Nations Water Conference, U.N. Doc. E/CONF.70/29

<sup>11</sup>Sharmila L. Murthy JD, MPA, (2013),The Human Right(s) to Water and Sanitation: History, Meaning, and the Controversy Over-Privatization, 31 Berkeley J. Int'l Law. 89 p. 89

<sup>12</sup>Ziganshina, D. (2008), Rethinking the concept of the human right to water, 113-128, Journal of International Law, p. 114

<sup>13</sup> Cullet Philippe (2013), Right to water in India, plugging conceptual and practical Gaps, published in: 17/1, 56-78, International Journal of human rights p. 3 see also Ziganshina, D. (2008), note 12,p.114

<sup>14</sup>General Comment no.15(2002), note 4 para.21

<sup>15</sup> UN, General Assemble Resolution(July 2010), The Human Right to Water and Sanitation

Africa, Mauritania, and Uruguay have explicitly incorporated the human right to water under their domestic Constitutions as the part of the human rights.<sup>16</sup>

The three regional human rights systems have entrenched the human right to water [hereafter HRW] implicitly as well as explicitly in their legal instruments. These are European human right system, Inter American human right system and African human right system. In most cases all of them have substantiated the right to water through indirect approach by way of deriving from others civil and political rights or from explicitly recognized other human rights such as the right to health, life and clean environments.<sup>17</sup>

In the history of Ethiopian Constitutions, access to water has never been explicitly recognized as the human rights. For a long time, provision of water supply, water resource development and management activities have been not given adequate attention in Ethiopia. Access to water is enshrined in the FDRE Constitution both in the chapter three of Fundamental Rights and Freedoms provisions implicitly and chapter ten National Policy Principles and Objective expressly.<sup>18</sup> However, neither its Constitution nor other legislations expressly recognized for the normative content of the right to water; nor is the government directly getting involved in the provision of water on equal footing with other civil and political rights though there is a serious shortage of water in the country; indeed, there are.<sup>19</sup> The importance of responding to water problems in Ethiopia lies on realizing the right to water and serve as a measure to sustain ongoing development as well.<sup>20</sup> Particularly, the safeguard of the human right to water in Ethiopia also extends to ratified international agreements such as ICESCR, CRC and CEDAW;

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<sup>16</sup>South Africa's constitution of 1996 Section 27.1(b), Article 57 of the Mauritania Constitution, 1991, The Constitution of the Republic of Uruguay, 1967, last amended in 2004, confirms in Article 47, see also The right to water under the different national constitution, <http://www.righttowater.info/progress-so-far/national-legislation-on-the-right-to-water/> accessed in August, 2013, see also Curry Elliot (2010), Water Scarcity and the Recognition of the Human Right to Safe Freshwater, Northwestern Journal of International Human Rights, Volume 9 | Issue 1 Article 5 Fall, p.116,

<sup>17</sup>Yusuf, Salma (2011) The Rise of Judicially Enforced Economic, Social, and Cultural Rights--Refocusing Perspectives, Seattle Journal for Social Justice: Vol. 10: Iss. 2, Article 3.p.771, see also Case of the YakyeAxa Indigenous Community v. Paraguay, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 201 (June 17, 2005).

<sup>18</sup> Constitution of the Federal Democratic Republic of Ethiopia (1995), article 43[4] and article 90(1)

<sup>19</sup> See chapter three & four of this thesis

<sup>20</sup> The minister of water resource in cooperation with corporate Media and communications, and Ethiopia, Investment promotion services, Magazine published on the Occasion of the world day 2008 celebration, p.6, see also world summit for social development t, Copenhagen declaration on social development and Programme of action, Annex 1, at Actions pt. C.35(b), U.N. Doc. A/CONF.166/RES/1 (1995), available at: <http://www.visionoffice.com/socdev/wssdpa-0.htm>, accessed on November, 2, 2013.

nevertheless, these have not avoided the prevalence of right to water violations in the country.<sup>21</sup> Based on what aforementioned, it could be possible to see that detailed research works have not been done in the country on this regard and also to rectify the wrong perception against the human right to water. This background contributed much in selecting to write on the human right to water.

## **1.2. Statement of the problem**

Certainly, it can be seen in rural areas of Ethiopia where the appropriate use of water is highly violated. Among other things, animals and human being drunk from the same streams but where nobody asks for local remedy either against the court or administrative body. Preliminary assessment made by researcher on judicial enforcement of the right to water in Ethiopian Courts reveals that there are no practical right based litigations.

Denial of the right to vote or of the right to freedom of speech, solely on the prohibited grounds is loudly and rightly condemned by the international community including our country. Yet deep-rooted violation in the enjoyment of the human right to water is often tolerated as unchanged realities.

The human right to water is the most pressing item on the international and national human rights contexts agenda; but it remains below the expected rate of water coverage and water quality. The lack of safe drinking water not because the resources are unavailable but mostly because the local communities are badly governed and it seems no rule of law is observed. In other words this simply indicates that there is a failure of understanding about how one could go about the practical implementation of the right to water. Although there are such situations in many countries, the protection of the right to water at international as well as national level is underdeveloped, due to the fact that there is lack of adequate legal framework.

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<sup>21</sup>FDRE Constitution(1995), note 18, article 9(4)

### 1.3. Research questions

This research attempts to answer the following questions:-

1. Whether there is independent or derivative human right to water in the UDHR, ICESCR, the African Charter on Human and Peoples Rights and FDRE Constitution?
2. Is the human right to water is justiciable in Ethiopian context?
3. What are the most important challenges to the effectiveness of the human right to water in Ethiopia and what are the possible ways to overcome them?

### 1.4. Literature review

The normative character of socio economic rights has been very controversial since the adoption of international human rights law.<sup>22</sup> Unlike civil and political rights, socio economic rights are broad and they are considered as progressive rights including the right to water.<sup>23</sup> At the same time, it is claimed that the rights are by nature, open-ended and indeterminate, and there is a lack of conceptual clarity about them.<sup>24</sup> It has taken half a century as rights that cannot be enforced due to its ambiguity or vagueness, however, such rights are those aimed to secure for all members of a particular society a basic quality of life in terms of food, health, clothes, water, shelter and so on.<sup>25</sup>

The economic and social rights including the right to water is resource-intensive and required the direct intervention of the governments whereas civil and political rights do not involve government expenditure but merely entail the government's forbearance from interfering with

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<sup>22</sup>Dejene Girma (2007), The realization of the right to housing in Ethiopia, p. 9 Submitted in partial fulfillment of the requirement for the degree of LL.M. [human rights and Democratization in Africa] center for human rights, Faculty of law, University of Pretoria. See also Philip Alston and Gerard Quinn(1987), The nature and Scope of states parties' obligation under the international covenant on economic, social and cultural rights, 156-229, Human rights quarterly 9 ,p.156

<sup>23</sup>Robertson and Merrills(1992), Human rights in the world, An Introduction to the study of the international protection of human rights, 3rd edition,p.230

<sup>24</sup>E Wiles, (2006-2007), Aspirational Principles or Enforceable Rights? The Future for Socio-Economic Rights in National Law; 22 American University International Law Review, p.50., see also AmareTefaye(2010), Justiciability of socio economic rights in the Federal Democratic Republic of Ethiopia, A Thesis Submitted to the School of Graduate Studies of Addis Ababa University in Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Human Rights Law Stream, p.5

<sup>25</sup>G Erasmus,(2004), 'Socio-Economic Rights and Their Implementation: The Impact of Domestic and International Instruments' 32 International Journal of Legal Information 243, 252 ,see also Risse Mathias(2012), The Human Right to Water and Common Ownership of the Earth, Harvard University, p. 5, see also Philip Alston and Gerard Quinn(1987) note 22,p.157-159

the rights of the people.<sup>26</sup> However, authors, like Eide, argue that such kinds of argument are gross over simplification. He point out that there is a scenario where socio economic rights including the right to water does not required resource and as the same time there are also civil and political rights which require resource.<sup>27</sup> For example, once the water service is provided the obligation to respect entails that the state should refrain from disconnection or contamination of water utilities.

South African Constitutional system now represents a leading example of entrenched the right to water and it is used as proof that the gap between normative aspirations and social realities has bridged.<sup>28</sup> Langford M. said that the adoption of Optional Protocol of 2008 has break down the walls of division that history built and would united once again what the UDHR proclaimed as a sole body of the human rights sixty years ago.<sup>29</sup> Danilo stressed that states were obliged, regardless of the level of economic development, to ensure respect for minimum subsistence of the right to water for all.<sup>30</sup> Therefore, the right to water can be made justiciable and claimable on the basis of core-minimum right before a court of law at the national as well as regional level.<sup>31</sup>

The legal existence of the human right to water has been both slow and controversies in relation to other human rights.<sup>32</sup> The main cause this confronting is the non-explicit recognition under the international bill of rights. As a result, there are controversial question whether there is an independent human right to water in the contemporary international human rights law or not.

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<sup>26</sup> Agbakwa SC. (2002), 'Reclaiming humanity: Economic, social and cultural rights as the cornerstone of African human rights' 5 Yale Human Rights and Development Law Journal, p. 187

<sup>27</sup> Eide, A (2001) 'Economic, Social and Cultural Rights as Human Rights', in: Eide, Asbjørn; Krause, Catarina and Rosas, Allan (eds), Economic, Social and Cultural Rights - A Textbook, 2nd ed., (Dordrecht, Boston, London: MartinusNijhoff Publishers p. 25

<sup>28</sup> G. Young Katharine(2013), Freedom, Want, and Economic and Social Rights: Frame and Law, Maryland Journal of International Law Volume 24 | Issue 1 Article 18,p.202

<sup>29</sup> Langford M., (editor 2009), Perspectives on a New Complaint and Inquiry Procedure: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Special issue of nordisktidsskrift for menneskerettigheter, Nordic Journal of human rights, Volume 27, No. ,p.2

<sup>30</sup> Report of the Special Rapporteur on the Realization of Economic, Social and Cultural Rights, U.N. ESCOR, Comments on Human .Rights., 43rd Sess., Agenda Item 8, at 18, I 52 (d), U.N. Doc. E/CN.4/Sub.2/1991/17 (1991)

<sup>31</sup> Sisay Alemahu Yeshanew (2011), Approaches to the justiciability of economic, social and cultural rights in the jurisprudence of the African Commission on Human and Peoples' Rights: Progress and perspectives, African human rights law Journal Volume 11 No 2, p.318

<sup>32</sup> Gonzalo Aguilar Cavallo (2012), The Human Right to Water and Sanitation: From Political Commitments to Customary Rule? 3 Pace Int'l L. Rev. Online Companion 136, p.137 See also Takele Soboka Bulto (2011) The emergence of the human right to water in international human rights law: Inventory or Discovery? Melbourne Journal of International Law [Vol. 12] p.2

Scholars like Tully argue that there is no human right to water under customary international law; therefore, there is no independent human right to water under the ICESCR.<sup>33</sup> He further argued that CESCR invented the right to water under the same Covenant rather than elaboration. During the General Assembly Resolution debate, Australia has also argued that Resolution has created new human right to water.<sup>34</sup> In similar way, Peter H. Gleick argued that the human right to water may be viewed as derivative from various recognized rights under the international human rights law.<sup>35</sup>

According to Ziganshina, D. although this right has not been explicitly recognized as a separate fundamental right in the ICESCR; however, it was treated as an element of the rights accorded in these documents through recognition of other basic rights.<sup>36</sup> These rights are including the right to health, food and an adequacy standard of living.<sup>37</sup> With respect to water as part of the right to life; the right to life comprises the right of every human being not to be deprived of his life and the right of every human being to have the appropriate means of subsistence and a decent standard of living.<sup>38</sup> In this sense, construed as the right to appropriate means of subsistence of the right to life would clearly encompassed the right to sanitary drinking water.<sup>39</sup>

However, this research is an attempt to assess the autonomous[a free-standing] of the human right to water under the UDHR, ICESCR and the African Charter on Human and People's Rights in order to fill the gaps in Ethiopian context. The human right to water is not only a matter of access but also its normative content i.e. both freedoms and entitlements. Article 11 (1) and 25(1) of the ICESCR and UDHR subsequently was intended to be broad, and specifically the three the right to basic needs mentioned: the right to food, clothing and housing has meant to be illustrative, in case including the human right to water. Therefore, there is an international human right to water which presently exists as part of the international bill of rights through normal course of interpretation. Derivative human right to water has its own problem. This means that

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<sup>33</sup>Tully (2005), note 3 p. 63

<sup>34</sup>General Asseble Resolution (July, 2010) note 15

<sup>35</sup>Peter H. Gleick (1998) "The human right to water" I Water Pol'y 487 at 490 -493.

<sup>36</sup>Ziganshina, D. (2008), note 12, p. 114

<sup>37</sup>McCafrey, Stephen C. (1992) A Human Right to Water: Domestic and International Implication, 5 Geo. Int'l Env'tl. L. Rev. 1, at 5. Cited in J. Alvarez Ignacio, (2012) note 32 p.2

<sup>38</sup> Constitution of the World Health Organization, opened for signature, July 22, 1946, 62 Stat. 2679, 14 U.N.T.S. 185

<sup>39</sup> Human Rights Committee, General Comments adopted under Article 40, paragraph 4 of the Civil and Political Covenant, U.N. Doc. CCPR/C/21/Rev. 1 (may 19,1989) at 5

the realization of the human right to water could mean different things depending on the primary article in question. Putting the matter otherwise, the prospect of realizing the human right to water is further complicated; in light of the fact that its existence depends on the acceptability of other human rights.

While there is a relative infancy of the human right to water, in the field of international human rights law such as the CRC and CEDAW treaties are specifically recognized the right to water for specific groups of people.<sup>40</sup>The Abuja Declaration has also adopted by 45 African and 12 South American states at the First Africa-South America Summit in 2006 contains a commitment by participating states to 'promote the right of their citizens to have access to clean and safe water within their respective jurisdictions'.<sup>41</sup> Again in 2004, Guisse Special Rapporteur pointed out that the right to drinking water was part of the international recognized human rights and may be considered as basic requirements for implementation of other human rights.<sup>42</sup>

The adoption of the African Charter on Human and Peoples' Rights [the African Charter] marked a watershed in the Africa's history. Adopted at a time when most African states were either authoritarian or simulations of democracy, the move signaled a fresh start for the human rights project in the region.<sup>43</sup>The African Charter has no provision that explicitly relates to the human right to water; but this right is implied in other rights such as the right to human dignity, life and as enjoying the best attainable state of physical and mental health. Indeed, article 1 of the African Charter in its literal interpretation appears to suggest the view that the realization of all the rights in the African Charter, including the right to water which are not subject to any conditions.<sup>44</sup> The African Commission on Human and Peoples' Rights in many of its decision confirmed the direct justiciability of the socio economic rights including the right to water

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<sup>40</sup> Winkler, I(2008) 'Judicial Enforcement of the Human Right to Water – Case Law from South Africa, Argentina and India', (1) Law, Social Justice & Global Development Journal (LGD) available at: [http://www.go.warwick.ac.uk/elj/lgd / 2008 \\_1/winkle](http://www.go.warwick.ac.uk/elj/lgd / 2008 _1/winkle)

<sup>41</sup> Abuja Declaration(2006)' (Declaration adopted at the First Africa–South America Summit, Abuja, Nigeria, para. 22

<sup>42</sup> Special Rapporteur to the Sub-Commission on the Promotion & Protection of Human Rights, Economic, Social and Cultural Right, 23, U.N. Doc. E/CN.4/Sub.2/2004/20 (July 14, 2004) (by El HadjiGuissé).

<sup>43</sup>Juma Dan(2007)Access to the African Court on Human and Peoples' Rights: A Case of the Poacher turned Gamekeeper, Essex Human Rights Review Vol. 4 No. 2

<sup>44</sup>Mbazira C.(2006) Enforcing the economic, social and cultural rights in the African Charter on Human and Peoples' Rights: Twenty years of redundancy, progression and significant strides, 6. African human rights law Journal,333,340 see also Robertson and Merrills(1992) note 23p.230

enshrined in the African Charter.<sup>45</sup> However, the close examination of the practice of some African countries reveals that civil and political rights are given the constitutional recognition of human rights whereas the right to water is provided as states policy programs and directive principle.<sup>46</sup> Moreover, the former are subject to judiciary protection, the latter is not. This shows that there is a clear incompatibility between the African Charter and the national constitution of some of the African countries.<sup>47</sup>

According to Heyns, the socio economic rights in the African Charter have received scant attention from the African Commission on Human and Peoples' Rights, but in its landmark decision of the *SERAC* case the Commission dealt with the issue and in effect held that the internationally recognized socio economic rights that were not explicitly recognized in the African Charter should be regarded as implicitly like the human right to water.<sup>48</sup> It departs radically from traditional international and regional human rights instruments by giving express recognition to a range of economic, social and cultural rights, along with civil and political rights, as justiciable rights.<sup>49</sup> Not only the African Charter but also extends to the ACRWC, Maputo Protocol, Kampala Convention, nevertheless, it is only for certain groups of individual.<sup>50</sup>

In the domestic sphere, many writers have made certain reflections on Ethiopian socio economic rights under the FDRE Constitution in different perspectives. But, the right to water has not been explored in as much as other human right aspects rose. Thus, the right to access to drinking water is fundamental to life and there is a duty on the State under Article 15 FDRE Constitution to provide clean drinking water to its citizens. Inherent right to life cannot properly be understood in a restrictive manner, and the protection of this right requires that government adopt positive measures among others recognition the right to water i.e. the right to water can be derived from

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<sup>45</sup>Sisay Alemahu Yeshanew (2011), note 31, p.331

<sup>46</sup>Amare Tesfaye (2010), note 24, p.3

<sup>47</sup>FDRE Constitution (1995) note 18 article 90[2] under chapter three, Nigerian Constitution of 1999, article [ ], Gambian Constitution article, 216(4), Chapter 3 of the Namibian Constitution article 95, Constitution of Zambia, 1996, in Article 112 stipulates that the State shall endeavor to provide clean and safe water.,

<sup>48</sup>*SERAC case*, The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, Available at <http://www.umn.edu/humanrts/Africa/comcases/155-96.html> accessed on July, 2013, see also Gonzalo Aguilar (2012) note 32 p.148

<sup>49</sup>J Oloka-Onyango (1995) 'Beyond the rhetoric: Reinvigorating the struggle for economic, social and cultural rights in Africa' 26 California Western International Law Journal 10; C Odinkalu (2001) 'Analysis of paralysis or paralysis of analysis? Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights' 23 Human Rights Quarterly 327; Agbakwa SC. (2002), note 26, p. 177

<sup>50</sup>Gonzalo Aguilar Cavallo (2012), note 32, p.149

the right to life. Therefore, it is possible to extend protection, to the human right to water that are concealed in the constitution through the interpretation of the constitutional right to life.

There is explicit or implicit right to water in some legal instruments to which Ethiopia is a signatory.<sup>51</sup> An analysis of these legal instruments arguably leads us to the premise that the human right to water should be treated as a basic fundamental and human right even if it is not expressly mentioned in the FDRE Constitution.<sup>52</sup> Therefore, the protection of the right to water in Ethiopia also extends to ratified international agreements. Whether there is a human right to water or not in the substantive provisions of the FDRE Constitution is a subject to academic arguments. Some writers, like Collins, said that the human right to water has been codified under the FDRE Constitution of article 90[1].<sup>53</sup> However, the writer of this study is in debate as to the existence of independent human right to water under the same Constitution. Close reading of the FDRE Constitution reveal that the above provision is found under the National policy Principles and Objective that means the Constitution provided clean drinking water as the government obligation rather than individual or groups rights.<sup>54</sup>

Ethiopia has been suffering from a lack of access to safe drinking water from improved sources and to adequate sanitation services.<sup>55</sup> As a result, people are still dependent on unprotected water sources such as rivers, streams, springs and hand dug wells. Since these sources are open, they are highly vulnerable to flood and birds, animals and human contamination that is not only potential impact on the human right to water but also other human rights such as the right to health and life. This means the availability of improved and quality water supply infrastructures

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<sup>51</sup>International Covenant on Economic, Social and Cultural Rights(1966), Convention on the Elimination of all forms of Discrimination Against Women ( 1979), Convention on the Rights of the Child (1989)

<sup>52</sup>Scholler(2006), Ethiopian Constitutional and legal Development, Vol. II: Essays on Ethiopian Legal Development,p.106-107

<sup>53</sup> Collins Lynda M.(2007), Implementing the human right to water in Canada discussion paper, by United Nations Association in Canada,p.9

<sup>54</sup>Rakeb Messele(2002) Enforcement of human rights in Ethiopia, p.29 Research Subcontracted by Action Professionals' Association for the People (APAP) Human Rights and Gender Consultant 31

<sup>55</sup>World Health Organization (2006), cited in Meseret Belachew (2012) Assessment of drinking water quality and determinants of household potable water consumption in Simada district, Ethiopia. A Project Paper Presented to the Faculty of the Graduate School of Cornell University in Partial Fulfillment of the Requirement for the Degree of Master of Professional Studies, Addis, p.1

are widely recognized as an essential component of human rights, social and economic development in Ethiopia.<sup>56</sup>

### **1.5. Objectives of the study**

The objective of this paper is to analyze the legal frameworks put in place for a human right to water in the major international human rights; national and to point out some of the drawbacks in the implementation. In addition, to provide findings that would enable people to claim their right and encourage for the adoption of comprehensive laws on the human right to water and their redressing mechanisms both at international and national levels.

In precise terms, this study has the following specific objectives:

- To examine the conceptual and theoretical framework set up for the human right to water and shows clearly where the human right to water stands in the international, regional and domestic legal system implicitly or explicitly; and with a view to filling the gaps in the existing literature in the field of the right to water,
- To assess whether there is an independent or derivative right to water,
- To examine the existence of local remedy where there is a violation of the human right to water in Ethiopia,
- To provide possible solutions on how to adapt systematized, consolidated and comprehensive law on the human right to water for a better enforcement of the international human rights law in Ethiopia as well.

### **1.6. Methodology**

To answer the research questions attempt will be made mainly on library based with review of the relevant literature related to the human right to water at national or international through analyzing legal regimes and if any scrutinize judicial decisions in the field of study.

In addition, various Internet sources sites will be consulted in order to get pertinent data and information on the right to water. As far as the practical source is concerned, with the view to confirm the objectives set in the research, interviewees will be randomly selected consulted

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<sup>56</sup> African Development Fund (2005), Ethiopian rural water supply and sanitation appraisal report. Infrastructure department north, east and south

among the Ethiopian Federal Court judges and Oromia Supreme Court because of their proximity.

### **1.7. Significance of the study**

In the broader aspect, the findings of this study will have legal or policy significance. Secondly, it is expected that the findings will create awareness to the public and the government about the status of the human right to water and indicate what measure to be taken in the future to make the system more effective. Thirdly, the outcome of the study will inform individuals and groups of their rights, and to inform governments, politicians, policy-makers and officials of inter-governmental organizations their legal obligations. Alternatively, the findings of this research are considered to be useful and enabling other researchers either as an input or as encouragement for further research in this area.

### **1.8. Scope of the study**

Time and space does not permit a comprehensive study of all legislation of different countries related to the right to water. Nevertheless, an attempt will be made here to conduct study on an international and national legal framework of the human right to water. Hence, any pertinent legal instruments will be examined. As far as the reflection of national legal framework is concerned, basically the laws, policy, guidelines and other documents of the Federal government relating to the human right to water will be considered because of the predominance of federal jurisdiction over water. If so important, any material related to the regional state will also be consulted.

### **1.9. Limitations of the study**

Like other humanly works, this thesis work suffers from certain short comings. First, there is no adequate literature on the human right to water especially at national level, which will lead to heavy reliance on international human rights law. Second, the absence of judicial jurisprudence in relation to some of the issues will be raises and inadequate resources to carry out research. Thirdly, the fear of the writer is that it will be difficult to get sufficient and reliable data to address entire problem related to the human rights to water; so that there could be lack of data that show the detailed normative content of rights.

### **1.10. Ethical Considerations**

It is interesting to note, realizing the indispensability of ethical considerations in any research work, I will consider ethical values of the concerned government rule and regulation. Such consideration involves respecting their norms, non-disclosure of their identities and even changing their names and the days on which information is obtained from them except for those individuals who consent to the disclosure of their identities.

### **1.11. Organization of the study**

The thesis is divided into five chapters including conclusion and recommendations. Chapter one is an introductory part of the study and deals with background of the study, research questions, literature review, objective of the research, methods of the study, significance of the research, scope and limitation of the research and lastly, not the least ethical considerations of the research has also been observed .

Chapter two focuses on the evolution and legal status of the right to water and the writer also discusses the historical background and elements of the right to water in brief. In general overview of the right to water in the international prospect has discussed focusing on United Nations Charter and related action such as declaration and resolution. The implicit and explicit of the human right to water from international law perspective, main regional approach and South Africa and India as well will be discussed.

Chapter three deals with the legal status on the right to water in Ethiopia from historical perspective of the constitution and with the other subordinate laws .In general, the overview of socio economic rights under the FDRE Constitution are discussed. By the same token, the Ethiopian government obligation towards the right to water and the justicability of the right to water in the FDRE Constitution in light of other good lesson (good practices) on the right to water. Chapter four devotes to examine implementation of the right to water in light of legal frameworks in Ethiopia. At this stage, the challenges and opportunities to enforce the right to water in Ethiopia has been seriously securitized. Finally, chapter five of the research shall end with conclusion by way of forwarding certain measure to be taken in alleviating the problems related to the human right to water and with some reasonable recommendation.

rights are applicable for both civil and political rights and socio economic rights as well; the concerns of UN Charter and other organs in their constitutions could also extend to recognize the right to water. It is therefore deemed desirable to establish the right to water in the Charter of United Nation. Understanding such early recognition of right could signify its importance and influence the contemporary legal systems. This line of understanding is more in line with the object and purpose of the UN Charter.

The next question could be what is the international human right to water? Scholars try to define an international human right to water might be worded in terms that suggest citizens holding of right enforceable against their own governments.<sup>75</sup> The writers have never found out binding international human rights law that defined the human right to water. But recently, the CESCR defined the human right to water as entitling everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.<sup>76</sup>

#### **2.4. Essential elements of the right to water**

The scope of provision of the human right to water has its own parameter not only to regulate its implementation but also to assure accountability and transparency as well as to set a benchmark against which government programs can be focused on and assessed.<sup>77</sup> The elements of the right to water must be adequate for human dignity; life and health.<sup>78</sup> The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantity and technology or the existence of legal frame work but also in other aspects such as water quality.<sup>79</sup> Water should be treated as a social and cultural good, and not primarily as an economic good though either of them cannot be without limitation. Finally, the manner of the realization of the right to water must be sustainable, ensuring that the right can be realized for present and future generations.<sup>80</sup>

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<sup>75</sup> Bruce Pardy (2011) The Dark Irony of International Water Rights, 28 Pace Envtl. L. Rev. 907,p. 912  
Available at: <http://digitalcommons.pace.edu/pelr/vol28/iss3/6>

<sup>76</sup>General comments No.15 (2002) note 4, Para. 66–67. See also Narain V.(2010) Water as A Fundamental right: A perspective from India , 918 -926,Vermont Law Review [Vol. 34:917, ,p 920

<sup>77</sup>General comment No.15 (2002), note 4 Para. 11

<sup>78</sup>ICESCR note 62 article 11[1] and 12

<sup>79</sup>General comment No.15 (2002), note 4, Para. 11

<sup>80</sup>The Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992

The right to water contains both freedoms and entitlements.<sup>81</sup> The freedom includes the right to maintain access to existing water supplies necessary for the right to water, the right to be free from interference and to be free from arbitrary disconnections or contaminations of water supplies.<sup>82</sup> Whereas an entitlement of the right to water is the right to a system of water supply and management that provides equality of opportunity for all people to enjoy.<sup>83</sup>

#### **2.4.1. Normative content of the right to water**

Having a human right to water is empty pocket unless some parameters are placed for the right holders against which the government can be challenged. To date, there are three core attributes representing the foundations for water security such as availability, accessibility and quality, yet they have been widely violated.<sup>84</sup> First and foremost, the following elements are one of the essential points for evaluating how far the right to water is enforced in line with the World Health Organization guidelines.

The water supply for each person must be sufficient and continuous for personal and domestic uses. Continuous means that the regularity of the water supply is sufficient for domestic consumption of water.<sup>85</sup> These uses ordinarily include water for drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.<sup>86</sup> Water requirements vary with diet, climate activity and gender. Even though it is possible, it is very difficult to put the minimum amount of water required for basic human needs across the board.

The water call for each personal or domestic use must be safe; it needs to be free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's

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<sup>81</sup> Curry Elliot(2010), note 16, p.18

<sup>82</sup> General comments No.15 (2002) note 4, Para. 10

<sup>83</sup> General comment No.15 (2002), note 4, Para. 10

<sup>84</sup> Curry Elliot(2010), note 16, p.18 see also Francis R., and Firestone L.(2011)Implementing the human right to water in California's central valley: Building a Democratic voices through community engagement in water policy decision making , Willamette law review, human right to water in California

<sup>85</sup> General comments No.15 (2002) note 4, Para. 12,foot note no 12

<sup>86</sup> In this context, "drinking" means water for consumption through beverages and foodstuffs. "Personal sanitation" means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. "Food preparation" includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. "Personal and household hygiene" means personal cleanliness and hygiene of the household environment cited in General comment no 15,(2002) Para. 12,foot note no 13

health.<sup>87</sup> Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use. The WHO defines safe water as water that does not represent any significant risk to health over a lifetime of consumption, including sensitivities that may occur between life stages.<sup>88</sup> Ethiopia is one of the countries in the world with water quality problems and it has the lowest water supply and sanitation coverage with only 42% and 28% respectively as of 2007 in Sub-Saharan countries.<sup>89</sup>

Accessibility encompasses both economic and physical accessibility.<sup>90</sup> Water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the state party.<sup>91</sup> Accessibility has four overlapping dimensions such as physical, economic, non-discrimination and information accessibility.<sup>92</sup> As the WHO recommended, people are categorized as enjoying access to water if they have available at least 50 liters a day of clean water from a source less than 1 kilometer from their home.<sup>93</sup> However, around 1.1 billion people in the world live more than 1 kilometer from a water source and water uses are often less than 5 liters a day of unsafe water as of 2000.<sup>94</sup> The direct and indirect costs and charges associated with securing water must be affordable, and must not threaten for the realization of other Covenant rights.<sup>95</sup> Every person has the right to receive and consent to information related to the

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<sup>87</sup>Smets, H. (2000), The right to water as a human Right; Environmental policy and law magazine, vol..30.no. 5. p248,p.249, see also, The Committee refers States parties to WHO, Guidelines for drinking-water quality, 2nd edition, vols. 1-3 (Geneva, 1993) that are "intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a minimum concentration, of constituents of water that are known to be hazardous to health."

<sup>88</sup>[http://www.who.int/water\\_sanitation\\_health/publications/2011/dwq\\_chapters/en/index.html](http://www.who.int/water_sanitation_health/publications/2011/dwq_chapters/en/index.html) (accessed September 2013)

<sup>89</sup> World Health Organization and United Nations Children's Fund., United States of America: 2002. World Bank Document. Federal Democratic Republic Ethiopian Urban water supply and sanitation project. 2007. [September 13, 2007]. <http://www.worldbank.org>

<sup>90</sup> General Comment 12, Right to adequate food, para.13

<sup>91</sup> General Comment no.15 (2002), note 4, Para. 12

<sup>92</sup> Murthy Sharmila L., JD, MPA, Williams Mark, JD and Elisha Baskin(2013)The Human Right to Water in Israel, A Case Study of the Unrecognized Bedouin Villages in the Negev, Forthcoming in the Israel Law Review, Volume 46, Issue 1, Cambridge University Press and The Faculty of Law, The Hebrew University of Jerusalem,0.14

<sup>93</sup> World, Health Organization(2000) "Global Water Supply and Sanitation Assessment Report" Web site World, Health Organization, [Online] available in: [http://www.who.int/water\\_sanitation\\_health/monitoring/jmp2000.pdf](http://www.who.int/water_sanitation_health/monitoring/jmp2000.pdf) access: August 20th of 2013; UN World Water

<sup>94</sup> Beyond scarcity(2006), Power, poverty and the global water crisis, Human Development Report, Published for the United Nations Development Programme p. 35

<sup>95</sup> Armaye Assefa(2011), The right to adequate standard of living with specific focus on the right to adequate housing: The institutional and legal framework in Ethiopia, Addis Ababa University, school of graduate Studies school of law ,p.27

management of water resources and to receive information about the environmental objectives established for water.

## **2.5. The human right to water: explicit references**

The right to water has been talking in many occasions but in an international framework only a few legally binding instruments clearly recognized the right to water. Those legal documents have recognized only to certain segments of the right to water as well as only to certain groups of individuals.<sup>96</sup>

The human right to water was explicitly mentioned under the CRC 1989. It authorizes that states shall take, any appropriate measures to combat disease and malnutrition, within the framework of primary health care and through the provision of adequate nutritious foods and clean drinking-water.<sup>97</sup> Within this context, water is seen as part of the measures needed to ensure the right to health. It is also important to highlight that the above article makes some distinction between food and water, assuming that the right to water is not the same subject as the right to food. In its General Comment No. 7, the Committee<sup>98</sup> on the rights of the child stated that in light of article 24, state have a responsibility to ensure access to clean drinking water and adequate sanitation.

On the other hand, article 14[2][h] of the Convention on the Elimination of All Forms of Discrimination against Women have enshrined the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.<sup>99</sup> This specific Convention seems to discriminate between rural and urban women because the provision deals with solves rural women problems. Some writers have argued that there is no scope to enlarge

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<sup>96</sup>Human Rights Council Res. 7/22, Human Rights and Access to Safe Drinking Water and Sanitation, 7th Sess., Mar. 3-28, 2008, U.N. GAOR, 63d Sess., Supp. No. 53, A/63/53, p. 136 (Mar. 28, 2008) (“Emphasizing that international human rights law instruments, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child entail obligations in relation to access to safe drinking water and sanitation, . . .”); see also U.N. High Commission for Human Rights, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the U. N. High Commissioner for Human Rights and the Secretary General, ¶ 5(a), U.N. Doc. A/HRC/6/3 (Aug. 16, 2007) [hereinafter Human Rights Council, Annual Report]. Cited in Gonzalo Aguilar Cavallo , The Human Right to Water and Sanitation: From Political Commitments to Customary Rule?, 3 Pace Int’l L. Rev. Online Companion 136 (2012).p.140

<sup>97</sup> Convention on the Rights of the Child, 1989 article 24(2)(c)see also Stephen C. McCaffrey, A Human Right to Water: Domestic and International Implications, 5 GEO. INT’L ENVTL. L. REV. 1, 7 (1993

<sup>98</sup>Committee on the Rights of the Child, General Comment No. 7, ¶ 27(a), U.N. Doc. CRC/C/GC/7/Rev.1 (Sept. 20, 2006).

<sup>99</sup>Laqueur W. and Rubin B.( Edited 1989), The human rights reader, p.270

the interpretation of the CEDAW to include even water for all women's needs.<sup>100</sup> However, for strong reason there is no ground why we discriminate urban women's right to water when the problem are also reflected in urban areas particularly in developing countries. The Committee on the CEDAW confirmed in its General Recommendation no. 24 that state party has an obligation to provide adequate water supply,<sup>101</sup> as women and girls are often the most affected by the lack of water accessibility, availability and safety.<sup>102</sup>

The Convention on the Rights of Persons with Disabilities have also recognized the right to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs.<sup>103</sup> Neither the CRC nor the CEDAW and CRPD intended to convey universal human right to water as they target to specific groups in society, but they do oblige states to respect, protect, and fulfil the right to water only for those identified within the treaties. The importance of the CEDAW<sup>104</sup> and CRC<sup>105</sup> in adopting the right to water was not only in their inclusion of water provisions as a human right, but also their was the main universal instruments with extremely successful ratification of 185 and 193 respectively.

What is the value of explicit acknowledging of the human right to water, as the international community has admitted the human right to food, housing and life? Indeed, explicit recognition of the human right to water has much significance for right holders as well as for the progressive development of the human right to water jurisprudence. It can also help to set specific priorities on water policy, to arrange a solid basis for holding government accountable and to promote national legislation that complies with the international standards that states themselves have

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<sup>100</sup> Gromwell Jenny T.(2008) Access to water Rights, obligations and the Bangalore situation, Linköping Studies in Arts and Science No. 439 Linköping University, Department of Water and Environmental Studies Linköping, p.217

<sup>101</sup> U.N. Comm. on the Elimination of Discrimination against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), ¶ 28, U.N. Doc A/54/38/ Rev.1 (May, 2, 1999).

<sup>102</sup> Marsha A. Freeman (1997) The Human Rights of Women under the CEDAW Convention: Complexities and Opportunities of Compliance, 91 AM. SOC'Y INT'L L. PROC. 378, 379, see also Aart Hendriks (1995) The Right to Health: Promotion and Protection of Women's Right to Sexual and Reproductive Health Under International Law: The Economic Covenant and the Women's Convention, 44 AM. U. L. REV. p.1123 see also Margaret Plattner (1996), The Status of Women Under International Human Rights Law and the 1995 UN World Conference on Women, Beijing, China, 84 KY. L.J. p.1249

<sup>103</sup> Convention on the Rights of Persons with Disabilities(2006) article 28(2)(a) Available at: <http://www.un.org/esa/socdev/enable/documents/tccconve.pdf>. Ethiopia is signatory on 30 Mar 2007, ratified on 7 Jul 2010

<sup>104</sup> CEDAW, <http://www.un.org/womenwatch/daw/cedaw/states.htm>, last visited September 2013

<sup>105</sup> CRC, There are 193 States Parties as of September 2013, with only two states that have not ratified the document

freely accepted.<sup>106</sup> Right holders can usually demand their right without confusion as to the scope of the right as well as the government can easily defend allegation brought against it. In general, the explicit human right to water has the potential to effect meaningful change in light of its ability to unite the claims of the oppressed, and through its ability to confer a stamp of legitimacy on the efforts of those who are already working for a human right to water progress.

## **2.6. Impliedly References of a human right to water**

There is no right to water expressly mentioned in the international bill of human rights. Is this intentional or accidental? The absence of the right to water was due to lack of global environmental awareness that had not taken place until the Stockholm Declaration of 1972.<sup>107</sup> This means had the framers of bill of rights predicted the scarcity of water today, they would have clearly recognized a human right to water. It is therefore necessary to say the omission of the right to water in explicit term in the bill of rights would be inadvertent.

The Universal Declaration of Human Rights constitutes the bedrock for the subsequent adoption of human rights as well as the right to water. It proclaims that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing.<sup>108</sup> This provision is not exhaustive because the phrases "including" show that there is some similar rights like the right to water which the drafter of the declaration have not included at the time of the drafting.<sup>109</sup> Similar to this logic, there are categories of rights which potentially distress the standards of living other than those explicitly mentioned by name.<sup>110</sup> On the other hand, the omission of the right to water under the document is the behavior of the law maker rather than an exceptional. In most of the cases be it national, regional and international law makers as well, itemizing some rights and lives the room for any similar rights for those who interpreted the law. Even though it is possible, it will be difficult to enumerate all the circumstances of the cases on certain spot. So the omission of the right to water is not a surprise but it is a tendency in most law making process.

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<sup>106</sup>Gonzalo Aguilar(2012) note 32,p.153, see also EguavoenIrit and Spalthoff Daniel(2008) World Water Congress, Montpellier, Getting Access Right: Human rights and household water rights in Ghana, p.3., see also Peter Gleick(1999) The Human Right to Water, 487-503 , Published in 1(5) Water Policy p.3

<sup>107</sup> Schreiber William(2008) note 2 p. 440

<sup>108</sup>The universal Declaration of Human Rights( 1948) article 25

<sup>109</sup>Curry Elliot, (2010), note 16 p.16

<sup>110</sup>Curry Elliot, (2010), note 16 p.16

The right to water is one segment which helps for an adequate standard of living; it seems obvious that such a standard of living could not exist without an adequate supply of water suitable for drinking.<sup>111</sup> Therefore, there is an independent right to water under the UDHR which is part and parcel of those rights essential to bring an adequate standard of living. As noted above, the framers of the document have not actually intended to exclude the right to water as explicit right rather omission of the right has inadvertent.

## **2.7 Soft laws on the right to water**

The role of international community is very important in creating consciousness regarding the right to water that has been extremely influential.<sup>112</sup> International statement and agreement also reflects states' political commitment and practice, which offers further evidence of the process towards an independent human right to water.<sup>113</sup> International human rights declarations are not legally binding effect; the term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain political aspirations.

Beginning from 1970s a series of international environmental or water conferences have been taken place on the issue of access to basic resource needs particular in the right to water.<sup>114</sup> A series of statements and conclusions from this conference are relevant in order to understand the headway of the human right to water as well as to predicate the forthcoming direction of international community in this regard.

Under the Declaration on the Right to Development states has made a commitment to take all necessary measures for the realization of the right to development among others thing access to water. They have also addressed denying access to water represents a clear and flagrant violation

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<sup>111</sup>McCafrey, Stephen C., A Human Right to Water: Domestic and International Implication, 5 Geo. Int'l Env'tl. L. Rev. 1, p.8. (1992)

<sup>112</sup>Maria Adelaide, (2010) note 1, p.70

<sup>113</sup>Gonzalo Aguilar(2012) note 32, p.155

<sup>114</sup>The Report of the United Nations Water Conference urged that the Decade ". . . should be devoted to implementation of the national plans for drinking water supply and sanitation in accordance with the Plan of Action contained in Resolution. This implementation will require a concerted effort by countries and the international community to ensure a reliable drinking water supply and provide basic facilities to all urban and rural communities, see also Salman S. (2004) From Marrakech Through The Hague to Kyoto: Has the Global Debate on Water Reached a Dead End? International Water Resources Association Water International, Volume 29, Number 1, Pages 11–19,

of human rights under its article 8 of the above declaration.<sup>115</sup> In similar way, the right to water has provided in the Copenhagen Declaration and Programme of Action that states are supposed to focus their efforts and policy to provide basic needs for all among others safe drinking water.<sup>116</sup> In 2007, the United Nations Commissioner for human rights stated that, it was a time to consider access to safe drinking water as human rights.<sup>117</sup>

After the long run, in 2010 UN General Assembly adopted a Resolution recognized the right to water as human rights. This resolution declared that the right to safe and clean drinking water has human rights that are essential for the full enjoyment of life and all human rights.<sup>118</sup> This resolution is the most recent of many steps taken toward developing a broadly recognized the right to water at the international and domestic affairs. Nevertheless, and rather interesting, none of the states voted against the resolution, instead forty-one countries preferring to abstain from it including Ethiopia.<sup>119</sup>

In general, from the practice of the international community and political leaders one can concluded that the right to water for drinking have recognized in different scenario starting from 1970's up to recent UN Resolution of 2010. It is therefore reasonable to say the right to water does indeed exist in soft law.

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<sup>115</sup>United Nation (1986), Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128, 4 December, Article 8, 1986 (available at <http://www.unhchr.ch/html/menu3/b/74.htm>) visited on 10/9/2013

<sup>116</sup> UNDP Copenhagen Declaration on Social Development Commitment No. 2, para. (b).

<sup>117</sup> The Annex to the Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, para.66 (2007) UN Doc. A/HRC/6/3, available at: [www.ohchr.org](http://www.ohchr.org) accessed on October, 2013

<sup>118</sup> July 2010 UN General Assembly Resolution A/RES/64/292, see also Barton H. Thompson, Water as a Public Commodity, 95 MARQ. L. REV. 17, (2011);p.33

<sup>119</sup>UN Resolution, 2010 available at <http://www.un.org> (last visited on August, 2013) /News/Press/docs/2010/ga10967.doc.htm (abstaining countries included The following countries abstained: Armenia, Australia, Austria, Bosnia and Herzegovina, Botswana, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, Greece, Guyana, Iceland, Ireland, Israel, Japan, Kazakhstan, Kenya, Latvia, Lesotho, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Poland, Republic of Korea, Republic of Moldova, Romania, Slovakia, Sweden, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, United States, Zambia

## 2.8. The UN Covenant on Economic, Social and Cultural Rights

As presented in the above discussion, the right to water is one of the subdivisions of the socio economic rights. The background documents to the ICESCR “*travauxpréparatoires*”<sup>120</sup> make clear the concept of an adequate standard of living by indicating that it meant to have a broad and general meaning. Under article 11(1) of the ICESCR establishes that the states recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The specific references to clothing, housing, and food were intended to be exemplary.<sup>121</sup> The use of the word ‘including’ indicates that this list of rights have not intended to be comprehensive. This means there must be sets of rights which farmers of the Covenant have been intending to put but had not provided in it. This provision can be seen as a foundation stone for the human right to water.

There is no exhaustive list in the above-mentioned article 11(1) detailing with an adequate standard of living which falls within the scope of this provision; therefore, the human right to water has an anticipated right as its one of the potential distress an adequate standard of living. An adequate standard of living has never intended to be restricted to those lists of rights only. The effective implementation of this provision therefore demands a genuine interrogation of all rights that may be prejudicial to an adequate standard of living is arguably one such the human right to water.

Then the right to water can be claimed under the above provision through the normal course of interpretation. Articulating the human right to water as a free-standing under article 11(1) is consonance with the rules of treaty interpretation which emphasis the need to promote the object and purpose of the ICESCR rather than invented new rights. The approach of CESCR has been accepted by others regional human rights systems i.e. deriving implicit right from other explicit

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<sup>120</sup>The literary meaning of this French term is preparatory works. It constitutes the materials used in preparing the ultimate form of an agreement or statute, especially of an international treaty. The materials constitute a legislative history.

<sup>121</sup>Matthew C. R. Craven(1995) The international covenant on economic social and cultural rights: A perspective on its development p. 301 cited in Williams and Sharmila(2013) Reconciling the carbon market and the human rights to water: The role of suppressed demands under clean development mechanism and the gold standards, 519-560, Environment law [Vol. 43:517, p.543

human right. For instance, the European Court of Human Rights<sup>122</sup> and the African Commission on Human and Peoples' Rights<sup>123</sup> have been derived the right to privacy from the right to family and the right to water from the right to health subsequently.

The issue of the independent right to water is not only of academic interest but also part of giving solution to the problem marginalized and vulnerable groups are facing today. Derivative argument is attributable to the subordinate status of the human right to water. Indeed, from this discussion an argument that there is no right to water can be dismissed as sheer nonsense. A contrary reading of this provision could be taken as erroneous interpretation.

After the Committee<sup>124</sup> recognized the existence of the right to water; many challenges have been forwarded to the clarification. Scholars, like Tully, argued that the right to water need not be explicitly recognized because it is implicit in other rights such as the rights to life, health, a healthy environment, and an adequate standard of living.<sup>125</sup> An entitlement to access water for personal and domestic use available to all does not exist under the contemporary international law.<sup>126</sup> He seems to contend that if the right to water is included, the right to access electricity, the right to access to internet or other essential civil service such as postal delivery could also be included. However, under whatever circumstance the right to water should not put with equal position with postal delivery or access to internet; without lack of such services human being can survive thousands of days but without water only few days can individual sustain life. This, in turn, implies the two rights must not be seen as interests which compete to each other.

According to him, Socio Economic Committee has invented a human right to water under the ICESCR, however, this research argues that they have not invented the right to water rather they gave legal recognition to the pre-existence rights from mid of 1970 in different legal instruments or they clarified the content of Covenant rights in more detail under their mandate of clarification. The absence of an explicit provision on the human right to water does not mean that the right to water is not guaranteed under the ICESCR. Therefore, the author's point is that

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<sup>122</sup> The European Court of Human Rights (2012) Case of Van Der Heijden vs. The Netherlands, (Applications no. 42857/05), Judgment, Strasbourg

<sup>123</sup> *SERAC* case (2002) note 48 para.50

<sup>124</sup> Committee on Economic, social and cultural Rights Twenty-ninth session Geneva, 11-29 November 2002 Agenda item 3

<sup>125</sup> Tully (2005), note 3, p.40

<sup>126</sup> Tully (2005), note 3, p.40

interpretation of article 11(1) by CESCR would be on the right track. As a result, there is an independent human right to water under article 11(1) of the Covenant.

## **2.9. Regional instruments on the right to water**

This section will delve the three regional human rights instruments, only in light of the nature and scope of the right to water & guarantees, and besides the two well-developed national jurisdictions that have been effectively utilizing the protection of the human right to water will also be discussed. This has been done by interpreting the justiciable civil and political rights and through other explicit recognized socio economic rights.

The Council of Europe adopted the European Convention on Human Rights in 1950, and it entered into force on 3 September 1953. It enumerated list of civil and political rights; the right to water is not explicitly defined within this Covenant. Later on under the auspices of the UN Economic Commission for Europe, twenty-one European nations have ratified the London Protocol on Water and Health<sup>127</sup> which under article 5 states that equitable access to water, adequate in terms of both quantity and quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion. After this all European nations have taken legislation, policy, and pragmatic steps in order to ensure the basic water needs of their citizens.<sup>128</sup>

The European Social Charter under article 11 states that contracting parties should both directly or in co-operation with public or private organizations, inter alia remove as far as possible the causes of ill-health and prevent as far as possible epidemic, endemic and other diseases.<sup>129</sup> In order to remove the above ill- health problem, the minimum amount of water is required; then indirectly it refers that the right to water was recognized under the above provision. Judicial

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<sup>127</sup> [http://www.unece.org/env/water/status/lega\\_wh.htm](http://www.unece.org/env/water/status/lega_wh.htm). ,see also European Charter on Water Resources, 2001, article 5

<sup>128</sup> Generally Water Information System for Europe, online: <http://www.eea.europa.eu/themes/water>, see also Henri Smets(2006) The Right to Water in National Legislations, p. 16 (“Explicit acknowledgement that the right to water is a fundamental right is an important act with strong symbolic and legal value. It provides proof of the importance that government authorities give to water for health and of their consideration for the desires of users who do not have access to drinking water”)

<sup>129</sup> European Social Charter( 1961), article 11

ICESCR is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions. When states ratify human right treaty to water, they are under obligations to perform the substantive provisions of such treaties in good faith,<sup>150</sup> just as they ratified any other treaty. This obligation could be territorial or extraterritorial obligations which come from general human rights principle.<sup>151</sup>

Under international human rights law, an obligation to respect the right to water requires that state refrain from actions that interfere with individuals realizing their right to water; denying or limiting equal access for all people's the right to water and disconnection of water services.<sup>152</sup> All states are under an obligation to respect the right to water of other states in consonant to extraterritorial obligation.<sup>153</sup> Accordingly, they must, for example, refrain from imposing embargos or similar measures and prevent their own or commissioned enterprises/individuals to infringe the availability of clean drinking water in other states.<sup>154</sup> Furthermore, in Brazil, the Catarinense Company of Water and Sanitation interrupted the provision of water to Mr. Ademar Manoel Pereira and his family because they had not paid the debts and they filed a petition. Then the court considered that the company has obliged to provide water to the population in an adequate, efficient, safe and continuous manner, and in case a user falls back with the payments it cannot interrupt the service exposing him to a 'ridiculous situation' and finally it said that the interruption of the water supply service was a reprehensible, inhuman and unlawful act.<sup>155</sup>

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Right," UN Doc. No. E/ CN.4/Sub.2/1987/23 , Cited in Yamin Alicia Ely., Beyond compassion: the central role of accountability in applying a human rights framework to health, volume 10, no. 2 health and human rights p. 87, see also South African constitution, 1996 Article 7(2)., see also United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January (2003): 9-11 E/C.12/2002/11. <http://www.unhcr.org/refworld/docid/4538838d11.html> (accessed July 2013).

<sup>150</sup> This reflects the '*pacta sunt servanda*' principle codified in Article 26 of the Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331, entered into force 27 January 1980

<sup>151</sup> Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights Final version, 29 February, 2012

<sup>152</sup> General comments No.15 (2002) note 4 Para, 25 see General Comment No. 14(2000) para. 34,

<sup>153</sup> Takele Soboka Bulto(2011) note 138 p.494

<sup>154</sup> General Comment No. 8 (1997) ,para.3 and 16

<sup>155</sup> Ademar Manoel Pereira v. Catarinense Company of Water and Sanitation (CASAN), First Chamber of the Brazilian Court of Appeals (STJ), Special Appeal n. 201.112/SC, 20 April 1999, 25 Full decision in Portuguese available at: <http://www.stj.gov.br/SCON/jurisprudencia/doc.jsp?livre=201112&&b=ACOR&p=true&t=&l=10&i=3>

States must protect the right to water by safeguarding individuals against interventions by third parties.<sup>156</sup> This obligation includes, inter alia, adopting the necessary and effective legislation and other measures to restrain, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources.<sup>157</sup> For instance, in the Argentina case of '*menores Comunidad Paynemils/accion de amparo*', an indigenous community's right to health and a safe environment has found to be violated when an oil company had polluted their water supply. As a result, a court ordered the government to provide 250 liters of drinking water per person per day and to ensure the provision of drinking water by appropriate means within 45 days.<sup>158</sup>

In general, every individual is expected to use his or her own efforts and resources for the satisfaction of the right to water.<sup>159</sup> Only when people do not have the means to attain water services for them, the state is required to take the necessary measures of direct provision, in particular to ensure water that is affordable to everyone. This can be achieved by supplying water free of charge in order to ensure access to a minimum essential level of water.<sup>160</sup> For instance, in *Free Legal Assistance Group v Zaire*,<sup>161</sup> it has been argued that this communication appears to impose on the Zaire government the obligation to fulfil the right to water.<sup>162</sup> As for lack of resources, for example, it is often not possible to implement the right to water immediate but gradually, states are under obligation to take all possible measures to ensure the right to water for all.

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<sup>156</sup> Democracy Ctr., *Bechtel vs. Bolivia: Cochabamba's Water Bills from Bechtel* (2003) [hereinafter *Bechtel vs. Bolivia*], <http://democracyctr.org/bolivia/investigations/water/waterbillsindex.htm> (last visited september. 12, 2013), see also Maastricht Guidelines, para 6, 28.

<sup>157</sup> General comment No.15 (2002), note 4 para.23, see also Maastricht Guidelines, para 6.

<sup>158</sup> Winkler, I(2008), 'Judicial Enforcement of the Human Right to Water – Case Law from South Africa, Argentina and India', (1) *Law, Social Justice & Global Development Journal (LGD)*, p.1 [http://www.go.warwick.ac.uk/elj/lgd/2008\\_1/winkler](http://www.go.warwick.ac.uk/elj/lgd/2008_1/winkler)

<sup>159</sup> Eide, A (2001) note 27 p. 23

<sup>160</sup> General comment No.15 (2002), note 4, Para. 25, 27

<sup>161</sup> *Free Legal Assistance Group and Others v Zaire* (1995) note 137

<sup>162</sup> F Viljoen 'The justiciability of socio-economic and cultural rights: Experience and problems' (unpublished paper on file with author) 23 cited in Mbazira C.(2006) *Enforcing the economic, social and cultural rights in the African Charter on Human and Peoples' Rights: Twenty years of redundancy, progression and significant strides*, 6. *African human rights law Journal*, 333, P.345

## **2.12. Conclusion**

To conclude, some of the points made in the chapter may be recapitulated, as the genesis of international human right to water can be traced back to the adoption of the United Nation Charter, though the philosophy of human right has exist from time of immemorial. There is no right to water explicitly mentioned under the UDHR or the Covenant; however, a CESCR has come across the right to water by interpretation of the Covenant. On behalf of that there are also instruments, both international and regional in scope that accepts fundamental human rights, such as life, health, and human dignity as dependent upon the premise that people are guaranteed access to sufficient quality and quantity of water. It has to be noted that the Committee has never come across new right but rather clarified the right that has been addressed by international community in different circumstances. As mentioned earlier, the work of CESCR and the 2010 Resolution would be taken as landmarks in relation to propagate the human right to water.

The three regional human rights have also recognized the human right to water though the manner of appreciation is different and a lot of thing remains to be done. In national jurisprudence such as India, Argentinean and South Africa is one of the best examples in well-grounded and accorded sufficient guarantees to the right to water. The normative impact of these practices are significant, creating a framework within which to articulate and forward claims to access to water as a fundamental right. The duty of state obligations as to the right to water emanates from legal instruments to which states is a parties as the same time from the political pledges that they have taken through declaration, resolution or treaty.

realization of the right to water. It draws upon, reinforces, integrates and complements a variety of other provisions and cannot be properly understood in isolation from this right. This thesis advocates a clear nexus between the human right to water and other socio economic rights.

### **3.3. Constitutional guarantee of the human right to water in Ethiopia**

A detailed discussion of Ethiopia's constitutional history falls beyond the parameter of this thesis; Ethiopia has adopted four written constitutions so far. The first written Constitution was the 1931 Constitution;<sup>169</sup> it didn't have any significant relevance for the human right to water discourse. The 1955 Constitution had likewise recognized a handful of rights, but their relevance had for the most part been jeopardized due to the absolute power vested in the person of the Emperor and the absence of organs empowered to interpret and apply the Constitution;<sup>170</sup> hence, the human right to water was not recognized nor implemented in any meaningful sense.

The military junta took power after dethroning Emperor Haile Selassie in 1974, and adopted the 1987 Constitution. The 1987 Constitution highly emphasized on the entrenchment of socio-economic rights mainly because of the socialist ideology endorsed by the regime.<sup>171</sup> Under article 21, the Constitution enshrined that the state and society shall progressively expand health, pension, insurances, and other forms of social security services in order to improve the well-being of the people.<sup>172</sup> The general phraseology of 'other forms of social security services' had been interpreted as including potable and safe drinking water; water was one of the services that advance the welfare of the people.

The FDRE Constitution incorporated socio-economic rights including the right to water both as part of fundamental rights and freedoms and a statement of the national policy principles and objective. However, as would be seen in the subsequent sections, when compared to its predecessor - the 1987 Constitution, the FDRE Constitution could be regarded as a normative regression. Under the 1987 Constitution, the right to work, right to free education, and right to

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<sup>169</sup> Constitution of Ethiopia, (adopted in July 1931). The absence of written constitutions before 1931 does not however mean that there were no (unwritten) constitutions.

<sup>170</sup>K. Adem (2011), Human Rights under the Ethiopian Constitution: A Descriptive Overview, Mizan law review Vol. 5 No.1, spring p. see also The Imperial Constitutions of the Empire of Ethiopia THE 1955 REVISED CONSTITUTION, article 37- 65, provided ample of right but there is no right to water.

<sup>171</sup> Constitution of the People's Democratic Republic of Ethiopia(1987)

<sup>172</sup>Constitution of the People's Democratic Republic of Ethiopia(1987),note,171, article [21]

are provided in both parts of fundamental rights.<sup>184</sup> This does not of course mean that they are ‘legally irrelevant’; on the contrary, they can be supplementary to the interpretation of other Constitutional provisions.<sup>185</sup> There is little doubt as to their ‘non-direct’ justiciability although the rationale for putting these rights in the set of state policies –premised on a number of grounds –has only had the cumulative effect of taking away their enforcement through the ambit of court systems. In this regard, Eide and Rosa argued that such fundamental needs could not be laid at the mercy of government policies and programs, but should always be defined as ‘entitlements’.<sup>186</sup> The concern has been that recognizing socio-economic rights and particularly a human right to water as political programs would undermine the very aspirational principle enshrined under the FDRE Constitution i.e. human rights and freedoms emanating from the nature of mankind are inviolable and inalienable. Unlike civil and political rights, the FDRE Constitution has simply recognized the human right to water as one of the series of government obligations within the frame of ‘social services’, rather than as individual or collective rights.<sup>187</sup>

In effect, in spite of the Constitutional entrenchment, such classification of the right to water as one of the purely aspirational norms would practically entail that the application of such right shall be left to the discretion of politically accountable officials. If this line of thought is held as valid, their categorization as part and parcel of the human rights regime would become fallacious- for there would be no mechanism capable of enforcing them apart from pure government will.

This is however a wrong postulation; the fate of a right to water cannot be left solely to the political mercy of governments. Instead, article 41[4] of the FDRE Constitution should be interpreted as protecting a human right to water as an entitlement of both individuals and groups, although this line of argument is not readily consonant with the legislator’s intention as detailed in the minutes of the discussions on the adoption of the Constitution.

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<sup>184</sup> K. Adem(2011), Human Rights under the Ethiopian Constitution: A Descriptive Overview, Mizan Law Review, Vol. 5 No.1, spring, p.55

<sup>185</sup> Tushnet, Mark(2004) ‘Social Welfare Rights and the Forms of Judicial Review’, Texas Law Review, 82.7:p.1895

<sup>186</sup> Nakuta J.(2008), The justiciability of social, economic and cultural rights in Namibia and the role of the non-governmental organizations,p.95

<sup>187</sup> Minutes of the Discussion on the Draft Constitution of FDRE at the Council of Representatives in archive library, May 1994 (Amharic) on accessed 22October,2013 see also Supra note 173, p.19 see also K. Adem(2011), note 184 p.54

In summary, one can submit that the human right to water has not been robustly put under the FDRE Constitution; at least not in the same scale it recognized civil and political rights. Only a derivative right to water or a right inferred from the broader statement of 'state policies' and obligations with regard to the provision of 'social services' could be established - rather than an autonomous human right to water as such. A more effective implementation of the right to water would however require its clear articulation as a self-standing right rather than as part of the general obligations of the government.

#### **3.4. The right to water: Ethiopia's commitments under international human rights instruments**

During its transition to democracy in the 1990s, the Ethiopian government embarked on the ratification of several international and regional human rights treaties in relation- which treat the human right to water in one form or another. Ethiopia acceded to the International Covenant Economic Social and Cultural Rights,<sup>188</sup> Convention on the Rights of the Child,<sup>189</sup> Convention on the Elimination of All Forms of Discrimination against Women,<sup>190</sup> African Charter on Human and peoples' Rights,<sup>191</sup> and African Charter on the Rights and Welfare of the Child(ACRWC).<sup>192</sup>

A human right to water is enunciated under articles 25, 11(1) and (16) of the UDHR, ICESCR and the African Charter on Human and Peoples' Rights subsequently through pioneering interpretation. By the way of recapitulation what has been discussed under chapter two of this thesis, the right to an adequate standard of living and the right to enjoy the best attainable state of physical and mental health under the above articles cannot be expected with certain amount of quality and quantity water. The first human rights treaty to explicitly recognize the right to water was CEDAW, under its article 14(1) (h), and subsequently; the CRC explicitly recognized the right of children to clean drinking water under article 24(2) .In similar fashions, the ACRWC,

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<sup>188</sup> 11 June 1993 ratification of Ethiopia, International Covenant on Economic, Social and Cultural Rights. This Covenant is one of the major human rights treaties that have been adopted and are being monitored within the framework of the United Nations human rights system. It has been in force since 1976 and currently 153 States have ratified the treaty and are therefore legally bound by it. This means Ethiopia has obliged to implement the provisions of the treaty at the national level, <http://treaties.un.org/Pages/ViewDetails.aspx?>

<sup>189</sup> 1991 ratification of Ethiopia, Convention on the Rights of the Child, 1989, Article 24 of CRC

<sup>190</sup> Article 14(2) of the CEDAW

<sup>191</sup> Ratification of Ethiopia, African Charter, 15/06/98,

<http://www.au.int/en/sites/default/files/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf>

<sup>192</sup> Ratification of Ethiopia, African Charter on the Rights and Welfare of the Child, on 02/10/2002

under article 14(2) is provided the right to safe drinking water in explicit manner. Unfortunately explicit reference to the right of water is limited, which aim to provide protection for particular vulnerable groups in society.

By virtue of article 9(4) of the FDRE Constitution, these human rights instruments which have been ratified by Ethiopia are an integral part of the law of the land, simultaneously creating an obligation on the state to realize such rights within its jurisdiction.<sup>193</sup> The inclusion of the verb 'shall' under article 13(2) of the Constitution imposes a mandatory and immediate obligation to take reference to international human rights laws while interpretation of a human right to water. It is therefore a burdensome obligation and was intended to be so.

While it is true that no provision in the international bill of rights explicitly endorsed a human right to water, several international conventions to which Ethiopia is a party have embraced it as a duly recognized component of their texts.

This is very important because it provides significant opportunity to interpret the rights in light of the human rights instruments which have been extensively interpreted by different treaty monitoring bodies and to benefit from a large body of jurisprudence that has been built-up over the years.<sup>194</sup> Ethiopia, as a state, does not have any philosophical and political difference with the human rights systems prevalent under international law.<sup>195</sup> This would guarantee jurisdictional protection of the right to water stemming from these international instruments at the national level and grants Ethiopian subjects the possibility of demanding the right's enforcement. The treaties impose on Ethiopia the obligation to perform the substantive provisions of such treaties in good faith (*pactasuntservanda*);<sup>196</sup> but ratification alone, without a means for domestic application might be of little assistance in the search for domestic remedies and the enjoyment of the right at the local level.<sup>197</sup>

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<sup>193</sup>Dejene Girma(2007) note 22 p. 14 see also FDRE Constitution(1995) , note 18 article 9 [4], all international agreements ratified by Ethiopia are an integral part of the law of the land.

<sup>194</sup> Why Ethiopia should ratify the Maputo Protocol: <http://www.pambazuka.org/en/category/features/69059/print>

<sup>195</sup>Getachew (2005), protection of Fundamental Rights and Freedoms in Ethiopia Federalism, p.256

<sup>196</sup>United Nations Vienna Convention on the Law of Treaties (1969), Vienna 23 May 1969 (entered into force Jan. 27, 1980). Art 26 provides that every treaty in force is binding upon the parties to the treaty and must be performed by them in good faith

<sup>197</sup> Philip Alston and Gerard Quinn(1987), note 22, p.166

With regard to domestic incorporation and transformation of obligations assumed under international treaties, it would seem that there is no uniform modality adopted cross the globe.<sup>198</sup> While some states like The Netherlands and USA accord international treaties a Constitutional rank,<sup>199</sup> a few states distinguish only human rights treaties for treatment of an enhanced constitutional status.<sup>200</sup> Other states, on the other hand, place international treaties below constitutions,<sup>201</sup> while a few others leave the issue of hierarchy between treaties and domestic laws resolved.<sup>202</sup>

In similar vein, the status of international human rights under the FDRE Constitution does not appear to be definite, and has been the subject of academic debate over the years.<sup>203</sup> The academic discourse on the position of international human rights instruments within the hierarchy of Ethiopian laws provides three alternative approaches.<sup>204</sup> The first, based solely on the stipulation under article 9 (1) of the Constitution, starts with an assertion of a basic principle in determining the place of a piece of legislation within the hierarchy of laws. According to this trust some scholars argue that the Constitution is the supreme law of land,<sup>205</sup> and then the status of the international human rights is below the Constitution.<sup>206</sup>

On the contrary, the second approach has generally submitted that international human rights are not the same with national legislations- including the Constitution, and therefore, in case of conflict, international human rights override the Constitution as per article 13(2) of the Constitution.

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<sup>198</sup>Getachew (2005), note 195, p.256

<sup>199</sup> Center for Civil and Human Rights at Notre Dame Law School Working Paper ( 2012), Beyond subordination and legal fetishism: New reasons for Mexican federal judges to apply international human rights LL.M.Thesis,p.9 see also Getachew (2005), note 195, p.256

<sup>200</sup> Larry Catá Backer(2008-2009) From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power System, 113, Penn St. L. Rev., 671, p. 716-730

<sup>201</sup> Shelton, Dinah(2011) International Law and Domestic Legal System, Incorporation, Transformation, and Persuasion

<sup>202</sup>Henkin, Louis (1994), A new birth of Constitutionalism: genetic influences and genetic defects, in Constitutionalism, Identity, Differences and Legitimacy, Theoretical Perspectives, 39, p. 40.

<sup>203</sup> R. Tsegaye (2009) Making Legal Sense of Human Rights: The Judicial Role in protecting Human Rights in Ethiopia; Mizan Law Rev.Vol.3p. 301

<sup>204</sup> Center for Human Rights Production, College of Law and Governance Studies(2013),Addis Ababa University, p.21

<sup>205</sup>FDRE Constitution (1995), note 18 article 9[1], The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.

<sup>206</sup>Getachew (2005), note 195, p.257

The third argument, which is based on primary legislation rather than constitutional provision, starts with the 'formal requirements' for recognition of a document as a law under the Ethiopian legal system.<sup>207</sup> In order that the all Federal or Regional legislative, executive and judicial organs could recognize a stipulation as law, it has to be published in the Federal Negarity Gazette.<sup>208</sup>

Depending on which approach one adopts with regard to the constitutional supremacy clause in Ethiopia, one line of thinking advocates that the meaning, scope and categories of rights, including the right to water under chapter three of the FDRE Constitution must not contradict with the standards set under international human rights laws.<sup>209</sup> This argument is premised on the idea that if an international treaty is accorded a status which is below a national constitution, states would obviously abuse their law making powers, and may amend such human rights laws through subsequent legislations and thereby relinquish their international liability. In addition, the adoption of international human rights treaties at the highest level of the national normative pyramid and the acceptance of the jurisdiction of international bodies in the area of human right to water logically obliges the national authorities to recognize the interpretation of these treaties that took place in international forums.

On the basis of the normative characterization of rights provided in the preceding provisions of international instruments, Ethiopia should commit itself to enforce the human right to water within its jurisdiction in light of the principles provided under international law for operationalization of treaties in national contexts. Clearly, as reflected under article 27 of the Vienna Convention on the Law of Treaties, a state party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. In other words, Ethiopia should modify its domestic legal order as necessary in order to give effect to treaty obligations of the human right to water. In this context, regardless of the issues relating to hierarchy and normative contents of the domestic law, Ethiopia is placed under an international obligation to enforce the human right to water. The particular way in which the pertinent provisions of the FDRE Constitution have been framed with regard to socio-economic rights - and especially the right to

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<sup>207</sup>Center for Human Rights Production, College of Law and Governance Studies(2013), note 204, p.22

<sup>208</sup>Proclamation No.3 (1995), Federal Negarit Gazeta Establishment Proclamation, 1st Year No. 3, Addis Ababa, article 2(3)

<sup>209</sup>Abdi Jibril Ali (2013), note 173, p.16

water - could not in itself be raised as a legitimate defense for failure to enforce the human right to water in Ethiopia.

### **3.5. Features of Ethiopia's obligation to 'recognize' a human right to water at the national level**

An obligation to respect, protect and fulfil a human right to water could be derived in various forms from the general obligations assumed under international and domestic laws.<sup>210</sup> The common features of the international commitments entail various degrees of obligations on states. The African Commission on Human and peoples' Rights had the occasion to explain the expected conduct in the *SERAC* case; it restated the internationally accepted ideas that all rights civil and political rights as well as socio-economic rights - including the right to water generate at least four levels of duties; on a state, namely, the duty to respect, protect, promote, and fulfil these rights.<sup>211</sup> Like most rights, the human right to water would be ineffective in a vacuum; for it to function properly, someone must be entitled to demand water, and someone must be obligated to provide it in light of a human rights approach.

As indicated above, Ethiopia has ratified the ICESCR which then entails the obligation to take series of obligations regarding human right to water; under article 1[1] of the Covenant, such a duty covers taking measures in the areas of policies, programs and legislations. These obligations also extend overall parts of the state's jurisdiction without any limitations or exceptions. Hence, in Ethiopia too, all branches of the government and other government authorities would have to act with a view to respecting, protecting and fulfilling the human right to water with in equal par with other civil and political rights.<sup>212</sup>

The duty to respect requires the Ethiopian government to ensure that the activities of its institutions, agencies and representatives do not interfere with a person's right of access to water. Where interference cannot be avoided, individuals should be given reasonable notice, full

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<sup>210</sup> Office of the High Commissioner for Human Rights, Office of the High Commissioner for Human Rights, International Human Rights Law, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (last visited November. 14, 2013) (asserting that "[t]he obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human right to water. The obligation to protect requires States to protect individuals and groups against human right to water abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human right to water.")

<sup>211</sup> *SERAC* case(2002),note 48 para.62

<sup>212</sup> ICESCR note 51 article 28, see also FDRE Constitution (1995) note 18 article 13

information, a chance to consult with authorities, and the opportunity to make an effective formal complaint to a tribunal or court.<sup>213</sup> In line with this, the government has the duty to abstain from arbitrary intervention by way of disconnecting water access in one area without providing other alternatives for the inhabitants who cannot afford to travel to the next water access services.<sup>214</sup>

In this tune, of course, article 89[8] of the FDRE Constitution stipulates that the government shall endeavor to protect the health, welfare and living standards of the working population of the country.<sup>215</sup> Without minimum amount of the provision of water, it would prove difficult to realize the aspiration anticipated under this provision; the government should be obligated to protect access to safe and potable water. In this regard, the government is not the only actor that can restrict the right to water; individuals and corporations have the potential to interfere with a person's or community's water supply.<sup>216</sup> For example, the current industrial pollution from factories, farming or sewage services can greatly damage the quality of water used for drinking. The government should therefore implement Environmental Pollution Control Proclamation (Proc. no. 300/2002) that can protect the right of access to quality water.

On the other hand, the duty to promote involves the facilitation of the enjoyment of right to water - especially through awareness raising, the provision of legal protections and procedures that pave the way for the enforcement of the rights and through the removal of domestic obstacles.<sup>217</sup> The state's duty to fulfil entails a direct delivery of water without payment in the event that individuals lack the requisite material in order to lead a life of dignity. In this context, it may be argued that requiring excessive water fees may amount to violation of the human right to water as it would have an effect of denying marginalized groups access to their right to water when they could not afford to pay for its services. For instance, unlike in Ethiopia, South Africa has adopted a policy decision that makes for a provision of a free 6000 liters of safe water per household per month.<sup>218</sup>

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<sup>213</sup> World Health Organization(2003), The Right to water, p. 28

<sup>214</sup> Rakeb Messele(2002), note 54, p.30

<sup>215</sup> FDRE Constitution(1995), note 18, article 89[8]

<sup>216</sup> Maastricht Guidelines, Para. 6, 28.

<sup>217</sup> Minister of Health and Others v Treatment Action Campaign and Others, 2002, 13 Butterworths Human Rights Cases, see also Communication 155/96, The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria, 15th Annual Activity Report,

<sup>218</sup> Republic of South Africa (1997), Water Services Act 108 of 1997, Government of South Africa. Cape Town, section 4[3]

All the above mentioned duties entail both obligation of conduct and obligation of result; the former requires taking actions that are reasonably calculated to realize the enjoyment of the human right to water whereas the latter requires the achievement of specific targets to satisfy a detailed substantive standard of the right.<sup>219</sup>

### **3.6. Ethiopia's policy and national legislative frameworks addressing the right to water**

It is obvious that subsidiary legislations derive their force from the Constitution. Hence, the protection of a human right to water could be depicted in ordinary legislations as well. However, ordinary law, whatever its condition, cannot on its own create an inconsistent regime of rights; it can only facilitate the procedure under which such right can be enforced. The most important step in setting up the legal framework in Ethiopia has been showed with the establishment of the Ethiopian Water Resources Management Proclamation and its executing Regulation. Furthermore, confiscation, destruction, removal and rendering useless of drinking water installations have been recognized as war crimes against the civilian population under the criminal code of Ethiopia.<sup>220</sup> This can be mentioned as one scenario where the Ethiopian criminal law wants to protect the right to water.

The 2002 Water Supply and Sanitation Programme Development<sup>221</sup> provide a roadmap for government policy efforts for the rural and urban water supply sector. For drinking water, the Universal Access Programme states that the development of technologies for rural areas will focus on the water schemes that can be completed with least cost, shorter time, and which could minimize water tariffs.<sup>222</sup>

The policy discussion is beyond the parameter of this thesis, however in order to have the general overview of the policy behind a human right to water the following discussion is necessary. As global governance is translated into national policy, this new rights-based agenda has laid the groundwork over which an expanding implementation movement can be established

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<sup>219</sup> Liu Huawen (2004) The Obligations of States under the International Covenant on Economic, Social and Cultural Rights: The Chinese Case, Research Notes 04, p.13

<sup>220</sup> Proclamation No.414/2004, article 270 (i), Criminal code of the Federal democratic republic of Ethiopia

<sup>221</sup> Government of Ethiopia, Minister of water and Energy (2002), Ethiopian Water Supply and Sanitation Program, Addis Ababa

<sup>222</sup> Government of Ethiopia (2006), Universal Access Program document, First English Edition, December 2006, p.28

at the intersection of the human right to water and water policy.<sup>223</sup>The Ministry of Water and Energy is responsible for formulating policies for the water sector at national level, for long term planning strategies, the setting of generic standards and for the coordination of projects and their funding together with foreign donor agencies. However, there are absence of a coherent development policy, strategy, and program, until very recently.<sup>224</sup>

National water policy serves as the principal means of realizing the human right to water. General Comment no. 15 outlines a series of government responsibilities for national water strategies and plans of action, structuring state accountability for water policy.<sup>225</sup>This indicted that beyond Constitutional law, Ethiopia has sought to realize the right to water through codification of its obligations in the national legislation like in the national policy and strategy. The right to water does not function in a space, and that its practical implications and implementation are necessarily situated in national water policy.

Ethiopian Water Resource Management Policy laid out a framework to implement community based water supply, sanitation and hygiene interventions in an integrated manner.<sup>226</sup> The government of Ethiopia has made remarkable progress in the past few years in the water sector. In 2005, the Water and Sanitation Universal Action Plan was formally established.<sup>227</sup>

The right to water indicators should be identified in national water policy and strategies or plans of action. The indicators should be designed to monitor, at the national obligations and should address the different components of adequate water such as sufficiency, safety and acceptability, affordability and physical accessibility.<sup>228</sup> However, in this regard, our water policy is not substantiated in details.

Ethiopia's five year Plan for Accelerated Sustainable Development to End Poverty (PASDEP) places water as one of the road map in the way to development.<sup>229</sup> The Plan references the overall objective of the National Water Resources Management Policy, which is to enhance and

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<sup>223</sup>Benjamin Mason Meier, Georgia Lyn Kayser, Urooj Quezon Amjad and Jamie Bartram(2012),Implementing an evolving human right through water and sanitation policy, Water Policy, p.10

<sup>224</sup> The 15-year Water Sector Development Program (WSDP) 2002,p.20

<sup>225</sup>General Comment No.15(2002),note 4 para.48&49

<sup>226</sup>The National Water Resource Management Policy (1999)

<sup>227</sup>Ethiopia Country Statement for Sanitation and Water for All High Level Meeting, 20 April 2012 Washington, DC

<sup>228</sup>General Comment no.15(2002),note 4 para.54

<sup>229</sup>Ethiopia(2005-2009) ,Building on Progress A Plan for Accelerated and Sustained Development to End Poverty (PASDEP),p.10

monitoring, protection and regulation. As to my own understanding water pollution means any condition which is actually and potentially affects water quality and tends to jeopardize the fully realization of the human right to water. To put it in a nutshell, these proclamations could be taken as one means to protected water quality in Ethiopian contexts. In fact, the definition of Environment under article 2(6) of the Proclamation no.300/2000 is included water; then indirectly it refers to the human right to water. In rural areas community uses mainly contaminated water as it is the direct result of environmental factors.

Thus, while the Proclamations could be used to fill in the vacuum created by the absence of a clear constitutional provision on a human right to water, its relevance could not be overstated in defining the normative content of the human right to water.

Whereas for instance, South Africa's Water Services Act, 108 of 1997 enumerated issues regarding water quantity such as the minimum amount of water that individuals can claim as of right.<sup>236</sup>In similar tone, in Belgium, three regional states have, through ordinary legislations, recognized the minimum amount of water that individual can claim in line with recommendations by the WHO.<sup>237</sup>

In this regard, both the Proclamation No. 197/2000 and Regulation no. 115/2005 on Ethiopian Water Resources Management would not seem to be useful for they mainly focus on stipulating the powers of the supervising body in relation to water supply. They do not go deeper into issues of accessibility, affordability, quality and quantity of the water to be provided. These issues which it fails to adequately address are the core components of the human right to water. In this reading, therefore, a resident cannot, entirely rely on these laws as a legal basis for seeking relief.

On the other hand, one way of enhancing affordability for poor households is by providing an amount of water sufficient to cover basic needs at a low price or for free.<sup>238</sup> This means there should be subsidy mechanism that should finance from the government to poor households with

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<sup>236</sup>Manzungu E, Jonker L., Madaka E., Naka Z., Sithole E., &Dzingirai V.(2013) Emerging Forms of Social Action in Urban Domestic Water Supply in South Africa and Zimbabwe, *Journal of Sustainable Development*; Vol. 6, No. 3; ISSN 1913-9063 E-ISSN 1913-9071, p.76, Published by Canadian Center of Science and Education

<sup>237</sup> FRESHWATER COUNTRY PROFILE BELGIUM Decision-Making : available at:  
[www.un.org/esa/agenda21/natlinfo/.../belgium/belgiumwater04f.pdf](http://www.un.org/esa/agenda21/natlinfo/.../belgium/belgiumwater04f.pdf)

<sup>238</sup>UNDP(2006) note 94 p. 98

eligibility requirements.<sup>239</sup> One of the interesting aspects of the Proclamation No. 197/2000 in this regard is that it gives priorities for domestic consumption uses of water in case of conflict among the various such as agricultural and industrial utilizations.<sup>240</sup> One thing I never pass without saying reluctance and tacit refusal of government officials in Minister of Water and Energy and decline to cooperate assess to empirical data, Proclamations and Regulations

### **3.7. The justiciability of a human right to water in Ethiopia**

Before directly addressing the main issues regarding the justiciability of a right to water in Ethiopia, it is imperative to assess the general essence of justiciability of rights in legal discourses. Generally, the judicial enforcement of civil and political rights is uncontested unlike socio-economic rights; it is also fundamental for these categories of human rights. Obviously, a right without a remedy raises questions whether it is in fact a right to all.<sup>241</sup> This is not at all to say that judicial remedy is the only, and indeed, the best way of protecting a right to water. Judicial enforcement has a clear role in developing our understanding of the right, in affording remedies in cases of clear violations and in preventing future violation of the right. Furthermore, the socio economic Committee addressed that any persons or groups who have been denied their right to water should have access to effective judicial remedies at levels.<sup>242</sup> They were also confirmed that the human right to water has been subject to litigation by the number of countries before national courts.

Justiciability has been conceived as a matter that one can take to court to assert it as concrete legal claim, rights that can be litigated and deserving remedies when the argument in their favor has won.<sup>243</sup> In this connection, of course, it should be underlined that the mere existence of a court is meaningless unless there is also a neutral court as matter law and fact. Justiciability of socio-economic rights including the right to water boosts their domestic enforcement and implementation.<sup>244</sup> However, opponents of the justiciability of socio-economic rights strongly

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<sup>239</sup>Eide, A (2001), note 27,p.8

<sup>240</sup>Proclamation No. 197/2000,note 230 articles 7(1)

<sup>241</sup> A. Haxhirja(2013), Judicial enforcement of social economic and cultural rights, 221-220,Academics International Scientific Journal, p.226

<sup>242</sup>General comment No.15 (2002) ,note 4 para.55 and 57, General Comment No.9, Para. 9

<sup>243</sup>R. Tsegaye(2009), note 203,p.289

<sup>244</sup>Takele Soboka Bulto(2010),The Utility of Cross-Cutting Rights in Enhancing Justiciability, Law School, University of Tasmania,p.148

argued that judges lack both substantive and technical expertise in the area of the quality of water and analysis of water policy which can hardly be adjudicated by courts of law.

In this context, solutions to extremely technical presentations had been proposed through the appointment of experts.<sup>245</sup>The logic goes that if the lack of expertise has never been used to argue against the adjudication of, for instance, complex tort cases involving scientific theories, evidences, patent and copy rights, and criminal cases involving different medical professions, it should not also prevent courts from adjudicating human right to water even in the Ethiopian context.<sup>246</sup>

### **3.7.1. Direct justiciability of human right to water**

This section will emphasize on the direct protection of a human right to water as a justiciable right on the basis of ratified international human rights laws in Ethiopia. Unlike the FDRE Constitution, in South Africa, the human right to water can be directly justiciable because the Constitution has provided water as a human right.

The UN Committee overseeing socio-economic rights- including the right to water has consistently argued that legally binding international standards should be operated directly and immediately within the domestic legal system of each state party there by enabling individuals to seek enforcement of their rights before national courts and tribunals.<sup>247</sup>Ethiopia has ratified the ICESCR as well as the African Charter Human and Peoples' Rights and the aforementioned legal instruments and hence becoming part and parcel of its domestic law system; on the basis of this logic, the right to water contained therein can therefore be invoked before Ethiopia courts directly. From the experience of the African commission's decision,<sup>248</sup> the human right to water can be located under articles 22, 16 and 4 of the African Charter on Human and Peoples' Rights.

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<sup>245</sup>Larson Rhett B.(2012) The right to water and the public trust ,A civil right to water, p,21, 2012, see also Getahun A. Mosissa(2010) The Role of Experts in the Adjudication of Socio-economic Rights , Annual Legal Research Network Conference , University of Groningen, Faculty of Law,p.1 see also H.J. Steiner et al.(2007), International Human Rights in Context: Law, Politics and Morals (3rd Ed); Oxford university press, P. 317

<sup>246</sup>Getahun A. Mosissa (2010) note245, p.3 see also Mantouvalou (2010), The Case for Social Rights; Georgetown Law Faculty Publications and Other Works, Paper 331p. 16.

<sup>247</sup> Genera Comment No.9,The Committee on Economic, Social and Cultural Rights, "The domestic application of the Covenant", para. 4

<sup>248</sup> African Commission on Human and Peoples' Rights, Communications 279/03, Sudan Human Rights Organization v The Sudan and Communication; 296/05, Centre on Housing Rights and Evictions v The Sudan, 45th

Then, it is the power of the Ethiopian courts to interpret the rights and decide their exact content; this position is further confirmed under article 3(1) of the Federal Courts Proclamation no 25/1996 which stipulates that Federal Courts shall have jurisdiction over international and regional human rights treaties ratified by Ethiopia and to settle disputes on the basis of the proclamation.<sup>249</sup> Article 6 of the Proclamation provides that Federal Courts shall settle cases or disputes submitted to them within their jurisdiction on the basis of the federal and international laws. This procedure for direct enforcement would be grounded on the creative device of article 9[4] of the Constitution which labeled all international agreements ratified by Ethiopia are integral part of the laws of the land.

While it is true that Ethiopian courts have not yet handed down noteworthy decisions on human right to water, the following case adjudicated by the Federal Supreme Court might simply be considered of relevance in the context of the issue at hand. It invoked the CRC as part of the domestic law in the Tsedale Demissie v Kifle Demissie proceedings.<sup>250</sup> This decision exemplify the court's acceptance and application of the international human rights ratified by Ethiopia; in the same logic the courts can read the human right to water into or from other explicit rights under the aforementioned ratified legal instruments.

In the Haregewoin Gabre-Salassie and IHRDA (on behalf of Dergue Officials) v Ethiopia case before the African Commission on Human and Peoples' Rights, the Commission held that the African charter Human and Peoples' Rights had become binding on Ethiopia and forms part of the law of Ethiopia and therefore had to be given effect in Ethiopian legal systems.<sup>251</sup>

Nevertheless, the decision is not related to human right to water but confirms the international-law-friendly nature of the FDRE Constitution. However, some have claimed that such responsiveness only extends to the enforcement of civil and political rights, and not with a human right to water. Needless to say, such a construction signifies a thin and poor version of article 9[4] of the Constitution itself; putting the matter differently, the undisputed fact remains

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sess (13–27 May 2009) 125. See also SERAC case, para.8–9. See also Free Legal Assistance Group and Others v Zaire note 137

<sup>249</sup>Federal Courts Proclamation, No. 25/1996, Federal Neg. gaz. 2nd year, No, 13, Addis Ababa (1996).

<sup>250</sup>Tsedale Demissie v Kifle Demissie, File No. 23632, decided on 26 Tekemt 2000 E.C, Fed. Sup. Ct., Cass. Div. Jud., Vol. 5, at 189., cited in Abdi Jibril Ali(2013) note 173p.2o

<sup>251</sup>Communication 301/05: Haregewoin Gabre- Salassie and IHRDA (on behalf of Dergue Officials) v Ethiopia, available at: <http://www.ihrda.org/2013/04/fair-trial-for-political-prisoners-in-ethiopia/> accessed September 20,2013

that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity.<sup>252</sup>

Through the creative device of article 9[4], all ratified international and regional human rights instruments that incorporated a human right to water could be directly invoked in the Ethiopian legal system. This line of interpretation is more in line with the object and purpose of the FDRE Constitution which has opened room for incorporation of ratified international instruments covering such subjects as the right to water. Article 9[4] should be conceived as potentially enabling Ethiopian citizens to appreciate the importance of the world beyond their own country in the definition and enforcement of a human right to water.

In closing this section, this research seeks to demonstrate that the direct justiciability of right to water under the FDRE Constitution has been hampered primarily by the shaky foundation of the human right to water under the supreme law of the land. Moreover, many have argued that the right to water is too broad and general to enforce - unlike that the right to life, fair trial, freedom of expression and freedom from torture which is absolute and directly enforceable.<sup>253</sup> However, this line of argument seems dubious, to say the least, because non recognition of the right to water could make the protection of civil and political rights difficult, and at times impossible. Therefore, despite the unclear normative content, the right to water and its incorporation in the Constitution should be conceived and applied in a manner which makes it easier for activists and litigants to claim a human right to water with some degree of legal certainty.

### **3.7.2. Indirect justiciability of a human right to water**

Alternatively, where there is no right to water explicitly mentioned in a constitutional text, the right to water can be claimed indirectly from other human rights instruments.<sup>254</sup> The indirect justiciability of a human right to water as part of an all-encompassing right to life is a major scheme forward towards the integration of the right to water into the Ethiopian legal system. This kind of approach is basically applied in countries that do not incorporate the right to water in the substantive parts of their constitution or only incorporated them as non-justiceable rights similar

<sup>252</sup> A. Haxhirja(2013) note 241p.228

<sup>253</sup> Interview with Ali Mohamed Ali, a Judge at Federal Supreme Court, Cassation Division, 13 November, 2013

<sup>254</sup> Bluemel, Erik B. (2004), The Implications of Formulating a Human Right to Water, 957-1006, Ecology law quarterly Vol. 31, p.981

to Ethiopia.<sup>255</sup> It is mainly based up on the expansive and progressive interpretation of the more flourished and expressly protected rights.<sup>256</sup>

It is hardly possible to live without a safe drinking water. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessity of life such as right to water, right to food and shelter.<sup>257</sup> For instance, the right to water has been envisaged as part and parcel of the right to life which is provided in section 12 of Zimbabwe's Constitution of 1979 on the basis that human rights are indivisible and interdependent.<sup>258</sup>

Owing to the fundamental nature of the right to life, restrictive approaches to it are generally inadmissible. This enables to argue for the indirect but broader protection of the right to water as justiciable right within our domestic legal system as well. This can be possible through a liberal and activist interpretation of a fundamental right to life under article 15 of the FDRE Constitution. The best example of this type of protection is found in Indian jurisprudence, where the Directive Principles of State have been interpreted to give content to the civil and political rights as contained in the Bill of Rights of the Indian Constitution.<sup>259</sup> In the Francis Coralie Mullin case, the Indian Supreme Court declared that the right to life includes the right to live with human dignity and with all that goes with it, namely, the basic requirements of life such as the right to water.<sup>260</sup>

The Indian experience with regard to overcoming the so-called constitutional dilemma, namely the right to water entitlements, is of actual relevance to Ethiopia too. Under both Constitutions (in India and Ethiopia), there are sets of civil and political rights which do not expressly recognize the right to water as an entitlement, but rather as one which had been formulated in the form of a directive principle of state policy. Both Constitutions had created a prima facie

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<sup>255</sup> C. Courtis. The Role of Judges in the Protection of Economic, Social and Cultural Rights; Human Rights Office, Development, Economic and Social Issues Branch Research and Right to Development Division Office of the United Nations High Commissioner for Human Rights, South African Chief Justices Forum Annual Meeting Botswana, (7 to 8 August 2009)p.45

<sup>256</sup>Chidi Anselm Odinkalu (2001) note 49 p. 337 See also Takele Soboka Bulto(2010)note 244,p.159

<sup>257</sup>Tinta, M. Feria(2007), note 68 p.446

<sup>258</sup>Manzungu E, Jonker L., Madaka E., Naka Z., Sithole E., &Dzingirai V.(2013), note 236p.

<sup>259</sup> Aduba J.. nnamdi DUBA J. and Belgore Chair,S.M.A.(2011), The right to life under Nigerian Constitution: The courts and reality, Published by Nigerian Institute of Advanced Legal Studies,p.8

<sup>260</sup>Francis Coralie Mullin v The Administrator, Union Territory of Delhi, (1981) 2 SCR 516 p. 529

constitutional dilemma among others on the enforcement of the right to water in their respective jurisdictions although they have been treated differently in the two countries.

The Indian judiciary has, through creative interpretation, pioneered a process of interpreting civil and political rights in a manner that would help give a dynamic legal character to a human right to water. According to one authority, right to water is non-justiciable in Ethiopia because the FDRE Constitution does not want to give it legal protection as such; however, indirect justiciability is a possibility so long as water is the source of life and any act or omission that deprived life will bring about liability.<sup>261</sup>

One can submit that the right to life places responsibility on the Ethiopian government to pursue policies that ensure that all people have access to the means of survival. Such a link between the right to water and the right to life has also been demonstrated in other national case laws. In the case of *General Secretary West Pakistan Salt Mines Labour Union vs the Director, Industries and Mineral Development*, the court held that water was necessary for existence of life, and if polluted or contaminated, can cause serious threat to human existence.<sup>262</sup>

Indeed, if such kinds of case would have been brought before Ethiopian courts, the court would probably pass a similar decision. While it is true that no judicial decision have been ruled regarding right to water per se in Ethiopia, although there have been cases brought before the Federal supreme court touching on the subject only indirectly. In the case of *Bishoftu City Administration Drinking Water Services vs Teshale Tefara et al*, for example, the applicant, Teshale Tefara submitted an application to the Court against the City of Bishoftu for cutting the water supply on his small scale plantation; the judge directed the city administration to pay compensation for the damage sustained by the applicant.<sup>263</sup> The court did not allude to or give any reference to water as a human right, but simply considered the matter on the basis of a breach of contract. From this decision, perhaps, it is possible to draw that indirect justiciability of the right to water could have been inferred so that citizens would seek relief from the courts. This

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<sup>261</sup> An interview with Mr. Bekele Bonja a high public prosecutor at Minister of Justices and former a judge for 15 years, November, 15, 2013

<sup>262</sup> *General Secretary West Pakistan Salt Mines Labour Case v The Director of Industries and Minerals Development, Punjab Lahore 1994 SCMR 2061*, Cited in Manzungu E, Jonker L., Madaka E., Naka Z., Sithole E., & Dzingirai V. (2013) note 236p.74,

<sup>263</sup> *Bishoftu City Administration Drinking Water Services vs Teshale Tefara et al* [Decided by the Federal Supreme Court cassation division bench, File No. 87173/2005, ruling of 26 June 2013, unpublished).

case can also proffer an opportunity for Ethiopian courts to enforce the right not only in the context of contracts as such, but also in light of the right to property or life under articles 40 and 15 of the FDRE Constitution.

The experience of some international institutions and national jurisdictions - including the African Commission and the Indian jurisprudence could be good examples for Ethiopian courts with regard to how to construe the right to water from other explicit rights enunciated under FDRE Constitution<sup>264</sup> and the covenants to which Ethiopia is a party.<sup>265</sup> The experiences indicate that in the modern world, the right to life is more than recognizing such a right on paper in the sense that it includes all action to be taken in order to save life. The expression inherent in the right to life cannot be properly understood in a restrictive manner, but requires that Ethiopia should adopt positive measures, among others, with a view to full implementation of the human right to water.<sup>266</sup>

Therefore, Ethiopian courts must base their decisions on the fact that access to safe and potable water is a fundamental prerequisite to the enjoyment of the right to life. Affording a right to water to all people will enable them enjoy the other rights enshrined in Chapter three of the FDRE Constitution. However, it must be noted that the indirect justiciability of a right to water in Ethiopia does not create an absolute right to water; the courts shall take into account the specific circumstances of a case and there should be a policy line beyond which courts could not step. The interpretation should be able to show a genuine substantive interrelationship between the human right to water and the right to life. Drawing inspiration from international and regional jurisprudence might aid Ethiopia's judges in their day-to-day affairs, lend legitimacy to their decisions, and therefore generate greater acceptance of their decisions. Such indirect approach carries a potential in enhancing the justiciability of the right to water, although, obviously, it is not the only solution.

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<sup>264</sup> FDRE constitution article 15 [Every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law.]

<sup>265</sup> Adopted by the United Nations General Assembly, International covenant on civil and political right, in December 1966, article 6 entered into force in 1976.

<sup>266</sup> Hardberger A.(2006), Whose Job Is It Anyway?: Governmental Obligations Created by the Human Right to Water , 533-566, Texas international law Journal [VOL. 41: p.534 see also General Comment No. 06(1992), The right to life, art. 6 CCPR, para.5 see also Tripathy Abhishek and Mohapatra Prajna R.(2009), Right to water : Debating the human rights perspective, NUJS LAW REVIEW 2 NUJS L. Rev. p.305

### 3.8. Scope and limitation of a human right to water

Like any other human rights, in contemporary international human rights too, the state is the primary guarantor of a human right to water.<sup>267</sup> It must ensure that all people have physical access to water and water facilities that give access to water within safe physical reach for all sections of the population.<sup>268</sup> It must also guarantee that all people have economic access to water; this is purely a right based approach.<sup>269</sup> The cost of accessing water should be fixed at a level that ensures all people without discrimination. All peoples should also be able to afford access to water without having to sacrifice access to other basic needs. The scope of a human right to water does not only deal with quantitative aspects of water, but it also extends to water quality.<sup>270</sup>

Limitation on the right to water sprung from the very phrasing of 'progressive realization' of the right enunciated under article 2[1] of ICESCR but, this should not distort the minimum core obligation of governments.<sup>271</sup>

It true that despite the claims of universality and inalienability of human rights, there is no absolute right to water that could be exercised without any limitation since such actions would be necessary for an optimal enjoyment of the right itself.<sup>272</sup> For instance, article 90 (1) of the FDRE Constitution says that 'to the extent the country's resources permit' policies shall aim at providing all Ethiopians access to clean water. This shows that the Constitution seems to limit availability of access to potable clean water subject to conditions of resource. For Ethiopia to exonerate itself of failure to meet at least its minimum core obligations with regard to a right to

<sup>267</sup>Hardberger A.(2006) note,p.541

<sup>268</sup>J Visser, E Cottle& J Mettler (2002) 'The Free Basic Water Supply Policy: How Effective is it in Realizing the Right?' ESR Review Vol. 3, No. 1, Available at [http://www.communitylawcentre.org.za/ser/esr2002/2002july\\_water.php](http://www.communitylawcentre.org.za/ser/esr2002/2002july_water.php) see also CESCR, General Comment no. 12,999) para.13

<sup>269</sup>General Comment no.15(2002), note 4 paragraph 12

<sup>270</sup>General Comment no.15(2002),note 4, paragraph 12

<sup>271</sup> CESCR, General Comment No. 3, Para. 10; see also General comment no.15 para.56; see also Yoram Robin and Yuval Shany(2003-2004)"The Israeli Unfinished Constitutional Revolution: Has the Time Come for Protecting Economic and Social Rights?" Israel Law Review, Vol.37, No.2-3 p. 338.

<sup>272</sup>Gordon Hollamby(2002) "The Limitation Clause," in Nel, F. and Bezuidenhout (eds), Policing and Human Rights, p. 103-118 see also R. Tsegaye (2009), note203, p. 303. See also Murthy Sharmila L. , JD, MPA, Williams Mark, JD and Elisha Baskin(2013) note 92p.21

water, it must be able to demonstrate that every effort has been made to use available resources within the national domain.<sup>273</sup>

Such limitation clauses therefore act both as a shield and as a sword, and must be used in appropriate place and time. Courts are required to strictly interpret the limitation clause under article 93 of the FDRE Constitution and the special limitation clauses in relation to human right to water with appropriate caution to give positive effect to its application.

A human right to water does of course require that the Ethiopian government should provide access to water free of charge,<sup>274</sup> except when people, for reasons beyond their control, are genuinely unable to access domestic consumption of water through their own means.<sup>275</sup> Subsidies or the provision of minimum essential levels of services free of charge can be suitable measures in this regard.<sup>276</sup> There is no theoretical reason as to why basic water should not be provided to everyone in same way that basic education is provided free.<sup>277</sup> In the Ethiopian context, too, a right to the provision of free water should not be controversial since some rights like education have already been provided. This indicates that the entitlements of the right to water should also include an obligation to provide free water at least to the extent necessary to cover domestic consumption of water.

### 3.9. Conclusion

By way of conclusion, this part discussed the legal environment in which socio-economic rights in general and the right to water in particular has been provided under the FDRE Constitution and the subsidiary legislations in Ethiopia.

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<sup>273</sup> CESCR, General Comment No. 3(1990), para.1&10, The nature of States parties obligations

<sup>274</sup>Salman S. (2004) From Marrakech Through The Hague to Kyoto: Has the Global Debate on Water Reached a Dead End? International water resource Association, Water International, Volume 29, Number 1, p. 17 See also World Health Organization(2003),The right to water , 6 Monetary contributions to the water system, either through taxes or fees, will help maintain an effective system and preserve the right for the larger group available at <http://www.who.int/>

<sup>275</sup>Ethiopian water policy(200), section 2.2.5(B) (6), see also Malebakeng Forere(2011)The relationship between the right of access to education and work, and sub-regional economic integration in Africa, 11 African Human Rights Law Journal ,p.,598

<sup>276</sup>Skogly Sigrun(2012)note 149,p. 413

<sup>277</sup>CESCR, General Comment No. 13, para.6, primary education shall be available “free to all”, States parties are required to progressive, see also P. Cullet(2013) note 13,p 12

A human right to water, it has been argued, is incorporated under the FDRE Constitution through the ratification of the aforementioned international legal instruments; nevertheless, questions pertaining to the implementation of such right remain unanswered. The non-existence of an explicit provision on the right to water or the indirect nature of the protection afforded to the right under the FDRE Constitution cannot adversely affect full realization and enjoyment of the right to water of Ethiopian in general and that of marginalized people in particular.

The direct justiciability of the right to water under the substantive parts of the FDRE Constitution would seem to be impossible considering the very drafting of the Constitution. With regard to implementation, providing access to safe and potable water under the Constitution is by itself obviously not enough to ensure its protection and enforcement - unless it is provided as a right. Here, it has been argued that the right to water needs to be given greater prominence in order to address the high levels of inequality, poverty and social exclusion in Ethiopia. Further, it has been submitted that indeed it is possible to invoke the right to water within the Ethiopian legal system either directly - based on article 9[4] of the Constitution - or indirectly, through the expansive interpretation of certain civil and political rights as was done in other jurisdictions.

Our analysis has shown that there is a derivative right to water as part of the right to life under the FDRE Constitution.

With regard to the role of the judiciary, it was argued that there exists a bias towards civil and political rights in enforcing their mandate on human rights; this violates the principle of equality provided under the FDRE Constitution and international human rights law.

continues to grapple with development challenges, it is necessary to develop the implementation of the right to water on unshakeable foundation.

The national implementation of the human right to water encounters many challenges, while there is also a prospect in near future for the full realization of the right. The chapter is structured into five sections: section one deal with an introductory part, section two presents on the efforts of the government towards implementation of the right to water and discusses some aspects of the circumstances entailing violation of a human right to water in Ethiopia. This shall be based on the normative analyses presented in the previous chapter and some recapitulation of the same in section three of this chapter. Section four scrutinizes the challenges and opportunities with regard to the effective implementation of the right to water, and the last section summarizes the major findings of implementation of the right under discussion.

#### **4.2. The implementation of a human right to water in Ethiopia**

Supplying adequate and clean water to the population helps to progress in economic and social development, to improve the quality of life and eradicate poverty. Implementation of the human right to water entails taking a set of measures aimed at realizing and supervising the realization of the normative contents of the right to water.

Ethiopia's water supply sub-sector has been characterized by poor performance with a number of problems including unsustainability and unreliability of domestic water supply services.<sup>279</sup> To tackle these problems, the government of Ethiopia issued the National Water Resources Management Policy in 1999 and the Water Sector Strategy in 2001 to increase and sustain the domestic water supply services in both rural and urban areas and ultimately ensure that every Ethiopian citizen has access to water of acceptable quality and sufficient quantity. The overall objective of the Water Supply Policy and Strategy is the promotion of the well-being of the people and enhancement of public health through the provision of water supply systems of acceptable quality and quantity, and design a mechanism of implementation.

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<sup>279</sup>Ministry of Water Resources Development (2006).FDRE Ministry of Water Resources, universal access program for water supply and sanitation services 2006–2012, international calendar 1999–2005 Ethiopian calendar Part I–Rural. Minister of Water and Energy Addis Ababa, Ethiopia

In line with the contemplations of the Growth and Transformation Plan [GTP], a number of activities have been undertaken during the last three years in order to implement the right to water. For example, among the major works of construction, 22,789 hand dug wells, 5162 hand pump medium and deep water wells, 15,738 developed springs, 1345 rural piped water systems, 4050 rain harvesting works and 70 old water institution expansion works have been completed. Overall, 50,750 water schemes have been built for the rural people.<sup>280</sup> As result, 20.5 million rural and 1.7 million urban populations - in aggregate 22.2 million people have got access to clean drinking water from the newly constructed and rehabilitation services of water supply schemes.

According to the Minister of water, Irrigation and Energy report the water supply coverage is 66.54% in rural and 81.31% in urban areas, while the national coverage is estimated to be 68.45 % in the 2013 or at end of 2005 Ethiopian fiscal year.<sup>281</sup> However compared to the GTP target for 2012/13, the current national water supply coverage is lower by 18.55 percentage points. This implies that as par GTP the national water coverage is intended to be 87% in the year of 2012/13.<sup>282</sup>

However, there are still challenges in this regard.<sup>283</sup> Among others, there is an implementation capacity gap which requires building the sector's administrative and human resource capacity.

As noted in the preceding chapter, the ultimate aspiration of any international instrument, including those dealing with a human right to water is to respect, ensure and promote the full realization of such right to all individuals living within a state's territory and under its jurisdiction, regardless of citizenship, nationality or refugee statuses.<sup>284</sup> However, as socio-economic Committee<sup>285</sup> in its sessions in May 2013 has highlighted, a large percentage of households in rural areas as well as people living in refugee camps did not have ready access to safe drinking water, with over half of the households having to make a long journey to fetch

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<sup>280</sup> Minister of Water and Energy Public Relation and Communication Directorate, (September 2013)p.4

<sup>281</sup> Minister of Water, Irrigation and Energy Public Relation and Communication Directorate ( November 2013),p.2

<sup>282</sup> Minister of Finance and Economic Development( 2010), Federal Democratic Republic of Ethiopia Growth and Transformation Plan, 2010/2011 Volume II, policy matrix, Addis Ababa, p.15

<sup>283</sup> Minister of Water and Energy Public Relation and Communication Directorate , september,2013

<sup>284</sup> Center for Human Rights Production, College of Law and Governance Studies, note 204 p.12

<sup>285</sup> CESCR(2012), Forty-eighth session, Concluding observations of the Committee on Economic, Social and Cultural Rights, Ethiopia, U.N. Doc. E/C.12/ETH/CO/1-3 (2012):

<http://www1.umn.edu/humanrts/esc/ethiopia2012.html>,accessed September,2013 Para.23

drinking water in Ethiopia.<sup>286</sup> Accordingly, the Committee recommended Ethiopia should take steps to improve the accessibility of safe drinking water. Despite this, it appeared very routine concern for many people in urban and rural settlements to provide adequate and clean water, and when there is, to ensure its sustainability. While it has been suggested that the government was doing its best to overcome the problems, there is no denial of the fact that violation of the human right to water is still being committed, particularly in rural areas.

As a side issue, the Committee also reflected that there has been a water problems with those people evicted from their land - including water for drinking, washing and sanitation though the exact number of population is yet unavailable.<sup>287</sup> However, the government of Ethiopia contends that villagization was being undertaken to ensure more efficient delivery of services to the rural populations.<sup>288</sup> Obviously, the water authority cannot contest its duty to provide water to these communities in an amount required for their existence and as part of their basic rights to live in human dignity and as basic necessity of life. The failure to provide potable water has been a major violation of the human right to water and other interdependent rights of such communities.

For instance, with regard to villagization in the Gambella National Regional State, the lack of available water at the new villages has increased and about 20 rapes have occurred when women had been travelling long distances to access potable water.<sup>289</sup> Although a progressive right, this in part indicates a failure by the government to comply with the obligations contained under Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women and Article 41(4) of the FDRE Constitution. In any instance, the action of government must be compatible with human rights laws. As reiterated time and again, the obligation of a state encompasses a duty to implement appropriate policy that responds to the needs of the people; therefore, recognizing the right in human rights instruments is not alone vital.

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<sup>286</sup> CESCR(2012), Concluding observations of the Committee on Economic, Social and Cultural Rights, Ethiopia

<sup>287</sup> CESCR(2012), Concluding observations of the Committee on Economic, Social and Cultural Rights, Ethiopia note 285 Para.21

<sup>288</sup> World Bank Board approves investigation into allegations of bankrolling human rights abuses in Ethiopia, <http://www.inclusivedevelopment.net/world-bank-board-approves-investigation-into-allegations-of-bankrolling-human-rights-abuses-in-ethiopia/> September,2013

<sup>289</sup> Human Rights Watch (2012), "Waiting Here for Death" Forced Displacement and "Villagization" in Ethiopia's Gambella Region, p.38 website: <http://www.hrw.org> accessed on September,10,2013 see also CESCR(2012), Concluding observations of the Committee on Economic, Social and Cultural Rights, Ethiopia note 285 Para.21

In defining access and availability of water, the World Health Organization and the United Nations Children's Fund have suggested a minimum requirement of 20 liters a day from a source within 1 kilometer of the household as a standard reference.<sup>290</sup> While this is only indicative and does not have a legally binding effect, Ethiopia's universal access plan has already provided 20 and 15 liters in urban and rural area respectively, making distinction between urban and rural settlements. However, the Human right to water refers to a substantive right and its universal application extends to all people by virtue of being human beings without considering the place.<sup>291</sup> Hence, the government's policy direction on this subject deviates from the normative expectations of provisions of the African Charter on Human and Peoples' Rights and international human rights standards.

#### **4.3. Qualitative and quantitative considerations of the right to water in Ethiopia**

As with many other socio- economic rights, the normative content of the right to water can be determined in terms of the criteria of availability, quality, acceptability, accessibility and affordability. Putting otherwise, the right to water even goes further than water availability in home proximity. It extends to embody the individual's right to access a quality water with economic and information availability.<sup>292</sup>

While it is true that MDGs 7 target C explicitly refers to access to safe drinking water, the indicator does not measure quality directly. It is based on the assumption that improved sources are more likely to provide safe water than unimproved sources. On top of this on 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and acknowledged that clean drinking water are essential to the realization of all human rights. The phrase 'clean' is refer to water quality which could be a guide line in order to understanding the global consensus of the right to water standards.

<sup>290</sup> World Health Organization(2003), The Right to water, .p. 12

<sup>291</sup> This is the very fundamental principle of human rights under what every consideration

<sup>292</sup> General Comment no. 15(2002), note 4 Para. 2 and 12

There is no international sets standard in regard to water quantity, however according to the World Health Organization between 50 and 100 liters of water per person per day are needed to ensure that most basic needs are met and few health concerns arise.<sup>293</sup>

Ethiopia has ratified most of the core human rights conventions, including the United Nations Covenant on Economic, Social and Cultural Rights whose contents have been defined along the lines indicated above. But, the general recognition of the normative content of the right to water or its ratification has not been fully conceived as also entailing a broader set of obligation which articulates the right to water in terms of availability, accessibility and affordability. Threats to water quantity and quality still exist in both rural and urban areas of Ethiopia. An effective implementation of the right to water in Ethiopia would obviously require supportive policies and legislative frameworks in the specific areas of water quality and quantity.

#### **4.3.1. Accessibility of drinking water**

Domestic water accessibility is one of the crucial components of the right to water.<sup>294</sup> Even though accessibility of safe drinking water supply has gradually increased at the national level, the rate is still low and thus inadequate to satisfy the basic water needs of an average person in the country.<sup>295</sup> The National Wash Inventory is intended to make a standard, annually updated, and national survey of water supply in Ethiopia and organized by the National WASH Inventory Project Office at the Ministry of Water and Energy. They have their own Wash steering committee at different level of government's organ to accommodate additional political clout.<sup>296</sup>

Regarding water supply coverage in Ethiopia, there are two approaches. The government uses in most of the cases the 'usage of water' whereas National Wash Inventory follows the 'access to

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<sup>293</sup> International Decade for Action 'water for life' (2005-2015) <http://www.un.org/waterforlifedecade/quality.shtml> Accessed on October, 2013

<sup>294</sup> Gonzalo Aguilar(2012),note 32,p.161

<sup>295</sup> Israel DenekeH.and Awdenegest M.(2012) African Journal of Environmental Science and Technology229-236, Vol. 6(5), ,p.230, see also Federal Democratic Republic of Minister of Health of Ethiopian(2011), National Drinking Water Quality Monitoring and Surveillance Strategy, Addis Ababa,p.5 see also Fareh Abdulkadir Mohammed (2011),Opportunities and Challenges in Implementing Poverty Reduction Policies in Pastoral Communities: A Case Study from the Somali Regional State, Ethiopia, Thesis Presented to the Higher Degree Committee of Ritsumeikan Asia Pacific University In Partial Fulfillment of the Requirements for the Degree of Master of Science in International Cooperation Policy, p.66

<sup>296</sup> Katharina Welle and Kristof Bostoan, What next after completing the first National WASH Inventory? Suggestions from stakeholders at the national, regional, and woreda level, <http://r4d.dfid.gov.uk/PDF/Outputs/RIPPLE/workshop-report-may-2011.pdf> Accessed on October,2013

water' approach. The first refers to the size of the rural population that is actually using water irrespective of quantity and distance from water point, and in relation to urban settlements, what percentage of the population has been served by water supply utilities.<sup>297</sup> Whereas in the second scenario, access to water is defined by reference to what percentage rural and urban population that has been provided access to 15 liters within 1.5 km and access to 20 liters within 0.5 km of the water supply respectively.

Table 1:

Regional water supply levels

No.	Region	Access%	Usage %
1	Tigray	55.86	70.09
2	Afar	37.37	72.34
3	Amhara	52.87	65.67
4	Oromia	51.52	62.31
5	Somalia	-	-
6	Benishangul	59.89	65.27
7	SNNP	43.35	57.15
8	Gembela	66.37	77.54
9	Harar	84.01	85.63
10	Addis Ababa	82.22	94.10
11	Dire Dawa	83.77	91.41

Source: National Wash Inventory: progress and M&E- MIS REPORT of October 10-12, 2012<sup>298</sup>

There is no uniform data clearly showing the domestic water supply coverage of the country. The genuine discrepancy between the various data has most probably emanated from the methodology application during data collection as to 'access to water' and 'usage of water'. In addition, not so few water and hand pump facilities constricted every year have become nonfunctional shortly afterwards, hence affecting the correctness of data gathered at different time intervals. Construction of such facilities must obviously be durable and sustainable for them

<sup>297</sup>Ripple in collaboration with Minister of water and Energy, Proceedings of water sector annual review meeting (October,10-12,2012) performance review of 2011/12 and plans for 2012/13 facial year, Mekelle, Ethiopian, p.96

<sup>298</sup>Ripple in collaboration with Minister of water and Energy(2012) note 297 p.97

to have meaningful effect on the implementation of the right to water. At the same time, there should be consensus across the country regarding accessibility and usage of water. In most cases, the national water coverage has been reported through the employ of the ‘usage of water’ approach that is not necessarily consonant with the broader set of objectives of a human right to water. Interestingly, one could note that the approach carried out by the National Wash Inventory could be the right track as it is compatible in many ways with the standards and anticipations of modern international human right to water, although it still falls short of telling about the economic accessibility of the right to water and water quality.

Table 2:

National water supply level			
No.	Coverage level	Access	usage
1.	National urban and rural	54.3	64.23
2.	National Rural	48.53	61.81
3.	National Urban	74.73	90.44

Source: *National Wash Inventory: progress and M&E- MIS REPORT of October 10-12, 2012*<sup>299</sup>

#### 4.3.2. Requirements for a good quality water

The current acceptable drinking water quality parameter is incorporated in the World Health Organization guidelines for drinking water quality; based on aesthetic and taste considerations.<sup>300</sup> Such guideline is accommodated the scientific elements like temperature. By implication to evaluate drinking water quality in Ethiopia, our references point should be in line of the aforementioned guidelines. Failure to adhere these recommendations is considered as violation of the human right to water. This section assesses if the quality of drinking water supply schemes affects the right to water. The human rights dimension of the quality and safety of freshwater means that water must be of such quality that it does not pose a threat to human health. Water

<sup>299</sup>Ripple in collaboration with Minister of water and Energy(2012), note 297 p.97

<sup>300</sup> WHO (2004), Guidelines for drinking-water quality (3rd ed.). Vol. 1. Recommendations, World Health Organization, Geneva.

quality is not an alternative to scrutinizing the right to water, but it is an important component and a prerequisite in the realization of the right to water.<sup>301</sup>

Ethiopia has adopted the National Drinking Water Quality Strategy in 2011 hence showing dedication and commitment of the government with regard to water quality. The Ministry of Health is responsible for verifying water quality standards across the country.<sup>302</sup> A number of indicators could be used to measure water quality, including clarity, existence of heavy metals, fluoride, level of bacteria, taste or smell or the level of nitrate in water.<sup>303</sup> In national contexts, a survey of water quality started in December 2004 and was completed in April 2005 under the auspices of the WHO/UNICEF in Ethiopia.

Water pollution constitutes greater risk to Ethiopia's public health, mainly caused by high levels of organic pollutants and water-borne diseases that have impacts on realization of human rights.<sup>304</sup> On top of that, there is no specific evidence about the quality of water or no comprehensive data regarding the service being provided to communities, households and institutions as to the safety of the drinking-water supply; this can only be inferred from the different materials that do not entail full information for the right holders.<sup>305</sup> There is, therefore, an urgent need to obtain independently verifiable water-quality data, to support the Ethiopian government in its efforts to promote the right to water across the country.

Research has shown that there are a number of domestic water quality problem in Ethiopia that have potential impact on the right to water - especially for those who live in the Rift Valley areas. For instance, in 2006, the Ministry of Health determined that fluoride contamination of water was a major problem, especially for people in the Rift Valley area. In 2003, a research had already indicated that most of the Rift Valley water was not suitable for human consumption due

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<sup>301</sup> Meseret Belachew(2012), note 55,p.2

<sup>302</sup> Minister for Foreign affairs of Finland(2013-16), Country Strategy for Development Cooperation with Ethiopia p. 10

<sup>303</sup> The New Zealand Institute (2010) NZahead p. 79.<http://www.nzinstitute>. Accessed 19 December 2012

<sup>304</sup> César E. and Ekbohm A, Ethiopia Environmental and Climate Change policy brief , Sida's Helpdesk for Environment and Climate Change , 2013,p.5 [www.sidaenvironmenthelpdesk](http://www.sidaenvironmenthelpdesk) see also World Health Organization and UNICEF,p.24 2010 see also Water Aid Ethiopia (2010) Regional Water Supply and Sanitation Coverage in Ethiopia: according to 2001 EFY reports , <http://www.iothdu.edu.et> accessed on 9/23/2013 see also Supra note55,p.2

<sup>305</sup> Dagnaw Tadesse, AssefaDesta, Aberra Geyid, Woldemariam Girma, Solomon Fisseha, Oliver Schmoll(2010), Rapid assessment of drinking water quality in the Federal Democratic Republic of Ethiopia , country report of the pilot project implementation in 2004-2005, World Health Organization and UNICEF, p.Viii

to the excessive presence of certain chemicals.<sup>306</sup> This dictates that people living in the Rift Valley area are highly affected by lack of quality water that could have potential impact not only for realization of their human right to water but also on their right to life.

Under international human rights law, the right to water is to be realized in full and this regardless of land tenure.<sup>307</sup> This is because the right stems from the basic principle of human dignity; the human right to water should not be conditioned on the (un)fortunate status of a settlement or other circumstances for that matter. This is particularly true of people living in certain geographical areas as in the Rift Valley whose legal rights are often not appropriately implemented. In 2012 alone, research has revealed that around 7.5 million Ethiopians were suffering from problems related to high fluoride levels.<sup>308</sup> In various degrees, their human right to water has been violated due to the non-observance of 'quality water' as part and parcel of the normative content of the right to water.

Many reasons have been recited for the non-compliance of the obligation involved in the provisioning of water quality in Ethiopia. First, no national guidelines concerning drinking water quality standards exist that required water to be free from substances hazardous to human health.<sup>309</sup> Secondly, the absence of an organized and well equipped central laboratory for water quality monitoring at the Minister of Water and Energy or Minister of Health could account for such predicament.<sup>310</sup> Thirdly, most of the urban water supply utilities lack sufficient capacity to monitor the quality of water they produce. Finally, the absence of fully functional data management system that enables to store data generated by the regional bureaus, urban water supply utilities, and other community-managed water schemes is also another downside of the

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<sup>306</sup> Clemens Reimanna, KjellBjorvatnb, BjørnFrengstada, ZenebeMelakuc, ReddaTekle-Haimanotc, Ulrich Siewersd(2003), Drinking water quality in the Ethiopian section of the East African Rift Valley I—data and health aspects, 65–80, *The Science of the Total Environment* 311, p.78 see also World Health Organization and UNICEF, p.29 see also Federal Democratic Republic of Ethiopia Minister of water resource Technology center(2008), Butajira Ziway areas development Study, water quality,p.12 see also Israel Deneke H. And Awdenegest M.(2012), *African Journal of Environmental Science and Technology*229-236, Vol. 6(5), p.235

<sup>307</sup> Catarina de Albuquerque, on the right track good practices in realizing the rights to water and sanitation 32, 58 (2012), <http://www.ohchr.org> cited in Murthy Sharmila L., JD, MPA, Williams Mark, JD and Elisha Baskin (2013) note 92 p.30

<sup>308</sup> Hendrix Morgan(2012) Water in Ethiopia: Drought, Disease and Death, 110-120 ,*Global Majority E-Journal*, Vol. 3, No. 2 p.110

<sup>309</sup> World Health Organization(2006), *Guidelines for drinking-water quality*, 3rd edition, [www.who.int/water\\_sanitation\\_health/dwq/gdwq3rev/en/](http://www.who.int/water_sanitation_health/dwq/gdwq3rev/en/)

<sup>310</sup> Federal Democratic Republic of Minister of Health of Ethiopian(2011), *National Drinking Water Quality Monitoring and Surveillance Strategy*, Addis Ababa,p.16

sector.<sup>311</sup> Perhaps the root cause for these is the comparatively less focus given to water quality monitoring as compared with provision of access to water supply, although both have equal importance in the realization of the right to water.

To sum up, lack of access to sufficient amount of good quality and affordable water services in many parts of Ethiopia are stand in sharp contrast to the ideals of the right to safe drinking water for all. If the current poor water quality persists, Ethiopia may well fail to attain the MDGs not only with regard to the right to water but also on other human rights such as right to health, sanitation and education. The progress, so far, clearly indicates that redoubled efforts are required in order to meet the GTP target of ensuring universal access to potable water supply in the remaining one and half years of the GTP period. In light of the huge task ahead, rigorous efforts would be required from all stakeholders such as the government, communities, non-governmental organizations, private sector and development partners of the state of Ethiopia.

#### **4.4. Effective implementation of the right to water: overview of challenges and opportunities**

As presented in the preceding discussions, Ethiopia has stridden some journey in the implementation of the right to water; however, the problems still remain serious. Several reasons could be recited for the poor implementation of the human right to water in Ethiopia. Some of these problems are the result of the absence of the adequacy of the national policy framework. Problems relating to law and policy at the national level are responsible for the failure in designing mechanisms that serve all citizens in the country. In the absence of fitting policy and legal regimes, it would be impossible for the federal government to ensure the accountability of the federal and regional authorities.

##### **4.4.1. Inadequacy of laws**

Domestic legislation is one of the key elements in the national implementation of international human rights law. Although Ethiopia has ratified the CEDAW and ICESCR, the government has not yet ratified their Optional Protocols or the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which contained land mark stipulations as far

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<sup>311</sup>Federal Democratic Republic of Minister of Health of Ethiopian(2011) note 312

individual compliant mechanism on the right to water is concerned.<sup>312</sup> Ethiopia was among the forty- one countries who absented during voting on the 2010 UN Resolution on drinking water<sup>313</sup> and is not still a party to the 1997 UN Convention on the Non Navigational Use of transboundary Watercourse.<sup>314</sup>

As stated in the previous discussions, the poor or rather less articulate drafting of a human right to water under FDRE Constitution has negatively impacted the effective implementation of the human right to water. In fact, during this research, it was confirmed that some authorities considered the need for promulgating subordinate legislations as a priority; the belief has been that the existing laws could not adequately deal with the subject matter.<sup>315</sup> In order to achieve full implementation of the human right to water, harmonization of some laws would need to be undertaken by the government both as a technical exercise and a process; this requires a political commitment to respect standards under the international instruments and entails taking legislative and administrative measures at the national level as well.<sup>316</sup>

Arguably, a notable, setback emanates from the FDRE Constitution itself which grants the power of interpretation of socio-economic rights - including the right to water - to the House of Federation.<sup>317</sup> Apparently, this inhibits courts from readily engaging in the interpretation of human rights stated under the Constitution in manner conforming to international instruments ratified by Ethiopia. Ambiguity in the status of the international human rights instruments under the Constitution and the non-publication of the international human rights in the Federal Negarit Gazette could as well be invoked as downsides of the law.<sup>318</sup> In principle, courts only take judicial notice of a law when such law is officially published.

The Ethiopian Standards Regulations No. 12/1990, which set up quality standards for drinking water, was issued September 1990 by the Standards Authority. The regulation establishes

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<sup>312</sup>[http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Africa4WomenRights\\_Ethiopia\\_HRC102.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Africa4WomenRights_Ethiopia_HRC102.pdf)

<sup>313</sup> The Human Right to water and Sanitation GA Resolution 64/292 UNGAR0 64th SessSupp No 49 volume III UN

<sup>314</sup> The 1997, Convention on the Law of the Non-navigational Uses of International Watercourses. To enter force, the convention requires ratification by 35 countries, but as of July, 2013 has received only 30 ratifications, [http://www.internationalwaterlaw.org/documents/intldocs/watercourse\\_status.html](http://www.internationalwaterlaw.org/documents/intldocs/watercourse_status.html) accessed on July 10, 2013

<sup>315</sup> Interview with Ali Mohamed Ali, a Judge at Federal Supreme Court, Cassation Division, 13 November, 2013.

<sup>316</sup> Center for Human Rights Production, College of Law and Governance Studies(2013) note 204,p.158

<sup>317</sup> Interview with Kasahun Gutata, a Judge of Oromia Supreme Court, , 02 November, 2013

<sup>318</sup> Interview with Iyassu Abebayehu, note 177

desirable and permissible levels for the physical and chemical properties of drinking water as well as the testing methods to be used. When defining the scope of the Regulation in article 1, limits its application to piped drinking water supplies. Thus, the standards do not apply to the supply of drinking water by other means (boreholes, hand-dug wells, ponds, etc). Moreover, the Regulation also imposes the standards only when the consumer population exceeds 10,000 persons. The standards were devised to apply to the larger towns where piped drinking water supply may be available to significant numbers of people; in a case it do not reflect the particular conditions of Ethiopia. To date, some efforts have been made to prepare specific regulations and guidelines particularly with respect to environmental impact assessment of development projects and activities; but much remains to be done in providing appropriate environmental quality standards for different sectors including water quality standards.

To date, there is no legal binding effect subordinate legislation that elaborates or clarifies the quantitative norms and contents of the right to water as claimable individual rights before the judiciary, or that specifically address the general and vaguely worded rights entrenched under the supreme law of the land. In other word, the Proclamation no. 197/2000, Proclamation no. 534/2007 or Regulation no 115/2005 dealing with water is failure to define on the quantity of water in perspective of the right to water. The aforesaid legal binding instruments are also failure to address economic accessibility of the human right to water in black and white in case of controversies. For instance, there is no clear legal binding procedure to be followed during disconnection of water service upon unable to pay the debts of water services. Under whatever circumstance, the interruption of water service should not degrading or humiliating human being in perspective of the right to water.

Furthermore, there is no authorized binding law that allows individuals or groups to claim remedy for lack of the provisioning of water as violation of the right to water. With regard to the already ratified but not yet translated and published human rights instruments, the state must take the necessary measures to publish in a domestic legislation and publicize them at least in the

working language of the country to facilitate the enforceability of the human right to water before national courts.<sup>319</sup>

The fact that the documents are not translated in to the all working language of the Federal government and other vernacular could well be another problem in enforcing international human right to water before the domestic courts, the unique position of Ethiopian courts with regard to the powers of constitutional interpretation notwithstanding. This will not only enable the direct application of the principles and standards, but also puts in place the human right to water in a primary legislation. True, there are various translations of the texts into the multilingual translations – the works by the Ethiopian Human Rights Commission (EHRC) being one, but none has been published in the official legal gazette to date. This and other related factors exacerbate the problems in the application of the provisions of international legal instruments, particularly those which are not necessarily self-executing, and hence require the enactment of detailed domestic legislations to identify mandates, structures, procedures and remedies.<sup>320</sup>

The findings of this study indicate that the existing law is very poorly equipped to accommodate issues relating to a human right to water. Lack of updated water regulations was identified as one element contributing to the failure to develop a human right to water. It would be impossible for individuals to call for this right without a legal text to support them.<sup>321</sup> Adopting law does not mean a mere proclamation of a right but that the content and elements of such a right are rooted in a process of public argumentation for the creation of justice institutions which is absent in case of the right to water.<sup>322</sup> Nevertheless, the explicit recognition of the right to water does not solve existing water problems nor does it allay current suffering overnight; but it would place the issue at the forefront of public discussion.

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<sup>319</sup>Rakeb Messele(2002) note 54 ,p.53,see also Human Rights Committee, Replies from the Government of Ethiopia to the list of issues (CCPR/C/ETH/Q/1) to be taken up in connection with the consideration of the second periodic report of Ethiopia (CCPR/C/ETH/1), 102nd session, paragraph 3, Geneva, 11 – 29 July 2011

<sup>320</sup>Center for Human Rights Production, College of Law and Governance Studies(2013) note 204,p.25

<sup>321</sup>Tully (2005 note 3p. 36

<sup>322</sup> O'Neill O. (1996), *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*.

Cambridge University Press: Cambridge cited in Anandr P. B. (2007)Right to water and Access to water An Assessment, 511-526, *Journal of International Development J. Int. Dev.* 19, p. 523

#### **4.4.2. Lack of financial and human resources**

With regard to the management of water resources, the responsibilities of the federal government and the regional states are distinctly provided in the Constitution. The federal government is vested with the responsibility of formulating the policies, strategies and plans as well as the enactment of laws for the utilization of natural resources including the right to water. Regional states are given the responsibility of administering other natural resources in accordance with the policies and laws issued by the federal government.<sup>323</sup>

As regards the administration of water resources, the Constitution has a specific provision which provides that the federal government shall determine and administer the utilization of the waters or rivers or lakes linking two or more States or crossing the boundaries of the national territorial jurisdiction as per article 51(11) of the FDRE Constitution.

The mandate for administering federal water resources is given to the Ministry of Water and Energy, defined as the supervising body.<sup>324</sup> On the other hand, water resources found in any Regional State or the Addis Ababa City Government or the Dire Dawa Administration are defined as water existing in concerned a region. The Supervising Body for water resources existing in regions is the respective regional bureau responsible for administering water resources in each Regional State. This implies that Regional States cannot set up their own administration water resources but should comply with those sets at the federal level unless they wish to establish more favorable conditions than that sets at the federal level. Therefore, unless otherwise provided, the primary responsibility to implement the right to water lays on Federal Government of Ethiopia, particularly, the Minister of Water and Energy.

An effort has been made to access budget allocation of the Minister of Water and Energy of the last two or three successive years but it is unable to success. Lack of financial resource is not a unique problem of the state of Ethiopia; it exists in many other developing counties as well. The realization of the right to water faces huge difficulties owing to the lack of economic resources in many jurisdictions hence their progressive nature; as states become more developed, they will be better able to assume greater responsibility.<sup>325</sup> As often claimed, developing countries have been

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<sup>323</sup>FDRE Constitution(1995), note 18 article 51(2),(5), article 52(c)(d)

<sup>324</sup>Proclamation No. 197/2000,note 230 article 2(7), 6(3), 8

<sup>325</sup>CESCR General Comment no. 3., para.1

unable to comply with obligations pertaining to the right to water due to lack of financial resources.<sup>326</sup> In turn, the unavailability of resources affects the implementation of laws which may have to be considered before undertaking any legal reform.<sup>327</sup> On the other hand, it was submitted that implementation problems associated with resources and the establishment of institutions should be accorded primary focus to guarantee better protection to a human right to water.<sup>328</sup>

In Ethiopia, lack of financial resource in the area of the right to water did emanate not only from our meager economic development, but also from unfair distribution of budget across the different sector of the government; for instance, Ethiopia's military budget for the 2006 fiscal year was reportedly 10 times the sum allocated for water and sanitation purposes - a fact which could be regarded as manifestation of unfair distribution.<sup>329</sup> This leads to failure to make resources available where they are most needed. In addition, the government's budgetary allocation to water sector has been decreasing over the years, declining almost by half - from 4 percent in 2006 to 2.5 percent in 2010, as the international NGO Water Aid pointed out.<sup>330</sup> However, questions of economic development and lack of resources could not be submitted as excuses for failure to implement the right to water in Ethiopia.<sup>331</sup>

Not only the financial problems but also lack of human resource is another reason for the non-realization of the right to water in Ethiopia. For instance, in the 2013 in the Tigray National Regional State, the Bureau of Water Resources would require 18 full-time staff to adequately deal with water resource management and regulation in the region, yet it had only 3 in place,

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<sup>326</sup> Generally 'Statement by the UN Committee on Economic, Social and Cultural Rights on 'An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant,' 10 May 2007, EC/12/2007/1. See also Federal Democratic Republic of Ethiopia(2013) Water, Sanitation & Hygiene in Ethiopia Addis Ababa

<sup>327</sup>Center for Human Rights Production, College of Law and Governance Studies, Addis Ababa University(2013) note 204,p.159

<sup>328</sup>Interview with Ali Mohamed Ali, a Judge at Federal Supreme Court, Cassation Division, 13November, 2013,Interview with Almaw Wolie(2013) note 328

<sup>329</sup> Beyond scarcity(2006), note 94 p. 8-9

<sup>330</sup> Are budgets for water supply adequate? Brief note by water aid:

<http://www.wateraid.org/~media/Publications/public-finance-water-supply-sanitation-national-budgets.ashx>  
accessed on 23/9/2013

<sup>331</sup>Narain. V. (2010) note 142,p.923

with no budget for additional staff.<sup>332</sup> The same problems have also reflected the Afar, Gembella, Somalia and Benshengul -Gumze Regional States; they all lacked experts in the area of water quality control.<sup>333</sup> Naturally, to meaningfully apply the right to water, and effectively conduct water quality monitoring and surveillance activities, organizational capacity is required. Finally, one of the most significant challenges in the water sector is the apparent lack of reliable, up to date information on the coverage of and access to water as well as water quality;<sup>334</sup> hence making the building of a national database as absolutely desirable.

#### **4.4.3. Issues relating to awareness on a human right to water**

Ethiopia should make sure that individuals are able to exercise their right to water for example by promoting tolerance, raising awareness, and even building infrastructures. To achieve this objective, awareness creation and education on the right to water should be undertaken through the media as well as workshops; creating community awareness of water supply services is one of the options for improving sustainable access to the human right to water.<sup>335</sup> The first step is to speak openly about a human right to water through awareness raising; nevertheless, Ethiopia as country has a very poorly organized schemes for promoting awareness on the right to water; to this extent, the public, decision-makers, proponents and even lawyers do not have an adequate knowledge about the entitlements of the right to water.<sup>336</sup> This has led to the perception that such a right was merely a summation of principles and values, rather than human rights, and was considered as a non-justiciable right.

The dominant perception among members of the judiciary is as the right to water is not judicially enforceable in Ethiopia; as the interviews made with selected participants of this research

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<sup>332</sup> International Federation of Red Cross and Red Crescent Societies, Ethiopia(2013) Country Case Study Report How Law and Regulation Supports Disaster Risk Reduction Geneva, p.54,, see also Ripple in collaboration with Minister of water and Energy(2012), note 297.p.97

<sup>333</sup> Dr. Yacob Arsano, Elsa Mekonnen and Dr. Simon O'Meally, Demissie Gudisa, Demeke Achiso, YacobArsano and Elsa, Mekonnen. Quality control, backstopping and substantive inputs were provided throughout the entire process by Roger Calow and Dr. Eva Ludi(2010), A study conducted by the Organization for Social Science Research in Eastern and Southern Africa in collaboration with the Overseas Development Institute, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6109.pdf> ,pp,12 accessed on 23/9/2013, see Beyond scarcity(2006), note 94P. 88

<sup>334</sup> The Federal Democratic Republic Ethiopia, Minister of Water Resource(2002-2006) Water Sector Development Program .p.6 see also The 15-year Water Sector Development Program,2002,p.18, see also Ethiopia(2010) Millennium Development Goals Report,p.40

<sup>335</sup>World Health Organization (2006), note 55,p.2

<sup>336</sup> Federal Democratic Republic of Minister of Health of Ethiopia(2011),note 310p.20, see also Interview with Almw Wolie(2013), note 328 Interview with Ali Mohamed Ali(2013) note 253

indicated, this perception emanates from the understanding of the right to water as resource demanding, positive and a progressive right without immediate action;<sup>337</sup> the truth, however, remains that even many civil and political rights are also resource demanding, positive and progressive rights requiring for example measures with a view to improving capacity of judiciary, public prosecutor and police forces. This shows the existence of lack of awareness about the realities in the enforcement of the right to water.

On the other hand, the reality of life in many parts of Ethiopia where there is shortage of potable water has forced communities to give priority to quantity rather than quality; there is little awareness creation work done with regard to water quality issue.<sup>338</sup> Interviews conducted with concerned stakeholders revealed that of major importance in working around the right to water is the need for inclusive training, education and awareness rising on the human right to water.<sup>339</sup> To the many rural dwellers in any African states, and particularly in Ethiopia, and indeed to the urban poor, the lack of awareness has made it impossible for them to assert their rights. As many Ethiopians are illiterate and economically deprived, they lack the requisite knowledge and means to effectively assert their rights, let alone enjoy them. Conversely, many human rights practitioners tend to be unfamiliar with the lessons learnt and the challenges involved in the right to water.<sup>340</sup> This research finds that the society is not aware of the right to water that has been indirectly recognized under the FDRE Constitution and explicitly referred to under international human rights law; as a result, there are no cases law developed in this areas which in turn has prevented the growth of the human right to water in Ethiopia.

On the other hand, there exist a few positive sides providing opportunity for the effective implementation of the human right to water in Ethiopia.

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<sup>337</sup>Interview with Reta Tolasa a Judge of Federal Supreme Court, Cassation Division 20November,2013See also Interview with Kasahun Gutata(2013) note 318

<sup>338</sup>Federal Democratic Republic of Minister of Health of Ethiopian(2011) note 310,p.16

<sup>339</sup>Interview with Almwaw Wolie(2013) note 328 see also Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque(2012) Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Human Rights Council Twenty-first session Agenda item 3, para.63

<sup>340</sup>Centre on Housing Rights and Evictions(2007) American Association for the Advancement of Science, Swiss Agency for Development and Coordination and UN HABITAT, Manual on the Right to Water and Sanitation ,p.1

#### 4.4.4 Political commitment

Political commitment is one of the required elements for implementation of the right to water. It facilitates the realization of rights faster than conventional obligations since legal beliefs and opinions evolve more rapidly than conventional law-making processes.<sup>341</sup> The political commitment of a government is in reality more important than the written right on the paper. At the same time, it is usually the first attempt and most immediate legal answer to the national community's water requirements; it is perhaps the most authentic response.<sup>342</sup> As presented in chapter three, a number of policies and laws have been issued in Ethiopia on water - directly or indirectly affecting the right to water; this in itself is one manifestation political commitment. Typical among these are the 15-year Water Sector Development Program (WSDP 2002), the Ethiopian Water Sector Strategy (2001) and the Ethiopian Water Resources Management Policy of 1999.

Legislative measure is also one of the manifestations of political will to protect the human right to water in Ethiopia. Interestingly, one can discern that adopting policies or ratifying legal instruments concerning the right to water could be regarded as expression of Ethiopian government's response to the seriousness of water problems in the country. Obviously, political commitment remains the first driver for change.<sup>343</sup>

#### 4.4.5 Millennium Development Goals

The prospects for the implementation of a human right to water could as well be considered in connection with the MDGs. Though the challenges are formidable, the adoption of the Millennium Development Goals with members of the international community presents opportunities. One of the MDGs targets within the environmental sustainability goals calls for halving 50% of the world population without sustainable access to safe drinking water.<sup>344</sup> In addition, as the MDGs reports indicate, no single measure would do more to reduce disease and

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<sup>341</sup>Gonzalo Aguilar Cavallo(2012) note 32,p.183

<sup>342</sup>Gonzalo Aguilar Cavallo(2012) note 32,p.183

<sup>343</sup> VIGEO RATING , [www.vigeo.com](http://www.vigeo.com) July 2013

<sup>344</sup>Sufian Ahmed(2005), Development Planning and Research Department Ministry of Finance and Economic Development, Ethiopia: MDGs Needs Assessment Synthesis Report, Addis Ababa, p. 32

save lives in the developing world including Ethiopia than bringing safe water and adequate sanitation for all.<sup>345</sup>

Along with the world, Ethiopia has also adopted a target of increasing access to water from 68.5% in 2010 to 98.5% across the country by the end of MDGs period.<sup>346</sup> This could be an opportunity for a number of reasons. First, it is a set of time-bound and measurable goals, and intends to decrease lack of access to water. Second, it is a voluntary assumption of obligation by the government. Thirdly, water is not just the subjects of one of the targets of the MDGs as such; but it is a part which plays a significant role in the realization of all the MDGs targets such as right to health, education, food, development and environmental protection.<sup>347</sup> Hence it is a driving force for realization of other human rights. The time lost because of long-distance travelled for water collection contributes to poverty reduction; water resource facilities closer to home reduce the risk of assault for women and girls when they are searching water. Most importantly the MDGs help to promote accountability at national and global levels through monitoring and reporting based on internationally agreed targets as well as nationally tailored poverty reduction targets.

#### 4.5. CONCLUSION

In line with the preceding discussions, the following conclusion can be made. The government of Ethiopia has been committed to realize the human right to water as the matter of principle. Obviously, some encouraging achievements have been registered regarding the coverage of the access to water. However, lack of water quality remains a pressing problem, and children and women are still forced in many geographical regions to search for water - with all the consequences thereof.

It may however be desirable to also note that challenges remain on satisfying the right to all within the national jurisdiction, and even worse, with regard to quality water and the provisioning of indoor water connection. Naturally, the solution to this problem is not simple. It

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<sup>345</sup> Dieter Zinnbauer, Rebecca Dobson and Krina Despota(2008 Editors), the Global Corruption Report Corruption in the Water Sector, P. Xvii, Cambridge university press, New York, [www.cambridge.org/9780521727952](http://www.cambridge.org/9780521727952)

<sup>346</sup>Federal Democratic Republic Ethiopia, Growth and Transformation plan (2010/11-2014/2015),Minister of Finance and Economic Development, Addis Ababa P.14, see also Ethiopia( 2010), Millennium Development Goals Report,p.39

<sup>347</sup>Sufian Ahmed(2005), note 344 p.8

is clear that fulfilling the right to water in Ethiopia in all its forms is still a faraway prospect. Water supplies in both rural and urban areas are not sufficient to sustain water needs, and there also exists a big gap between them.

The aforementioned analysis also reflect that there is poor implementation of the human right to water in Ethiopia largely attributed to the inadequacy of the management in the governmental sectors. Less attention has been paid to the right to water that shapes the prosperity of country and the well-being of its citizens. It is easy enough to proclaim that water is a human right or its approximation but the legislative promise would mean less if its implementation is not effectively pursued.

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.1. Conclusions

The role that legal frameworks can and do play in the realization of the human right to water in the international as well as national contexts should not be underestimated. Admittedly, there is no universal human rights treaty that expressly acknowledged the human right to water, though many efforts at international level have endeavored to focus on the need for recognizing the right and considered the right to water as a fundamental human right. Evidence at the international and national levels - both in the form of Constitutional norms and judicial decisions - confirm the existence of a strong support for the notion of human right to water.

The legal fundament of a right to water is enshrined under article 11[1] ICESCR rights, article 25(1) of the UDHR and article 16 of the African Charter on Human and Peoples' Rights. There is an independent right to water, though, that can be inferred through innovative interpretation; and this lays in governments a responsibility to extend the privileges to everyone within their jurisdictions without any conditions.

There is an increasing tendency in protecting a self-standing human right to water at the domestic levels, especially tuned by Constitutional perspectives.

There is no debate that water is one of the basic necessities of life but when compared with other human rights, one cannot fail but to note that little attention has been paid. As a result, millions of people have been exposed to lack of supply of water with all its adverse consequences. Bluntly put, there are a range of problems besetting peoples but at the heart lay troubling concerns involving the lack of access to water in adequate quantity and quality; this has led not only to a routine violation of human right to water, but also engendered a violation of other interdependent human rights.

It can be said that international enforcement mechanisms were strongest for civil and political rights, and their violation was considered more serious than that of the right to water - a right labeled as a socio-economic right. There are a few international NGOs that focus on socio economic rights including the right to water and limited number of lawyers who have the knowledge or experience to defend the right to water at national as well as international forums. It is less likely that the right to water would be protected in the national jurisdictions better than civil and political rights.

Like any other human rights, a right to water has been recognized in the three regional human rights systems. A human right to water has also been construed from other rights such as the right to life, health and clean environments.

Ethiopia is often referred to as the water tower of Africa because of the many rivers that pour off its high lands. The FDRE Constitution has also recognized a human right to water both in the substantive parts and through ratification of the international human rights. Concerning the legal status of the human right to water in the FDRE Constitution, there is derivative right to water in light of the substantive provision; while independent human right to water can be claimed from perspective of international human right to water which Ethiopia has been ratified. The right to water is not a silver bullet that will automatically address the nation's water crisis. However, it is a powerful tool that can be used to focus attention and resources on improving access to water for those individuals and communities who currently endure the hardships imposed by the absence of safe water.

This research has established that the legal basis for an independent human right to water, developing from international consensus into a reality of positive law. The recognition of the right to water is thus not only lip-service, but the right to water has proven to be an enforceable human right in many instances. The overall socio-economic, behavioral, environmental and personal factors of the people are assumed to be potential contributing factors for the failure to register achievements in water services in Ethiopia. The enforcement of the Constitutional rights and policy should be maximized to assist the way forward for better success in the maintenance of the human right to water. Action to improve a basic universal access to the right to water is now spurred by a sense of greater urgency.

International human rights laws are adopted to protect and promote the interests of the international communities. The right to water is part and parcel of international bill of rights. These instruments refer the obligations of states to provide effective remedies for violations of such rights. Ethiopia as a party to the ICESCR shall observe the obligations that are imposed on states parties among others by the human right to water. Ethiopia has not only adopted numerous conventions regulating several aspects of the right to water, it has also put in place national policies, strategies, and in limited scales laws. Recognition of the right to water legal frameworks in Constitution and policy tools at national levels, and using international obligations, can help in moving forward the right to water claim and allow local communities to seek accountability. Ethiopia will incur responsibility for not complying with their legal obligations to respect and ensure, that is, to guarantee, the effective enjoyment of the human right to water recognized either in a treaty binding on the Ethiopia concerned or in the Constitution.

Justiciability of a right to water is subject to academic debate which is still unsolved problems in all over the world; the cases highlighted in this thesis shows that the rights framework can successfully be applied in the right to water. Justiciability of the right to water in Ethiopia contexts is a matter of practical necessity. The judiciary is a fertile and an appropriate institution to deal with incomparability of national legislation with the international and African Charter on Human and peoples' Rights.

The cases law from South Africa, Argentina and India could serve as orientation for Ethiopian courts. While it is true that states that have included an explicit provision on the right to water under their Constitutions could in particular be guided by South African cases law. Furthermore, the development in India shows that courts can interpret the right to life in a way to cover the right to water. This model has already been followed in a number of other states such as Nepal, Pakistan, Argentina, Bangladesh and Zimbabwe.

The areas of the right to water which need more consideration are three-fold. There needs to be more legislative reform – there is little harmonization of the ICESCR, ACHPR, CRC and ACRWC in too many countries including Ethiopia. Enforcement is the second problem. There is a huge gap between law and practice and this may be related to capacity. Finally, budgetary constraints are a big problem. Too few resources are allocated to the human right to water, particularly in comparison with, for example, defence and security.

Indeed, the substantive commitment and implementation beyond ratification are also significance that is the matter of the crux. The national implementation of the right to water has been encountered by many challenges. The absence of a systematic review of legislation and failure to adopt comprehensive human right to water laws has remained sources of concern. In this context, the adoption of comprehensive human right to water laws in Ethiopia has been conceived as an act of fulfilling the government's obligation to carry out legislative measures and address the concerns of the socio economic committee on harmonization of national legislations with principles and provisions of the international human rights law.

Creating community awareness of their water supply services is one of the options for improving sustainable access to water. Rethinking the right to water in Ethiopia is not only recommended but also advisable because it's a matter of survival. Setting aside the layman, the lawyer is filed to recognize the right to water. Awareness about the right to water, their international dimension and the implication of their utilization is very important.

Political will has also been identified as a major driver of improved water management and this will have to be transformed in order to ensure that the available legal machinery be used in the future to avoid similar problems arising again. As for the present difficulties, there are existing legal mechanisms, and then they will have to be used in conjunction with political solutions accompanied by large amounts of money and human resource. These obstacles, however, still have to be surmounted if the above challenges are honestly addressed by the governments. The human right to water is at the heart of the UN's MDGs; hence, it will be an opportunities that could bring about tangible achievements in area of the right to water.

The implementation of the human right to water in Ethiopia requires disentangling the provisions of basic services from a more complicated set of questions and interprets the existing laws and regulations in a way that harmonization with Ethiopian's human rights obligations. It is generally accepted that the most effective manner of ensuring the right to safe drinking water is the so

called “multi barrier” approach which includes not only treatment and contamination of drinking water, but also the protection of water at its source which is very exacerbated the problems.

In general, a human right to water is not yet individual rights in a uniform manner across the globe; however, the amount of attention it has received indicates that it is moving towards an individual-based approach. Even though current domestic legislations do not contain any recognition of the human right to water as such, they have incorporated clear recognitions of contents or elements of the right to water, which could allow the national community to identify the components of a derivative right to water from the right to life. After a deep analysis, the main conclusion found is that the right to water has had some progress, it still has a significant number of defiance ahead that will require joint and dedicate action both from the international and national concerned body as well.

Unless NGOs, international and local governments as well as water providers adopt and work to meet a basic water requirement standards, large-scale of human misery and sorrow will endure and grow in the future. Ultimately, decisions about defining and applying a basic water requirement will depend on political and institutional will. However, the right to water is in no way aspirational or a mere fiction, but rather imposes real obligations on states, for which they will be subjected to the national analysis and international tribunals. Bluntly put, recognizing other human rights without due attention to the human right to water is endless and futile efforts. The human right to water has progressively transcended from mere moral prescriptions to clear articulations of legal standards, finding expression in the international human rights instruments and under some domestic Constitutional orders.

The obligation to the human right to water is a progressive one which requires states to take a combination of whatever measures are necessary- legislative, administrative, social and educational- to ensure the effective implementation of the human right to water. The human right to water is basic to our development. It should be at the core of our being and our actions as citizens of the country and of the world.

## **5.2. Recommendations**

The role of the domestic government should be to ensure that expectation set out in the international human rights instruments are reflected in water policy and in their domestic Constitution. The right to water entitlements which may be identified from the textual reading of the international legal instrument need to be translated and given effect as an enforceable claim to respect, protect and promote. Hence, the government needs to re-think the engagement between water policy, the human right to water as a legal rights, and fundamental human rights. In addition, one way of resolving difficulty in the realization of the right to water, the government should allocated adequate budget and fulfilled human resources gap in water sector.

In some national jurisdictions there are cases decided by judiciary organ in area of the human right to water; nonetheless, even at the current improved phase, there is much to be desired in

terms of a systematic analysis of facts and laws, evaluation of competing perspectives, soberness of findings, consistency in details and defining the normative content of the right to water which may result in the definition of the minimum essential levels of rights. In many of the cases the court is reluctant to reach its own conclusion, rather following arguments of the parties. Therefore, it would have been preferred first to identify the normative content of the right to water before concluding the provision which had been violated.

Based on the findings of the study the researcher forwards the following specific recommendations.

#### **5.2.1. Public relations [promotion] measure**

The Ethiopian's courts like the courts of other countries cited elsewhere in this thesis could also entertain claims with the available legal procedures and relevant laws. Particularly the enforceability of the right to water demands active, assertive and creative judiciary. However, there is lack of awareness of the judges about the international human right to water and the generous application of Constitution. The judiciary should learn from the best practices of the Indian and Argentinean jurisprudence when confronted with a claim involving the right to water. In addition, we have to create active citizens capable of initiating cases and bringing them to courts. The civil society institution has to play a proactive role not only creating the human right to water awareness among the people but also in instituting cases on behalf of victims of this right. There is a need to popularize, reinforce and sustain a modest approach to encourage demand driven, community involvement in order to bring rapid improvement in the right to water in Ethiopia. Promoting human rights should not be selective; it should embrace all aspects of human rights including the right to water which will conform to universal norms and standards. Finally, further research will be necessary to overcome obstacles in translating the human right to water into practical applications which is the inner part of the promotion.

Therefore, the researcher suggests that the government should provide training to members of the judiciary concerning the judicial enforceability of the right to water and consequently boost their awareness of this right. Hence, it is the duty of the government, to enhance the awareness of citizens through promotion that help them to claim their constitutionally and internationally guaranteed right to water. The citizens should first claim their right, and then judges will play their second role in the adjudication of the victim's right. This awareness creation regarding the right to water should also be extended to the beneficiaries of this right as they are the driving force of complaints on which the court is required to decide. Therefore, there are also a lot of thing to be done in order to increase awareness of the society particularly in the rural areas of Ethiopia.

#### **5.2.2. Legislative measure**

In order to enforce the human right to water some measures have to be taken by the government such as to enact laws that guarantee the remedies for violations of this right; enshrined both in

the international legal instruments and national constitution. This indicated that the major responsibility of the full realization of the right to water falls on the shoulder of the government. Especially in promulgating detailed substantive and procedural laws to enforce the human right to water. The major setback to be seen is:

- International as well as national level, perhaps, the necessity for adopting a law that comprehensively addresses the human right to water goes without saying.
- At international level, states including Ethiopia should ratify Op- protocols on ICESCR and CEDAW which has potential importance for individual to claim their rights before international tribunal. Such undertaking obliges states including Ethiopia to adopt appropriate legislative, administrative and others measures with a view to implementing the right to water stipulated under the international human rights law.
- Provisions of the FDRE Constitution must be repealed or interpreted to ensure harmonization of the full realization of the international human right to water.
- To ensure implementation, the draft legislation on the drinking water quality guidelines, should put in place by the concerned body as soon as possible.

In spite of the commendable efforts in the recent year, the human and institutional capacity needs further strengthening to implement the human right to water at the Federal and Regional States of Ethiopia. Another area that needs to be explored further is the participation of the private sector in water supply areas under the supervision of the government. Generally, existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed that inconsistent with international and national obligations of Ethiopian government.

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## **LIST OF INTERVIEWEES**

Interview with Ali Mohamed Ali, a Judge at Federal Supreme Court, Cassation Division,  
13November, 2013

Interview with Almax Wolie, a Judge of Federal Supreme Court, Cassation Division,  
13November, 2013

Interview with Anonymous, a Judge at Federal Supreme Court, Cassation Division, November,  
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Interview with Anonymous, Assistant Judge of Federal high Court, 15November, 2013

Interview with Anonymous, a Judge at Federal First Instance court, 11November, 2013

Interview with Anonymous, a Judge at Federal high Court, Ethiopia, 14November, 2013

Interview with Bekele Bonja, a higher public prosecutor in Minister of Justice, 11November,  
2013

Interview with Daniel Girma a Judge of Federal First Instance Court, 11November, 2013

Interview with Dawit Belay a Judge of Federal First Instance Court, 15November, 2013

Interview with Iyassu Ababayehu a Judge of Federal First Instance Court, 15November, 2013

Interview with Kasahun Gutata, a Judge of Oromia Supreme Court, 02 November, 2013

Interview with Kenate Hora, a Judge at Federal high court, 14 November, 2013

Interview with Reta Tolasa a Judge of Federal Supreme Court, Cassation Division  
20November, 2013

## **ANNEX**

### **INTERVIEW GUIDE**

#### Interview Guide for Judges at the Federal and Oromia Supreme Court

I am Ifa kenea Ayana, LL.M student of Addis Ababa University College of Law and Governance Studies. I am doing my LL.M thesis on a topic title: The International and National legal framework on the human right to water. I kindly request you to participate in the study and share your opinion with me. I want to assure you that the information you give me will be kept confidential whenever you so demand. Your name & identity would not be disclosed to any other person against your will. If you hesitate to mention your name you can leave it. All your answers would be anonymous & is insured that it cannot be traced back to you in any way.

The purpose of the interview is to get deep insight on whether the Ethiopian courts are competent and legitimate to decide on the right to water; and to identify other impediments against judicial enforcement of the right to water in Ethiopia as well as how far the court is working in the promotion, protection and realization of the right to water. Accordingly, the actual problems will be identified and solution will be suggested for better future endeavor.

Thanks in Advance!!!

1. Would you introduce yourself, occupation, position?
2. What are socio economic rights particular, the right to water for you? What differentiates them from Civil and political rights?
3. Is there the right to water under FDRE Constitution? If your answer is yes, implicit or explicit? If your answer no how can we enforced?
4. Is the right to water justiciable under the FDRE Constitutions? If your answer is yes, indirect or direct justiciable?
5. Is there any effective remedy in case of violation of the right to water in Ethiopia?
7. What are the impediments faced on judicial enforcement of the right to water in Ethiopia? What solution do you propose?