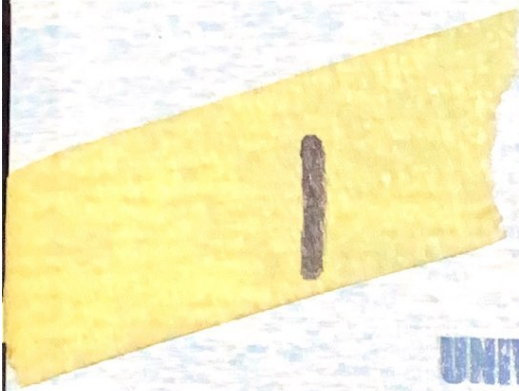




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ACCESS TO CLEAN AND SAFE DOMESTIC WATER IN NIGERIA: THE LEGAL FRAMEWORKS EXAMINED

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ABSTRACT

Water Resources Management focuses on the various uses of water to enable a cross sectoral policy approach towards the management and sustainable use of water resources. As a result, there is the need to safeguard the water system that supports human lives. It is on this premise that this paper examined the importance of water to human existence with specific attention on domestic uses. This paper thus argued that much priority should be given to water systems that are fundamental for day to day activities. The paper analysed the Constitution of the Federal Republic of Nigeria 1999 and the Water Resources Act of 1993 in relation to the protection of water for domestic uses and on this note submitted that there is the need for the legal framework to give prioritization for domestic water supply in Nigeria to enable all Nigerians live a life of human dignity.

1.0 INTRODUCTION

Several Nigerian scholars have noted that water resources in Nigeria are in abundance.¹ It is however ironical that in spite of Nigeria being categorised as a nation having water in abundance² about half the population of Nigerians do not have access to safe clean water for their domestic use.³ The uses of water are divergent and it is important that every identified use such as agriculture, industrial, navigational, domestic and recreational be protected by the law. This would enhance a sustainable use and also prevent conflicting uses.⁴ As examined and opined, not all water resources in Nigeria are adequately protected by law especially domestic water and this contributes to the problems of access to clean water in Nigeria. As noted by Akpabio there are several laws on water resources in Nigeria⁵ however this article analyses only the Constitution of the Federal Republic of Nigeria (hereafter CFRN) and the Water Resources Act because these

-
1. National water policy 2004 3; IJ Goldface-Irokalibe 'Water Resources Management – Forum of Federations' (2008) Environment Law Research Institute (ELRI) Report. Available at <http://www.forumfed.org/en/global/thematic/water_papers/Joel%20Goldface_en.pdf> (accessed 14 June 2014) (hereafter IJ Goldface-Irokalibe (2008) ELRI); Olawale Ajai Law, water and sustainable development: Framework of Nigerian Law (2012) 8 Law Environment And Development Journal (LEAD Journal) 91-113, 91.
 2. J O Ayoade 'Water Resources and their Development in Nigeria' 20 Hydrological Sciences Bulletin (1975), 583.
 3. Muhammed Tawfiq Ladan, Law, Cases and Policies on Energy, mineral resources, climate change, environment, water, maritime and Human rights in Nigeria (ABU Zaria 2009) 490.
 4. MT Ladan (2013) 'No1: Review of the regulatory and policy Frameworks of the Nigerian water sector and international legal response for sustainable management and protection of water resources' Prof. Ladan's law and Policy Review Research working papers (hereafter 'Ladan's Law and Policy Review papers') available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2358884> (accessed 20 April 2015).
 5. Emmanuel M. Akpabio & Iniubong E. Ansa, 'Water for Cities in Nigeria: The Governance Dimension' 4 Mediterranean Journal of Social Sciences (2013), 297, 305.

acts are the superior laws on water resources and domestic water supply and are expected to cover all water resources in Nigeria including domestic water. It is argued that the Nigerian Government favours water for agricultural use and encourages albeit unsatisfactorily, the legal protection of water from pollution. It is also argued that the various uses of water need to be adequately covered by law especially domestic water supply which in comparison with the quantity of water needed for irrigation or agriculture is insignificant. It is argued here that anything short of a proper integration of water resources, with domestic water as a priority is a misplaced priority of the water resources management. An argument is canvassed for a prioritization of domestic water over other uses of water. This paper therefore is divided into five major parts and this introduction which provide a background to this paper is this first part. The second part examines water resources management in Nigeria. The third part examines the international human rights laws on the right of access to clean and safe water. The fourth part looks at the legal frameworks on the protection and safety of water for domestic uses in Nigeria. The last part is the conclusion.

2.0. WATER RESOURCES MANAGEMENT IN NIGERIA

Nigerians derive their water for domestic use from different sources.⁶ These sources which include (but not limited to) rain, streams, rivers and wells are more often than not found

⁶ Adekunle et al 'Assessment of Groundwater Quality in a Typical Rural Settlement in Southwest Nigeria 4 Int J Environ Res Public Health (2007),308

unclean for human consumption.⁷ Around the Niger Delta area of the Southern part of Nigeria, rain falls for an average of nine to ten months in a year.⁸ The Northern part of Nigeria is the least favoured in terms of rainfall as they enjoy an average of three to four months of rainfall in a year.⁹ Rainfall has been known to support and promote significantly water for domestic use.¹⁰ Oguntade et al in their research evaluated the rainfall trends in Nigeria between 1901 and 2000. Their argument for this evaluation was to show the importance it holds for the sustainable management of water resources in Nigeria considering the increasing demand for water due to population increase.¹¹ Their research was perhaps necessary to inform the public and the government on the need for proper planning towards ensuring a proper management and allocation of water resources bearing in mind the population increase of the country.

Ishaku et al in their findings discovered that the amount of rainfall in Nigeria was sufficient to meet the domestic needs of Nigerians especially in rural communities.¹² Aladenola et al in their submission on rain water harvesting stated that harvested rainwater in Abeokuta Ogun State can satisfy

7 There have been a range of studies on the quality of the rivers and streams which Nigerians have access to for their domestic use. The result of these case studies shows that the rivers and streams in different parts of the country are polluted and not fit for human consumption.

8 Ayoade (1975) 20 Hydrological Sciences Bulletin 584.

9 Ayoade (1975) 20 Hydrological Sciences Bulletin 583, 584.

10 mteaz et al 62 Resources Conservation and Recycling (2012) 51.

11 See Oguntade Abiodun & Lischeid (2011) 411 Journal of Hydrology 207.

12 Ishaku et al, 'Water Supply Dilemma in Nigeria Rural Communities: Looking towards the Sky for an Answer' (2011) 3 Journal of Water Resources and Protection 59.

household monthly demand for a period of eight months except in November, December, January and February during the dry season.¹³ They however noted that the excess rainfall in the months of September and October can be used as supplement during the dry season.¹⁴ Imteaz *et al* also affirms the position of Ishaku *et al* and Aladenola *et al* when they stated in their work that rainwater when harvested is sufficient for domestic use even in the dry season.¹⁵

Goldface-Irokalibe also attests to the abundance of water resources in Nigeria when he examines the abundance of rivers and their capacity as well as the dams available in Nigeria. He expounded on Nigeria's eight hydrological areas drained by rivers. Niger and Benue as well as the minor tributaries Lake Chad and Lake Oguta and the rivers that discharge into them.¹⁶ He considers the available water in the different geographical locations in Nigeria affirming that water resources in Nigeria is in abundance. He conceives that Nigeria invested in water resources development by constructing dams to control flood provide water for domestic and industrial use for hydro power and irrigated agriculture. He however submits that a large percentage of Nigerians do not have access to water.¹⁷ In spite of the abundance of water in

13 O.O Aladenola & O.B Adeboye 'Assessing the potential for rainwater Harvesting' 24 *Water Resource Management* (2010), 2129

14 O.O Aladenola & O.B Adeboye

15 Imteaz *et al* 'Rainwater Harvesting Potential for Southwest Nigeria Using Daily Water Balance Model' (2012) 62 *Resources Conservation and Recycling* 51-55; Joseph O. Adejuwon, 'Rainfall Seasonality in the Niger Delta Belt, Nigeria' 5 *J.Geogr.Reg.Plann.*, (2012) 51-60.

16 IJ Goldface-Irokalibe (2008) *EI.RI* 2.

17 IJ Goldface-Irokalibe (2008) *EI.RI* 3.

all forms, many Nigerians are exposed to polluted water and insufficient water for their domestic use.¹⁸ Some others have to spend a lot of money to access clean water while yet others have to go long distances to acquire clean water for their basic use.¹⁹ Although water resources in Nigeria are vested in the Federal government,²⁰ the duty of domestic water supply is anchored on the state.²¹ There are thirty six states in Nigeria and a Federal Capital territory (FCT).²² There are three tiers of government – Federal, State and Local – which share the responsibility for water resources management and especially domestic water supply.²³ Each of these states inclusive of the FCT has their own state water agencies that have the duty of providing water for their people.²⁴ The local government have the duty of disseminating water in the rural areas within their respective states.

Goldface-Irokalibe in his analysis of water management in Nigeria identifies the Water Resources Act,²⁵ the Minerals Act,²⁶ the National Inland Waterways Act²⁷ and the River

18 Muhammed Tawfiq Ladan, *Law, Cases and Policies on Energy, mineral resources, climate change, environment, water, maritime and Human rights in Nigeria* (ABU Zaria 2009) 490, 491.

19 Ayoade (1975) 20 Hydrological Sciences Bulletin 588

20 Water Resources Act 1993 s 1

21 Tom Franks, Hassan Bdliya & Lawrence Mbuya, 'Water governance and river basin management: comparative experiences from Nigeria and Tanzania' 9 *Intl J of River Basin Management* (2011), 94

22 Constitution of the Federal Republic of Nigeria (CFRN) s 3 (1) (4).

23 IJ Goldface-Irokalibe (2008) ELRI 4.

24 IJ Goldface Irokalibe (2008) ELRI 4.

25 The Water Resource Act of 1993 was formerly referred to as Water Resources Decree of 101 of 1993. However by virtue of section 318 of the CFRN all decrees including the Water Resources Decree became Acts of the Federal government.

26. Nigerian Minerals and Mining Act Cap F 34 Laws of federation of Nigeria 2004.

27. No 13 of 1997

Basins Development Authorities Act, as Federal Laws relevant in the development and management of Nigeria's water resources as well as state laws and the customary laws.²⁸ In addition to these lists of relevant laws, Ladan identifies first the Nigerian Constitution,²⁹ National Water Resources Institute Act³⁰ as well as the current National Water policies such as the National Sanitation Policy 2004 and the National policy on the environment 1999.³¹ Also on water resources in Nigeria are the National Water Policy 2004 and the Water Bill of 2008. These policies and water bill are expected to mirror the future provisions on water resources and a replacement of the Water Resources Act in Nigeria. These policies are not legally enforceable and cannot be referred to as laws.

There also exists a proposed Water Bill.³² Planning and consultation regarding the proposed water bill commenced in 1997³³ and the bill has since passed its fourth reading but has not been passed into law.³⁴ The author however notes that the only provision of water for domestic use in the said proposed Water Bill does not address sufficiently the issues of domestic water supply and does not guarantee access to water for the common Nigerian. This lacuna would only bring forward the

28 Goldface-Irokalibe (2008) ELRI 3.

29 Constitution of the Federal Republic of Nigeria 1999 (hereafter CFRN).

30 No 3 of 1985

31 Ladan (2013) Review of the regulatory and policy frameworks pages 14, 22, 26 and 27.

32 A copy of this bill is on file with the author.

33 Babalobi, 'Nigeria's Draft Water Resources Bill' February 26 2008 available at <<http://assemblyonline.info/nigeria-news-2-2/>> (accessed 13 April 2015).

34 Engr. R. A. K. Jimoh 'Legal and Institutional Framework and Implementation Status of Integrated Water Resources Management in Nigeria' 18 February 2013.

extant laws on access to water in Nigeria and all not have addressed the major challenges domestic water in Nigeria.

NATIONAL HUMAN RIGHTS LAWS AND WATER

may not be the best of all things, it however, is considered as the most important commodity in the world as without water, there can be no life and no civilisation.³⁵ Water is a necessity on which all life depends and the United Nations hence has given it the highest status in human rights.³⁶

The United Nations has declared water to be a human right. The human right to water refers mainly to domestic water. Domestic water covers a variety of water uses in the household for drinking, for cooking, laundry, sanitation

³⁵ (1981) 51 *Journal of Hydrology* 369.

³⁶ One of the arguments of whether the right to water is a human right or not as interpreted by the Committee on Economic and Social Rights in General Comment 15 (General Comment on the right to water) is an interpretative document by the Committee on Economic and Social Rights who are not rights experts. Their interpretations are persuasive but not legally binding. See also Bullo (2010) 12 *Melbourne International Law Journal* 2 In 1.; the United Nations General Assembly has declared water to be a human right to which every human being is entitled to. On 28 July 2010, the General Assembly adopted by a vote of 122 in favour, none against and 41 abstentions the United Nations General Assembly Resolution 64/292 (hereafter General Assembly (A/65/254)) recognised access to clean water and sanitation as a human right. See <<http://www.un.org/News/Press/docs/2010/09/100927.doc.htm>> (accessed 10 June 2014); See Resolution on the human right to water and sanitation adopted by the United Nations General Assembly at <http://www.un.org/en/ga/res/64/res64/64_292.html> (accessed 6 April 2015) (hereafter Resolution 64/292 (Rev. 1 and Add. 1)).

challenges of the extant laws on access to water in Nigeria and as such would still not have addressed the major challenges of access to domestic water in Nigeria.

3.0. INTERNATIONAL HUMAN RIGHTS LAWS AND THE RIGHT TO WATER

Water may or may not be the best of all things, it however cannot be denied as the most important commodity in the history of man as without water, there can be no life and no development or civilisation.³⁵ Water is a necessity on which every life depends and the United Nations hence has given it a place amongst human rights.³⁶

The United Nations has declared water to be a human right in 2010. The human right to water refers mainly to domestic water. Domestic water covers a variety of water uses in the home. These are for drinking, for cooking, laundry, sanitation

35 Biswas (1981) 51 *Journal of Hydrology* 369.

36 In spite of the arguments of whether the right to water is a human right or not as interpreted by the Committee on Economic and Social Rights in General Comment 15 (General Comment 15 is an interpretative document by the Committee on Economic and Social Rights who are human rights experts. Their interpretations are persuasive but not legally binding. See also Bulfo (2011) 12 *Melbourne International Law Journal* 2 fn 1.), the United Nations General Assembly declared water to be a human right to which every human being is entitled to. On 28 July 2010, by a recorded vote of 122 in favour, none against and 41 abstentions the United Nations General Assembly Resolution GA/10967 (hereafter General Assembly (A/65/254)) recognised access to clean water and sanitation as a human right. See <<http://www.un.org/News/Press/docs/2010/ga10967.doc.htm>> (accessed 10 June 2014); See Resolution on the human right to water and sanitation adopted by the United Nations General Assembly at <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/292> (accessed 6 April 2015 (hereafter Resolution A/64/L.63/Rev. 1 and Add. 1)).

and personal hygiene.³⁷ There are other domestic uses of water such as gardening; it however does not fall within the domestic scope of the human right to water.³⁸ The human right to water refers to water that human beings depend on for their survival and to live a life of human dignity.³⁹ It follows that water is a basic need which is essential for human survival and also to live a dignified life.⁴⁰

If the very essence of water is for survival and living a life of human dignity then the human right to water cannot be exonerated from being a right as it is a necessity to the realisation of other rights as recognised under human rights.⁴¹ The human right to water can be linked to several other socio-economic rights such as the right to sanitation and the right to health. The human right to water is also related to civil and political rights such as the right to life. This interrelatedness of water to other human rights has no doubt given it a place amongst other rights.

If rights could be classified in the order of importance, perhaps the right to water would be given priority as it

37 Howard and Bartram (2003) WHO/SDE/WSH/03.02 found at http://www.who.int/water_sanitation_health/diseases/en/WSH0302.pdf (accessed 28 October 2014) (hereafter Howard and Bartram); Ladan (2013) available at <SSRN 2358884>.

38 United Nations Factsheet 35 (2010) (hereafter factsheet 35) available at <<http://www.ohchr.org/documents/publications/factsheet35en.pdf>>; See also Howard and Bartram (2003).

39 Factsheet No 35 [8].

40 WHO/WSH/WWD/TA.10 (Feb. 2001) World Water Day 2001; Water Health and Human Rights 1. Found at http://www.who.int/water_sanitation_health/en/humanrights.html (accessed 9 October 2013).

41 See PH Gleick 'The Human Right to Water' (2003) 9/10 Water Nepal 115-149 [118].

existed before man and the sustenance and existence of man depends on water.⁴² Although there have been classifications of human rights into generations, human rights are indivisible irrespective of the class they belong to as the improvement of one right facilitates the advancement of the others⁴³

As asserted by scholars, water is indispensable where food, health and a clean environment is concerned.⁴⁴ The human right to water is primarily an inherent part of the right to life⁴⁵ and human dignity.⁴⁶

In Trinidad's interpretation of the right to life, he asserts that the right to life broadly interpreted means that one must not be deprived of his life and all that is needed to sustain and preserve such a life forms part of the right to life (this he termed the right of living).⁴⁷ In India, article 21 of the

42 The Christians find that water was one of the very first creations of God which is used to sustain life. Genesis 1: 27. Creation story in the bible shows that water was created before man. See Genesis 1:2 and Genesis 1:27 See also 2 Peter 3: 5 „...earth was formed out of water and by means of water.

From a religious angle, the Muslims believe that God created every living thing from water. Quran 21:30.

43 United Nations human rights (Office of the High Commissioner for human rights) <<http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>> (accessed 21 June 2014).

44 Anton Kok & Malcolm Langford, „The Human Right to Water in „Socio-Economic Rights in South Africa Brand & Heyns (eds) (2005) 191, 197-200

45 Article 6 International Covenant on Civil and Political Rights (ICCPR) provides that „everyone has the inherent right to life which must be protected by law.

46 See para 3 of General Comment 15.

47 Antonio Augusto Cancado Trindade, „The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions Upon the Exercise of Recognized Human Rights (1991) 13 *Revista IIDH* 51-52 also at <<http://www.juridicas.unam.mx/publica/librev/rev/iidh/cont/13/dtr/dtr3.pdf>> (accessed 23 June 2014).

48 The Constitution of India (as modified up to the 1st of December 2007) hereafter Indian Constitution.

Constitution⁴⁸ - the right to life - has been expanded to include a few other rights such as the right to education and the right to unpolluted water. The Constitution states:

*No one shall be deprived of his life or personal liberty except according to procedure established by law.*⁴⁹

The right to life, under article 21 above has been interpreted by the Indian apex court to include many other non-justiciable directive principles such as the right to education and the right to pollution free water and air.⁵⁰ The India court has stated that the right to water and air are attributes of the right to life as they are basic elements which sustain that life.⁵¹

Article 11 (1) of the ICESCR includes the right to food as part of the right to an adequate standard of living.⁵² The right to food as defined by the committee on Economic Social and Cultural rights is that:

*The right to adequate food is realised when every man, woman and child, alone and in community with others has physical and economic access at all times to adequate food or means for its procurement*⁵³

49 Art 21 Indian Constitution.

50 See Vidhan Maheshwari, „Article 21 of The Constitution of India-The Expanding Horizons available at <http://www.legalserviceindia.com/articles/art222.htm> accessed 23 June 2014.

51 See Hussain v Union of India OP 2741/1988 (1990.02.26).

52 Also Article 25 Universal Declaration of Human Rights 1948.

53 General Comment 12 para 6.

Water and food cannot be separated. Foods are derived from agricultural produce and industrial produce. Both products require adequate water as crops cannot grow without water either through irrigation or rainfall. Also some of these crops are processed for preservation purposes and this also requires adequate water. In other words, in realising the right to food, water plays a dominant role. McCaffrey in arguing a human right to water through the right to food states that since food gives life sustaining nourishment, it should include the right to potable water since potable water itself also helps to sustain life.⁵⁴

Water is also associated with the right to health. Article 25 of the UDHR and article 12 of the International Covenant of Economic Social and Cultural Rights⁵⁵ (ICESCR) states that everyone has the right to the highest attainable standard of health. World Health Organisation (WHO) defines health as the absence of diseases, infirmity and a state of physical and social well-being.⁵⁶ General Comment 14 further states that the right to health encompasses socio-economic factors that promote healthy conditions which can help people live a healthy life and as such extends the determinant of health to food and nutrition, housing, access to potable water and sanitation and a healthy environment.⁵⁷

⁵⁴ Stephen C McCaffrey, „A Human Right to Water: Domestic and International Implications 5Georgia International Environment Law Review (1992) 23.

⁵⁵ 1966 (hereafter ICESCR).

⁵⁶ Preamble to the Constitution of the World Health Organisation, New York 10-22 June 1946.

⁵⁷ See Para 4 of the General Comment 14 (22nd session 2000 UN Doc. E/C.12/2000/4 also reprinted in Compilation of General Comments and General Recommendations adopted by Human rights Treaty bodies UN Doc. HRI/GEN/1/Rev.6 at 85 (2003). See also para 11 and 12 of General Comment 14.

It has been posited that everyone has a right not to suffer from disease or birth defects as a result of drinking polluted water.⁵⁸ When polluted or unclean water is ingested and inadequate water is used for sanitation and personal hygiene purpose, health becomes an issue of concern as polluted water has been known to be the source of many diseases which has also caused the death of many.⁵⁹ Unquestionably, the right to health cannot be entirely achieved without the right to water.⁶⁰ Clean water aids good health and a removal or lack of clean water can cause diseases which impede good health. The right to water has been interpreted both at the national and regional levels to be part of a right to a healthy environment.⁶¹ The environment when related to health suggests an absence of pollution.⁶² Further related to the right to water are the right to education,⁶³ the right to development,⁶⁴ the right to

58 Satvinder Juss, „Global Environmental Change: Health and the Challenge for Human Rights” 5 *Indiana Journal of Global Legal Studie* (1997) 121-178 [150].

59 WHO in 2002 estimates that approximately 1.5 million people died as a result of diarreha which is attributed to unsafe water, sanitation and hygiene. See Factsheet no 31 the right to health found at <<http://www.ohchr.org/documents/publications/factsheet31.pdf>> (accessed 17 October 2014).

60 Adele Kirschner, „The Human Right to Water and Sanitation (2011) 15 *Max Planck Yearb UN Law* 445-487.

61 Anton Kok, „Privatisation and the right to access to water 259 fn 5 in Feyter K. De Koen & Gomez Isa Felipe (eds), „Privatization and Human Rights in the Age of Globalisation (2005) ISBN 9050954227; SERAC v Nigeria.

62 United Nations Non-Governmental Liaison Service (NGLS), „Human Rights Approaches to Sustainable Development available at <<http://www.un-ngls.org/orf/pdf/ru90hrsd.pdf>> (accessed 16 October 2014) 5.

63 Art 26 of the UDHR, Art 13 and 14 of the ICESCR and Art 17 of the African Charter are examples of international and regional document which recognise the right to education. Education is made compulsory at the elementary level. The right to water promotes the right to education where adequate water is available at home, children who assist their mothers to fetch water would be able to go to school without been saddled with the task of searching for or trekking long distances for water. Although there are other rights which enhance the right to education such as sanitation, access to water also plays an important role in the right to education. Children have been known to drop out of school for lack of food and water. See the case of *Xákmok Kásek*

sanitation.⁶⁵

The Mar del Plata Conference was probably the beginning of the human right to water as the preamble to the declaration states that:

*All peoples whatever their stage of development and their social economic conditions have the right to have access to drinking water in quantities and a quality equal to their basic needs.*⁶⁶

Apart from the content of this declaration suggesting a human right to water, it also suggests a right not to be discriminated against irrespective of the 'stage of development' of everyone. The Mar del Plata conference espoused the importance of water and the need to recognise and include it as a human right at both international and national levels.⁶⁷ This conference lays emphases on the importance of water and the need to gradually accept and adequately promote access to water in the various states of the world.⁶⁸

Indigenous Community v Paraguay Inter-American Court of Human Rights (2010) para 214 at <http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf> (accessed 1 May 2015)

64 Art 1 Declaration on the right to development (1986) A/RES/41/128.

65 Sanitation is a means of promoting health by maintain proper hygiene and disposal of sewerage and other forms of dirt or waste. Adequate water is needed to enhance sanitation. See Malcolm Langford Jamie Bartram and Virginia Roaf „Revisiting Dignity: The Human Right to Sanitation The Right to Water: Theory, Practice and Prospects (2014) at <http://www.jus.uio.no/smr/english/people/aca/malcolml/Draft%20Sanitation%20Chapter.pdf> (accessed April 15 2014).

66 United Nations Water Conference 1977 (resolutions) p 1 available at <<http://www.iclec.org/content/e7701.pdf>> (accessed 22 October 2014).

67 United Nations Water Conference Mar del Plata 14-25 March 1977.

68 Asit K. Biswas, „United Nations Water Conference Action Plan 4 International Journal of Water Resource Development (IJWRD) (1988), 148-159, [151].

One of the goals of the Mar del Plata conference was to ensure that an adequate supply of quality water was available to meet socio-economic needs, increase efficient water use and promote preparedness to guide against water crises both nationally and internationally.

At this conference a series of recommendations were made that covered water management holistically and was called Action Plan.⁶⁹ The policy aspect was based on providing potable water and sanitation facilities, accelerate political will and investment in the water sector. Furthermore, this Mar del Plata conference declared 1980-1990 as the International Water Supply and Sanitation Decade.⁷⁰ This declaration recommends that the period between 1980 and 1990 be devoted to implementing national plans for drinking water supply and sanitation in accordance with the action plan.⁷¹

Cano identified and discussed the recommendations of the Mar del Plata conference based on water policy and law. One of such recommendations was that water policies which had the public interest in mind and protected the reasonable interests of individuals should be adopted.⁷² Another

69 Biswas (1988) 4 IJWRD 149; Malin Falkenmark, „UN Water Conference: Agreement on Goals and Action Plan (1977) 6 *Ambio* 222-227.

70 The resolution reaffirmed the goals and objective of providing safe water and sanitation for all. General Assembly A/RES/40/171 17 December 1985 <<http://www.un.org/documents/ga/res/40/a40r171.htm>> (accessed 17 June 2014).

71 Falkenmark (1977) 6 *Ambio* 222.

72 Guillermo J Cano, „The Recommendations of the United Nations water conference (Mar del Plata, 1977) and related Meetings on National Water Laws (1981) 51 *Journal of Hydrology* 381-392, [384].

recommendation of the Conference is that priority be given to the populace in greatest need of water for their basic use.⁷³ The Mar Del Plata Conference identified the problems associated with water legislation and suggested recommendations to address these issues. One of such recommendations was that comprehensive national legislation for a coordinated approach to water planning be enacted and should be combined in a unitary legal instrument (with the constitution so permitting) containing all provisions on water resources management. Although the Water conferences of the United Nations are not binding, however, the recommendations form parts of the normative content of the human right to water, originally derived from international instrument (such as the ICESCR). This instrument and a few more such as the Convention on the Elimination of all Discrimination Against Women⁷⁴ and the Convention on the Rights of a Child⁷⁵ which give life to the right to water has been ratified by Nigeria.

Community water supplies and water for agricultural purposes were given priority at the Mar del Plata Conference. Biswas stressed that the Mar del Plata Action Plan provided an excellent road map for water resources in general but nations have not been successful in following it to a significant

73 Asit K. Biswas, „Water for the Third World (1981) Foreign Affairs 148-166, [154].

74 Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981.

75 Adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990

76 Asit K. Biswas, „Mar del Plata: Twenty Year Later (1997) in Proceedings Mar del Plata 20 year anniversary Seminar Stockholm <http://www.siw.org/documents/Resources/Reports/Report1_Mar_del_Plata_1997.pdf> (accessed 13 June 2014).

extent.⁷⁶ It seems nations just looked at the road map and made provisions for what they felt was priority. Nigeria has tried to promote 'water resources' in general with little or no significant mention of water for domestic use. The Mar del Plata conference is not about a minute part of water but a comprehensive system of all water uses. The Mar Del Plata Conference of 1977 states:

*Realizing that the accelerated development and orderly administration of water resources constitute a key factor in efforts to improve the economic and social conditions of mankind, especially in the developing countries, and that it will not be possible to ensure a better quality of life promote human dignity and happiness unless specific and concerted action is taken to find solutions and apply them at the national, regional and international levels...*⁷⁷

Water resources as cited in the above do not refer only to inter-boundary waters or water for agricultural use. Water Partnership has defined water resource management as:

A process which promotes the coordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability

⁷⁷ Mar del Plata Action Plan 25 March 1977.

⁷⁸ Global Water Partnerships, „Integrated Water Resources Management (2000) 4 TAC Background Papers No 4 series 22 Found at http://www.gwp.org/Global/GWP-CACENA_Files/en/pdf/tec04.pdf (accessed 18 June 2014).

*of vital ecosystems.*⁷⁸

From the above definition, water resources are all encompassing of the various uses of water. This use does not leave out water for domestic use. In other words integrated water resource management includes a variety of water resources which range from urban and rural water supply, distribution, rivers and pollution. Nigeria is bound under international Law to make provisions for domestic water laws but the extant Nigerian water laws provide otherwise

4.0 LEGAL FRAMEWORK IN NIGERIA

There are two basic laws in Nigeria which are expected to cover these exigencies – the Constitution and the Water Resources Act – besides the new water policies. These two identified current laws will be examined in this part.

1. Constitution of the Federal Republic of Nigeria (CFRN)

The 1999 CFRN like any other states' Constitution is said to be supreme with its provisions having binding force on all authorities and persons throughout the Federal Republic of Nigeria.⁷⁹ The Nigerian Constitution was described in the case of *Kalu v Odili*⁸⁰ as an instrument

⁷⁹ Sec 1 (1) CFRN.

⁸⁰ (1992) 5 Nigerian Weekly Law Report (NWLR) (Pt.240) 130