

LAW AND SOCIAL JUSTICE REVIEW

Volume 2 (2) May, 2021

ISSN: 2564-7290



ICLDS INTERNATIONAL CENTRE FOR LAW AND DEMOCRACY STUDIES
(in conjunction with the Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria)



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examination of issues lying at the juncture of social justice and the law. LASJURE publishes legal studies and analyses of case law, legislation, and instruments that address the law's interface with historically challenged groups and stress the law's potential as a tool of positive social change. These studies can also rely on findings from related disciplines, especially social sciences and humanities. The aim of LASJURE is to provide inspiration for the development of law in ways that encourage the use of law as an instrument of social engineering. LASJURE is published three times a year in January, May and September. The journal invites professors, judicial officers, legal practitioners and law postgraduate students to submit scholarly articles, essays, legal briefs, case comments and book reviews that address issues involving the intersection of social justice and the law.

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DOES THE NIGERIAN INSTITUTIONAL STRUCTURE ENCOURAGE ACCESS TO DOMESTIC WATER?*

Abstract

In the Nigerian water sector, the institutions and legal framework that exist to provide access to water is fraught with challenges. One of which is that they are inadequately equipped to guarantee the access to water as a right. This paper examines the challenges facing institutional access to water, and the implications of the adoption of a human rights-based approach to access to water as a means to curb these problems. Finally, it is recommended that to experience a progressive shift from the status quo, the human rights-based approach to water should be considered.

Keywords: Institutional Structure, Nigeria, Access to Domestic Water, Encourage

1. Introduction

The institutions saddled with responsibility for the provision of domestic water in Nigeria, seem to be bedeviled with challenges which have to a great extent impeded their optimum performance. Such challenges may be legal, political, social, or environmental. It is trite that the foundation of any modern society is its legal machinery. However, the strength of the law is in its power to command the needed enforcement capability through institutions by which it gains recognition. Nevertheless, where there seem to be shortage of laws, undefined roles of institutions, unwillingness of stakeholders and the government to synergise for the proper functioning and maintenance of infrastructures, then the protection and welfare of the people cannot be brought to feasibility. Although Nigeria is a signatory to several international treaties which have recognized the human right to water, the right has not been domesticated in Nigeria and consequently does not enjoy legal recognition, protection, or enforcement. By the provisions of the Nigerian Constitution¹ 'no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.'² Hence the institutional framework on access to water cannot function to enhance the protection of a right which has not been recognised explicitly under the Nigerian law. Although the right has not been specifically recognised under a local enactment, it is however, expedient to examine whether the institutional structure in place promotes certain basic principles of the right as to suggest a compatibility with such principles or otherwise to examine the practical implications of the adoption of the right on institutions to enhance sufficient access to water in line with those principles. It is noteworthy that, although the human right to water has not been domesticated by any local enactment, certain international treaties which implicitly protect the right can be enforced in the country. Such include the African Charter on Human and Peoples Rights³ and the Universal Declaration of Human Rights⁴. It is however believed that the Nigerian water sector is in dire need of reforms which reflect principles of the human right to water to address its many problems. This is because the nation is blessed with abundant water resources and its government being a leading government in Africa has the capability to put machinery in place for the enforcement of the right. Nigeria provides aid to many African countries⁵ and judging from the commendable efforts of South Africa in promoting the right, Nigeria is inexcusable in terms of providing both the legal and institutional machinery for the adequate recognition, protection, and enforcement of the right. The readiness of the nation to adopt a human right to water does not affect the capability of the nation's government but rather the willingness to do so. This is because the human right to water requires a progressive realisation and subject to the availability of resources.

In this paper, the authors appraise the challenges facing institutional access to domestic water in Nigeria. This is done to bring to the fore the hindrances which have so far plagued the Nigerian water sector and which any approach adopted must seek to combat. To be examined also is whether the structure in place enhances, in a budding way, the principles of the human right to water and finally consider how the adoption

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*Adenike Bibiana ADENIJI

¹ Constitution of the Federal Republic of Nigeria, 1999 as amended (hereafter CFRN)

² Section 12(1) CFRN

³ Articles 1 (on the right to life; without water, a man cannot enjoy this right to the optimum); article 16 (on the right to the enjoyment of the best attainable state of physical and mental health; the protection of this including the prevention of diseases, will no doubt involve the provision of potable water).

⁴ Article 25 of the UDHR.

⁵ Including economic aid, aid for military and civilian peace keeping missions, etc. See S.N Sulaiman; Nigerian foreign aid profile: Inflows and Outflows; Conference on South-South Cooperation, 10-11 March, 2016 available at www.ris.org.in accessed on September 27, 2020. Nigeria was one of the major backbones to South Africa in the fight against apartheid.

of a human rights-based approach will be impacting on the nation's water sector to ensure more effective operations in the provision of potable water.

2. Challenges Facing Institutional Access to Water in Nigeria

Several writers, authors and learned jurists⁶ have addressed and expounded about the challenges submerging the efforts of the government and institutions in ensuring access to potable water in Nigeria. According to them,⁷ challenges of institutional access to water in Nigeria may be legal,⁸ social,⁹ political,¹⁰ etc. In this part however, this paper will be adumbrating, rather than expounding on these challenges as several writers have done justice to same. As earlier introduced, the foundation of any modern society is its legal machinery. Hence for there to be a society where the principles of equity, justice and fairness are promoted, the legal machinery of such society must be vibrant enough to accommodate and meritoriously uphold same. Evidenced by the lacunas existing in the various federal and state laws on water which have failed to succinctly address the provision of potable water for domestic use as well clearly defining the roles of institutions charged with the provision of water, Nigeria lacks adequate laws to cater for the entire water sector. Emphasis is placed on adequacy because there seem to be too many laws creating several agencies and institutions on water protection and general supply,¹¹ but this only result in duty overlaps without clear cut distinctions in their operations. The failure is further made evident by the little or no coordination among the federal, state and local government authorities. The federal government, by its laws and institutional operations has made it evident that domestic water access is not included in its functions but same is left to the states' and local government authorities to address. These states and local authorities, however, seem to lack the legal or institutional capability to enhance domestic water access.¹² Hence consumers are left to 'sort themselves out' because their various water institutions do not have a clearly defined portfolio. It is further opined that the institutions saddled with the responsibility of providing access to water in Nigeria lack the adroitness to carry out their duties. Asides the dearth of laws to explicitly establish their duties, the state of many of these institutions across the country cannot but hinder their effective performance. The Nigerian institutional framework, it is asserted¹³, cannot adeptly enhance the protection of the human right to water where same is recognized by our laws. This article seeks to examine whether the Nigerian institutional framework on access to domestic water can efficiently guarantee the human right to water, in the face of legal crusading for same as well as to consider the practical implications of adopting the human right to water and its attendant principles on these institutions. Summarily, challenges facing institutional access to water include inadequate policy issues, the control and command approach to water resource management (i.e. focusing on providing physical infrastructure without these institutions seeking the participation of the people using the water in the maintenance of these infrastructures and getting to know what suits them the best), institutional and human capacity weaknesses, lack of participation of stakeholders in the operations of these institutions, lack of enabling environment for private sector participation, poor investment by states and local governments, poor operations and maintenance culture, poor funding/low budgetary provisions, absence of effective legal and regulatory framework, delays in budgetary appropriation by the legislature, lack of political will, arbitrary budgetary allocations by the legislature, inadequate power supply, poor revenue generation and inadequate cost recovery for services, etc.

3. Does The Nigerian Institutional Structure Enhance The Human Right To Access Water?

Various legislations have emerged over the years to protect water resources in the country and to ensure that same is used for the common good and benefit of all the citizens including access to same for domestic purposes.¹⁴ However, institutional operations to ensure access to domestic water according to standards suitable for normal human living seem to be ineffective in certain quarters, and in other regions, access based

⁶See TO Bolaji, *Ensuring Access To Water In Nigeria: Examining The Environmental And Human Rights-Based Approaches*; (LL.B Thesis; University of Ilorin, 2019;); E.O Aluta; *Participatory Water Governance in Nigeria: Towards the Development of an Effective Legal Framework for Rural Communities*(Ph.D. Thesis; University of the West of England, 2016; pg. 30-32); OL Niyi-Gafar, *Adopting a human rights-based approach to access to water in Nigeria: Lessons from Selected Jurisdictions*; (LL.D Thesis, University of Pretoria 2016) etc.

⁷ Ibid.

⁸ Niyi-Gafar, *op cit*.

⁹ Aluta *op cit*.

¹⁰ K.E Chukwu; *Water Supply Management Policy in Nigeria: Challenges in the Wetland Area of Niger Delta*; European Scientific Journal September 2015 edition vol. 11, No.26 ISSN: 1857 – 7881 (Print) e - ISSN 1857- 7431

¹¹For instance The National Environmental Standards and Regulations Enforcement Agency Act, 2007, River Basins Development Authorities Act 1979, The Water Resources Act, 1993.

¹² This is evident in the various surveys conducted for this article.

¹³ Several research visits were embarked upon to affirm this.

¹⁴ See the provisions of the Water Resources Act 1993

on same is partly realised and this is not without difficulty. According to recent estimates/statistics,¹⁵ the primary source of water for a larger portion of the country is the privately dug borehole for domestic use¹⁶ and even for drinking for some minorities.¹⁷ For some others, especially in the rural communities where the activities of the various water agencies are poorly effected, the people depend on water from unprotected sources. This is however quite unsafe as several waterborne diseases are being contacted by the people.¹⁸ A sizeable number of the country's population still see access to potable water as a challenge¹⁹ with several women and children facing hardship and harassment in a bid to get water for their families. With the recent pandemic of Corona virus ravaging the world which has also taken its toll on Nigeria and Nigerians in sizeable numbers, provision of water has become imperative. It is essential, for the prevention of the spread of this virus that clean water be provided for the people to maintain good hygiene. However, the government cannot be said to have excelled in this regard as an opinion poll conducted in recent times revealed the displeasure and dissatisfaction of Nigerians regarding the attitude of the government towards the provision of clean water,²⁰ as several people particularly those in the rural areas lack access to piped water.²¹ Moreover, without access to clean water, most health care centres cannot adequately manage the pandemic while 'the poorest and most vulnerable people are being left to face the pandemic alone without even the most basic defence- clean water and a bar of soap.'²² In difficult times such as these, 'water is not only a basic human need but can save a life in these difficult times.'²³ A survey conducted in a remote part of Abuja revealed the level of hardship women go through to provide water for themselves and even for sale as a business to people. Such water cannot be said to be of the best quality and are not well kept in protected storages.²⁴ According to another report, only about 30% of northerners have access to safe drinking water despite having a water corporation and a rural water agency in almost every state in the north.²⁵ In yet another report, it was gathered that in the earlier part of the year 2020, ten in ten people lacked access to safe water in Tika Community, Kuje LGA Abuja which left 'the community at the mercy of water related diseases that have led to the loss of lives.'²⁶ It is appalling, as gathered in the report from visits to the community, that an entire community lacks a functioning borehole or safe water source. According to the community head, an overhead tank installed about 20 years ago never supplied water to the community as the construction of same was halted before the completion.²⁷ It was further gathered that a young man lost his life while defending women who went to fetch water for their households at the only available water source in the community.²⁸ As observed, the various state water corporations are ill-equipped for the provision of sufficient water to the citizens and this weakness became more obvious in this pandemic era. For some parts of the country, it took the intervention of international organisations to provide clean water for hygiene purposes.²⁹

The human right understanding of access to water entails accessing water in sufficient quantities, in its acceptable form (without colour, taste or smell), geographically accessible, safe (health wise) and economically affordable. This cannot be said to be the case in Nigeria. Ecological factors can be said to

¹⁵2018, NOI Polls; Access to Clean Water is Still a Major Challenge in Nigeria; March 2019 available at <https://noi-polls.com/access-to-clean-water-is-still-a-major-challenge-in-nigeria/> accessed October 7, 2020

¹⁶ About 50%

¹⁷ About 37%

¹⁸ About 60,000 children under the age of 5 die each year from diseases caused by lack of adequate access to water and sanitation. *Ibid.*

¹⁹ About 37% of households. *Ibid.*

²⁰ NOI Polls; Nigerian Government doing a Poor Job on Water/Sanitation and Health Care, Citizens Say; September 10, 2020 available at <https://noi-polls.com/nigerian-government-doing-a-poor-job-on-water-sanitation-and-health-care-citizens-say> accessed October 7, 2020

²¹ For a detailed analysis, see NOI Polls *op cit.*

²² WaterAid; The Scandal of 95% of Healthcare Centres in Nigeria and 150 Million Nigerians Without Access to Water and Hygiene Facilities in the face of the COVID-19 Pandemic; May 2020 <https://www.wateraid.org/ng/media/the-scandal-of-95%-of-healthcare-centres-in-nigeria-and-150-million-nigerians-without-access-to-water-and-hygiene-facilities-in-the-face-of-the-covid-19-pandemic> accessed October 7, 2020.

²³ Water Poverty in Nigeria: Effects and Impacts of Covid-19; The Guardian Nigeria, September 21, 2020 available at <https://pulitzercentre.org/reporting/water-poverty-nigeria-effects-and-impacts-covid-19> accessed October 7, 2020

²⁴ *Ibid.*

²⁵ USAID; Water; available at <https://www.usaid.gov/nigeria/water> accessed October 5, 2020.

²⁶ 10 in 10 People Lack Access to Safe Water in Tika Community, Kuje LGA Abuja, Nigeria (#WATERTIKA); March 17, 2020; available at <https://watertide.org/10-in-10-people-lack-access-to-safe-water-in-tika-community-kuje-lga-abuja-nigeria-watertika/> accessed October 9, 2020.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ See International Organisation for Migration (IOM); Clean Water, Hygiene and Sanitation: Crucial to contain COVID-19 among IDPs in Northeast Nigeria; July 2020 available at <https://www.iom.int/news/clean-water-hygiene-and-sanitation-crucial-contain-covid-19-among-idps-northeast-nigeria> accessed October 8, 2020.

affect the availability of water in sufficient quantities as different parts of the country witness water in varying quantities at different times of the year. Moreover, the lack of zeal on the part of the government³⁰ has hindered the provision of water in sufficient quantities and the citizens particularly the less privileged are left to source for water in distressing ways. This is evidenced by the poor funding of the various water institutions. Some water boards in the country are filled with old and rusted equipment and machineries, ill equipped offices and facilities. Moreover, despite the growing population in many of these states, their water sector has not been expanded to cater for the attendant growing demand for water. In some places where about 6 dams took care of the water needs of about 10 million people, the same number of dams is still relied on to provide for the needs for about 30 million person. Sometimes water obtained may not be of the best quality or safe for their health but same would still be used since water from vendors might not be within their economic power.

Furthermore, the attitude of the institutions does not reflect compliance with rights-based principles. Homes may be disconnected for a long time without adequate information on why such occurred or when it will be restored. The approaches adopted by many of the institutions are more of the economic rather than a right induced approach. With just a few equipment working for a long time, many of the institutions saddled with the duty of providing water become handicapped in carrying out their duties because of the constant breakdown of their machineries, theft or vandalism of same by hoodlums.³¹ The Nigerian water sector is rather reactive than proactive. Measures are put in place to combat issues which have arisen rather than ensure that measures are brought to deal with future challenges. In all, the government has not been exceptionally responsive particularly in recent times with the raging pandemic, whereas the demand responsive policy is a feature of human right.³² It is noteworthy that the discourse above examines whether the Nigerian institutions adopt any of the principles of the rights-based approach in its activities especially the provision of access to water by the people. It is not enough to have the law in black and white but proper compliance and adherence to same must be ensured by those saddled with the responsibility.

4 Institutional Implications of the Adoption of the Human Rights-Based Approach to Access to Water in Nigeria

There are various approaches to realising water for domestic use. The human rights-based approach to water seems the most realistic approach where same is adopted. This is because this approach entails the provision of potable water to the people in line with principles associated with the human right to water. These principles are definitive principles and distinguish a human right from other rights or privileges. They are the upholding tenets of the human rights doctrine and seek to ensure that any right regarded as a human right remains inviolable by any person or government. The human right to water has as its upholding tenets, the principles of 'participation', 'accountability', 'non-discrimination', 'empowerment' and 'legal redress' otherwise known as the PANEL principles of the human rights-based approach to water.³³ The Constitution of South Africa by its section 27 recognises and protects the human right to access to sufficient water by the citizens of South Africa. It further compels the state to take active steps within its available resources, to progressively realise the right. In furtherance of this, the National Water Services Act, sets out standards, norms and developmental plans which must be followed by all water related institutions across the country, in order to achieve the realisation of the right to water. The free basic water policy of South Africa is also in line with the government's willingness to protect the human right to water of the people. Not only does the legal machinery of the Republic promote the human right to water, the institutional framework has also been structured to discharge duties in line with the principles of the human right-based to water.³⁴

As earlier observed, the Nigerian water sector still has a lot of homework to do in order to meet up with the provision of safe water and more especially to quit paying lip-service to international instruments which have at different times recognised the human right to water. To this end, several measures need to be put in

³⁰ Evidenced by the state of many water agencies across the country.

³¹ During a visit to one of the states' water corporations, it was complained bitterly that these factors greatly impede their optimum performance.

³² The demand responsive policy entails the ability of the government to act in response to the need of the people, i.e. the provision of water in quantity demanded for the reasonable survival of the people.

³³ See Niyi-Gafar, Adopting a human rights-based approach to access to water in Nigeria: Lessons from Selected Jurisdictions; (LL.D Thesis, University of Pretoria 2016, 2-289); also Bolaji, Ensuring Access To Water In Nigeria: Examining The Environmental And Human Rights-Based Approaches; (LL.B Thesis; University of Ilorin, 2019).

³⁴ See IP Molobela & P Sinha, Management of Water Resources In South Africa: A Review; *African Journal of Environmental Science and Technology* vol.5 (12), pp 9931002 December 2011 available online at <http://www.academicjournals.org/AJEST> ISSN 1996-0786 (c)2011

place in order to ensure that the right is not only protected and promoted by our laws but also informs the actions of the various water institutions in the country in the discharge of their functions. In view of this, we highlight measures that may be put in place and how the PANEL principles may be accommodated to ensure a promising practice for access to water.

On the principle of participation, as found in South Africa, the structure accommodates the participation of all stakeholders at the various levels of government. Although there are government owned water institutions, the private sector³⁵ as well as local associations³⁶ are actively involved in the provision of water to the end users. It is noteworthy that the partnership between the government, the private sector as well as the people even to the grassroots has greatly accelerated the progressive realization of the right to water. For instance, although the department of water and sanitation oversees the public trusteeship of water on behalf of the national government,³⁷ the water services authorities have the duty to provide access to water for all the citizens.³⁸ This duty may be carried out either by the water services authorities themselves or they may enter into a contract with a water services provider, thereby allowing for private sector participation. Water services providers may however be local associations or a private company. Furthermore, prior to the implementation of any draft water services development plan made by a water services authority, such is brought to public notice and public comment is received, thereby making for an inclusive water governance.³⁹ Moreover, the Department of Water and Sanitation is required by law to set up a national information system on water services that is reasonably accessible to the public. The above seek to ensure that decisions of the various water institutions are reasonably influenced by the views and experience of those affected by them.

In Nigeria, perhaps the pattern proffered by Bakker will be instructive. According to him, the most progressive strategies adopt a two-fold tactics; reforming rather than abolishing state governance and fostering and sharing alternative local models of resource management.⁴⁰ The reformation of the existing system of water governance in Nigeria will engender policies, programmes and legislative instruments which will minimise the friction and resultant escapism of responsibility and accountability by these institutions. The recognition of the human right to water will necessitate an evident progressive reformation of the institutional operations to incorporate principles of the human right to water so that same will not end up as a gateway for litigious distractions. Such laws will clearly create and define the roles of the various institutions on water governance the extent and limit of their powers, their financing structure⁴¹ and monitoring and accountability mechanisms. Principally, the reformation rather than abolition of the existing system of water governance begins with a change in the legislative structure of the nation on water governance particularly domestic water and involves a thorough implementation and monitoring of the various implementing institutions. It should be noted that this article seeks practical measures and approaches which can be adopted by the nation's government to ensure that the lives of its citizens are not jeopardised by its inability to provide their most basic needs and to prove its sincerity to this course. This will further aid the smooth running of the already dilapidating structure of the nation's judicial machinery.

On the second approach of the two-fold tactics of the progressive strategies i.e the fostering and sharing of the alternative local models of resource management, the principle of actual and practical participation of the various stakeholders is expedient. Water governance across nations of the world is gradually shifting from the command and control approach and prescriptive use, to community based and people-sensitive systems. This x-rays the ability of the various policies, programmes and approaches of the government to be perceptive of local needs. In many Nigerian communities water access programmes are based on complex policies which the communities are not acquainted with which will only work for a limited time before the total collapse of same. Under this model therefore, a strategy to be put in place must ensure that intended beneficiaries are able to voice their concerns and have same addressed adequately, ensure that the long and strenuous link between the end users of water and the various government institutions is abolished and in its place is established an all-encompassing and people sensitive establishments thereby making for a partnership between the communities and the government.

The principle of accountability is one of the key features of the South African institutional water arrangement. The legislative instruments of South Africa have provided measures of holding institutions accountable for the

³⁵ E.g water service intermediaries.

³⁶ E.g water user associations

³⁷ See section 3 of the National Water Act.

³⁸ See section 3 (2) and 11 of the Water Services Act.

³⁹ Section 15 Water Services Act.

⁴⁰ K Bakker, The 'Commons' versus the 'Commodity'; Alter-globalisation, Anti-privatisation and the Human Right to water in the Global South 39 (3) (2007) antipode 430-455

⁴¹ During a field trip conducted in one of the states in the course of writing this article, it was gathered that although the state government was responsible for the funding of the state water corporation, the government apart from failing in its responsibility was looking into privatizing the state water corporation. This could be a detriment to the state water sector if not properly handled.

non-compliance or otherwise with their mandates. For instance copies of any draft of a water services development plan made by a water services authority as well as comments received on same and other ancillary documents must be made available for inspection by any person at its offices.⁴² Moreover it is required to report on its activities and the extent of its implementation of the development plan drafted by it during each financial year.⁴³ Also each water service institution must have a consumer service to which non-compliance with the regulations can be reported.⁴⁴ These and several other measures (including legal actions) are put in place to hold institutions accountable. In Nigeria, the first step to accountability is the provision of a legal background for action. Institutions cannot be held responsible for that which is not expressly signified to be part of their duties, hence there must be an evidence of an obligation to justify the execution of an action by the various actors within the institutional water management system.⁴⁵

Furthermore, 'there must be an existence of procedures set out to monitor progress, report and evaluate on results, and provide valuable feedback.'⁴⁶ This means the provision of unambiguous and less rigorous methods of checking the activities of these institutions. This provides a vibrant network of effective communication of the strengths and weaknesses of the various water institutions. One of the major pitfalls of the Nigerian institutional management system is the lack of a transparent strategy for checking institutions and holding them accountable.⁴⁷ Hence a major milestone in achieving efficiency of service of various water institutions is the creation of necessary procedures to check their accountability.⁴⁸ Value should therefore be placed on the degree to which an oversight exists in decision-making and implementation. Finally there must be in place a mechanism for punishing non-compliance. Without access to national accountability mechanisms (for example courts, national human rights institutions, water tribunals, and the media etc.) it would be difficult for citizens to have their rights respected and realised. The principle of non-discrimination reverberates equitable access to water by all, irrespective of gender, age, colour, economic status etc. It should be noted that these factors (and many others) form the basis of discrimination in the enjoyment of many human rights in Africa and across the world.⁴⁹

In South Africa the constitution, which has duly recognized the human right to water, has also enshrined the principle of non-discrimination in its provisions.⁵⁰ The various provisions of the water laws have also prohibited the illegal denial of the enjoyment to the right to water by the citizens due to any activity of the water institutions.⁵¹ Hence a person cannot be denied access to basic water by reason of gender, age or even economic status.⁵² The various water institutions have a duty to adequately inform the citizens in the event of a blockage of supply of water. Moreover the structure in place ensures that the water institutions do not leave anyone out in carrying out water developmental projects, exercise of decision making powers in the management of these resources hence the system can be said to adopt gender equality based participatory models.

Two major areas of discrimination in relation to local water supply and governance in Africa are economic status and gender difference. Women in most Nigerian homes, as it is common in Africa, have a duty to provide water for their households as part of their home keeping duties, hence they are and should be major stakeholders in decision making. The active participation of women will enhance their empowerment. The issue of economic status must also be considered. Institutions in Nigeria, adopt an economic approach and research conducted has revealed that most water corporations are more willing to supply potable water to those who have the means to pay other than those without such financial capability. Although this is an issue of the law creating and regulating the activities of these institutions, it is opined that the various water corporations must be empowered to provide water even to those without the economic means. Presently, the facilities available for use by these water institutions cannot cater for a major part of the nation's population⁵³ and as such providing free water to the poor might become a legal burden which will hasten the breakdown of the nation's water sector. Hence, there has to

⁴² Section 14 and 15 WSA

⁴³ Section 18 *ibid*.

⁴⁴ Section 21(2) (g), 27, etc. of the Act.

⁴⁵ See B Adhikari & J Tarkowski (2013) Examining Water Governance: A New Institutional Approach. *J Geogr Nat Disast* S5-001 doi:10.4172/21670587.S5-001

⁴⁶ *Ibid*.

⁴⁷ E.S.I. Ejere; Promoting accountability in public sector management in today's democratic Nigerian; book of proceedings-tourism and management studies international conference Algarve 2012 vol. 3 ISBN 978-989-8472-25-0 © ESGHT-UNIVERSITY of the Algarve, Portugal.

⁴⁸ B Adhikari, *et al op cit*.

⁴⁹ See Discrimination at Work in Africa, Declaration on Fundamental Principles and Rights at Work; ILO Fact Sheet, available at www.ilo.org/publication accessed on November 25, 2020

⁵⁰ Sections 1(b), 3(2); 7(1); 9 of the Constitution of the Republic of South Africa 1996.

⁵¹ See section 4 of the Water services Act

⁵² See *Mazibuko & Ors v City of Johannesburg*

⁵³ See UNICEF (2018) Water, Sanitation and Hygiene available at <https://www.unicef.org/nigeria/water-sanitation-and-hygiene> accessed on 13th April 2021

be adequate provisions for the revitalization of the various water institutions in the country. Moreover, gender discrimination is another aspect to deal with as regards decision making. In most African homes,⁵⁴ women are not given opportunity to have a say even on salient issues regarding their wellbeing and situation of things around them. However as the burden of providing water for the household lies on them, it is argued that they are major stakeholders and must have a say in the decision making process, infrastructural management and reception of information etc. although this also seems to be a legal issue, institutional practices which encourages these must largely be put in place otherwise it may lead to a breakdown of law and order. The status of women must change from users and choosers' to 'makers and shapers'.⁵⁵ Moreover the rural dwellers must be considered in the provision of water infrastructures. In most Nigerian communities, rural dwellers are often left to source for water from nearby rivers and springs etc., which sources are often unsafe for domestic use. Hence the provision of rural water supply schemes must be strengthened as the neglect of a people in the provision of water is a violation of their human right. There must be regard for the most vulnerable and marginalized populace. One major setback that may arise in the actualization of this principle is the financing structure of these water institutions. Although it is argued in this thesis that there has to be clearly defined roles for the various water institutions in the country, this does not necessarily mean the exclusion of the federal and state governments in the issues arising in relation to water access, especially relating to the financing of the system. One major commitment any government can show to the cause of ensuring access to domestic water is the priority placed on it in its budgetary allocation. Finance is a critical driving force for the implementation of the mandates of the various water institutions and as such the government (both federal and state) must make special provisions in this regard to ensure the stability of operations in the water sector, particularly access to domestic water. This will aid the delivery of water even to the poorest masses who do not have the economic means of paying for water supplied.

Another major principle of the rights based approach obtainable in South Africa is the legal empowerment of the people. It is noteworthy that human rights in principle seek to empower every person to be responsible for the protection and preservation of his/her own life. Human rights lends a voice to the voiceless in ensuring the safeguard of their legal entitlements due to them by virtue of their being human, by making them partake in the smooth operations of the machineries for doing so. In South Africa the law recognizes the formation of associations by the local people to ensure the effective access to domestic water by the people of their community. These associations are given opportunity to partake in the decision making process and the management of infrastructures put in place for the provision of water to the people of their communities. It can be said that the South African structure enhances, accommodates and improves the participation of the local people, it can be said to be homegrown and people responsive as it makes partakers of water able to contribute to the development of access to water through their experiences needs and feelings. It makes them capable to decide for themselves according to their needs, makes them innovative and able to recommend to public water institutions on how to improve water access in their communities.

In Nigeria over the years, domestic water access has been managed in such a manner that government (public) water institutions assume the role of overlords with private companies, ventures and enterprises coming to the rescue in times of urgent needs. Often times the state water agencies⁵⁶ provide infrastructure for the provision of water to communities without proper interaction with stakeholders in such communities for the maintenance of same. When such infrastructures are damaged and an urgent need for provision of water arises, private individuals and companies and sometimes international agencies come to the aid of such communities especially in cases of extreme water hardships. The management of communities' water infrastructure and governance by the state and local agencies⁵⁷ has not been effective particularly because of the 'command and control approach' which has been in use for a long time. Provision of access to water should not just be a duty for public authorities. Recognition of the right to water ought to become an element of corporate identity and governance of both private and public operators. Across the nations of the world, the participation of the private sector in the recognition of the human right to water and the provision of water in line with the attendant principles of the right has been on the increase in recent years. The Nigerian water institutions will need to adopt a more flexible approach to provision of access to water to allow for the participation of the private sector and the local individuals. This will lead to a more 'development-prone' situation, where the experiences of the people who are affected by decisions made are relevant in the making of such decisions. The legal empowerment of people across all gender, economic status, etc., will largely bring about effectiveness in the system because the people will no longer be recipients of the government's 'favours' but will be actively involved in the realisation and enforcement of their rights, thereby

⁵⁴ More especially in the Northern part of Nigeria; see B Callaway B, (1987) Women and Political Participation in Kano City, *Comparative Politics* 19(4), 379-393. Doi: 10.2307/421813

⁵⁵ A Cornwall & J Gaventa (2001) 'From Users and Choosers to Makers and Shapers: Repositioning Participation in Social Policy,' IDS Working Paper 127, IDS, Brighton. Cited in Nandita Singh; Women's Participation in Local Water Governance: Understanding Institutional Contradictions Gender, Technology and Dopment10(1),2006 Sage Publications New Delhi/Thousand Oaks/London DOI: 10.1177/097185240501000104

⁵⁶ Sometimes federal particularly in situations of emergencies.

⁵⁷ A major problem of local agencies is the issue of adequate funding.

ensuring that the unreached are reached conveniently and progressively. Local user associations and groups may spring up to partner with states and local agencies in solving water issues in their communities and will be adequate representatives of the interest of their people on issues of water governance including access and their communities.

According to the Swiss Agency for Development and Cooperation,⁵⁸ three elements are required for an operator to successfully implement the right to water:

- a. a clear contractual definition of the roles and responsibilities of partners in order to facilitate access to water for the urban and peri-urban, poor and/or informal settlements;
- b. existence of a low and/or subsidised connection price for poor areas; and
- c. existence of a sustainable social mechanism permitting access to the service for vulnerable groups.

The above may provide a useful framework for the partnership of the public and private water institutions to enhance access to water especially in the poverty-stricken regions of the country.

On the principle of Legal redress, South Africa has a vibrant legal system which ensures the adequate protection of every right recognized by her constitution. The constitution of South Africa recognizes the bill of rights as a cornerstone of democracy in South Africa,⁵⁹ and its provisions must be respected, protected, promoted and fulfilled by the state.⁶⁰ Moreover, the constitution establishes certain bodies and institutions to monitor adequate compliance with the provisions of the constitution particularly the bill of rights. The South African Human Rights Commission is mandated by Section 184 of the Constitution to promote respect for human rights, protection development and attainment of human rights as well as monitor and assess observance of human rights throughout the Republic. To this end the commission receives complaints from citizens and organisations and investigates same and make necessary reports in order to bring about due compliance with respect for human rights.⁶¹ Furthermore the judiciary⁶² is empowered to entertain matters relating to the violation of the human rights of the people to water. By virtue of this, the courts have adjudicated on several cases relating to the rights of the people and have upheld same.⁶³

In Nigeria, the legal recognition of the right to water will not only provide a framework for the operations of the various water institutions, it will also provide a legal basis for protection against its infringement. Opportunity for legal redress can only be given when there is a legal recognition of the existence and enforceability of the right. The Courts and the National Human Rights will play significant roles in the protection of the peoples' rights, enforcement of same, serving as a watchdog on the duty bearers to ensure compliance with the provisions of the law as well as provide legal redress by declaring actions of duty bearers which are contrary to the provisions of the law, void, imposing sanctions for breach of duty and compelling compliance with the provisions of the law regarding the protection of the rights. The law courts are regarded as the hope of the common man as they are empowered to compel individuals and institutions to respect the rights of the ordinary citizens recognized by the law. Hence the effective operation of the human right to water will, needless to say, include the provision for legal redress principally by the courts and by the National Human Rights Commission and other Human Rights' bodies across the nation.

6. Conclusion

The recognition of the human right to water and the adoption of the human rights-based approach to water has been a subject of intellectual discourse in international law and among scholars in recent times. It is believed that for water governance to experience a progressive shift, the human rights-based approach to water access must be given serious consideration. This is because it is people-centered and considers the economic, societal, political and social orientation of the people before providing for their needs. Hence the adoption of the rights based approach to water access is a step in the right direction.

⁵⁸ Swiss Agency for Development and Cooperation SDC (2008); *A Human Rights-Based Approach to Water and Sanitation* Briefing Paper.

⁵⁹ Section 7 (1), Chapter 2 of the Constitution of South Africa, 1996; "the Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."

⁶⁰ Section 7(2)

⁶¹ SAHRC Annual Trends Analysis Report 2015/2016; cited in *The Right to Water and Sanitation*, Human Rights Commissions; available at www.sahrc.org.za>> SAHRC Water and Sanitation revised pamphlet 20 March 2018.pdf accessed on September 16, 2020

⁶² i.e the Courts

⁶³ See *Residents of Bon Vista Mansions V Southern Metropolitan Local Council* 2002(6) BCLR 625,643-44 (W) (S.Afr); *Mazibuko v City of Johannesburg* Case CCT 39/09, (2009) ZACC 28 etc.