

The Right to Water in Cameroon: Legal Framework for Sustainable Utilisation

Christopher F. TAMASANG
Lecturer in Law
University of Yaounde II-Cameroon
BP 8107, Yaounde
Tel: (237) 999 70 88/931 15 44/471 08 50
Email:funwie2001@yahoo.fr

Paper prepared for the workshop entitled 'Legal Aspects of Water Sector Reforms'
to be organised in Geneva from 20 to 21 April 2007 by the International
Environmental Law Research Centre (IELRC) in the context of the
Research partnership 2006-2009 on water law sponsored by the
Swiss National Science Foundation (SNF)

ABSTRACT

This paper argues that water is indispensable for human survival and this explains why there is increasing recognition at the international and national level of the right to water. The paper defines the right to water as the right of the human person to the use of water for domestic and personal needs and circumscribes its frontiers. Taking Cameroon as a case study, the paper catalogues the sources of the right to water and attempts a critical analysis of the nature of the right to water. It further brings out the salient ingredients of the right to water and argues that the implementation of the right in Cameroon is fraught with hurdles. Of course, the view is taken that in spite of these hurdles, Cameroon is among a few African countries that have signed and ratified international legal instruments calling for recognition of the right to water in their internal legal orders. The paper concludes with some proposals on the way forward to an effective enforcement of the right to water.

Key Words: enforcement, fundamental, health, human, implementation, instruments, international, law, right, water.

1. Introduction:

Of all the natural resources in the world, water features as the most indispensable. This may explain why the right to water is increasingly recognised universally as a fundamental and inalienable right of the human person which states are called upon to recognise and enforce in their internal legal order with the cooperation of the international community. Forming part of economic and social rights, the right to water means that everyone without discrimination, must have access to water in quality and quantity sufficient to meet his/her basic needs. The right to water consists in the provision of sufficient, physically accessible and at an affordable cost, clean and quality water acceptable for personal and domestic use of everyone.¹ The right to water has also been defined as the right of everyone regardless of his economic standard, to possess a minimum quantity of water of good quality which is sufficient for his life and health.²

However, it is important to underscore at the outset of this debate that the right to water which is limited to personal and domestic uses exclude water for agricultural, industrial and commercial activities. Similarly, it does not concern additional water from rainfall for instance, which by its very nature has a low marginal utility. In fact, water quantity for fundamental needs is a human right while additional quantity of water is hardly guaranteed and may not be accessible to marginalised people.³ Finally, the right to water does not imply gratuitous provision of water or any quantity of it.

The right to water is also of capital importance in the ongoing battle against poverty.⁴ In this regard, it relates more to the social categories of poor or vulnerable people in the rural areas and those in the urban setting as well. Indeed, the poor are those most affected or essentially deprived of the right to portable water basically as a result of their economic and physical inaccessibility.⁵

In spite of the importance of the right to water enunciated at the national and international levels, a cross-section of the population continue to be deprived of this right in Cameroon. Access to portable water remains a nightmare to the local population of the rural areas as well as those marginalised urban population in Cameroon with women and children bearing the grunts.

¹ UN Committee on Economic, Social and Cultural Rights, *The Right to Water*, General Comment N° 15 ; UN DOC.E/C.12/11,29th Session, (2002).

² H. Smets, *Le Droit à L'eau*. www.academie-eau.org (2002) p.1.

³ *Id.* p.10

⁴ See for example, FAO, World Food Day; *Water: Source of food Security* (2005).

⁵ *Id.*

Cameroon is one African country with territorial pieces of legislation in general and water reform legislation in particular. This is explained by the fact that the country operates two systems of laws; to wit, the Common law and the Civil law.⁶ This bi-jural character of Cameroon is a result of two major world cultures inherited from Britain and France when the country came under the administration of these great powers. The bi-jural nature which makes for the application of the Common law in the English speaking provinces and the Civil law in the French speaking provinces of the country is gradually being mitigated since independence in 1961, by the harmonisation of legal reforms across the country.⁷ One of such harmonisation reforms in the area of environmental law is in water law.⁸

It is therefore important to examine the sources of the right to water in Cameroon; the nature of the right to water; the content of the right to water; national mechanisms for the implementation of the right to water; the hurdles or challenges to the effective and sustainable utilisation of the right to water.

2. The Sources of the Right to Water in Cameroon:

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

2.1. International Legal Instruments.

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

2.1.1 Non-Conventional or Non-binding Sources

There is quite a litany of international legal instruments which provide for the right to water as a fundamental right of the human person. The Universal Declaration of

⁶ It may be mentioned here that the administration of what is today Cameroon, began with the Germans (1896 – 1916). After having been defeated during the First World War by France and Britain, these two powers took over the territory from the Germans and partitioned the same between themselves. This was in the Treaty of Versailles in 1919. From then, Cameroon was under the Mandate System until 1945. Thereafter, the country became a Trust territory under the Trusteeship System of the UN.

⁷ There are many other areas where harmonisation of legal reforms have already taken place such as criminal law, land law, labour law, environmental law, business laws, criminal procedure, investment law, just to name these few

⁸ Until fairly recently, water law was closely related to property or land law but because of its unique features (mobility, variation from season to season, location, simultaneously use by many users), it has become the domain of modern environmental law.

Human Rights⁹ recognises a wide range of social, economic and civil rights¹⁰ which are today inextricably linked to the right to water.

By the mid 1970s, the UN began to take interest in water perhaps because of its scarcity and quality. In Mal de Plata in Argentina, a Declaration was made in 1977 sanctioning the end of the UN Conference on water. In its preamble, firm commitments were taken to safeguard water resources and enhance the right to water by all human beings across the globe.

About one and half decades after Mal de Plata, legal instruments relating to general environmental protection still under the auspices of the UN provided for the right to water within the context of the rights of the person. This was in the agenda 21 Programme of Action¹¹ for the Rio Declaration following the United Nations conference on Environment and Development held in Rio de Janeiro in 1992. In the same year, a declaration was adopted in Dublin at the end of the International Conference on Water and Development. That Declaration underscored the right to water as the cornerstone of development.

Again, from a general perspective, a Programme of Action¹² was adopted in the report of the international conference on Population and Development held in Cairo in September 1994 which mentioned the right to water. Also within a general environmental context, the World Summit on Sustainable Development which held in Johannesburg in 2002 mentioned in the Johannesburg Declaration and Plan of Action that a pertinent crisis facing mankind today is the right of access to water and that governments from around the world should adopt appropriate measure of ensuring that this right is available to all citizens.

The most ambitious of the non-conventional instruments is undoubtedly the Millennium Declaration adopted by the General Assembly of the United Nations¹³ after the Millennium Summit in New York which brought together Heads of States and Governments. Their objectives are expressed in a number of chapters. The following commitment was taken:

⁹ The Universal Declaration of Human Rights was adapted by the General Assembly of the United Nations on 10 December 1948.

¹⁰ Some of these rights include the right to life, the right to health, the right to work, the right to housing, the right to feeding, the right to adequate standard of living, just to mention these few.

¹¹ See paragraph 18.47

¹² See principle 2

¹³ See Resolution 55/22 of August 2002.

to reduce to half by 2005 the proportion of the world's population whose income is less than a dollar per day and that of people suffering from hunger, and to reduce to half within the same period, the proportion of people who have no access to portable water or who lack the means to procure it.¹⁴

It was also firmly promised in the same Declaration, to put an end to the irrational exploitation of water resources by formulating strategies at the regional, national and local levels to enable the guarantee of equitable access and adequate provision.¹⁵

Cameroon has participated in most, if not all of the above international meetings and has appended its signatures to the legal instruments translating the intentions of the government to ensure a quiet enjoyment of the right to water. It must be mentioned, however, that the instruments highlighted above generally have a non-binding legal status in international law.¹⁶ They can therefore, hardly be complied with or enforced by states who sign them. They are usually referred to as soft law. But we have argued that compliance with and enforcement of international legal instruments in general is much a matter of political will of the parties taking the commitment or expressing their wishes.¹⁷ We used the Central African Sub-region as a barometer to test the veracity of this position and demonstrated that in the last ten years, the Central African leaders have relied on Declarations to protect the Congo Basin forest and other natural resources, water inclusive.¹⁸

Besides, the proliferation of these instruments at the regional and international level is evidence of the fact that right to water is a universally recognised right of the human person.

2.1.2 Conventional Legal Instrument

a) At the Global Level

At the international level, traditional sources, (conventions, treaties, protocols and covenants) of the right to water feature either explicitly or implicitly in the legal instruments. Firstly, express reference to the right to water has been made in the

¹⁴ See Chapter III on Development and Poverty Elimination.

¹⁵ See Chapter IV entitle: Protecting our Common Environment.

¹⁶ D. Hunter; J. Salzman, and D. Zaelke, *International Environmental Law* (New York: Foundation Press, 1998), p. 258-64.

¹⁷ See C.F. Tamasang, *Legislation for Sustainable Forest Management in Central Africa*. Paper presented at the IUCN 4th Colloquium in New York, October 2006.

¹⁸ *Id.*

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁹ It is therein provided that “State parties...shall ensure to women the right.... to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply.”²⁰

Explicit reference to the right to water is also made in the Convention of on the Rights of the Child.²¹ This Convention provides with regards to the right of the child to water that “state parties recognise the right of the child to the enjoyment of the highest attainable standard of health... and pursue full implementation of this right and shall take appropriate measure... through the provision of clean drinking water...”²²

Explicit reference to the right to water as a fundamental right of the human person had already been recognised, but, within the context of humanitarian law. The Geneva Convention of 1949²³ and its Additional Protocols II of 1977²⁴ on the treatment of prisoners of war, and on the protection of victims of non-international armed conflict, respectively, have clearly imposed on states the obligation to implement the right to water even during war situations.

In fact, there are several Conventional legal instruments at the global level alluding to the right to water but with differing weight of obligations on the state parties. The New York Convention of 1997, for instance, on the use of International Waters for Purposes other than Navigation is contented with a simple invitation of states to be particularly diligent when it concerns the satisfaction of basic needs of their respective population.²⁵ This does not seem to impose succinct and concrete obligations on state parties. On the contrary, we find that the three conventions and Protocols just discussed above actually provide for clear and firm obligations on the part of states as concerns the right to water. The question now is how have these obligations been translated on the ground by various countries?

¹⁹ The Convention on the Elimination of all Forms of Discrimination against Women was adopted by the General Assembly Resolution 34/180 of 8 December 1979.

²⁰ See art14 (2) (h).

²¹ The Conventions on the Rights of the Child was adopted by General Assembly Resolution 44/25 of 20 November 1989.

²² See Art 24 (1), (2) (c).

²³ Arts 20, 26, 29 and 46.

²⁴ Arts 5 and 14.

²⁵ Art 10 paragraph 2

In the case of Cameroon, it has signed and ratified these Conventions.²⁶ Cameroon operates the dualist approach²⁷ to the domestication of international legal instruments. This implies that the right to water contained in these instruments is recognised in Cameroon. As to whether this right is enjoyed by the population is quite another question which shall be examined later in this paper. But must the right be explicit for it to impose obligations?

There are also implicit references to the right to water at the global level which impose implied obligations. The most important in this regard is the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁸ This covenant recognises the economic and social rights of the human person to an adequate standard of living, to sufficient feeding and a right to health. The right to water is an integral part of these rights universally recognised or which could be considered as an indispensable component to the enjoyment of existing social and economic rights.

Within the framework of implementation of the Covenant, the UN Committee on Economic, Social and Cultural Rights recognises²⁹ that water is a fundamental right as contained in article 11 paragraph 1 of the ICESCR. However, a more detailed coverage is afforded by the same committee in its General Comment N° 15³⁰ on the right to water. It defines the right to water, delimits its boundaries and spells out the obligations which are expected from states in this regard. It should be noted that the provisions of the Committee are not binding as the status of General Comment has been considered as soft law and hence non-binding on states.³¹ However, there is no doubt that its provisions are insightful to the understanding and enforcement of the right to water.

Implicit reference to the right to water has also been made by the International Covenant on Civil and Political Rights.³² The covenant recognises the right to life.³³

²⁶ Convention on the Elimination of all Forms of Discrimination against Women was ratified on 15 July 1988 by law N° 88/11; Convention on the Rights of the Child ratified on 17 July 1991, by law N° 91/006 and the Geneva Convention ratified on 16 September 1963; Protocol II of 1977 ratified on 16 March 1984.

²⁷ The dualist approach as opposed to monist approach is one where signature of an international legal instrument does not suffice for it to be applicable in the home or signatory country. It must be followed by a ratification process within the internal legal order which then injects the legal instrument's provisions into the internal legal order making it to become hard domestic law.

²⁸ Cameroon ratified this Covenant on 24 June 1984.

²⁹ General Comment N° 6.

³⁰ See *Supra*, note 1.

³¹ *Supra*, note 16.

³² This covenant was adopted by the UN General Assembly Resolution 2200A (XXI) of 16 December 1966.

The right to life cannot be enjoyed without the right to water. The right to water is, therefore, a prerequisite for the enjoyment of the right to life. Although implicit, the right to life and hence the right to water are recognised in Cameroon by dint of the fact that the covenant on Civil and Political Rights has been ratified³⁴ by Cameroon.

b) At the Regional Level

The discussion here will be limited to the African continent for obvious reasons. Cameroon is in the African continent and is often referred to as Africa in miniature. Explicit reference to the right to water in African continental instruments is found in the African Charter on the Rights and Welfare of the Child.³⁵ The Charter recognises that “State parties to the present Charter... shall ensure the provision of adequate nutrition and safe drinking water...”³⁶ The fact that Cameroon has also signed and ratified³⁷ this charter implies that the rights to water of the Cameroonian child are recognised under Cameroonian law. But is it enforced? This question would be answered subsequently. Another legal instrument at the African continental level with explicit reference to the right to water is the African Convention on Conservation of Nature and Natural Resources.³⁸ It is therein provided that state parties shall endeavour to guarantee to the population a sufficient and continuous flow of clean water.³⁹ Although this convention is not yet in force, we may applaud the initiative of having given a place to the right to water.

We may also note implicit reference to the right to water in the African Continent in the African Charter on Human and Peoples Rights⁴⁰ which protects the right to health⁴¹ and the right to a clean environment.⁴² As already argued with regards to global implicit references, the implementations of these rights also imply the recognition and enforcement of the right to water.

2.2 National Sources of the Right to Water

2.2.1 The Constitution

³³ Art. 6.

³⁴ The covenant on Civil and Political Rights was satisfied on 12 June 1984.

³⁵ OAU Doc. CAB/LEG/24.9/49 (1990)

³⁶ See art 14(1)(2)(c).

³⁷ Cameroon ratified the Charter on December 17, 2004.

³⁸ Signed by 33 states in Maputo in 2003, this convention has not yet entered into force.

³⁹ See art.7 (2).

⁴⁰ This charter was signed in 1986.

⁴¹ Art.16.

⁴² Art.24.

The constitution of the Republic of Cameroon⁴³ does not explicitly provide for the right to water. However, it has a number of preambular provisions relating to economic and social rights. Since it is admitted that the right to water is an integral part of economic and social rights, it could, therefore, be submitted that the constitution makes implicit reference to the right to water through its provisions for economic and social rights.⁴⁴ As an integral part of environmental law,⁴⁵ the right to water has a comfortable foundation in the constitutional provisions. It is provided in the preamble that every person has a right to a healthy environment, that the protection of the environment shall be the duty of every Cameroonian, and that the state shall ensure the protection and improvement of the environment.⁴⁶ Therefore, in this light, there is an implicit commitment to protect and improve on the right to water.

2.2.2 The Water Code⁴⁷

Just like the constitution, earlier pieces of legislation on the environment have not made any express provision on the right to water. However, probably inspired by the constitutional provision on the right to a healthy environment and the other bundle of economic and social rights, the Cameroonian legislator passed the Water Code within the respect of environmental management principles and public health protection. In it, it is expressly provided that water is a public good or utility which the state ensures its protection and management and facilitates access to all.⁴⁸ The measures of protection are clearly spelled out in the Code⁴⁹ and violators come under heavy criminal sanctions⁵⁰ without prejudice to civil claims. To ensure conservation, protection and sustainable utilisation, the Code institutes a National Water Committee,⁵¹ an institution placed under the Ministry in charge of water resources. With the above as the major sources of the right to water in Cameroon, a question that further springs to mind is what the nature of the right to water is.

3. The Nature of the Right to Water in Cameroon

⁴³ Law N° 96/06 of 18 January 1993.

⁴⁴ For instance, see paragraph 17, 24 and 27.

⁴⁵ See *Supra*, note 8.

⁴⁶ Paragraph 26.

⁴⁷ Law N° 98/005 of 14 April 1998 to lay down the Water Code and its Enabling Statutes.

⁴⁸ See art. 2.

⁴⁹ See art 4-7.

⁵⁰ See art. 19-20.

⁵¹ Art. 26(1)

A crucial question here is whether the right to water is a specific right or has been treated as relating to or intricately intertwined with other rights under existing legislation. As we have noted above, Cameroon like most of the countries of the world has not expressly provided for the right to water in its constitution. This may be explained by the fact that only one traditional international binding instrument in the field of human rights⁵² has made express provisions to the right to water from which countries could easily be inspired or be obliged upon signature and/or ratification. But, there again, we notice that the provision is more in connection with access without discrimination than right per se. So the right to water had only been treated as a health-related right until the Water Code of 1998 explicitly recognise access by all to water. But is this to be taken to mean that access to water is a human right in Cameroon? By the wordings of article 2 (1) of the Water Code; “L’eau est un bien du patrimoine national dont l’état assure la protection et la gestion et en facilite l’accès à tous.”

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

This kind of ambiguous provisions in the aw may justify why we need an international convention for water⁵³ which would emphasize on the human right character of the right to water so as to better protect and develop it. We may also subscribe to the argument by some writers⁵⁴ that the right “to” water envisaged as a fundamental human right different from the right “of” water which refers to the sovereign right of states over its territorial water, to justify why access to water in Cameroon should have been treated explicitly as a human right and not as it appears from the law, a sovereign right. However, the weight of authority seems to swing in the direction of equating, facilitating access to water, to the right to water. This is

⁵² See *Supra*, note 19.

⁵³ See R. Bär, *Why we need an International Water Convention*. Alliance Sud, Berne (2004), p. 4. See also Water As Human Right, Chapter 1 at http://www.who.int/water_sanitation_health/rtwrev.pdf.

⁵⁴ Notably, J.M. Dupuy, *Le Droit à l'eau : Un droit International*, EUI Working papers, Law N°. 2006/06, Badia Fiesolana (2006), p. 3-. See also H. Smets, Note 2, *Supra*.

evident from the provisions of many international instruments and constitutions⁵⁵ which have recognised the right to water.

Having now understood the nature of the right to water in Cameroon, it is also important to find out the components of the right to water.

4. Contents of the Right to Water in Cameroon

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

4.1 Access to Sufficient Quantity of Water

The right to water implies that everyone shall have access to water in sufficient quantity to enable satisfaction of his/her domestic and personal needs. It also implies that availability of water should not only be sufficient but also must be continuous.⁵⁶ The question has been posed: What amount of water is considered sufficient and in what context? In answering the first part of this question, reference must be made to the World Health Organisation (WHO) guidelines. By these guidelines, everyone must have at his/her disposal at least 20 litres of portable water per day.⁵⁷ With regards to context, it is estimated that normally in urban settings, sufficient access to water should be 50 litres per person per day and may even go up to 100 litres.⁵⁸ It must be noted that some individuals and groups may require additional water due to health, climate and work conditions.⁵⁹ However, an African consumes on the average 30 litre of water a day.⁶⁰

Cameroon generally adheres to the WHO guidelines on availability of drinking water but on the ground, it is difficult to find marginalised persons especially in urban areas having access to 20 litres of water per day. The government argues that within its limited means, that is all it can afford in the struggle to facilitate access to water by all Cameroonians within the meaning of article 2(1) of the Water Code. Whether or not

⁵⁵ Constitutions of Uganda, Zambia, Philippines, Gambia just to name these few.

⁵⁶ *Supra*, note 1, p. 2.

⁵⁷ *Supra*, note 50 at p. 12.

⁵⁸ H. Smets, *Le droit à L'eau dans les Législations Nationales* (Académie de l'eau : AESN Nanterre, 2005), p. 11.

⁵⁹ *Supra*, note 1, av p. 2.

⁶⁰ *Supra*, note 55.

this argument is founded, is subject to debate. On the one hand, the state may really not possess adequate resources to enforce the right to water but given that the right to water impacts seriously on health which no other thing can surpass, it ought to be a priority issue for the government such that more resources may be deployed from other sectors to enhance a more effective enjoyment of the right. On the other hand, it may actually be a question of lack of will to enforce the right and the government relies on the provisions of article 2 of the covenant on Economic, Social and Cultural Right which state that “states are obliged... to take steps... to the maximum of available resources with the view to achieving progressively the full realisation of the right...”

4.2 Access to Safe and Acceptable Water

The right to the enjoyment of water means that people are entitled, besides sufficient and continuous availability of water, to adequately safe water. What this means is that drinking water for household uses must be of quality standard. To be acceptable, such water must be safe and therefore free from micro organisms, chemical substances, physical and radiological hazards that constitute a threat to people’s health and sanitation. Acceptable standard of quality water must also consider colour, odour and taste. These quality standards are important because the death toll of people especially children from diarrhoea (2 million in 1998) resulting from poor water supply and sanitation⁶¹ has continued to increase. To minimise this calamity and safe succeeding generations, governments are required to adopt measures of developing and implementing drinking water quality set out in the “WHO Guidelines for Drinking Water Quality”.

In Cameroon, one thing has remarkably caught the attention of the water legislator. Even if access to water in sufficient quantity has not been guaranteed, at least, in principle, a wide array of legal provisions have been envisaged for ensuring the quality standard of water for health. In fact, before judicial measures are resorted to preventive measures are envisaged in the Code. This is why the Code has provided for water agents charged with inspection and control of water quality.⁶² The Water Code

⁶¹ WHO/UNICEF Joint Monitoring Programme on Water Supply and Sanitation; Assessment Report (2000), p.7.

⁶² See art 1(3) of Decree N°.2001/162/PM of 8 May 2001 fixing the modalities of Designation of agents for surveillance and control of water quality.

has proscribed a number of acts⁶³ which may directly or indirectly impact on water quality. These are accompanied by heavy criminal sanctions.⁶⁴

The importance in Cameroon, of the quality of water has been impressed with regards to criminal sanctions as it is provided in the law that such sanctions shall attract no mitigating circumstances.⁶⁵ All these are intended to protect the quality of water for domestic and personal use and ensure public health as provided in article 7. In this regard, provisions have been inserted in the Code dealing with protection of the sources of water such that land within the perimeter of protection of sources of water is reserved for public use.⁶⁶ In fact, to reinforce the guarantee for water quality and ensure public health an enabling statute is in place in this connection.⁶⁷ Whether or not these measures are adequately implemented is quite another question to be examined subsequently in this paper.

4.3 Accessibility

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

Physical accessibility in this context relates to water, its facilities and services being within safe reach of the population. It is also defined as “within the immediate vicinity of households, educational institutions and workplace”.⁶⁸ Collection of water from distant sources imports both direct and indirect risk to health.⁶⁹ Women and children are most affected in this sense because they are the major collectors of water for domestic and personal use.

In Cameroon, ensuring physical accessibility to water remains one of the legislator’s major objectives. In the urban areas, this problem is not as acute as it is in the rural

⁶³ See art 4-9.

⁶⁴ Art. 15-18, see also S. 82(1) of Law N° 96-12 of August 1996 relating to environmental management and in particular, sanctions for non compliance with provisions for quality of water, air and subsoil. See further, Law N° 65-LF-24 of 12 November 1965 and Law N° 67-LF-1 of 12 June 1967 instituting a Penal Code for the Republic of Cameroon, in particular S. 261 on infringement of Public Health.

⁶⁵ See in particular art 18.

⁶⁶ See art 7(2)

⁶⁷ See Decree N° 2001/163/PM of 8 May 2001 regulating the Perimeter of Protection of the Sources of Water and Treatment of Water Stored for portable use.

⁶⁸ *Supra*, note 1, p.3.

⁶⁹ *Supra*, note 50, chapter 2, p. 15.

areas. However, there are continuous attempts by the government to facilitate physical access with the available financial resources.

It is also necessary, in attempting to enforce the right to water, that population should be able to seek, receive and impart information concerning water. The long and short of all these is the participation of the population in the various stages of decision-making and policy design, construction, implementation and monitoring and evaluation. There are many national legislation across the world which recognise the right of the population to participate in states affairs, water issues inclusive.⁷⁰ The advantage of participation of the population is that the right to water and public health would be largely improved upon and implementation is unlikely to meet with many difficulties. If there are difficulties or blames, these would be shared between the state as the guarantor of the right to water and the population which seeks to enjoy and sustain the utilisation of the right to water and together they can conveniently begin a search for viable solutions to improve on the right to water.

Unfortunately, this salient ingredient has been overlooked by the Cameroonian water legislator. The consequence is that the population is deprived of information concerning the provision and protection of the right to water. The state is, therefore, failing to meet its obligation to respect, protect and fulfil the right to water under international law.

Finally, the right to water is non-discriminatory. Both in law and in fact, the right of access to water should not be based on any of the prohibited grounds: race, colour, sex, religion, political or other opinions, national or social origin, birth and others. The law in Cameroon has not alluded to any of these grounds as inhibiting access to water. However, there are factual situations in Africa in general and Cameroon in particular where access to water has been discriminated upon. After the fall of the Berlin Wall, the collapse of communism and the end of the Cold War, the wind of change began blowing across Africa. Many dictators fought to remain in power through every means. They found ways of stifling their political opponents. One of such ways was discrimination on access to water. They suffered from prolonged interruption for no just cause especially during the period of the state of emergency

⁷⁰ For instance, the Water Service Act (119) 2001, S. 16) in Finland, Loi N°. 2002,-276 du 27 Février 2002 relative à la démocratie de proximité en France; Local Government Act of New Zealand, S. 83-84 ; Utility Act 2000, N° 65,2002, S. 36 in Australia, Loi 10-95 sur l'eau, art 101 in Morocco ; Loi N° 002-2001/AW du 8, Février 2001 portant loi d'orientation relative à la Gestion de l'eau au Burkina Faso.

declared in the North West Province of the country in 1992, where the main opposition leader is based. It must be emphasized that it was much a matter of fact than law anyway.

4.4. Affordability

To adequately enjoy the right to water, government must ensure that water is affordable by all. The right to water, therefore, does not imply that water is free of charge. The general principle is that everyone is obliged to contribute to the cost of supply and treatment of water although this contribution may vary depending on the capacity of individual uses⁷¹ and may be made directly or indirectly. But, for the right to water not to be an illusory one, the contribution must be made moderate and affordable, not exorbitant. Affordable must be taken to include rates payable to access water networks such as connecting water to homes or public taps, and the rates payable for consuming the water⁷².

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

In Cameroon, a cross-section of the population do not enjoy access to water either because the cost to connect the water is too high and/or the cost per metre cube is too high (the cost per metre cube has risen from 339FCFA/ m³ to 470FCFA/m³ – about one US dollar/m³). Given the general financial situation of the people, this amount is too high and this partly explains why water cuts for failure to pay or delays are significantly many.

5. Mechanisms for the Implementation or Enforcement of the Right to Water in Cameroon.

⁷¹ *Supra*, note 55, p.51.

⁷² *Id.* p.29.

The problem in the Central African region and in Cameroon in particular is to translate theoretical legal issues or principles into realities on the ground.⁷³ In most areas, the environment in particular, there are a chunk of legal instruments regulating its management. But these instruments hardly find themselves into implementation. If laws cannot find their ways into implementation, it would be the same like having a right without a remedy which as it is often said, is a vain thing. Is the problem that of the absence of enforcement mechanism or the fact that they exist but are weak? In most cases, the problem is that they are weak. It is thus important to dissect the mechanisms in Cameroon for the enforcement of the right to water. Legal and policy, administrative institutional and judicial frameworks are some of the mechanisms in place to enforce the right to water.

5.1 Legal and Policy Framework

From our discussion above, there is no doubt that there are attempts to lay down a framework that recognises the right to water and its enforcement. The texts of laws are implemented more easily when there is clear policy. In this connection, there are the enabling instruments⁷⁴ detailing the manner of enforcement of the right to water. The problem with these is that some are usually in contradiction with the law itself, in contradiction with other related enabling statutes, are obscure and having ambiguous provisions or again are full of vacuums. All these render the enforcement of the law difficult hence making it a weak regulatory tool.

5.2 Administrative Institutional Framework

The major institution in charge of overseeing the implementation of the right to water is the Ministry of Water and Energy. This is the government's eye on issues relating to water. Technical expertise on water issues is offered by this ministerial department. In fact, it is this department and decentralised administrative institutions⁷⁵ that facilitate the understanding and practical implementation of the right to water to the population. Ministerial departments and other institutions, whose activities relate to or have implications on the right to water,⁷⁶ liaise with the Minister of Water and

⁷³ UNEP *Africa Environment Outlook 2*. (Nairobi –UNEP, 2006) p.126.

⁷⁴ See *Supra* note 59 for instance.

⁷⁵ See art 2(2) of the Water Code.

⁷⁶ For instance, the Ministries of Finance, Health, Environment and Protection of Nature, Forestry and Wildlife, Territorial Administration and Decentralisation, Lands and Housing, Urban Affairs, Regional

Energy. This may explain why the Water Code institutes a National Water Committee⁷⁷ bringing together representatives from every ministerial department whose activities directly or indirectly relate to water resources. The competence, organisations and functioning of the National Water Committee is dictated by a Prime Ministerial Decree.⁷⁸

Collaborative institutions which enhance the enjoyment of the right to water are concessionaires of water supply and treatment. They enter into contracts with the Ministry of Water Resources and Energy. Where they do not meet their concession agreements notably the regularity and quality of water according to “WHO Guidelines” the minister can propose the withdrawal of authorisation to operate in the water sector.

In its role, the Ministry of Water also plays the role of an arbitrator.⁷⁹ Out of Court arrangements or compoundment can be made by the minister with the author of an offence relating to the right to water. So therefore, the Ministry is an arbitration centre. This may partly explain why Court cases on right to water are difficult to come by.

5.3 The Human Rights Commissions

Considering that the right to water is a human right, it may therefore, be protected by human right institutions. In Cameroon, the human right institution is the National Commission on Human Rights and Liberties (NCHRS).⁸⁰ The Commission was created to protect and promote human rights of Cameroonian, the right to water forming an integral part of these rights. Unfortunately, the commission is tilted towards the protection and promotion of civil and political rights thereby paying little or no attention to economic, social and cultural rights, the right to water being a crucial component.

Even in the enforcement of Civil and Political rights, their interpretation does not consider that the right to life being a civil and political right includes the right to water for life. Consequently first aid measures in respect to the enjoyment of the right to

Development, Agriculture, Industry, Mines and Technological Development, Concessional Services for Water and Energy Supplies and Mayors.

⁷⁷ See *Supra* art 26(1).

⁷⁸ Decree N° 2001/161/PM of 8 May 2001 fixing the Competence, Organisation and Functioning of the National Water Committee.

⁷⁹ See art 22 and 23 of the Water Code.

⁸⁰ This commission was created by Law N° 2004/016 of 22 July 2004. This law relates to Creation, Organisation and Functioning of the Commission.

water which ought to have been provided by the Commission are not available to the population suffering from abuses relating thereto. The only option in the phase of such a disappointment is resort to the courts.

5.4 The Role of the Judiciary

The role of the judiciary is crucial in the implementation of the right to water. It is the reference of last resort providing a basis for enforcement and redress in the case of abuse. Some jurisdiction in Africa⁸¹ have long recognised in their national contributions and legislative instruments, and enforced in the courts the right to water as a specific and not a related right. In Asia,⁸² some jurisdictions upheld the right to water not as a specific and separate right but as a right under the right to life.

Unfortunately, there is a serious paucity in Cameroon, of judicial decisions on the enforcement of the right to water whether as a right per se or a right in relation to the right to health, to life, or to a healthy environment. What accounts for this situation? One may argue that for a considerably long time in Cameroon, the right to water was not explicitly. It recognised if not only to tie it to other rights like the right to life. Even so, the right to life was a preambular provision⁸³ and as generally acknowledged, preambular provisions are non justifiable. However, fairly recently, the legal value of preamble was recognised in the new Constitution of 1996. The preamble is now part and parcel of the Constitution.⁸⁴ But then, since 1996, what has been the trend? Many human rights like the right to water, for instance, needs to be more specifically set out in legislative texts. With regards to the right to water, this was passed in 1998 but the enabling instruments were passed only in 2001. The population needs to be well informed of this right and the possible avenues available for the enforcement of the right. This is still an ongoing process. It must also be mentioned that a majority of Cameroonian are generally reluctant to seek redress for the abuses of their human rights especially economic, social and cultural rights as the promotion and protection of this class of rights are peripheral issues.

⁸¹ In South Africa, for instance, in the case of *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*, High Court (Witwatersrand local Division), case N° 12312 (2001).

⁸² In India, for instance, in the case of *Attakoya Thangal V. Union of India*, High Court (Kerala), 1990.

⁸³ See *Supra*, note 40, paragraph 17.

⁸⁴ See art 65

6. Hurdles or challenges to the Effective Enjoyment of the Right to Water in Cameroon.

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

6.1 Interruption of Water Supplies

A major problem affecting the right of the population to water in Cameroon is frequent interruption of water supplies. Interruption here may take two dimensions. Firstly, interruptions may be for some sections of the communities and could last for several weeks. Is it load shedding or a collapse of the distribution system? Many of these questions are usually posed with no answers as no one is usually informed either in advance or during the interruptions of water of what is happening. Consequently, the population is deprived of water for basic human needs.

Secondly, interruptions may also be for non-payment or delays in paying water bills. It happens in the majority of cases of interruption that the persons affected have not paid their bills. We have argued earlier that although the right to water does not mean free water, it does not however, imply that failure to pay should automatically result to interruption of supply without investigation of the cause of such comportment. Although such argument may be lame because interruption is grounded on failure to respect the clauses of the water contract⁸⁵ (express or implied) with the company in charge of supplying water, it however impinges on a basic and fundamental right – the right not only to water but to a continuous supply of it or sustainable utilisation. The interruption for non-payment or delays is also explained by the exorbitant rates⁸⁶ charged per metre cube of water. This seems to prioritize and treat water as an economic commodity or good than a basic need for the human person. This state of affairs is a hurdle to the sustainable utilisation of water.

6.2 Imprecise Legal Protection

The effective implementation of the right to water under Cameroonian law is also hampered by the imprecision in the recognition of the right. The Water Code has

⁸⁵ The contract is usually a standard form contract. The individual or family seeking water supply does not negotiate the terms. It is a “take it or leave it” contract.

⁸⁶ See *Supra*, discussions on affordability.

failed to spell out [succently](#) that access to water is a human right. Moreover, by that law, the state shall only facilitate access to water but this does not in anyway and can hardly impose clear obligations on the state provide to water to all. A litigant can not, therefore, rely exclusive on the provision of the code but must invoke his right to water as arising from the ratification of international legal instrument relating to the right to water as a human right. In fact, there is ambiguity in the Code which makes the human right character of water a doubtful one. Squaring this dilemma is crucial for the sustainable utilisation of water for domestic and personal needs.

6.3 Human Resource Capacity

Human Resource capacity is a huge problem militating against the effective enforcement of the right to water. The law provides that the surveillance and control of water quality shall be ensured by water inspectors and their assistant.⁸⁷ They shall be appointed by the Minister of Water to control the quality of water, research and establish offenders and shall institute proceedings acting as Judicial Police officers against the said persons.⁸⁸ Although these inspectors have a crucial role to play for the purpose of protecting the right to cater and its sustainability, they are not only few but also many of them are not specialists in water matters. What is more? Regrettably, some of them facilitate the commission of water offences or fraternise with the offenders for their personal gains. The quality of water is compromised and the right to water jeopardized.

6.4 Lack of Political Will

One is at ease to state that the government of Cameroon is not taking its responsibilities relating to the right to water as argued under international law. The provision of the right to water and its effective enjoyment is for the most parts a matter of political will which in our opinion seems to be lacking on the part of the government.

7. Conclusion and Recommendations.

From the foregoing, it is clear that the right to water is a fundamental human right recognised explicitly and implicitly in many international and regional legal

⁸⁷ See art 19 of the Water Code.

⁸⁸ See *Supra*, note 51.

instruments. It is also clear that the reception and implementation of these rights remain country specific. In Cameroon, the right to water is recognised in the constitution as a related right to other human rights but legislative instruments on which we rely heavily to clearly set out the right as a specific right with emphasis on the human right character, has failed to do so. Besides, the implementation of the right as provided in the Water Code meets many challenges.

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

At the international level, we recommend a revolting and aggressive lobby for an international human right frame work convention on the right to water. This way, there would be accent on the human right character on the right to water.