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Jurisdiction of Courts on the Right to Water in Ethiopia

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Abstract: The law of a country establishes legally enforceable rights, duties to respect those rights, and means of redressing violations of rights. One means of redressing such violations of rights is through a court of law. International Human Rights Instruments and National Constitutions of some countries have adopted the human right to water. This makes the right to water remedial in a court of law. In Ethiopia laws and policies have been enacted for the realization of access to clean water. However, the issue of whether Ethiopian Courts can interpret and enforce the right to water is unknown. This makes the current extent and scope of jurisdiction of Ethiopian Courts concerning water cases to be vague. The aim of this paper is the legal analysis of whether Ethiopian Courts have jurisdiction to interpret and enforce the right to water. To do this, a doctrinal methodology that employed primary and secondary sources of data has been used. For greater insight and judicial practicability of the right, the experience of some countries on the issue has also been analyzed. The paper argues that Ethiopian courts can and should interpret and apply the human rights to water as a basis for the right to life. Amongst others, in this paper, the writer recommends explicitly incorporating the human right to water into Ethiopian water laws and developing the required administrative and competent judicial organs to strengthen recognition and interpretation of the right.

Keywords: Human Right to Water, Courts, National Constitutions

1. Introduction

Water is one of the most "essential, shared, and scarce natural resources" vital to the existence of humanity. It is a finite resource without alternatives and on which man depends for survival. Hence, water is the basis for the right to life. The recognition of the right to water in International Human Rights Instruments signifies a universal entitlement to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses [1].

Consequently, according to the 1995 Constitution of the Federal Democratic Republic of Ethiopia (hereinafter FDRE constitution), "to the extent resources permit, policies shall ensure that all Ethiopians have access to public health, education, clean water, housing, food, and social security [2]. This right to clean water is enshrined under Chapter 10 of the Constitution, which outlines national policy principles and objectives. Moreover, Ethiopian Water Resource Management Policy, section 1.3 (2) stipulates that "as far as conditions permit, Ethiopian citizens shall have access to enough water of acceptable quality, to meet their basic needs [3].

The duty to protect the entitlement to clean water can be realized when courts can interpret and enforce the right like other fundamental Rights and Freedoms. Even if the right to clean water is incorporated under Article 90 (1) of the FDRE Constitution and Section 1.3 (2) of the Water Resource Management Policy, it is ambiguous whether the right is subject to the jurisdiction of Courts like other human rights. This paper aims to analyze whether Ethiopian courts can assume jurisdiction to interpret and apply the human right to water under the current Ethiopian justice system.

To attain its aims, this research employed a doctrinal-based research method that involves examining both primary and secondary sources. For a better insight into analyzing the jurisdiction of courts on water cases, the practice of some selected countries will be examined. The primary sources that the researcher uses are the FDRE Constitution, Ethiopian Water Resource Management (hereinafter WRM) Proclamation No. 197/2000, Ethiopian Water Resources Management Regulation (hereinafter WRM) Regulation No. 115/2005, Amhara National Regional State Courts Establishment Revised (hereinafter ANRS) Proclamation No. 223/2015 and Federal Courts Proclamations No. 1234/2021 have been reviewed. Several secondary sources, such as the

1999 Ethiopian Water Resources Management Policy (hereinafter WRM Policy), books, journals, articles, and unpublished materials related to the thesis focusing on the issues under study were reviewed and analyzed.

2. Jurisdiction of Ethiopian Courts in General

2.1. Meaning of Jurisdiction

Jurisdiction is a legal body's authority to administer justice within a defined area of responsibility [4]. Hence; Jurisdiction refers to the ability of a court to exercise judicial power and is, of course, a prerequisite to exercising judicial power.

2.2. Structure and Jurisdiction of Ethiopian Courts

FDRE Constitution under Art. 79 establishes an independent judiciary with a two-tier system: the federal courts and the state courts, each with its structures and administration. Judicial powers, both at the federal and state levels, are vested in the respective courts. In the double court structure, the Federal Supreme Court shall have the highest and final judicial power over federal matters, while the State Supreme Courts shall have the highest and final judicial power over state matters. Additionally, they exercise the jurisdiction of the Federal High Court. Even though the state supreme court is the highest judicial authority in the states, the Federal Supreme Court has the power of cassation over any final court decision containing a fundamental error of law. The State Supreme Court has also the power of cassation over any final court decision on State matters which contains a basic error of law.

The Federal Courts Proclamation apportioned subject-matter jurisdiction to federal courts according to three criteria: laws, parties, and places. It stipulates that federal courts have jurisdiction over cases arising under the Constitution, federal laws and international treaties, parties specified in federal laws, and places specified in the FDRE Constitution or by Federal Law [5]. According to Articles 8-10 and 11-16 of the Federal Courts Proclamation No. 1234/2021, the Federal First Instance Court, High Court, and Federal Supreme Court have first instance and appellate jurisdiction. In addition, it gives the Federal Supreme Court cassation power.

Similarly, The Regional State Courts, for example, in the Establishment Revised Proclamation No. 223/2015 of the ANRS Court, also allocate the first instance and appellate jurisdiction of the woreda and zonal high courts regarding civil matters. The proclamation left the power of courts on criminal matters to be determined by other existing laws of the country. The proclamation further provides that the cassation bench of the regional supreme court shall have a jurisdiction to entertain and decide on Cases that have been given a final decision, in appeal, by the woreda court; Regional cases that have been given a final judgment by the high court; and Regional cases that have been given final judgments, by a regular bench of the Supreme Court which has a fundamental error of law [9].

2.3. Judicial Review of Administrative Decisions

Judicial review is a legal mechanism for ensuring that other branches of government are acting within their legal authority. To do this, the judiciary serves as a safeguard for citizens' rights against probable misuse by other arms of government, particularly the executive branch [6]. Beyond the inherent powers of the first instance, appellate and cassation power of the respective level of courts, both levels of courts review the decisions of administrative actions.

In Ethiopia, there is no single law that governs the judicial review of administrative actions. Different laws, on the other hand, allow for the review of administrative acts or decisions. These laws also specify which court has the authority to review the decision. However, because these laws are scattered, it is impossible to define the reach of judicial power and the extent of available review [7].

Some legislations, such as Article 34 (1) of the Freedom of the Press and Access to Information Proclamation No. 590/2008, establish a reviewing competent court as follows: Anyone who is dissatisfied with an Ombudsman judgment has thirty days to file an appeal with the Federal First Instance Court in the case of federal public bodies or the regional high court in the case of regional public bodies [8].

Coffee Marketing and Quality Control Proclamation No. 1051/2017 is another significant piece of law for this discussion. Article 18 (5) of the Proclamation grants the owner of the coffee the ability to appeal against the Ethiopian Coffee and Tea Authority's acts. Ethiopia Commodity Exchange Authority Establishment Proclamation No. 551/2007, as revised by Amendment Proclamation No. 1050/2017, also includes an appellate jurisdiction. As a result, if the Ethiopian Coffee and Tea Authority suspends or revokes the recognition of any Exchange Actor in violation of this proclamation, the suspension or revocation will be definitive and conclusive unless the person files an appeal with the Federal High Court [9]. Other legislation relating to judicial review of administrative decisions exists as well.

3. Jurisdiction of Courts on Water Cases in Ethiopia

The judiciary's participation in establishing rules for adjudicating water disputes is critical for gaining a holistic picture of the entire problem of water shortage and tracing the evolution of the concept of development of water rights under various laws. The court cases also show how water law rights have emerged, expanded, and are still growing strong; how Public Interest Litigation (PIL) has been used to expand the scope of the court and the law so that all citizens and individuals, whether they are affected or not, can bring a case to the court and have their grievances resolved [10]. The fundamental right to water is enshrined in the Constitutions

and Water Acts of several countries, and it is subject to the Court's interpretation and application.

3.1. First Instance Jurisdiction

The right to adequate, safe, acceptable, physically accessible, and inexpensive water for personal and domestic purposes is recognized as a fundamental human right and is enforced by international and national courts.

As a result, courts play a vital role in ensuring that the right is implemented. Negotiation, arbitration, and administrative decision-making by the Ministry of Water, Irrigation, and Electricity are all part of the dispute resolution procedure established by the WRM Proclamation No. 197/2000 and the WRM Regulation No. 115/2005. It allows for judicial review of the Ministry's decisions in limited circumstances by filing an appeal with the courts [11]. Apart from limited judicial review by way of appeal, Ethiopian water legislation does not allow citizens to stand in civil disputes before a court of law. As a result, it can be stated that Ethiopian courts do not have first-instance jurisdiction over water cases under the Federal Courts Proclamation. On the part of regional laws, for instance, under the ANRS Courts Establishment, Revised Proclamation No. 223/2015 regional courts do not have first-instance jurisdiction over water cases.

On the other hand, though narrow in scope, the WRM Proclamation No. 197/2000 has given the ordinary (first instance) jurisdiction of courts in criminal matters under Art. 29. Article 29 reads as:

29. Penalty

Any person who violates this proclamation or the regulations made under it shall be punished according to the provisions of the penal code [12].

3.2. Appellate Jurisdiction

An appellate court is a form of reviewing judgments of a lower court or reviewing decisions made by administrative bodies. In this regard, it follows from the above findings that since courts have ordinary jurisdiction at least in limited instances, Ethiopian courts have appellate jurisdiction for falls in criminal cases decided by the lower instance with ordinary jurisdiction. Concerning water cases in civil matters, Ethiopian Courts have an appellate jurisdiction based on the WRM Proc. No. 197/2000 and Art. 9 (2) of the WRM Reg. No. 115/2005.

The Dispute Settlement Mechanism outlined in the WRM Proclamation No. 197/2000 and WRM Regulation No. 115/2005 allows the MWIE to examine and decide disputes that arise between permit holders, a permit holder, and a third party concerning rights or obligations arising from permits, and it shall also have the power to determine and execute compensation to be paid by one party to the other. Hence, the supervising body can decide on the amount of compensation and execute the decision even though the procedure of execution is not provided under the above two water legislations.

Accordingly, per Art. 9 (2) of WRM Proclamation No. 197/2000, an appellate power of the court comes into picture when an aggrieved party involved in the dispute concerning rights and obligations, for instance, the obligation to pay compensation between a permit holder and a third party appeals to a competent court having jurisdiction within 60 days from the decision. This type of appellate jurisdiction is in the form of judicial review. The water laws make it difficult for both parties and courts because they do not specify which appeal court is competent. Because Article 35 of the WRM Regulation No. 115/2005 does not specify the dispute resolution procedures to be followed by the Supervisory Body and the parties, the WRM Proclamation No. 197/2000 and WRM Regulation No. 115/2005 do not specify the court that is competent to hear the case at hand.

To avoid the difficulty of identifying the competent appellate court the following two approaches of interpretation may be helpful. The first method of interpretation is an indirect inference from Article 35 of WRM Regulation No. 115/2005, which may help avoid the challenge of determining the appropriate appellate court. The Dispute Settlement Procedure outlined in Art. 35 in general and in Art. 35/1/e in particular demonstrates that the Ministry is given the legal authority to hear issues involving the rights and obligations resulting from permits.

The Ethiopian Civil Procedure Code, which governs procedures before a Court of First Instance in civil issues, shall be applied to the Ministry's actions when performing this adjudicatory function as stated under Art. 35 (1) (e) of the WRM Regulation No. 115/2005. In addition to the procedures outlined under Art. 35 (1) (a-e) and 35 (2) of the WRM Regulation No. 115/2005 in deciding such a dispute, the time limit provided for the aggrieved party to appeal is 60 days after the decision is rendered by the Ministry [13]. This deadline directly matches the appeal period specified under Art. 323 (2) of the Ethiopian Civil Procedure Code.

We can get to the conclusion that the Ministry has first instance jurisdiction in these matters by applying similar methods to those used by a court with first instance jurisdiction under the WRM Proclamation No. 197/2000 and WRM Reg. No. 115/2005. Therefore, depending on the delegation authority and the location of the case, the Federal High Court or the Regional High Court is the appropriate appellate court.

The second way of interpretation might be somewhat contrary to the first interpretation proposing that Judicial Powers, both at the Federal and State levels, are vested in the courts by Art. 79 (1) of the FDRE Constitution. And the administrative decision of the Ministry may be subject to the Court of the first instance through appeal. Thus, the Authority, now the Ministry, is not the same as the first instance court.

By Articles 9 (4) of WRM Proclamation No. 197/2000 and Art. 36 of WRM Regulation No. 115/2005, an appeal from an arbitral decision is the other situation in which Ethiopian courts have appellate authority. If a dispute develops between the Ministry and the permit holder and cannot be resolved

amicably within 60 days, either party may request that the matter be arbitrated. The party against whom an arbitral decision is rendered by the arbitrators following the procedures under the WRM Reg. No. 115/2005 shall be obliged thereby; nevertheless, the party who is not favored shall have the right to appeal to the appropriate court.

Generally speaking, Ethiopian courts have appellate authority in water issues involving criminal concerns via direct appeal from rulings of courts of the first instance and in civil matters by judicial review and via appeal from the ruling of arbitration.

3.3. Cassation Power (Jurisdiction)

Cassation jurisdiction is based on the qualification of cases involving fundamental errors of law in both the federal and regional supreme courts. According to Art. 10 of the Federal Courts Proclamation No. 1234/2021, the Federal Supreme Court shall have the power of cassation over final decisions made by the Federal High Court rendered in its appellate jurisdiction, final decisions made by the regular division of the Federal Supreme Court, and final decisions made by regional high courts or supreme courts while exercising their constitutionally delegated power of adjudication, and the final decision made by an organ vested with judicial review in cases where there is a fundamental error of law. The list here does not include all the cassation powers of the Federal Supreme Court's power of Cassation stated under the proclamation.

Similarly, Regional Supreme Courts, using Amhara Regional State as an example, provides that the cassation bench of the Regional Supreme Court shall have jurisdiction to entertain and decide on the following regional cases which have a fundamental error of law:

a. Cases that have been given a final decision, in appeal, by the woreda court;
b. Regional cases that have been given a final judgment by the high court; and;
c. Regional cases that have been given a final judgment, by a regular bench of the Supreme Court [14]. Hence, Ethiopian courts both at the regional and federal Court structures have the power of cassation if a case qualifies the criteria of basic error of law.

Additionally, the Federal Supreme Court's interpretation of a law, as determined by the cassation division with at least five judges, is binding on all levels of federal and regional courts. To do this, the Federal Supreme Court publishes and disseminates decisions of the cassation division that contain a definitive interpretation of the law through electronic and other print media as soon as practicable. The goal of this is to ensure that laws are applied and interpreted consistently throughout the nation. Despite the water case's importance to life, the writer was unable to obtain the Federal Supreme Court's rulings on it.

3.4. Judicial Review of Administrative Decisions (Actions)

As has been stated before, beyond the inherent powers of the first instance and appellate jurisdiction of the respective level of courts both at the regional and federal level, courts also review the decisions of administrative actions which is important to check the decisions of the executive organ.

To resolve disagreements that emerged between permit holders as well as between a permit holder and a third party on the rights and obligations arising from permits, the WRM Proclamation No. 197/2000 under Art. 9 (2) authorizes judicial review of the MoWIE's judgments by appeal to a court of law. Therefore, a permit holder or third party may appeal to a competent court with jurisdiction within 60 days of the date of the Ministry's decision where an aggrieved party is involved in the dispute about rights and obligations originating from permits. This form of appeal is one form of judicial review of the decisions of administrative organs-now in this case the Ministry of Water Irrigation and Electricity.

3.5. The Human Right to Water and Jurisdiction of Courts

3.5.1. The Definition and Concept of Human Right to Water

Depending on the context, the term "water" might signify different things to different states and people. It can be described in terms of its use, location, accessibility, affordability, and quality. Individually or collectively, people assert their legal right to water against governments and other organizations, such as multinational businesses under the human rights legal regime [15].

According to Abiy Chelkeba, the water right can be seen at least from two perspectives, i.e. basic water rights and water use rights. The term "basic water right," which is also used to refer to the human right to water, describes the freedom to utilize water for home purposes including drinking, cooking, and other associated household-level water usage. The human right to water is personal, a right of all persons [16]. As a result, everyone is entitled to enough water for personal and household usage that is safe, acceptable, physically accessible, and inexpensive [17]. Contrarily, a water use right is a specific entitlement or right based on established prioritizing guidelines.

3.5.2. The Human Right to Water Under International Human Rights Instruments

Natural individuals will have access to their right to water in terms of quality, quantity, affordability, and accessibility if the human right to water is effectively implemented. The Committee on Economic, Social, and Cultural Rights General Comment No. 15 defines the human right to water as a right to sufficient, safe, acceptable, physically accessible, and affordable water.

The human right to water is not specifically mentioned in the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), or International Covenant on Economic, Social, and Cultural Rights (ICESCR), collectively known as the International Bill of Rights. Water is said to be so necessary for human life that those who created the Universal Declaration of Human Rights (UDHR) did not consider the

need to explicitly include the right to water, even though the key founding documents of the international human rights system had not made direct reference to a human right to water.

The significance and necessity of water for other ICESCR and ICCPR rights forms the basis of the human right to water, which was not expressly recognized as a separate human right. It has been acknowledged as a crucial component of other human rights, including the right to life, which is the cornerstone of all others and is outlined in Article 6 (1) of the ICCPR., and the rights to health, food, housing, and sufficient standards of living, which are covered by the ICESCR. In this regard, Article 11 of the ICESCR is the most significant clause. It reads as follows:

Article 11

'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent".

Since ensuring the protection of the water right is essential to achieving an appropriate standard of living, the ICESCR Protocols implicitly recognized the human right to water for all by using the term "standard of living." In addition, the Parties to the ICESCR acknowledged everyone's right to the enjoyment of the greatest achievable quality of physical and mental health under Art. 12 (1). The water right is recognized under this specific Covenant clause for the same reason that the highest degree of health cannot be attained without sufficient and clean water. As a result, since water is required for life to exist, the International Covenant on Civil and Political Rights Article 6 (1)'s claim that there is an inherent right to life is justified.

In addition, there are more recent international human rights treaties than the ones mentioned above that specifically acknowledge the right to water as a fundamental human right. These are the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Per CEDAW's article 14 (2) (h), state parties must take all reasonable steps "to ensure adequate living conditions, particularly concerning housing, sanitation, electricity, and water supply," and the CRC's article 24 (1) (2) (c) guarantees children the right to the highest standards of health and full implementation of this right, including taking reasonable steps, among other things, to combat diseases and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollutions.

Additionally, there are other resolutions adopted by the UN General Assembly, one of which being UN General Assembly Resolution 64/292, The Human Right to Water and Sanitation (2010). For the first time, the UN General Assembly recognized the human right to access to clean, safe drinking water and sanitary facilities. It also exhorts governments to help this right be realized. It asserts that this is a fundamental human right necessary for the enjoyment of life and all other rights. The Human Rights Council swiftly adopted this position and declared that the human right to water is enforceable under the law. This leads to several international, regional, and national courts making decisions about the water right.

3.5.3. The Status of the Human Right to Water Under National Laws

The very specific guidelines required by national law, where the unique characteristics of each nation influence how the State will implement the realization of the human right to water, cannot be provided by international human rights law. Instead, each State must establish detailed standards for the provision of water and sanitation services [18]. Article 2 (1) of the International Covenant on Economic, Social, and Cultural Rights emphasizes the special importance of legislation in the implementation of Covenant rights, although States are free to choose how they implement human rights. A state's aims are formally expressed through its legal frameworks, which are (usually) permanent and legally enforceable.

Beyond this, the ICCPR's Art. 2 (3) (b) mandates the state parties to guarantee that any person claiming redress for the violation of those rights under the Covenant shall have the right to be determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the State's legal system, and to develop the possibilities of judicial remedy [19]. Beyond that, the following section examines the Ethiopian legal and particularly judicial context regarding the human right to water by comparing it to the constitutional (legal) guarantee and judicial environment of several chosen nations.

(i). Uruguay

A constitutional guarantee of the human rights to water may be made either implicitly or explicitly and the scope of the detail may vary. The human right to water and a lesser extent the human right to sanitation is and has been part of many constitutions, including some that were established before the recognition of the human right to safe drinking water and sanitation by the UN General Assembly in 2010.

In 2004, Uruguay became the first country to include an explicit guarantee of the human rights to water and sanitation in its Constitution under Art. 47. For the latter analysis, I have provided the partial extract of Art. 47 of the 2004 (amended) constitution as follows:

Article 47

"The protection of the environment is of general interest. Persons must abstain from any act that causes grave depredation, destruction, or contamination to the environment. The law shall regulate this provision and may provide sanctions for transgressors. Water is a natural resource essential for life. The access to potable water and the access to sanitation constitute fundamental human rights"[20].[Emphasis mine]. Hence, the Constitution has

provided the explicit and interesting incorporation of the human right to water and also provides a framework for violations under this Provision, Art. 47.

The amendment of the constitution, surprisingly made through direct democracy, established that Water is an essential natural resource for life. Access to drinking water and the sewerage system, constitute a fundamental human right. The Constitutional Reform of Article 47 of the Constitution in the section entitled "Rights, obligations, and guarantees" also stipulates that the standards for managing water resources, which must be done in the public interest, shall be based on sustainability and citizen engagement [21].

(ii). Republic of South Africa

The Republic of South Africa has also incorporated the human right to water under Art. 27 (1) of the 1996 Constitution under the Bill of Rights of chapter two of the Constitution by stating that everyone has the right to have access to: health care services, including reproductive health care; sufficient food and water; and social security, including, if they are unable to support themselves and their dependents, appropriate social assistance [22]. It has further stipulated that the state must, within the limits of its resources, take reasonable legislative and other measures to achieve the gradual fulfillment of each of these rights.

Here, other measures may include judicial interpretation and protection of these rights. This right to water is further enhanced by the National Water Act No. 36 of 1998 of South Africa (hereinafter South African Water Act No. 36) by providing that the purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed, and controlled in ways which take into account amongst other factors are meeting the basic *human needs* of present and future generations; promoting equitable access to water and promoting the efficient, sustainable and beneficial use of water in the public interest [23].

In event of non-compliance with the act's provisions, the Republic of South Africa Water Act No. 36 expressly created dispute resolution methods by designating the appropriate dispute resolution entity. The authority of the High Court is outlined in the Act's Articles 130, 131, 132, and 133, among other provisions. The Act's Articles 146 and 148 also deal with the Water Tribunal's authority and responsibilities, and its Articles 148 and 149 specifically address appeals from the Water Tribunal to the High Court. Furthermore, it has also provided criminal violations with their respective penalties in case of failure of duties under the act. These include, among many others, under Art. 151 (1) (a-m), that:

No person may:

(a) Use water otherwise than as permitted under this Act;
(b) Fail to provide access to any books, accounts, documents, or assets when required to do so under this Act;
(c) fail to comply with any condition attached to a permitted water use under this Act;
(d) fail to comply with a directive issued under sections 19, 20, 53, or 118;
(e) unlawfully and intentionally or negligently tamper or interfere with any water work or any seal or measuring device attached to a water work…../[24].

A violation of this provision is punishable by a fine or imprisonment for a term not to exceed five years, or by both a fine and such imprisonment for the first conviction, and by a fine or imprisonment for a term not to exceed ten years, or by both a fine and such imprisonment in the case of a second or subsequent conviction, for using water for a purpose other than that which is permitted or for which it is used, or by failing to comply with the conditions attached to the permit. The severity of the penalty in case of subsequent conviction makes a deterrence effect for other potential non-adherents of the Water Act No. 36.

(iii). Democratic Republic of Uganda

Another nation that recognized the human right to water under its Constitution is the Democratic Republic of Uganda. Every Ugandan has a right to a clean and healthy environment, according to Art. 39 of the 1995 Ugandan Constitution, which is located in Chapter Four and deals with the Protection and Promotion of Fundamental and Other Human Rights and Freedoms [25]. There, a clean and healthy environment is recognized as a human right in Chapter Four of the Constitution, recognizing the human right to water.

The Republic of Uganda's constitution also guarantees that any individual who believes that a fundamental or other right or freedom guaranteed by this Constitution has been violated or threatened is entitled to petition to a competent court for remedies, which may include compensation. The nation also established the Water Act, Cap. 152 of 1997, as well as many regulations in accordance with Art. 107 of the Water Act, to implement the human right to water. The Water Act has incorporated criminal charges and penalties for disregarding the Act's rules, just like the South African Water Act [26].

3.5.4. The Status of the Human Right to Water and Jurisdiction of Courts in Ethiopia

The conceptualization of the right to water in international human rights instruments construct a universal entitlement to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. Chapter three of the FDRE Constitution does not specifically include the water right. However, the social goal of the Constitution under Art. 90 (1) specifically mentions a human right to water, subject to the stipulation that the resource is available.

In contrast to the preceding nations, Ethiopia takes a distinct approach to the right to water. The latter nations formally acknowledge the human right to water. They also ensured that the right would be protected by the law. In our situation, the FDRE Constitution does not acknowledge the human right to water. Water is not listed as a fundamental human right in Chapter 3 of the constitution, which is devoted to fundamental freedoms and rights. Instead, it is acknowledged as one of the National Policy Objectives and Principles in Chapter 10 of the FDRE Constitution (Art. 85-92). For this purpose, Art. 90 (1) of the FDRE Constitution is produced as follows:

1. Article 90
2. Social Objectives

To the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food, and social security. This clause states that the provision of clean water as a social goal of the nation is conditional and will only be made possible by the nation's resources. Furthermore, as stated in the FDRE Constitution, the Constitution does not expressly ensure that all Ethiopians have a right to water. But acknowledged as a part of a governmental purpose that does not ensure rights and obligations.

A human right to water is implied by the WRM Policy, which among other things states that every Ethiopian citizen shall, to the extent that circumstances permit, have access to enough water of adequate quality to meet basic human needs. Section 2.1.1 of the Policy further stipulated that, to the extent that the circumstances permitted, one of the major principles was to make sure that household water needs were met and that, after meeting basic needs, all subsequent water allocations were made in accordance with fair and effective socio-economic development standards.

The human right to water can also be inferred from Art. 7 (1) and 7 (2) of the WRM Proclamation No. 197/2000 in setting priority to different water uses. Accordingly, the Proclamation gives a primarily preference to domestic water use that has a core value of promoting the very idea of the human right to water. Domestic use of water at a household level is considered as utilization of water that is basic to sustain human life. Similarly, the WRM Policy gives an absolute preference and protection priority among the potential water uses to domestic water uses. This shows that domestic water use is protected without any limitations and other potential water use must comply with the conditions of a permit. The exclusion that does not require a permit for home water uses further highlights the human right to water. According to Abiy Chelkeba, these laws and policies reinforce one another, and the justification for them is mostly tied to people's desire to survive because the right to life is inalienable from all other rights.

Giving this kind of interpretation for academic purposes might not be challenging. However, it needs a clear legal framework that recognizes the human right to water in its water legislation in order to be protected and enhanced. In addition, it mandates that courts have jurisdiction, that administrative actions be taken, and that crimes and punishments be applied when a right is violated. Such features are lacking in the Ethiopian WRM Proclamation No. 197/2000 since its provisions do not take into account the human right to water. Additionally, it does not stipulate court jurisdiction, administrative sanctions, crimes, or fines if a right is violated. The Proclamation emphasizes permits for water use.

Contrary to Art. 151 (1a) (b) of the Water Act No. 36 of South Africa, many of the infractions listed in the proclamation and WRM Regulation No. 115/2005 are not made punishable. A person who uses water in a manner that is not authorized by the Water Act (Proclamation) or who refuses to grant access to any books, accounts, documents, or assets when requested to do so is therefore criminally liable for the fine and imprisonment described above in South Africa, but not in Ethiopia, according to the South African Water Act No. 36 and Ethiopia's WRM Proclamation No. 197/2000 and WRM Regulation No. 115/2005. This is clear from the Water Act of South Africa's Articles 151 (1) (a) (b) and 151 (2), as well as Article 6 (2), (b) (a,) of the Ethiopian Water Regulation, respectively.

This leads one to the conclusion that, despite the Ethiopian Water Resource Management Policy's efforts to recognize the human right to water by requiring that resources be available, the policy still requires an efficient legal, institutional, administrative, and judicial system that can interpret and uphold the right to water.

4. Concluding Remarks and Recommendations

A sufficient, appropriate, physically accessible, and reasonably priced supply of water is protected under the human right to water. Since many of the rights outlined in the main international human rights agreements would be useless and impractical without water, the concept of a human right to water needs to be significantly strengthened.

According to international human rights conventions, national constitutions, and laws, the court has a crucial role to play in defending and advancing human rights. However, the human right to water was not expressly acknowledged by the Ethiopian Constitution as one of the essential freedoms. Under Chapter 10 of the Constitution, it is somewhat subtly acknowledged as one of the social aims subject to constraints.

Particularly in terms of regular jurisdiction on civil cases, Ethiopian courts have relatively little jurisdiction over cases involving water. A water dispute involving water use permits is taken to the courts via judicial review through the appeal. Ethiopian courts have general jurisdiction over criminal cases involving water use licenses. Contrary to Uruguay, South Africa, and Uganda, Ethiopian courts are not explicitly granted jurisdiction over the human right to water.

By excluding from Chapter 3 the section dealing with Fundamental Rights and Freedoms, consisting of Articles 13–44, the human right to water is recognized, at least by way of a broader interpretation, under Article 90 (1) of Chapter 10 of the Constitution. This leaves open the question of its scope of application and interpretation. This is so that all Federal and State legislative, executive, and judicial organs at all levels shall have the responsibility and duty to respect and enforce the requirements of this Chapter, as stated in the FDRE Constitution's Art. 13 (1) (2) regarding the scope of application and interpretation of Chapter 3 of the Constitution.

Additionally, it has been explicitly stated that the fundamental liberties listed in Chapter 3 must be interpreted

following the tenets of the Universal Declaration of Human Rights, the International Covenants on Human Rights, and any other international agreements that Ethiopia has ratified.

The human right to water as recognized by the Water Resources Management Policy is not explicitly protected by the WRM Proc. No. 197/2000 and the WRM Reg. No. 115/2005. Criminal charges, sanctions, and the appropriate court to hear appeals from MWIE administrative rulings are not mentioned. The absence of authority and ambiguity makes the realization and judicial protection of the human right to water particularly challenging. Although the Water Policy adopted every person's right to clean water, it has not been included in the Water Proclamation or Regulation, and citizen standing is not additionally granted by the Constitution or the Water Proclamation.

Even though the Federal Supreme Court issues decisions of the cassation division that contain binding interpretations of laws to all levels of courts and other relevant bodies, as well as publishes and disseminates those decisions, there have been no interpretations made on water cases from cassation volume one to the present (Cassation Volume 24). From the conclusions reached above the writer submits the following recommendations:

1) Ethiopian water laws should incorporate the human right to water explicitly and develop the required administrative and competent judicial organs by referring to the appropriate court to improve recognition and interpretation of the right to water. The Pollution Control Proclamation's model, which defined the competent court according to its definition, is crucial for this reason. As an alternative, the South African approach of referring to the appropriate court at the relevant provision is equally significant to resolve the uncertainty.
2) Concerning legal protection of the human right to water, the public should be made aware of the right and expressly provided with administrative procedures, offenses, and penalties, as was the case in South Africa.
3) Incorporating citizen advocacy for the fulfillment of the human right to water, human rights NGOs, and public engagement.

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