

Realizing the Human Right to Clean and Safe Water in Africa

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Kariuki Muigua*

Abstract

Water plays a vital role in achieving the Sustainable Development agenda. Access to water and sanitation are recognized as core human rights fundamental to everyone's health, dignity and prosperity. However, several factors hinder the attainment of this right including water scarcity, poorly managed water and sanitation services, and discrimination in access to water and sanitation services. A human-rights based approach to clean and safe water is therefore necessary in addressing these challenges. This paper critically explores the ideal of access to clean and safe water as a human right. It argues that clean and safe water is a fundamental human right that needs to be enhanced for sustainability. It conceptualizes the human right to clean and safe water and highlights its core tenets. The paper further discusses the progress made and challenges facing the attainment of the human right to clean and safe water in Africa. It also proposes measures towards realizing the human right to clean and safe water in Africa.

1.0 Introduction

Water is at the heart of Sustainable Development¹. According to the United Nations, water is critical for socio-economic development, healthy ecosystems and for human survival². In addition, water is also vital for reducing the global burden of disease and improving the health, welfare and productivity of populations³. In addition, it is central to the production and preservation of a host of benefits and services for people⁴. Water is

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¹ United Nations., 'Water and Sustainable Development' Available at https://www.un.org/waterforlifedecade/water_and_sustainable_development.shtml (Accessed on 20/05/2024)

² Ibid

³ Ibid

⁴ Ibid

also crucial in enhancing adaptation to climate change, serving as the crucial link between the climate system, human society and the environment⁵. Sufficient supplies of clean fresh water are indispensable for drinking and washing, growing and preparing food, maintaining health, and sustaining vital environmental systems among other core services⁶. It has been noted that without water, humans simply cannot survive, much less flourish⁷.

The United Nation's 2030 Agenda for Sustainable Development recognizes the role of water in development⁸. Sustainable Development Goal (SDG) 6 seeks to ensure availability and sustainable management of water and sanitation for all⁹. SDG 6 sets out several targets towards realizing this ideal including achieving universal and equitable access to safe and affordable drinking water for all¹⁰; improving water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally¹¹; substantially increasing water-use efficiency across all sectors and ensuring sustainable withdrawals and supply of freshwater to address water scarcity and substantially reducing the number of people suffering from water scarcity¹²; implementing integrated water resources management at all levels, including through transboundary cooperation as appropriate¹³; protecting and restoring water-related ecosystems, including mountains, forests, wetlands, rivers,

⁵ Ibid

⁶ Center for Strategic & International Studies., 'The Evolving and Incompletely Realized Human Right to Water' Available at <https://www.csis.org/analysis/evolving-and-incompletely-realized-human-right-water> (Accessed on 20/05/2024)

⁷ Ibid

⁸ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 20/05/2024)

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

aquifers and lakes¹⁴; and supporting and strengthening the participation of local communities in improving water and sanitation management¹⁵. Achieving these targets is key in ensuring access to clean and safe water.

Access to water and sanitation are recognized as core human rights fundamental to everyone's health, dignity and prosperity¹⁶. However, it has been noted that billions of people all over the world are still living without safely managed water and sanitation¹⁷. Marginalized groups are often overlooked, and sometimes face discrimination, as they try to access the water and sanitation services they need¹⁸. As a result, it has been asserted that governments must take a human rights-based approach to water and sanitation so that no one gets left behind¹⁹.

This paper critically explores the ideal of access to clean and safe water as a human right. It argues that clean and safe water is a fundamental human right that needs to be enhanced for sustainability. It conceptualizes the human right to clean and safe water and highlights its core tenets. The paper further discusses the progress made and challenges facing the attainment of the human right to clean and safe water in Africa. It also proposes measures towards realizing the human right to clean and safe water in Africa.

¹⁴ Ibid

¹⁵ Ibid

¹⁶ United Nations., 'Human Rights to Water and Sanitation' Available at <https://www.unwater.org/water-facts/human-rights-water-and-sanitation> (Accessed on 20/05/2024)

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

2.0 Access to Clean and Safe Water as a Human Right

Access to water and sanitation are recognized as human rights reflecting the fundamental nature of these basic needs in every person's life²⁰. It has been noted that lack of access to safe, sufficient and affordable water, sanitation and hygiene facilities has a devastating effect on the health, dignity and prosperity of billions of people all over the world, and has significant consequences for the realization of other human rights²¹. The right to water entitles everyone to have access to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use²². It has been noted that physical presence of water or water services is not the same as access²³. A water or sanitation service does not serve the whole community if it is too expensive, unreliable, unhygienic, unsafely located, unadapted for less able groups or children, or non gender-segregated, for example in the case of toilets and washing facilities²⁴. Access to safe, affordable and reliable drinking water and sanitation services are therefore basic human rights²⁵. It has been noted that these rights are indispensable to sustaining healthy livelihoods and maintaining people's dignity²⁶. In addition, human rights to water and sanitation are essential for eradicating poverty, building peaceful and prosperous societies, and ensuring that 'no one is left behind' on the journey towards Sustainable Development²⁷.

Access to safe drinking water and sanitation are internationally recognized human rights, derived from the right to an adequate standard of living enshrined under article 11 (1) of the *International Covenant on Economic, Social and Cultural Rights*²⁸. In addition, the key

²⁰ United Nations., 'Human Rights to Water and Sanitation' Available at https://www.unwater.org/sites/default/files/app/uploads/2018/10/WaterFacts_water_and_human_rights_sep2018.pdf (Accessed on 21/05/2024)

²¹ Ibid

²² United Nations., 'Human Rights to Water and Sanitation' Op Cit

²³ Ibid

²⁴ Ibid

²⁵ Office of the High Commissioner for Human Rights., 'OHCHR and the Rights to Water and Sanitation' Available at <https://www.ohchr.org/en/water-and-sanitation> (Accessed on 21/05/2024)

²⁶ Ibid

²⁷ Ibid

²⁸ International Covenant on Economic, Social and Cultural Rights., Available at <https://www.ohchr.org/sites/default/files/cescr.pdf> (Accessed on 21/05/2024)

elements of the right to water and sanitation are elaborated by the Committee on Economic, Social and Cultural Rights in its *General Comment No. 15*²⁹. According to General Comment No. 15, the human right to water is indispensable for leading a life in human dignity and a prerequisite for the realization of other human rights³⁰. It recognizes that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses³¹. General Comment No. 15 further acknowledges that an adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements³². General Comment No. 15 sets out the key elements of the right to clean and safe water. These are *availability* which is the idea that water supply for each person must be sufficient and continuous to cover personal and domestic uses, which comprise water for drinking, washing clothes, food preparation and personal and household hygiene³³; *accessibility* which is the ideal that water and sanitation facilities must be physically accessible and within safe reach for all sections of the population, taking into account the needs of particular groups, including persons with disabilities, women, children and older persons³⁴; *affordability* which acknowledges that water services must be affordable to all and that no individual or group should be denied access to safe drinking water because they cannot afford to pay³⁵; *quality and safety* which envisages that water for personal and domestic use must be safe and free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health³⁶; and *acceptability* which is the ideal that all water and sanitation facilities must be culturally acceptable and

²⁹ Committee on Economic, Social, and Cultural Rights., 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)' Available at https://www2.ohchr.org/english/issues/water/docs/cescr_gc_15.pdf (Accessed on 21/05/2024)

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

appropriate, and sensitive to gender, life-cycle and privacy requirements(Emphasis added)³⁷. It is necessary to foster these elements in order to realize the human right to clean and safe water.

On 28th July 2010, the United Nations General Assembly adopted a historical *Resolution*³⁸ which recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights. The Resolution acknowledges that equitable access to safe and clean drinking water and sanitation is an integral component of the realization of all human rights³⁹. It also calls upon states and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all⁴⁰. The Resolution urges states to address challenges related to the realization of the human right to safe and clean drinking water and sanitation⁴¹.

The right to clean and safe water has also been recognized as a fundamental human right at national levels. For example, the Constitution of Kenya stipulates that every person has the right to clean and safe water in adequate quantities⁴². It also requires the state to put in place affirmative action programmes designed to ensure that minorities and marginalised groups have reasonable access to water⁴³. It is necessary to implement the right to clean and safe water for development.

³⁷ Ibid

³⁸ United Nations General Assembly., 'The Human Right to Water and Sanitation: A/RES/64/292' Available at <https://documents.un.org/doc/undoc/gen/n09/479/35/pdf/n0947935.pdf?token=mWqjDbWKeIfEfBSz6e&fe=true> (Accessed on 21/05/2024)

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Constitution of Kenya., 2010., Government Printer, Nairobi., Article 43 (1) (d)

⁴³ Ibid, Article 56 (e)

Access to clean and safe water is therefore a fundamental human right. It has been noted that international human rights law obliges states to work towards achieving universal access to water and sanitation for all, without any discrimination, while prioritizing those in need⁴⁴. It has been argued that codifying water as a human right helps to guide policy development and implementation, provides global standards and objectives to frame government responsibilities and evaluate outcomes, and facilitates accountability by empowering rights holders to identify and claim their rights⁴⁵. It is therefore necessary to realize the human right to clean and safe water for development.

3.0 Realizing the Human Right to Clean and Safe Water in Africa: Promises and Challenges

Realizing the human right to clean and safe water is a key priority in Africa as envisaged under Africa Union's *Agenda 2063*⁴⁶. Among the key priority areas of Agenda 2063 is achieving water security in Africa⁴⁷. Agenda 2063 seeks to ensure that every citizen in Africa has affordable and sustainable access to quality basic services such as access to adequate and clean water and sanitation⁴⁸. According to Agenda 2063, Africa will be a fully water secure continent by 2030⁴⁹.

In addition, the *Africa Water Vision for 2025*⁵⁰, recognizes that water plays a crucial role in fostering socio-economic development in the continent. It acknowledges that Africa has

⁴⁴ Office of the High Commissioner for Human Rights., 'About Water and Sanitation' Available at <https://www.ohchr.org/en/water-and-sanitation/about-water-and-sanitation> (Accessed on 21/05/2024)

⁴⁵ Center for Strategic & International Studies., 'The Evolving and Incompletely Realized Human Right to Water' Op Cit

⁴⁶ African Union., 'Agenda 2063: The Africa we Want' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed on 22/05/2024)

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Africa Water Vision for 2025., Available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic->

large rivers, big lakes, vast water lands and limited, but widespread ground water resources to achieve the ideal of water security in the continent⁵¹. In addition, the Vision acknowledges that the sustainability of these water resources is threatened by certain natural phenomena and human factors⁵². The natural threats include the multiplicity of trans-boundary water basins, extreme spatial and temporal variability of climate and rainfall, coupled with climate change, and growing water scarcity, shrinking of some water bodies, and desertification⁵³. The human threats include inappropriate governance and institutional arrangements in managing national and transboundary water basins; depletion of water resources through pollution, environmental degradation, and deforestation; failure to invest adequately in resource assessment, protection and development; and unsustainable financing of investments in water supply and sanitation⁵⁴. The Africa Water Vision for 2025 is therefore designed to avoid the disastrous consequences of these threats and lead to a future where the full potential of Africa's water resources can be readily unleashed to stimulate and sustain growth in the region's economic development and social well-being⁵⁵. The Vision seeks to ensure that there is sustainable access to safe and adequate water supply and sanitation to meet the basic needs of all in Africa. It calls for strengthening governance of water resources, improving water awareness, meeting urgent water needs, and strengthening the financial base for the desired water future in Africa⁵⁶. It is necessary to implement the Africa Water Vision for 2025 in order to realize the human right to clean and safe water in Africa.

[Documents/african%20water%20vision%202025%20to%20be%20sent%20to%20wwf5.pdf](#) (Accessed on 22/05/2024)

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

The African Commission on Human and Peoples' Rights has also developed *Guidelines on the Right to Water in Africa*⁵⁷. The objective of the Guidelines is to inform and support the work of states, while meeting their obligation to respect, protect and fulfill the individual and collective right to water, and in developing their periodic reports to the African Commission⁵⁸. The Guidelines are guided by several key principles including state sovereignty and communities' responsibility over natural resources; principles of indivisibility and interdependence of human rights; states' obligations to respect, protect, promote and fulfil the right to water; states' obligation to mobilise resources for the realisation of the right to water; the principle of non-discrimination and equal access; and the principle of non-retrogression⁵⁹. The Guidelines require states to foster a rights-based approach to water management that encapsulates participation, community based water management, access to information, accountability, and sustainability⁶⁰. According to the Guidelines, the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses⁶¹. They provide that under no circumstances may an individual be deprived of the minimum essential amount of water for basic human needs and survival⁶². The Guidelines also require water to be treated as a social and cultural good and not as an economic good⁶³. The Guidelines are therefore vital in guiding the attainment of the human right to clean and safe water in Africa.

Despite the importance of the human right to clean and safe water in Africa, several challenges hinder the attainment of this ideal. It has been noted that Africa's freshwater

⁵⁷ African Commission on Human and Peoples' Rights., 'Guidelines on the Right to Water in Africa' Available at <https://achpr.au.int/en/node/904> (Accessed on 22/05/2024)

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

resources are unevenly distributed⁶⁴. For example, the six most water-rich countries in Central and Western Africa hold fifty four per cent of the continent's total resources while twenty seven most water-poor countries hold only seven per cent⁶⁵. Rapid growth in the population, inappropriate water governance and institutional arrangements, depletion of water resources through pollution, environmental degradation, deforestation, and low and unsustainable financing of investments in water supply and sanitation are some of the main challenges to the realization of the right to clean and safe water in Africa⁶⁶.

Agenda 2063 notes that despite the availability of huge fresh water resources, large rivers and lakes (including Congo, Nile, Zambezi and Niger and Lake Victoria), Africa is the second driest continent in the world⁶⁷. In addition, Africa's annual water availability is unevenly distributed⁶⁸. Lack of access to clean water and sanitation in Africa is a key health hazard to the people of Africa resulting in deaths among other challenges especially for vulnerable populations such as children⁶⁹. Without access to safe drinking water, communities are at risk of waterborne diseases such as cholera, typhoid fever, and diarrheal illnesses, which disproportionately affect children and the most vulnerable members of society⁷⁰. It has been asserted that lack of access to clean and safe water in Africa not only poses significant health risks but also perpetuates a cycle of poverty and inequality⁷¹. Water scarcity in Africa is also a major source of conflicts and crises⁷². Water scarcity is a pressing challenge in many parts of Africa, exacerbated by factors such as

⁶⁴ DownToEarth., 'Valuing Water a Challenge in Africa, Says UN Report' Available at <https://www.downtoearth.org.in/news/water/valuing-water-a-challenge-in-africa-says-un-report-76092> (Accessed on 22/05/2024)

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ African Union., 'Agenda 2063: The Africa we Want' Op Cit

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Kwakwa. V., 'Celebrating Water Day: Why Access to Clean Water is Vital for Africa' Available at <https://www.linkedin.com/pulse/celebrating-water-day-why-access-clean-vital-africa-victoria-kwakwa-3zxke/> (Accessed on 22/05/2024)

⁷¹ Ibid

⁷² African Union., 'Agenda 2063: The Africa we Want' Op Cit

climate change, population growth, and inadequate infrastructure⁷³. It has been noted that as water resources become increasingly strained, conflicts over access to water are likely to escalate, threatening stability and exacerbating existing social and political tensions⁷⁴. The lack of access to clean and safe water in Africa not only impacts health, but also education, peace and security, and economic growth, making it a pressing issue that requires attention and action⁷⁵. It is therefore necessary to realize the human right to clean and safe water in Africa for development.

4.0 Conclusion

The human right to clean and safe water is vital for development in Africa. It is necessary to realize this right. The Africa Water Vision for 2025 sets out key actions towards realizing the human right to clean and safe water in Africa including strengthening governance of water resources, improving knowledge and awareness on water, meeting urgent water needs, and strengthening the financial base for the desired water future⁷⁶. It is necessary to implement these actions through measures such as adopting and implementing integrated water resources management principles and policies, developing and implementing institutional reform and capacity-building at local, national and trans-boundary water-basin levels, promoting transparency and participation in decision making, raising awareness on water-management issues, conducting research and development on water-resources issues, mainstreaming gender and youth concerns in all activities related to water management, expanding safe water-supply and sanitation services to meet basic human needs, conserving and restoring water ecosystems, and securing sustainable financing from national and international sources for tackling urgent water needs⁷⁷.

⁷³ Kwakwa. V., 'Celebrating Water Day: Why Access to Clean Water is Vital for Africa' Op Cit

⁷⁴ Ibid

⁷⁵ Korn. M. S., 'Clean Water for Africa' Available at <https://microfinancingafrica.org/the-importance-of-access-to-clean-water-in-africa-how-it-impacts-health-education-and-economic-growth/#:~:text=Health%20Impact,typhoid%20fever%2C%20and%20hepatitis%20A> (Accessed on 22/05/2024)

⁷⁶ Africa Water Vision for 2025., Op Cit

⁷⁷ Ibid

It is also vital for governments in Africa to take a human rights-based approach to water and sanitation⁷⁸. According to the United Nations, states are duty-bearers of providing water and sanitation services to people, who are rights-holders⁷⁹. Citizens as rights-holders can therefore claim their right to clean and safe water and states as duty-bearers must guarantee the rights to water and sanitation equally and without discrimination⁸⁰. Embracing a human rights approach to water requires governments to direct their interventions to those most in need, and develop their capacities to fulfill their obligations⁸¹. In addition, it also creates a framework for rights-holders to participate, and to hold duty-bearers accountable⁸².

Realizing the human right to clean and safe water in Africa also requires concerted efforts towards protecting Africa's freshwater resources⁸³. It has been pointed out that investing in nature offers a clear pathway to protecting and restoring the freshwater systems in Africa on which nature and people depend⁸⁴. Safeguarding Africa's fresh water resources is a core contribution towards realizing the human right to clean and safe water by ensuring availability and security of water supply⁸⁵. It is therefore necessary to strengthen efforts towards conserving Africa's freshwater resources in order to realize the human right to clean and safe water in Africa.

Finally, it is vital to ensure that all barriers to water and sanitation are overcome⁸⁶. To achieve this, laws and governance structures must address all reasons for discrimination

⁷⁸ United Nations., 'Human Rights to Water and Sanitation' Op Cit

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

⁸³ The Nature Conservancy., 'Protecting Africa's Freshwater Resources' Available at https://www.nature.org/en-us/about-us/where-we-work/africa/stories-in-africa/protect-freshwater/?en_txn1=p_g.gmco.eg.ec_wtr.TNC.CK.GMC.IAAOW.BF.GS.ENG.PROS.AFR.BO.ALL.RSA.Text.AD01&gad_source=1&gclid=Cj0KCQjwxqayBhDFARIsAANWRnSq9v8jm0p4RUxXFvCpqlvhPr8eMC9qQlk5udIRAVRfeN_a64aNKnwaArbOEALw_wcB&gclsrc=aw.ds (Accessed on 22/05/2024)

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ United Nations., 'Human Rights to Water and Sanitation' Op Cit

including sex, gender, ethnicity, religion, caste, disability, age, health status, and economic status⁸⁷. In addition, other factors impacting water and sanitation access for marginalized groups, including climate change, population growth, conflict, and migration must also be addressed⁸⁸.

Realizing the human right to clean and safe water in Africa therefore requires better water management policies, strengthening water governance and the capacity of institutions, and strengthening investments and participation by communities and groups (rights-holders) to take part in collective decision-making⁸⁹. It is imperative to realize the human right to clean and safe water in Africa for development.

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Center for Strategic & International Studies., 'The Evolving and Incompletely Realized Human Right to Water' Op Cit

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