A critical analysis of the Ghanaian water and sanitation laws for the protection of the rights to human dignity: Prospects and existing obstacles

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DECLARATION

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I do hereby declare that this thesis entitled “Critical Analysis of the Ghanaian Water and Sanitation Laws for the Protection of the Right to Human Dignity: Prospects and Existing Obstacles” is my own work and that all materials referred to in the course of this work have been fully acknowledged.



Sylvester Agbezuge

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ABSTRACT

Sanitation is defined as conditions of the environment that relate to and enhance public health. It includes the provision of clean drinking water as well as adequate disposal of sewage. It also refers to the provision of facilities, such as pit latrines with slabs, ventilated improved pit latrines, flush toilets connected to sewers, pour-flush toilets and composting toilets. It also includes the provision of infrastructure recycling plants or waste disposal points and waste collection and disposal equipment and machinery that are necessary for the safe disposal of human urine, feces, garbage, and waste in general, as well as the maintenance of hygienic conditions.

Water and sanitation are recognized human rights globally. Article 14(2) (h) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognizes water and sanitation as important components of an adequate standard of living within the context of human rights. Sanitation is also recognized and linked to the highest attainable standard of living under Article 24(2) (e) of the Convention on the Rights of the Child (CRC). Article 14(2) (h) of the African Charter on Rights and Welfare of the Child (ACRWC) refers to environmental sanitation as a human right of children for the attainment of good health and well-being. Eventually, the United Nations Organization (UNO) declared safe water and improved sanitation human rights in 2010 under UNGA Resolution 64/292. The resolution imposed on States the duty to provide safe, available, affordable, accessible, and acceptable water and improved sanitation to their citizens. States are expected to respect, protect, and fulfill these human rights. Articles 4 (1), 19, and 63 of the American Convention on Human Rights (ACHRs) provides that all peoples have the right to full enjoyment of their human rights. Similarly, the European Charter on the Environment and Health (ECEH) recognizes safe and adequate drinking water, together with hygienic, waste disposal for all urban and rural communities of Europe as essential for good health and well-being for all peoples.

Provision, protection, and access to safe water and improved sanitation is however a great challenge in Ghana. Several attempts have been made by researchers and scholars to find a solution to the sanitation and water problems of the country. These interventions have however not yielded significant results. There are many laws on water and sanitation

in Ghana, including provisions in the 1992 Constitution of Ghana, the Criminal and Other Offenses Act of 1960 (Act 29), the Local Government Act of 2016 (Act 936), and the Environmental Protection Agency Act of 1994 (Act 490). Others are the Water Resources Commission Act of 1996 (Act. 522), and the Community Water and Sanitation Agency Act of 1997 (Act 538). There are a few case laws as well on water and sanitation. However, the existence of these laws has not improved the nation's water and sanitation considerably.

This research attempts to address Ghana's water and sanitation problems by critically examining its water and sanitation laws to determine their efficacy or otherwise for the protection of water and sanitation rights for the people of Ghana. It also critically explores water and sanitation legislation of other countries and used them to enrich the implementation and delivery of high-quality water and sanitation legislation to the people of Ghana.

The findings of the research revealed that, water and sanitation laws of Ghana are not robust enough to offer efficient protection for the human rights to water and sanitation as required by international law. Legislation on the two rights lacks details concerning the responsibilities of the State as a duty bearer to provide water and sanitation to citizens who are right holders. The current poor conditions of Ghana's water and sanitation are violations of the fundamental human rights to health and human dignity of the people of Ghana, and the State must be held accountable for the inadequacies.

It is therefore suggested that the State implements legislative reforms to consolidate the existing laws for efficient water and sanitation services delivery for the people of Ghana.

***Key Words**: safe water, improved sanitation, human rights, human dignity, legislation, law enforcement.*

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
ACHPR	African Court on Human and Peoples Rights
ACHRs	American Convention on Human Rights
ACRWC	African Charter on Rights and Welfare of the Child
AMA	Accra Metropolitan Assembly
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CCW	Consumer Council for Water
CIKOD	Centre for Indigenous Knowledge and Organizational Development
CWSAA	Community Water and Sanitation Agency Act
CWSA	Community Water and Sanitation Agency
CWSP	Community Water and Sanitation Programme
CRC	Convention on the Right of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DANIDA	Danish International Development Agency
DAs	District Assemblies
DWST	District Water and Sanitation Team

ECEH	European Charter on the Environment and Health
EPAA	Environmental Protection Agency Act
EPC	Environmental Protection Council
EPRP	Emergency Preparedness and Response Plan
GEAP	Ghana Environmental Action Plan
GWDSP	Ghana WASH Development Sector Programme
GEMF	Global Environmental Monitoring Fund
KNCHRs	Kenya National Commission on Human Rights
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UK	United Kingdom
GLAAS	UN-Water Global Analysis and Assessment of Sanitation
GSS	Ghana Statistical Service
GWC	Ghana Water Company
ICCPRs	International Covenant on Civic and Political Rights
ICESCR	International Covenant of Economic Social and Cultural Rights
LGA	Local Governance Act
MLRD	Ministry of Local Government and Rural Development
MMDAs	Metropolitan, Municipal and the District Assemblies
MSWR	Ministry of Sanitation and Water Resources
NRA	National Rivers Authority

NDPC	National Development Planning Commission
NMEHU	Nkawkaw Municipal Environmental Health Unit
OAS	Organization of American States
OFWAT	Water Services Regulatory Authority
OAU	Organization of African Unity
PURCA	Public Utility Regulatory Commission Act
PURC	Public Utility Regulatory Commission
RFCC	Regional Flood and Coastal Committees
RWST	Regional Water and Sanitation Team
SDGs	Sustainable Development Goals
UNCESCR	United Nation Covenant of Economic, Social and Cultural Rights
UNCHE	United Nations Conference on the Human Environment
UNICEF	United Nations Children's Fund
UNO	United Nations Organization
UNEP	United Nations Environmental Programme
WACAF	West and Central African Region
WIA	Water Industry Act
WICS	Water Industry Commission for Scotland
WHO	World Health Organization
WRC	Water Resources Commission
WRCA	Water Resources Commission Act

WSA	Water Service Authorities
WSL	Water Supply Licensing
WWC	World Water Council

CHAPTER 1

1.1 INTRODUCTION AND BACKGROUND

Sanitation is defined as conditions of the environment that relate to and enhance public health.[1] It includes the provision of clean drinking water as well as adequate disposal of sewage.[2] It could also refer to the provision of facilities, such as pit latrines with slabs, improved ventilated pit latrines, flush toilets connected to sewers, pour-flush toilets and composting toilets. It also includes the provision of infrastructure recycling plants or waste disposal points and waste collection and disposal equipment and machinery that are necessary for the safe disposal of human urine, feces, garbage, and waste in general, as well as the maintenance of hygienic conditions.[3] Additionally, sanitation encompasses the provision of services such as the collection, removal disposal or purification of human excreta, domestic wastewater, sewage and effluent resulting from the use of water for industrial and other commercial purposes.[4] In effect, sanitation means the provision and maintenance of a clean, safe, and pleasant physical and natural environment for human habitation.[5]

One of the values or qualities that are held in high esteem, and which promote human dignity universally is water and sanitation. As observed by Caterina de Albuquerque,[6] access to sanitation and safe water are essential for people to live in dignity. The word dignity takes its root from the Latin word "*dignitas*" meaning worthiness. The notion of dignity, therefore, connotes the universal worth of all human beings without exception.[7] All

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1 *The Oxford Dictionary of English, subverbo* "sanitation" *online*:< https://www.oxforddictionaries.cc> accessed on 20 May 2022.

2 ibid.

3 World Health Organization/Sanitation, online:< https://www.who.int/topics/sanitation/en Global Water, Sanitation, and Hygiene, available online. <https://www.edc.gov/healthywater/global/sanitation/index.html> accessed 20 May 2022.

4 Water Services Act, Act 108 of 1997 section 1.

5 Godfred Safo-Adu and Ruby Hanson, 'Practices and Knowledge of Environmental Sanitation and Hygiene Among Urban Dwellers in Gomoa East District, Ghana,' (2019) European Journal of Earth and Environment, 6:1, 2056-5860.

6 She was appointed by the UN Human Rights Council as the Independent Expert on the issue of human rights obligations in relation to access to safe drinking water and sanitation at its Ninth Session in September, 2008. She assumed office on November 1 2008.

7 Katrin Grossmann, Elena Trubira 'How the Concept of Dignity is Relevant to the Study of Energy Poverty and Energy Justice' (2021) Frontiers in Sustainable Cities <3.644231, doi:10.3389/frsc.2021.644231> accessed 14 November 2023.

peoples are free and equal in their human dignity and their rights are derived from an inherent human dignity. To respect dignity then, means to accept values or qualities that are believed worth holding in esteem and having dignity. A decent society is therefore one which promotes and respects the human dignity of all peoples.[8]

Human dignity in relation to water and sanitation therefore, implies that people have access to safe drinking water and improved sanitation for good health and vitality. It is indignifying to drink, cook or wash dishes with unsafe water, water that is unclean and emanate foul smell. Sharing water sources with animals does not promote human dignity; but defies the worth of the human person. It is therefore important that Ghana's water and sanitation situations are examined to determine if they promote human dignity and the existing laws on the subject efficient for the protection of the twin rights.

The provision of water and sanitation is generally a global challenge. In 2021, it was estimated that 2.2 billion people globally did not have access to safe drinking water and 4.2 billion did not have access to safe or improved sanitation.[9] Globally, inadequate sanitation accounts for 432,000 diarrheal deaths annually.[10] Developing countries are the worst hit as far as water and sanitation are concerned.[11]

According to the UNICEF 2025 Report on water and sanitation, between 2015 to 2024, it was estimated that, 1.4 billion rely on basic services,287 million rely on limited services and 302 million used unimproved water sources and 103 million continued to drink surface water.[12] Two out five people lacked safely managed sanitation. While 1.2 billion gained access to safely managed sanitation services with global coverage increasing from 40% to 58%, 3.4 billion people lacked safely managed sanitation. There had been an improvement in both water and sanitation services provision in 2025. Global access to

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8 ibid

9 UNICEF, *2021 Annual Report on Water, Sanitation, and Hygiene (WASH* (2021) <https://washdata.org/report/unicef-who-2021-affordability-wash-services-full> accessed 20 May 2022.

10 Mustapha Immurana and others, 'The effect of financial inclusion on open defecation and sharing of toilet facilities among households in Ghana' (2022) PLoS ONE 17(3): e0264187<https://doi.org/10.1371/journal.pone.0264187> accessed 25 May 2022.

11 ibid

JMP – Progress on household drinking water, sanitation and hygiene 20000 -2024: Special focus on inequalities> accessed 8 February2025

safely managed drinking water sources rose from 71.0% in 2018 to 87.3 by 2025. Safely managed sanitation rose from 53% to 80% within the same period.[13]

Ghana is not exempted from the global sanitation challenges. As of 2020, 18% of Ghana's population, as well as 32% of rural dwellers, practiced open defecation.[14] It is estimated that 19,000 people, mostly children under 5, have died from diarrhea since 2015.[15]

According to a survey carried out in 2022 by the Statistical Service of Ghana, nine in 10 households (92.0%) had access to improved sources of drinking water and the proportion is higher for urban (97.8%) than rural (83.0%) households. At least 90 percent of households in nine regions had access to improved sources of drinking water, of which Greater Accra (98.3%), Bono (97.5%) and Upper West (97.3%) had the highest, and Oti (77.1%), Northeast (74.8%) and Savannah (70.5%) regions, the lowest.

The sanitation sector on the other hand saw only a little growth.[16] Three in five households (59.3%) had access to a household toilet facility and the proportion is higher among urban (65.9%) than rural (49.1%) households. About 18 percent of households did not have access to a toilet facility with the proportion being over three times as much among rural (31.3%) as urban (8.9%) households. Access to water, per international standards, has not yet been achieved by Ghana.[17]

There has been some slight improvement in the statistics in the year 2024. According to the Ghana WASH Summary Sheet of 2024, 93% of the people of Ghana had access to improved drinking water and 25.3% had access to improved sanitation facilities.

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13 WHO Global Water, Sanitation and Hygiene Annual Report 2024>accessed 8 February 2025

14 ibid

15 ibid

16 ibid

17 The normative content category of 'physical accessibility' demands that infrastructure must be built and located in a way that facilities are accessible for all at all times, including for people with particular needs, such as children, older persons, persons with disabilities or chronically ill persons. The location of public sanitation and water facilities must furthermore ensure minimal risks to the physical security of users. In order to ensure that all needs are considered, participation is vital. See The Human Rights to Water and Sanitation in Courts Worldwide. A Selection of National, Regional and International Case Law. Water Lex 2014.

Even though water is available in many communities, the water sources are not close to the people. Moreover, the cost involved in buying it is mostly not within the means of the poor. Such people have no choice but to resort to other sources that most often, are not safe or clean for human consumption.[18] Coupled with that, people rely on water vendors who erect poly tanks over tricycles or trucks whose sources cannot easily be ascertained. Many people rely on water tankers, hand-dug wells, steam, and sachet water for domestic use. Most of these water sources are often contaminated by human and animal activities, such as farming, animal husbandry, irrigation, and mining.[19] The use of unsafe water and at times sharing the same with animals affect the dignity of the individuals, homes, and communities that patronize the same and this is what this research seeks to address.

In order to have comprehensive research, the candidate intends to rely on literature review research method, using conventions, international protocols, constitutions, statutes and case law from Ghana, Africa and other parts of the world that are relevant to the study and would offer useful lesson to Ghana to improve its water and sanitation situation. The research method is also intended to enrich Ghana's legislation on the human rights to water and sanitation and its human rights systems in general.

Sanitation and water are recognized human rights globally under both international and national laws. Internationally, Article 14(2) (h) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognizes water and sanitation as important components of an adequate standard of living within the context of human rights. Sanitation is also recognized and linked to the highest attainable standard of living under Article 24(2) (e) of the Convention on the Rights of the Child (CRC). Article 14(2) (h) of the African Charter on Rights and Welfare of the Child (ACRWC) refers to environmental sanitation as a human right of children for the attainment of good health and well-being. Article 4 (1), 19, 63 of the American Convention on Human Rights (ACHRs) provides that all peoples have the right to full enjoyment of their human rights. Similarly, the European

[18] Joseph Kangmennaag, Elijah Bisung, and Susan J. Elliot. 'We Are Drinking Disease: Perception of Water Insecurity and Emotional Distress in Urban Slums in Accra, Ghana' (2020) Vol. 17(3), 890, International Journal of Research and Public Health <https://doi.103390/ijerph17030890> accessed 25 October 2023.

[19] Appiah-Effah and others, 'Ghana's Post-MDGs Sanitation Situation: An Overview' (2019) Journal of Water, Sanitation and Hygiene Development https://waponline.com washdev/article pdf accessed 28 October 2023.

Charter on the Environment and Health (ECEH) recognizes safe and adequate drinking water, together with hygienic waste disposal for all urban and rural communities of Europe as essential for good health and well-being for all people. Above all, the United Nations Organization (UNO) gave recognition to water and sanitation as human rights and called on States to ensure that people have access to safe drinking water and improved sanitation for good health and well-being.[20]

Several States have also included sanitation and water in domestic legislation as human rights. For instance, section 27(b) of the Constitution of the Republic of South Africa recognizes the right to food and sufficient water as human rights and imposes a responsibility on the State to ensure their accessibility to citizens.[21] In addition, the Water Services Act of South Africa extensively provided the rights to clean and safe water as well as improved sanitation for good health and well-being for all.[22] Article 43(1) (b) of the Constitution of Kenya recognizes sanitation as a human right and calls on the State to make adequate provision for its availability and accessibility to all Kenyans. Section 66(2) of the Constitution of Ecuador equally recognizes sanitation as a human right and calls on the State to ensure its accessibility. In Ghana, the 1992 Constitution has not made a direct reference to water and sanitation as human rights. However, it has made provisions for the safeguarding of the environment and called on all Ghanaians to protect the human environment for the wellbeing and good health of all.[23] The Water Resources Commission Act (WRCA)[24] also emphasizes the importance of water as an essential good for the protection of life and good health.

In the case of *Dagoberto Bohorquez Forero c/ EAAB Empresa de Acuedueto y Alcantarillado de Bogota y Otros,*[25] a judicial inspection carried out on 15 October 2009, which revealed the water and sanitation service deficiencies in many informal settlements in Ciudad Bolivar and Soacha, on the outskirts of Bogotá. The situation compelled the inhabitants to install hosepipes and connect them to tanks for water provision. The

20 UNO Resolution 64/292 of 2010.
21 The Republican Constitution of South Africa, 1996 (as Amended) Article 27.
22 Water Services Act, Act 108 of 1997.
23 1992 Constitution of Ghana Article 41(k).
24 WRCA1996 Act 522.
25 [2012] Cour de Cassation (Crim) 09-84012.

sanitation system was equally in a bad state, because it was built by the community through their means. By popular action, the applicants sought the protection of collective rights and interests relating to the enjoyment of a healthy environment, access to water and sanitation services infrastructure that guarantee public health. The Administrative Court held that water and sanitation are essential to the realization of a healthy environment. It cited Article 365 of the Constitution, which provided that public services were inherent social purposesc of the State, and the State was obliged to ensure the efficient delivery of public services, such as water and sanitation, to every inhabitant. The case reiterates the importance of water in the attainment of good health and well-being of people and the responsibility of States to ensure the fulfilment of this right to their citizens.

Furthermore, in the case of *Hernán Galeano Díaz c/ Empresas Públicas de Medellín ESP, y Marco Gómez Otero y Otros c/ Hidropacífico SA ESP y Otros*,[26] the court held that failure to connect a property to the water and sanitation networks and a failure to supply a daily, minimum essential amount of water to a user constituted violations of the right to water under the Colombian Constitution and international human rights law. According to the Political Constitution of Colombia, the right to water is protected under the right to a healthy environment[27] and water service provision is a duty of the State.[28] It added that under international human rights law, the right to water is an economic and social right derived from articles 11 and 12 of the International Covenant of Economic Social and Cultural Rights (ICESCR), and also an essential element of the right of women to adequate living conditions and part of the right of children to health.

In effect, international and national jurisprudence, case law and journal articles emphasis the relevance or importance of human rights to water and sanitation. It is therefore important that nation-states take up the challenge to provide clean and safe water as well as improved sanitation for their citizens, thereby promoting good health and vitality.

The United Nations Organization (UNO) has attempted to safeguard environmental sanitation through several interventions. Notable among them is the United Nations

[26] Corte Constitutional, Ninth Chamber of Revision 5 August 2010.
[27] ibid Article 79.
[28] ibid Article 366.

Covenant on Economic and Social Rights,1966 (ICESCR). Article 12 of the Covenant encourages State parties to improve environmental sanitation and industrial hygiene (to dispose of industrial waste in a manner that would not endanger the health and safety of people in their respective jurisdictions for the dignity and welfare of their citizens.[29] In 1972, it organized the Stockholm Conference on the Environment.[30] The object of the conference was to encourage nation-states and international organizations to protect the environment against practices such as pollution of waterbodies, open defecation and other practices that are detrimental to the good health and well-being of all. The first principle of the Stockholm Declaration states that man has a fundamental right to freedom, equality, and an adequate condition of life in an environment of a quality that permits a life of dignity and well-being.[31] The Conference established four major elements of international environmental law and policy, namely; a declaration of principles on the human environment, the United Nations Environmental Programme (UNEP), the Action Plan and the Environmental Fund.

The Stockholm Declarations, *inter alia,* called for safeguarding the human environment to benefit posterity. It also called for international cooperation on issues that border on the environment. Principle 21 emphatically indicates that States have the sovereign right to exploit natural resources within their national jurisdictions. However, in doing so, they must ensure the sustainability of the environment by putting in legislation that safeguards the environment. The principles also emphasize that the natural resources of the globe are not limited to oil and minerals only, but also air, water, and ecosystems that must be preserved for posterity. These principles set the pace for international environmental law[32]

UNEP was established, for instance, as a pivot of environmental action and coordination within the UN system and entrusted with the implementation of the Action Plan of the Conference. The action plan was made up of three major elements: information on the environment, environmental management, and assistance, financial or otherwise to

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29 United Nations Covenant on Economic, Social, and Cultural Rights 1966 (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR), Article 12.

30 Sarpong G.A., 'Environmental Justice in Ghana' (1996-2000), Review of Ghana Law, Volume XX, 91-114.

31 Stockholm Declaration, 1972 Principle 1

32 See D. Shelton & A. Kiss *International Environmental Law (*Dordrecht 1991) 38-46.

national governments to enable them to protect their environment for health and human dignity.[33]

Under its programme on information, UNEP established the Global Environmental Monitoring Fund (GEMF). The GEMF, *inter alia,* studies air and water pollution and publishes biennial statistics on matters pertaining to the environment.[34] Under its management programme, UNEP provides an action plan for the protection and development of the marine and coastal development of the West and Central African Regions (WACAF).[35]

UNEP provided in its national assistance programme technical and legal advice on the establishment of national systems of environmental law. The Environmental Fund was put in place to enable UNEP to fund its programmes and activities. The fund was raised through voluntary contributions from member states of the UN.

The Earth Summit was held in Rio de Janeiro in Brazil in 1992 after the Stockholm Conference in 1972. It sought to tackle the issue of climate change and its effect on the environment and human beings. Four major documents were adopted at the end of the summit, namely, the Framework Convention on Climate Change; the Convention on Biological Diversity; the Forest Principles; the Rio Declaration on Environment and Development, and Agenda 21. For purposes of this work, the Rio Declaration provides *inter alia* that even though States have the sovereign right to exploit resources in pursuit of their respective development agenda, they must take cognizance of the environment and put in place policies and laws to sustain same.[36]

Both the Stockholm and Rio Conferences set the pace for future conventions, protocols, covenants and legislation on the environment and could be considered the framework for the protection of water and sanitation globally. In Ghana, for instance, the two conferences set the pace for the establishment of the Environmental Protection Council (EPC), an

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33 ibid 42.

34 ibid 42-46.

35 A. Kiss, *Droit Internationale de L'environment* (Paris, 1989) 80.

36 Rio Conference on Environment and Development, Environmental Policy and Law 22/4 (1992); Earth Summit Press Release (UN Department of Public information, New York, 1992).

advisory, research and coordinating body on environmental matters in the country. As its first initiative, the EPC produced the Ghana Environmental Action Plan (GEAP). GEAP, *inter alia,* sought to ensure sound management of the environment and avoidance of exploitation of the natural resources of the country in a manner that would cause irreparable damage to the environment. The EPC was later transformed into the Environmental Protection Agency Act[37] (EPAA), which protects and safeguards the environment generally in Ghana. Under Article 41(k) of the 1992 Constitution of Ghana, a duty is imposed on all citizens to protect and safeguard the environment. In addition, the Water Resources Commission (WRC) was established in 1996 under the Water Resources Commission Act[38] to protect and safeguard the environment. In effect, the Stockholm and Rio Conferences have had a positive influence on Ghana's environmental legislation.

The European Charter on Environment and Health,[39] (ECEH) lays down principles and strategies for protecting the environment for the benefit and well-being of all people. The main principles state that every individual is entitled to a conducive environment for the attainment of the highest level of health and well-being. As such, information on the environment must be accessible to all. Similarly, plans and decisions on the environment must be taken in consultation with individuals who may be affected by those decisions.

The Organization of American States[40], (OAS) under its Additional Protocol to the Inter-American Convention on Human Rights, guarantees the right of all people to live in a healthy environment and to gain access to basic public services. Furthermore, the African Charter on Human and People's Rights[41] (ACHPR) states that all people are entitled to a generally satisfactory environment that is favourable to their development. It further

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37 EPA 1994 Act, 490.

38 WRCA 1996 ACT 522.

39 European Environment and Health Charter, 1989 (adopted 8 December 1989, entered into force 15 January 1990) (EEHC)

40 Additional Protocol to the Inter-American Convention on Human Rights, 1988 (adopted 17 November 1988, entered into force 16 November 1999 (APAHR), Article 11.

41 African Charter on Humans and People's Rights, 1981 (adopted 27 June 1981, entered into force 21 October 1986) Article 24.

imposes a duty on State Parties to promote and ensure the realization of the right to a dignified environment for good health and dignity of people.

The ECEH, OAS, and the ACHPR emphasis the importance of a clean and healthy environment as a prerequisite for good health and well-being of all people. The State parties to these protocols and conventions were encouraged to ensure that their citizens have access to a clean and healthy environment in order to attain good health and human dignity. They also set the pace for the development of comprehensive human rights laws on water and sanitation globally. Their limitation however was that they focused on minerals, ecosystems, and timber resources and paid less attention to water and sanitation. this is what this research aims at filling – to emphasis the importance of water and sanitation as human rights necessary for the sustenance of life and human dignity.

Closely associated with sanitation is water, which is essential for good health, human dignity, and survival.[42] Like sanitation, water is a human right recognized globally.[43] The water right entitles all people to safe, acceptable, physically accessible, sufficient, and affordable personal and domestic use.[44] Water is essential to human survival and thus undoubtedly related to the right to health and human dignity. The water right has been given recognition in a number of international documents, such as treaties and declarations. For instance, Article 14(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[45] enjoins state parties to ensure that women enjoy adequate living conditions, particularly in relation to a water supply. Furthermore, Article 24(2) of the Convention on the Rights of the Child (CRC)[46] requires state parties to combat disease and malnutrition through the provision of adequate food and clean drinking water.

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42 Sustainable Development Goals Platform, 2015.

43 Murat Ersel, 'Water and Sanitation Standards in Humanitarian Action' (2015) Turkish Journal of Emergency Medicine 15(1) 27.

44 The Right to Water (articles 11 and 12): International Covenant on Economic, Social, and Cultural Rights (CESCR) General Comments 15, November 26, 2002–UN Doc. E/C. 12 2002/11. <https://www.umn.edu/humanrts/gencom/escgencom 15.htm> accessed 23 March 2022.

45 CEDAW 1979

46 CRC 1989

In order to concretize the importance of water and sanitation as essentials for human survival, good health, and dignity, the United Nations General Assembly declared water and sanitation as human rights in 2010.[47] The resolution emphasized and acknowledged that clean drinking water and sanitation are essential for survival, good health, and the dignity of people.

Furthermore, in 2015, the United Nations General Assembly developed the Sustainable Development Goals (SDGs). Goal six (6) has been dedicated to the provision of water, sanitation, and hygiene for all by 2030. In order to achieve the above objective, the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) were assigned the responsibility for water supply and sanitation-related goals. The United Nations has assigned the responsibility of providing water and sanitation services to state parties.[48] This fundamental responsibility requires state parties to meet a minimum threshold of providing water and sanitation services to their citizens. In line with this, the United Nations Covenant of Economic, Social and Cultural Rights (UNCESCR), General Comment No. 15 emphasizes that water is a limited natural resource and a public good and fundamental to life and health. States are therefore obliged to ensure that they provide water that is safe, accessible, acceptable, affordable, and enough for domestic and other uses without discrimination. Since the provision of safe water and improved sanitation comes with a cost, States are expected to draw plans and programmes which are aimed at the progressive realization of the rights to safe water and improved sanitation in their respective jurisdictions. This may be achieved if nation-states recognize water and sanitation as human rights and embrace their duty of ensuring the achievement of this objective.

In the case of *Hernan Galeano Diaz c/ Empresa Publicas de Medellin ESP, and Marco Gomez Otros c/Hidropacifico SA ESP y Otros*,[49] a public company mandated by the government of Columbia to provide water and sanitation services to its citizens had

[47] Resolution 64/292 of the United Nations General Assembly, July 2010.

[48] UNCESCR 'General Comments 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN DOC. HR/GEN/1/Rev.9".

[49] Corte Constitucional, Ninth Chamber of Revision, August 5, 2010.

refused to extend the services to the applicant, a household who had applied for it. He sued in the Constitutional Court, claiming, *inter alia,* that his rights to water, health, and dignified life had been violated under the provisions of the Political Constitution of Columbia[50] and international law.[51]

The court held that the refusal of the first respondent company to connect the first applicant's premises to water and sanitation networks constituted a violation of his right to water and sanitation and threatened his family's human dignity. The court referred to the status of the right to water under both Columbian national law and international law. It noted that articles 79 and 366 of the Political Constitution of Columbia guarantee the water rights and provide that water service provision is a responsibility of the State of Columbia. It added that under international human rights law, water rights is an economic and social right derived from articles 11 and 12 of the ICESCR. It further held that anytime the lack of water for personal and domestic use jeopardizes the enjoyment of human dignity, life and health, its protection becomes paramount. In effect, the State of Columbia had failed in its duty to guarantee the minimum essential levels of availability of water and sanitation under international law.[52]

Despite these interventions which were aimed at providing an enabling environment, including water and sanitation, namely, conventions, protocols, covenants, legislation and case law, sanitation is a critical challenge globally and Ghana in particular**.**[53] A number of factors account for this state of affairs in Ghana, including rapid urbanization and the inability of governments to provide adequate water and sanitation facilities and services to match the growing population. This is due to a lack of planning and the lack of commitment on the part of the government and its agencies to meet the growing water and sanitation needs of the populace. Others include the failure or inability of national governments to allocate enough resources to sanitation and water sectors; the attitude of people,

50 ibid Articles 29, 356 and 366.

51 CRC, (n 32).

52 ibid

53 Appiah-Effah and others, 'Ghana's Post-MDGs Sanitation Situation: An Overview' (2019) Journal of Water, Sanitation and Hygiene Development 397 <https://waponline.com washdev/article pdf> accessed 20 MaY 2022.

especially the poor, towards sanitation in general; and the lack of enforcement of sanitation laws are the other factors.[54] One could therefore conclude that the government of Ghana has so far not given the attention that safe water and sanitation deserve as human rights to the people of Ghana as required under international law.[55]

Ghana's sanitation laws include but are not limited to the following:

- The 1992 Constitution of Ghana has not made any direct provision for water and sanitation.[56] Instead, it provides that the State shall take appropriate measures to protect and safeguard the national environment.[57] Under Article 35(4) of the Constitution, the State is to ensure that the people of Ghana respect fundamental human rights and freedoms and the dignity of the human person. These two provisions even though did not specifically mention water and sanitation, they could be implied as the two most essential components of the environment are water and sanitation.[58] In order to protect and safeguard the environment, including water and sanitation for the dignity of man, Articles 11(1)(e) and 2 of the Constitution, 1992[59] recognize English common law, equity doctrines, and customary law rules, as well as case law determined by the Superior Courts of Judicature. These provisions under the Constitution are potent and allow the nation to apply the legal principles thereunder to remedy its water and sanitation problems. For instance, it is a widespread customary law[60] rule and practice among the Ewe tribes of Ghana that women who are in their menstruation are not permitted to swim in a river, stream, or any other water source suitable for domestic use.[61] It is believed that women who flout this rule bring misfortunes or disaster onto themselves as well as onto the entire community. Punitive sanctions, such as fines or pacification of the river gods by the slaughter of a ran are

54 Appiah-Effah and others, (n 39).
55 UNGA Resolution 64/292 of 2010.
56 1992 Constitution of Ghana Chapter 5.
57 The 1992 Constitution of Ghana Article 36(9).
58 Murat Ersel, (n 29).
59 The 1992 Constitution of Ghana.
60 In Ghana, customary laws are not codified but exist in the form of oral tradition, customary practices and beliefs, and case law. Article 11(3) of the 1992 Constitution of Ghana defines customary law as the rule of law that applies to particular communities in Ghana by custom.
61 J.Ofori Boateng 'Environmental Law: Ghana Water Law' (1977) 9 Review of Ghana Law 1-13.

imposed on culprits.[62] This enforcement mechanism enables the community to preserve clean and safe water for domestic and other uses. The fear of the gods makes compliance high as it is believed that the gods do not delay in executing punishments on defaulters.[63]

In the case of *Mould v Divine*,[64] the then Waterworks Department in Accra, Ghana cut off water supply to the house of the plaintiff, Ms. Mould pending the full payment of all arrears of water bills which were left unpaid by the previous occupant of the premises. She argued that the bills were supposed to have been settled by the previous occupant of the house, and that failure to do so, it was the duty of the Waterworks Department to recover same by instituting a legal action against the defaulter. She, therefore, applied for an order of mandamus to compel the water supply authority to restore water to the house. It was held that the Waterworks Department, being a public body, owed it a duty to supply water to the homes. Consequently, having failed to do so, it would be compelled to discharge the statutory. It was further held that the applicant had a legal right to have water connected to her premises and therefore was entitled to such an order.

The case establishes the importance of water to human survival and recognizes it as a human right that must be protected and safeguarded. Being a human right, failure to supply water for domestic and other uses constitutes a violation of human rights and entitles individuals or groups of people affected to seek redress in the courts of law.

Sections 13 (2) (a) and (b), 96, 104 (1) (c), and 181 of the Local Governance Act (LGA),[65] mandates the local government authorities to ensure the cleanliness of towns and cities under their jurisdiction. It makes throwing trash on the street and abandoning stray domestic animals on the street criminal offenses. The Act empowers Metropolitan, Municipal, and District Planning Officers to enact sanitation bylaws and

62 ibid
63 ibid
64 [1962] Ghana Law Reports 533 at 535.
65 LGA 936 of 2016 Sections 13 (2) (a) and (b), 96, 104 (1) (c), and 181.

prosecute those who cause a nuisance in the form of refuse or filth, unwholesome or polluted water. Under the bylaws of the Metropolitan, Municipal and District Assemblies (MMDAs) in Ghana, every household is mandated to provide standard containers for refuse storage. The collection and disposal of both solid and liquid is to be carried out by the Assemblies or their authorized agents. The bylaws make it an offence to discharge waste into the open, drains, compound or the environment. In addition, the operation of public or commercial toilets without a valid permit from the Assemblies constitutes an offence. Others include indiscriminate dumping of refuse in open spaces, drains, gutters, and public spaces as well as defecating in the open. Penalties for offenders on conviction are a fine or imprisonment not less than thirty days and not more than six months or both.[66]

In line with the bylaws, the Accra Metropolitan Assembly (AMA) has prosecuted 115 persons for flouting the various sanitation bylaws between January and March 2022.[67] The bylaws included throwing wastewater into drains, leaving human excreta in the open, defecating in the open and leaving overflowing affluent unattended to. Despite these interventions, people continue to flout the sanitation bylaws and the city authorities seem overwhelmed by the rampant disregard for them as well as the corrupt practices of some of the law enforcement officials who collect bribes from offenders and let them go scot-free.[68]

The Criminal and Other Offences Act,[69] makes any act, omission, or conduct which constitutes a nuisance a criminal offence and punishable on conviction by a fine or imprisonment. Section 296 of the Act makes throwing rubbish in a street, yard, or enclosure an offence. Under the same section, occupiers of land are mandated to keep their surroundings clean. They must, as well, keep drains or gutters clean of dirt

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66 Accra Metropolitan Assembly Sanitation Bylaws, 2017, Part 2 Regulations 1-13. Published in the Local Government Bulletin No. 3 2019.

67 Laud Nartey 'AMA Prosecutes115 Persons for Sanitation Offences' *Myjoy- Online* (Accra, 31 May 2022 <www.graphic.com.gh/newsgeneral-news/ama-prosecutes 115 people> accessed 27 March 2024.

68 Samuel Yaw Lissah and others 'Managing Urban and Solid Waste in Ghana: Perspectives and experiences of municipal waste company managers and supervisors in an urban municipality' (2021) PLoS 16(3): e0248392 <https//doi.org/10.1371/journals pone0248392> accessed 5 June 2022.

69 Criminal and Other Offences 1960, Act 29 Sections 296 (1) (a), (b), (r), and 300 (5).

or filth. Section 297 prescribes the sanction of a fine for offenders pronounced guilty of creating a nuisance, in the form of dirt or filth or contaminated water under section 296 above.

In the case of the *Republic v Emma Barasu and Others,*[70] the respondents placed human excreta and refuse within their premises contrary to sections 296 (1) and (2) of the Criminal and Other Offences Act.[71] They were arrested, charged with the offence and subsequently prosecuted. They were found guilty by the court and sentenced to a fine of Ghc. 360.00 each.

Under section 300 of the Act, cattle found at large in a public place are to be impounded and the owner or herdsman prosecuted. The rationale behind this provision is that cattle droppings create nuisances that affect sanitation. Stray cattle could also contaminate water bodies, thereby violating people's right to a clean environment. The objective of these provisions is to ensure that the human environment is clean and suitable for habitation and to promote good health and human dignity.[72]

Article 200 (1) of the 1992 Constitution of Ghana has generally given the Ghana Police Service the mandate to maintain law and order in the country. The Ghana Police Service Act[73] spelt out duties of the police service, *inter alia,* as prevention, detection of crime, apprehension of offenders, maintenance of public order and the safety of persons and property. Reading the two provisions together, it is the responsibility of the Ghana Police Service to ensure compliance with law and order in the country. They are expected to discharge this responsibility by preventing crime, detecting crime when committed, arresting suspected criminals and prosecuting them in a court of law. In line with their law enforcement responsibility under sections 296, 297 and 300

70 District Court Kpando, Court Case No B.15/50/2020 unreported.
71 1960 Act 29.
72 Vincent C.R.A.C Crabbe, 'Laws of Ghana' (2004) Vol. 3 LexisNexis Butterworths (PTY) LTD 1802-1805.
73 Ghana Police Service Act 1970 (Act 350) as Amended section 1.

of the Criminal and Other Offences Act.[74] The Service prosecutes sanitation offences and those found guilty are either fined or imprisoned or both.

In the case of the *Republic v Tawiah,*[75] the Nkawkaw Environmental Health Unit, while on their routine checks within the Municipality, found the accused person wrapped human excreta in six polythene bags and dumped them in a communal refuse container. She was arrested and charged with abatement of nuisance contrary to sections 3(2) and (6) of the Nkawkaw Municipal Assembly Byelaws on sanitation. The trial court found her guilty of the offence, convicted her and sentenced her to a fine of Ghc.2,000.00 or in default, to serve a prison term of one month. In pronouncing the judgment, the court noted that the practice of dumping human excreta in garbage containers or leaving them in the open could lead to communicable diseases such as typhoid and cholera which would endanger good health and human dignity of people in the affected locality.

The Public Health Act,[76] under section 52 prohibits the sale of food in an unclean environment, for instance, near refuse dumps, toilets, filth, and open drains. The rationale for this provision is to ensure proper sanitation for good health and human dignity for food vendors, sellers, and the public.

In the case of the *Republic v Oforiwaa,*[77] the respondent, a food vendor was arrested by the officials of the Health Directorate of the Nkawkaw Municipal Assembly for selling food to the public without the requisite Health certificate contrary to section 9 of the Nkawkaw Municipal Assembly Byelaw. Section 9 prohibits the sale of food without certification by the Assembly. She was found guilty of the offence and was sentenced to a fine of Ghc.500.00 or in default serve a prison term of one month.

The decision highlights the importance of environmental cleanliness around places where food is sold to the public. This is aimed at preventing diseases associated with

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74 Criminal and Other Offences Act, 1960 (Act 29) as Amended.

75 Magistrate Court, Nkawkaw Ghana (Court Case No. B/55/68/22 (25 July 2023) unreported.

76 (2012) (Act 851)

77 Magistrate Court, Nkawkaw Ghana (Case No. B. 15/55/2023 (9 April, 2023) unreported.

consuming contaminated food, such as cholera and ensuring good health and human dignity.

Before the issuance of the certificate, officials of the Municipal Health Directorate inspect the location where the vendor is designated for his or her trade to ascertain its suitability. The place must not be close to an open drain, refuse dump or filth. In addition, the potential vendor must be cleared of all communicable diseases by a certified medical practitioner.

The Environmental Protection Agency Act[78] (EPAA) provides, *inter alia*, that the Agency shall advise the Minister-in-charge of the environment on policies for the protection of the environment. In addition, the Act mandates the Agency to control and prevent the discharge of waste into the environment. Furthermore, they are to act in liaison and cooperate with government agencies, district assemblies, and other institutions to control pollution and generally protect the environment.

Water Use Regulations[79]

So that the Water Resources Commission (WRC) can exercise the powers conferred on it under section 35 of the Water Resources Commission Act,[80] The Water Use Regulations were promulgated to regulate water use in Ghana. The Regulations make it mandatory for people or institutions to apply for and obtain the requisite permit to use water for various purposes.[81]

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78 EPAA 490 of 1994, Sections 2 (a), (c), and (f).

79 Water Use Regulations 2001 L.I.1692

80 WRCA 1996 (Act 522). Section 35 provides that the Commission may, by legislative instrument, make Regulations (a) for preserving existing uses of public water; (b) for controlling any change in the course, current or cross current of any contained surface water to obtain the most beneficial use of the water; (c) (d) (e) relating to the declaration of water emergencies; for regulating the use of contained water and groundwater; for the carrying out of investigations in respect of a function of the Commission; (j) for the protection of watersheds; (g) for the granting of permits to discharge waste into water bodies; (h) for prescribing the acceptable levels of pollution; (i) to regulate or prohibit the doing of an act by a person in a protected catchment area; (j) for the levying of charges under this Act; and (k) generally to give effect to the provisions of this Act. (2) An instrument under subsection (1) of this section shall be signed personally by the chairman of the Board.

81 Water Use Regulations 2001 L.I.1692 Regulation 1 list the following uses of water for which a permit must

The WRC was established under the Water Resources Commission Act[82] (WRCA), to regulate and manage utilization of water resources in Ghana and to provide for other related matters.[83] The functions of the WRC include the regulation and management of the utilisation of water resources and the coordination of any policy about them. The Act vests all water resources in the President of the Republic of Ghana to be held in trust for the people of Ghana. Management and control of water resources, however, have been assigned to the WRC. The WRC carries out its function by granting permits to deserving applicants who desire to use water resources for industrial, commercial, and irrigation purposes. The Commission also has the mandate to withdraw licenses of holders who fail to comply with regulations accompanying same, such as not adhering to safety and pollution regulations. It is equally within its functions to formulate programs and policies in collaboration with EPA to ensure the safety and preservation of water resources. It also advises the government on the protection and conservation of water resources. The WRC is governed by a fifteen-member Board tasked with its function.

The Community Water and Sanitation Agency Act[84] (CWSAA) established the Community Water and Sanitation Agency (CWSA) to facilitate the provision of safe water and related sanitation services to rural communities in the country. The functions of the Agency were *inter alia* to support the District Assemblies to promote the sustainability of water supply and sanitation services in small towns and villages. To realise its objectives, the Community Water and Sanitation Programme (CWSP) was established. The CWSP assists rural and remote villages or communities to set up water and sanitation services to promote good health and human dignity in those areas. The programme ensures that there is a minimum water supply available and accessible to the communities concerned, which is sustainable all year round. The

be obtained - (a) domestic water use (b) commercial water use, (c) municipal water use, (d) industrial water use, (e) agricultural water use, (f) power generation water use, (g) water transportation water use, (h) fisheries (aquaculture) water use (i) environmental water use (j) recreational water use, and (k) underwater (wood) harvesting.

82 WRCA 1996 (Act 522).

83 Preamble to Act 552.

84 CWSAA 1998 (Act 564).

programme is aimed at supplying 20 litres of water per capita per day. The water supply facility is located within 500 metres of the community concerned. A water point must not serve more than 300 people.[85] Communities involved in the programme are expected to contribute five percent (5%) of the cost of providing the facilities.

Women as primary consumers are given prominence in the design and management of the water facilities. This allows them to design water supply facilities that are user-friendly. The program also integrates health, sanitation, and hygiene education to ensure maximum benefits to consumers.

To ensure the sustainability of the programme, every community that partakes in it is required to form a Community Water and Sanitation Committee (CWSC). The CWSC is responsible for all activities connected to the maintenance and general management of all water and sanitation facilities established under the programme. It is also responsible for revenue collection. The District Water and Sanitation Team (DWST), under the auspices of the District Assemblies (DAs), supervises CWSC in the discharge of their duties. The Regional Water and Sanitation Team (RWST) is responsible for the overall implementation of the CWSP in every region. Their most important duty is to assist the DAs in forming and training the DWSTs under their jurisdiction. They also give the final approval for the implementation of the CWSPs in the various communities.[86]

The CWSP has not fared well as far as sanitation is concerned. Much more attention has been given to the provision of water to the detriment of sanitation in the communities in which the programme is being implemented. Water and sanitation are complementary by nature and inadequate provision of one affects the other. In addition, owing to the demand-driven nature of the programme, the communities have to make requests for sanitation facilities before they are provided. Moreover, it costs over Ghc.5,000.00 to procure one modern toilet facility. This is beyond the means of many people living in those communities. Consequently, sanitation in most rural

[85] Community Water and Sanitation Programme Implementation Manual 1996, 1

[86] Community Water and Sanitation Programme Implementation Manual 1996, 1.

communities is poor and the situation compels people to resort to open defecation. It would be of much benefit to the rural communities if the cost of these facilities were reduced or subsidized.

Article 73 of the Constitution[87], mandates the government of Ghana to promote respect for international law and treaty obligations. The same provision indicates that Ghana must adhere to the principles and ideals of the United Nations Charter and those of other international bodies and institutions of which Ghana is a member.

Ghana has ratified a number of treaties and covenants, including the International Covenant on Civil and Political Rights (ICCPRs) and the International Covenant on Economic, Social, and Cultural Rights (ICESRs)) and the African Charter on Human and People's Rights (ACHPRs). A number of them have been incorporated into the Constitution of Ghana and other legislation. For example, a closer look at the Fundamental Human Rights under Chapter 5 of the 1992 Constitution reveals that a number of them are reproductions of texts from the covenants already mentioned.

One can therefore argue that having given recognition to international law, and having ratified the aforementioned international covenants on human rights and incorporated provisions thereunder in the 1992 Constitution, Ghana ought to apply those international legal frameworks on water and sanitation, as well as its domestic legislation to provide, deliver and address water and sanitation problems. However, this seems not to be the case considering the nation's current water and sanitation situations characterized by erratic water supply to big towns and cities such as Accra, Tema, Kumasi, Ho, Sunyani, Cape Coast, and Takoradi among others.

This research is aimed at examining the weaknesses and strengths in the water and sanitation laws of Ghana to ensure access to dignified sanitation and abulation. To this end, equally, existing policies, legislative, national, and international legal instruments that are in place to deliver quality sanitation in Ghana shall be explored and germane provisions shall be used to offer solutions accordingly.

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[87] The 1992 Constitution of Ghana.

1.2 The Link between Water, Sanitation, and Human Dignity

The right to water and sanitation is universal, indivisible, interdependent, and interrelated; it is the birthright of every human being.[88] Water and sanitation are essential in promoting hygiene for good health and vitality. Safe and reliable drinking water enhances sanitation by helping to separate excreta from human contact.[89] In addition, hand washing with soap after coming into contact with fecal matter or filth promotes good health, dignity, and well-being.[90]

According to the World Health Organization (WHO) and United Nations International Children Emergency Fund (UNICEF) Joint Monitoring Programme Report, 2017, water and sanitation are closely related such that neither can be fully realized without the other. Improved sanitation, according to the report, is achieved when excreta is separated from human contact. The separation is possible by transporting the excreta through a sewer with water.[91]

Research conducted on sanitation and health[92] revealed that adequate sanitation, together with safe and clean water, is fundamental to good health and socio-economic development. The three components of good health, namely, sanitation, water, and hygiene, are closely linked and are mutually supportive.[93] Without water, for instance, adequate sanitation may be impossible or difficult to attain owing to their complementarity. In effect, improvement in the three components can help reduce the rates of morbidity and mortality, especially in children.[94]

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88 Sayed Mohammad and others, 'Water Sanitation and Hygiene for Homeless People' (2016) Journal of Water and Health, Vol. 14, 1.

89 Wolf Jennyfer and others, 'Effectiveness of interventions to improve drinking water, sanitation and handwashing with soap on the risk of diarrhoeal disease in children in low-income and middle-income settings: a systematic review and meta-analysis' (2022) The Lancet Vol. 400 Issue 10345.

90 ibid

91 Ato Armah Frederick and others, 'Access to improved water and sanitation in Sub-Saharan Africa in a quarter century' (2018) Heliyon Volume 4 Issue 11.

92 Duncan Mara and others, 'Sanitation and Health' (2010) Vol. 7, Issue 11 PLoS Medicine <journal. pmed.1000363> accessed 26 June 2022.

93 ibid

94 ibid

In 2002, the United Nations Economic and Social Council's General Comment No. 15 interpreted the ICESCR provisions of Article 11 and argued that water is essential for the realization of other rights, including sanitation.[95] As a result, the Council referred to adequate water and sanitation as fundamental to the right to dignity and well-being.[96]

Consequently, safe and clean drinking water and sanitation were recognized as human rights by the United Nations General Assembly and the Human Rights Council in 2010.[97]

In *Matsipane Mosethanyane and Gakenyatsiwe Matsipane v The Attorney-General*, Court of Appeal (Labotse)[98], the appellants, Bushmen who were forcibly evicted from the Central Kalahari Game Reserve, when they refused to comply with the order of the government to leave the reserve, the government denied them access to water resources. As a result, the Bushmen were forced to substitute fruit for water, and the lack of water hampered their domestic activity and hygiene. As a result, they instituted a legal action against the government of Botswana for a declaration, *inter alia*, that the action of the government of Botswana constituted a violation of their right to water under the Constitution of Botswana and international human rights law. The action was dismissed by the High Court. On appeal to the Court of Appeal, it was held that preventing a well-established Bushmen community from using a borehole, which was their only source of water, amounted to inhuman and degrading treatment as well as an abuse of their right to water under Article 7 of the Constitution of Botswana and General Comment No. 15 of the United Nations General Assembly Resolution 64/292.

From the facts and the decision of the court, one could deduce the link between water and sanitation. With the availability of water, the Bushmen were able to meet their domestic needs and maintain their hygiene. Therein lies the complementarity of water and sanitation.

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95 Pedi Obani, Joyeeta Gupta. 'Human Rights to sanitation in the legal and non-legal literature: the need for greater synergy' (2016) Wiley Interdisciplinary Review 678-691.

96 ibid

97 United Nations General Assembly Resolution 64/292.

98 *Matsipane Mosetlhanyane and Gakenyatsiwe Matsipane v The Attorney General* [2011] Court of Appeal (Lobatse) CACLB07410

There is also a link between water, sanitation, and human dignity. The word dignity takes its root from the Latin word "*dignitas*" meaning worthiness. The notion of dignity, therefore, connotes the universal worth of all human beings without exception.[99] Human dignity points to a universal value to which everyone is entitled and which is linked to the autonomy and liberty of individuals from all walks of life.[100] One of the values or qualities which are held in high esteem and which promote human dignity universally is water and sanitation. As observed by Caterina de Albuquerque,[101] access to sanitation and safe water are essential for people to live in dignity. Yet most people the world over do not have basic sanitation. She reiterated the fact that access to sanitation goes hand-in-hand with human rights and human dignity. Contamination of food and water caused by sanitation problems undermines the right to food and safe water and lack of sanitation or poor sanitation is an affront to human dignity, she noted.

Another practice that degrades human dignity in Ghana is open defecation. The practice is prevalent in both urban and rural communities of Ghana.[102] There are a number of reasons why people engage in the practice. Many homes and communities have made provisions for public toilets. However, they most often become inconvenient to use due to lack of maintenance. To avoid them, people resort to defecating in bushes and even open spaces.[103] Other people resort to the practice due to religious beliefs. Some people believe that toilets are inhabited by evil spirits. Hence, the use of such facilities may provoke such spirits or those who have some magical powers may lose their potency in patronizing public toilets. In any case, the practice of defecating in the open poses a lot of health hazards and degrades human dignity.

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99 Katrin Grossmann, Elena Trubira (2021). 'How the Concept of Dignity is Relevant to the Study of Energy Poverty and Energy Justice.' Frontiers in Sustainable Cities 3.644231, <doi:10.3389/frsc.2021.644231> accessed 11 July 2023

100 ibid

101 The UN Human Rights Council appointed her as the Independent Expert on the issue of human rights obligations about safe drinking water and sanitation access at its Ninth Session in September 2008. She assumed office on November 1, 2008.

102 Eugene Appiah-Effah and others, 'Perception of peri-urban farmers on fecal sludge compost and its utilization: a case study of three peri-urban communities in Ashanti Region of Ghana'. Compost Science and Utilization (2015) 23 (4) <https//dioi.org/10.1080/1065657X2015.1046616> accessed 8 April 2022.

103 ibid

The current deplorable sanitation and water situation in Ghana is an affront to human dignity. Households lacking sanitation facilities such as toilets making people share such facilities with their neighbours and others defecating in open spaces, bushes, and into the sea, affect the dignity of the people of Ghana generally. Section 196 of the Criminal Offences Act,[104] prohibits the creation of nuisances in the form of liquid and solid waste and any other form of filth-sanitation problems. In addition, section 104 of the Local Governance Act,[105] assigns the responsibility of provision of sanitation to the MMDAs. Under the said provision, the Assemblies are to make by-laws to ensure the enforcement of sanitation laws throughout the country. These provisions could provide a solution to the sanitation challenge of Ghana when it is strictly enforced.

In the case of the *Republic v Peter Asare*[106] officials from the Nkawkaw Municipal Environmental Health Unit (NMEHU) discovered a collection of wastewater flowing from the premises of the respondent onto the open. On entering the premises, they realized that the wastewater was from a bathhouse for which no sewer was constructed to channel the wastewater in the appropriate direction. The respondent was therefore arrested and charged with creating a nuisance to wit, contrary to section 2 of the Nkawkaw Municipal Assembly bye-law on sanitation which prohibits the creation of nuisance in the form of throwing refuse or leaving wastewater unattended in an open space. He was found guilty of the offence and sentenced to a fine of Ghc.500.00 or in default serve a term of two months in prison. Additionally, he was ordered by the court to construct a soak-away pit to contain the wastewater within two months under the supervision of the NMEHU of the Assembly.

The decision addresses one of the responsibilities of the State, namely, to enforce sanitation laws against individuals and at times groups of individuals who flout the sanitation laws of the country. While this is a step in the right direction citizens and the people of Ghana in general should equally hold the State accountable for its failure to address the water and sanitation needs of the people of Ghana. This holistic way of

104 Criminal and Other Offences Act, 1960 (Act 29)
105 LGA 2016 Act,936
106 Magistrate Court, Nkawkaw Ghana (Court Case No. B.15/22/2023 (28 February 2023) unreported.

addressing the water and sanitation challenges of the country is most likely to change the status quo.

1.3 Background to the Study

Access to clean water and sanitation is recognized as a human right globally[107] Indeed, recent academic discourses and debates have recognized sanitation, water, and hygiene as fundamental human rights that are indivisible, interdependent, and interconnected and constitute a birthright for all.[108] United Nations Sustainable Development Goals, specifically target 6:1 and 6:2, tasked all nations to work towards universal and equitable access to safe and affordable drinking water, as well as adequate and equitable sanitation for all by 2030. It also called for an end to open defecation and encouraged states to pay attention to the needs of children, girls, and women in general in that respect.

The provision of water and sanitation services is a state responsibility[109], which cannot be divested because it borders on human rights as declared by the United Nations General Assembly in 2010.[110] Ghana has been grappling with water and sanitation challenges for decades.[111] This is due to a number of factors, including non-enforcement of sanitation laws by those who have the responsibility in that regard.[112]

Among competing demands such as education, health, and electricity, sanitation has not been given financial priority[113] owing to the fact that the governments of Ghana have not considered inadequate sanitation and unsafe water prevalent in the country serious human rights violations.[114] The situation results in the transmission of communicable

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107 Sayed Mohammad and others, 'Water Sanitation and Hygiene for Homeless People' (2016). Journal of Water and Health, Vol. 14, 1.

108 ibid

109 ibid

110 UN General Assembly Resolution 64/292.

111 Justice Mensah, 'Managing environmental sanitation in the catchment area of Benya Lagoon, Ghana: Education, regulation or infrastructure management as a matter of strategic priority?' (2019) Cogent Social Sciences S: 1 1709347.

112 ibid

113 ibid.

114 ibid

diseases such as diarrhea and cholera, which most often lead to fatalities, especially among children under five years old and adults alike.[115]

Much research has been conducted on Ghana's sanitation situation aimed at finding a lasting solution to the menace. For instance, Appiah-Effah, Eugene[116] carried out research in 2019 that examined Ghana's post-MDG sanitation situation and offered useful suggestions, such as ensuring that an adequate budget is committed to the sanitation and water sector to address the challenge. They also suggested strengthening institutions, such as the Metropolitan, Municipal and District Assemblies (MMDAs), the EPA, and the Ghana Police Service, mandated to enforce sanitation laws for efficient delivery. Unfortunately, the MMDAs, the EPA and the Ghana Police Service have not been able to turn around the poor sanitation situation of the country owing lack of clear policy directives and enforcement of sanitation legislation.[117]

The Local Governance Act, 2016 (Act 936) (LGA)[118] empowers the MMDAs to protect water and sanitation facilities to ensure the provision of safe water and improved sanitation. This task has been assigned to the various health departments of the MMDAs. To facilitate their work, the MMDAs formulate bye-laws on sanitation and throwing of filth, and dirty water into drains as well as defecating in the open offences punishable by a fine or imprisonment, or both. The bylaws also make it mandatory for every household to provide improved toilet facilities for use in their premises. The motive behind this bylaw is to eradicate or at least in the interim reduce the practice which has a number of health implications like communicable diseases.

In the case of the *Republic v Peter Asare*[119] officials from the Nkawkaw Municipal Environmental Health Unit (NMEHU) discovered a collection of wastewater flowing from

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115 Eugene Appiah-Effah and others, 'Perception of peri-urban farmers on fecal sludge compost and its utilization: a case study of three peri-urban communities in Ashianti Region of Ghana'. Compost Science and Utilization (2015) 23 (4), https//dioi.org/10.1080/1065657X2015.1046616 accessed 8 April 2022.

116 ibid.

117 UN Ghana Water, Sanitation and Hygiene Support Programme Report (22 March, 2023)< https://www.unwater.org/publications/who/unicef-joint-monitoring-program-water-supply-sanitation-and-hygiene-jmp-progress-0> accessed 4 September, 2024.

118 LGA 2016 Act 936 Sections 13(2), (a),(b),96,104 and 181.

119 Magistrate Court, Nkawkaw Ghana (Court Case No. B.15/22/2023 (28 February 2023) unreported.

the premises of the respondent onto the open. On entering the premises, they realized that the wastewater was from a bathhouse for which no sewer was constructed to channel the wastewater to the appropriate direction. The respondent was therefore arrested and charged with creating nuisance to wit, contrary to section 2 of the Nkawkaw Municipal Assembly bylaw on sanitation which prohibits the creation of nuisance in the form of throwing refuse or leaving wastewater unattended to in an open space. He was found guilty of the offence and sentenced to a fine of Ghc. 500.00 or in default serve a term of two months in prison. Additionally, he was ordered by the court to construct a soak-away pit to contain the wastewater within two months under the supervision of the NMEHU of the Assembly.

The decision of the court was not only punitive by nature but corrective as well. While the fine is supposed to serve as punishment for flouting the Assembly's byelaws, the order to construct a conduit for the wastewater was to abate the nuisance already created thus preventing diseases and promoting good health and human dignity.

The EPA Act[120] mandates officials of the Agency to ensure the safety and the preservation of the environment for human habitation. The law makes pollution of the environment, including water bodies, an offence and those found guilty on conviction are fined or imprisoned.

In the case of the *Republic v Abubakar Yahaya*[121] the respondent was the landlord of a residential house and the owner of a public septic tank latrine and a public bathhouse, all at Hohoe and about 10 meters from the residential house. In March 2022, a team of Environmental Health and Sanitation officers within the Hohoe Municipality detected spillage of effluent into the environment and indiscriminate dumping of household refuse into the growth of weeds behind the respondent's public toilet. After several warnings to the respondent to abate the nuisance and the failure of the respondent to comply with the directive, he was charged with the offence of allowing spillage of effluent from the septic tank into the environment contrary to section 13(10) (i) of the Hohoe Municipal Assembly

120 EPAA, 1994 (Act 490) sections 2(a),(c) and (f).

121 District Court, Hohoe (Court Case No. B15/11/2023 (6 April 2023) unreported.

bylaws, and indiscriminate dumping of refuse behind public latrine contrary to section 56(a) of Public Health Act, 2012 (Act 851). The trial court pronounced him guilty on both counts and sentenced him to a fine of 100 penalty units on the first count or in default a term of 6 months in prison and 150 penalty units on the second count or I year in prison.

The judgment stresses the importance of hygiene and proper sanitation as an essential component of health and human dignity. It would also serve as a deterrence to other people who may want to misconduct themselves similarly.

In a similar vein, Mustapha Immurana's,[122] research conducted on the open defecation and sharing of toilet facilities in 2022, identified, among others, financial support to the poor to enable them to procure sanitation facilities as an important solution to Ghana's sanitation problem.

Ghana's National Environmental Sanitation Policy dates back to 1999. The Ministry of Local Government and Rural Development developed it.[123] The policy covers all aspects of the environment. The Environmental Sanitation Policy (1999), and Revised (2010) identified a number of basic elements and policy strategies to promote accelerated development of the sector.

These include:

- Formal establishment of environmental sanitation as a sub-sector within the national development programme.

  In line with this policy statement, the government of Ghana in 2016, established the Ministry of Sanitation and Water Resources. The Ministry was to spearhead the agenda of the government by ensuring the provision of safe water and improved sanitation for all. Eight years down the line, Ghana's water and sanitation situation has

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122 Mustapha Immunara and others, The effect of financial inclusion on open defecation and the sharing of toilet facilities among households in Ghana' (2022) < www.https://doi.org/10.1371/journal> accessed 25 May 2022.

123 Sanitation and Water Resources Ministry <mswr.gov.gh/sanitation-policies-of-Ghana> Accessed 12 February 2023.

not made much progress, probably due to a lack of commitment on the part of the government and other stakeholders.[124]

- Rationalisation of institutional objectives and functions at all levels, including the delineation of responsibilities and the establishment of interagency linkages.

  The responsibility for the provision of water and sanitation was assigned to several government agencies under the policy. Notable among them were the Ministry of Local Government and Rural Development, the District Assemblies, and the Environmental Protection Agency. These agencies of government, over the years, established linkages with some non-governmental institutions in the discharge of their duties. They included World Vision International, the Danish International Development Agency (DANIDA), and Zoomlion Ltd. These institutional ties have not produced the desired results due to factors such as the discontinuation of water and sanitation policies following political transitions and the expiration of non-governmental agency tenures.

- Establishment of an annual National Environmental Sanitation Day

  In fulfillment of this provision, the government instituted National Sanitation Day in 2014. It was aimed at cleaning towns and cities in Ghana every first Saturday of each month. This policy took off well but failed mostly due to a lack of legislation to back it up. National Sanitation Day has been one of the policy interventions that could strengthen community participation in sanitation delivery. However, a lot of people did not take it seriously once there was no legislation backing its enforcement. Consequently, it fizzled in no time.

- Human resource development and institutional strengthening for environmental sanitation management.

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[124] Felix Boakye Oppong and others 'Demographic disparities in improved water and sanitation in Ghana: a nationally representative cross-sectional study' (2022) British Medical Journal vol. 12 (7), 1-11.

Institutional strengthening and capacity enhancement of all frontline and allied service providers are recognized as the number one priority for achieving sustainable services. Unfortunately, a number of challenges associated with capacity building have rendered performance ineffective. Among them is: the lack of a comprehensive policy assigning responsibilities for environmental sanitation to the relevant ministries and agencies, resulting in overlaps, gaps, and poor coordination in the management of programmes and services. Others include a lack of technical capacity at the time in the Ministry of Local Government and Rural Development to orient and support the District Assemblies in the provision of environmental sanitation services.

- Contracting out a significant portion of environmental sanitation services to the private sector via contract, franchise, concession, and other arrangements.

  There has been private sector involvement in water and sanitation service delivery in Ghana. Key among them is World Vision Ghana, the Danish International Development Agency (DANIDA), and Zoomlion Company Limited, which have assisted in diverse ways in providing water and sanitation services to many rural and urban communities. These efforts and arrangements have yielded little results owing to a lack of commitment on the part of the government and its agencies to monitor and evaluate these projects for future expansion.

- Creation of a strong legislative and regulatory framework, as well as the capacity to supervise and enforce environmental sanitation activities.

  Ghana has few of legislation to safeguard provisions for water and sanitation. They include provisions in the 1992 Constitution of Ghana, the Criminal and Other Offenses Act of 1960 (Act 29), the Local Government Act of 2016 (Act 936), and the Environmental Protection Agency Act of 1994 (Act 490). This legislation, among others, though not robust, can protect water and sanitation in Ghana to some extent.

However, enforcement becomes a challenge due to the failure of institutions such as the Ghana Police Service and the MMDAs to live up to expectations.[125]

- Promotion of research to review sanitation technologies

  Many research studies have been conducted on Ghana's sanitation problems. However, they are hardly used when it comes to policy formulation on water and sanitation. Research and development in the sector have not kept pace with technological advancement. Identification and dissemination of cost-effective, appropriate, affordable and environmentally friendly technologies to address environmental sanitation needs. Environmental sanitation services should be appropriately designed to suit the demands of different population groups, typically rural, small towns, and urban, as well as specialized target groups such as industries, commercial areas, and the urban poor. This would go a long way to transform the water and sanitation situation in the country.

- Adoption of the cost recovery principle in the planning and management of environmental sanitation services.

  The provision of environmental sanitation facilities necessitates significant investments, while their ongoing maintenance and use impose costs on individuals, households, communities, and the government. A major constraint in the provision of sustainable environmental sanitation services in Ghana continues to be the low levels of funds allocated to the sector and the non-economic tariffs charged for services. The situation is compounded further by low levels of revenue collection by service providers.

  This revised Environmental Sanitation Policy is in response to the various assessments on the effectiveness of implementing these policy objectives and

[125] Eugene Appiah-Effah and others, 'Perception of peri-urban farmers on fecal sludge compost and its utilization: a case study of three peri-urban communities in Ashanti Region of Ghana'. Compost Science and Utilization (2015) 23 (4), <https//dioi.org/10.1080/1065657X2015.1046616> accessed 8 May 2022.

measures, namely, the establishment of an annual sanitation day, the establishment of environmental sanitation as a sub-sector,[126] instituting an annual National Sanitation Day, strengthening community participation in environmental sanitation, human resource development and institutional strengthening for environmental sanitation management. The policy also takes forward the issue of outstanding strategies and actions, particularly those that were not implemented, sustained, or have failed to yield the desired results on mental health, including excreta and solid waste disposal and management.[127] For instance, the National Sanitation Day, which was meant to sensitize people on the importance of proper sanitation and hygiene practices was not efficiently implemented. The day was observed on a pilot basis only in some of the big towns and cities of Ghana such as Accra, Kumasi, Tema and Cape Coast. Besides, it was considered by some people as a political campaign strategy adopted by the ruling political party at the time. Hence many people refused to participate in it. It was also observed that many people misunderstood sanitation to mean cleaning of chocked drains and garbage collection only instead of making room for provision of modern-day toilet facilities in homes so as to prevent open defecation and its resultant health hazards.[128]

Ghana instituted the decentralization policy[129],which was aimed at bringing central governance to the doorsteps of the citizenry. In line with this objective**,** the country was divided into Metropolitan, Municipal, and District Assemblies (MMDAs). The MMDAs have been mandated to provide sanitation facilities, such as public latrines, refuse or garbage containers, and services such as liquid and solid disposal, to the people of Ghana. They have equally been mandated to enforce sanitation laws and make their own bylaws in that regard.[130] For instance, section 104 (1) (c) of the Local Governance Act,[131] provides that a District Planning Authority may make building bylaws within the scope of national building requirements provided under an

126 Which later translated into the establishment of the Ministry of Sanitation and Water Resources.
127 ibid
128 Bob Manteaw, "National Sanitation Day: Why it Failed" *The Daily Graphic (6 February 2017)* 48
129 The 1992 Constitution of Ghana, articles 240-256
130 LGA of 2016, Section 104 (1) (c) (Act 936).
131 ibid

enactment and shall in particular make provision for drainage and sanitation. The provision assigns the responsibility of making byelaws and enforcement of the same to MMDAs. Indeed, all them have made byelaws on sanitation. The sanitation bylaws of the MMDAs, *inter alia*, assign the responsibility of managing solid and liquid waste to the various Assemblies.[132] They may however license private institutions to carry out this responsibility on their behalf by contract. Even in such instances, the MMDAs are to play a supervisory role in that regard. The bylaws also assign the construction and operation of public toilets to the MMDAs. They may outsource this duty to private operators on a contractual basis. In the event that the private operators fail in the discharge of their duties, the MMDAs reserve the right to withdraw their license and take over the operation of the facility concerned. The bylaws also provide that where public drains are not available, it is the responsibility of greywater producers to construct a linkage soil pipe or soak away to drain the wastewater. Owners of premises or family heads, under the bylaws, are expected to provide sanitary facilities or places of convenience to those who reside within their premises. This provision is aimed at eradicating or preventing open defecation. The bylaws also make it mandatory for all households to provide or procure garbage containers for waste collection and subsequent disposal.[133] Failure by individuals of households to comply with any of these bylaws constitutes an offence punishable by a fine or imprisonment by a competent court of law**.**[134] However, implementation and enforcement are often not carried out efficiently due to corruption by the officials involved who collect bribes from offenders and allow them to escape prosecution.[135]

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132 Liquid waste includes human excreta in the form of night soil and effluent while solid waste means any solid material that had been rejected by the owner which may create a nuisance or pose a danger to health and the environment.
Accra Metropolitan Assembly (Sanitation) Bye-laws 2017; Nkwanta South Municipal Assembly (Sanitation) Bye-laws 2021; Shai-Osudoku District Assembly (Sanitation) Bye-laws 2020; Nkawkaw Municipal Assembly (sanitation) Bye-laws 2017; Kpando Municipal Assembly (Sanitation) Bye-laws 2017; Bekwai Municipal Assembly (Sanitation) Bye-laws 2019 and Adentan Municipal Sanitation Bye-laws 2018.

134 *Republic v Abubakar Yahaya* District Court, Hohoe (Court Case No. B15/11/2023; *Republic v Peter Asare* Magistrate Court, Nkawkaw Ghana (Court Case No. B.15/22/2023 unreported.

135 Sanitation and Water Resources Ministry. mswr.gov.gh/sanitation-policies-of-Ghana Accessed 12 February 2023.

As part of the government's efforts to augment the implementation of the sanitation policy, it instituted the National Sanitation Day Programme on November 1, 2014.[136] Under the programme, the first Saturday of every month was designated for cleaning a particular city. Then in 2018, in order to spearhead sanitation policies in the country, the government established the Ministry of Sanitation and Water Resources and launched the "Clean Ghana Campaign". The Clean Ghana Campaign was a strategy put in place by the government at the time to rid the country of filth, most especially in big towns and cities such as Accra, Tema, Kumasi, Takoradi, Cape Coast and Tamale. The strategy was twofold, namely educating the populace on the health benefits of living in a clean environment and the institution of National Sanitation Day, which saw a day set aside every month to clean choked public drains and the surrounding environment. This policy had prospects but could not achieve its desired goals. One of the reasons why the strategy failed was that much education and sensitization were not done before its commencement. Hence the populace did not own it. Secondly, cleaning activities were carried out voluntarily. Hence many people refused to partake**.** The policy could be revived and made to work effectively when Ghanaians are well-educated on the benefits and importance of safe water and sanitation. The benefits include the promotion of good health and human dignity and prevention of diseases such as cholera, diarrhea, and typhoid. In addition, the MMDAs could make it a bylaw which would give legal backing to the practice and make its enforcement effective.

Again in 2018, the government launched the "One Toilet, One Household" Policy. It was aimed at providing one toilet facility for each household to do away with open defecation. The programme was piloted in the Greater Accra Region of Ghana. This policy was in the right direction as well but has not provided much result as the government could not provide the needed matching financial support to deserving households. The implementation of the policy could be channeled through the MMDAs which should be supervised by the Ministry of Sanitation and Water Resources (MSWR). In 2021, the Sanitation Awareness Campaign was launched. The year was

136 Ministry of Sanitation and Water Resources, (n 125).

declared the 'Year of Sanitation', and citizens were encouraged to keep their environments clean of filth.[137]

Even though these policy interventions have been instituted, only a few positive results have been attained.[138] Several factors account for this state of affairs. Among them are:

Lack of goodwill by state actors to implement and enforce sanitation laws.

One of the major challenges inhibiting the provision of sanitation and safe water in Ghana is the enforcement of sanitation laws. In a study conducted by Appiah[139] on public compliance with environmental sanitation regulations in Ghana, he noted that Ghana has several laws, bylaws, and policies on sanitation. However, they are hardly complied with, and offenders are not prosecuted or sanctioned. In other words, the surest way to attain public compliance with the laws or regulations on sanitation is to enforce them to the later.

Inadequate allocation of funds to the water and sanitation sectors

The provision of water and sanitation services is capital-intensive. As such, funding is crucial in achieving its objectives. In Ghana, the release of budgeted funds to attend to the nation's water and sanitation needs has often become challenging.[140]According to the Ministry of Sanitation and Water Resources Medium Term Expenditure Framework for 2022-2025, the 2021 approved budget for the Ministry stood at 560,933.110.00 Ghana Cedis. However, only 58.58% of the total was released to the Ministry as of October 2021. This is inadequate for carrying out any impactful activity or program nationwide.

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137 ibid

138 National Sanitation Policy in Ghana: *A Case for Improved Co-ordination?* www.lboro.ac.uk/wedc accessed 28 Jiune 2022.

139 Justice Mensah, 'Public Compliance with environmental sanitation regulations in Ghana' (2022) Open Health vol. 3: 1-12 <10.1515/openhe.2022-0001> accessed 23 August 2023.

140 The National Development Planning Commission and the Ghana Statistical Services Report (2018).

Lack of planning and implementation of sanitation programmes

Another reason which has accounted for Ghana's poor sanitation situation is a lack of planning and coordination of programmes. Planning is a very important determinant of success in every programme. When it is missing, the progrmme is likely to fail. On the other hand, a lack of implementation of water and sanitation programmes in the country resulted in the failure to achieve access to improved sanitation.[141]

Ineffective monitoring and evaluation of policies

The lack of national monitoring and evaluation systems and the capacity building of community leaders and government institutions to efficiently mobilize citizens for collective action contributed largely to the failure of the policies. Monitoring systems ought to be robust to achieve results.

The above challenges could be addressed by resourcing, financially and otherwise, the Ghana Police Service, the MSWR, and the MMDAs and the WRC who are expected to implement and enforce water and sanitation laws of the country. In addition, the government should train personnel of the MMDAs, the WRC, the MSWR to improve sanitation and safe water delivery in the country. The MSWR could put in place a quarterly monitoring institution that oversees the treatment of water, for instance, the Ghana Water Company (GWC) so as to ensure the delivery of safe water to the people of Ghana. Research could also be carried out on efficient and contemporary means of water and sanitation administration for efficient services delivery.

Unfortunately, even though Ghana has a number of laws and policies to address its sanitation and water challenges, enforcement of its sanitation and water laws is a great challenge to the institutions mandated to do so owing to a lack of commitment and goodwill. It is therefore the aim of this research to establish the potency or otherwise of Ghana's sanitation and water laws and to determine whether they are capable of

141 UNICE, Ghana: *Report on Ghana's Sanitation Situation* 2021 .

addressing the water and sanitation challenges facing the nation. It is equally aimed at whipping up interest in the government departments and agencies mandated to ensure the provision of proper sanitation and safe and affordable water to all, in order to live in good health and in dignity.

1.4 Statement of the Problem

Ghana has legislative, regulatory, and policy frameworks to tackle its water and sanitation problems. Ghana has also ratified a number of treaties and covenants, which have provisions for the delivery of safe, affordable, and accessible water and sanitation services and facilities for the people of Ghana. Despite this, Ghana continues to witness poor sanitation and lack of safe water due mainly to a lack of robust legislative framework, implementation and enforcement of water and sanitation laws to provide and deliver these basic socio-economic needs, services, and amenities by the people and officials saddled with the responsibility to provide and deliver. The failure to provide and deliver posed a serious problem to human rights and human dignity, which this research seeks to address.

1.5 Aim

The main aim of this research is to examine whether it is the failure of the existing water and sanitation legal instruments to deliver high-quality sanitation and water services in Ghana or it is because of the officials and institutions saddled with the responsibility to deliver that are failing.

1.6 Objectives

The objectives of the research are:

1. To establish that Ghana's poor water and sanitation situation is not just a problem, but also a violation of human rights by both state actors and individuals or groups of people who contribute to the situation.
2. To establish that the government and its agencies tasked with ensuring safe water proper sanitation in Ghana must be held accountable for the state of affairs.

3. To strengthen compliance, implementation and enforcement of water and sanitation laws.
4. To hold those who are responsible to ensure and provide dignified sanitation accountable.

1.7 Research Questions

The research seeks to address the following questions:

1. What factors are responsible for Ghana's poor water and sanitation services?
2. Is the existing legislative framework for water and sanitation in Ghana adequate and sufficient to deliver clean water and dignified sanitation progressively?
3. Does Ghana's sanitation situation amount to a violation of human rights?
4. What are the possible solutions to the problem?

1.8 Literature Review

The word "sanitation" has various definitions. The Oxford Dictionary of English defines it as those conditions which relate to public health, especially the provision of clean drinking water and adequate disposal of sewage.[142] The definition suggests that the provision of clear and safe drinking water and a proper sewage system guarantees public health.

The World Health Organization (WHO) considers sanitation generally to refer to the provision of such facilities and services necessary for the safe disposal of human urine and feces. It also refers to it as the maintenance of hygienic conditions by providing services such as garbage collection and waste disposal.[143]

From the foregoing definitions, environmental sanitation has to do with a clean, healthy, and safe environment that is conducive to the physical, psychological, emotional, and

[142] The Oxford Dictionary of English, subverbo 'sanitation' online: https://www.oxforddictionaries.cc accessed 30 April 2022.

[143] WHO/Sanitation: http://www.who.int/topics/sanitation/en accessed 10 May 2022

social growth[144]and the development of people living in that environment. It has to do with an environment where waste is properly managed and there is safe drinking water. It has to do with an environment that is generally conducive to human habitation.

The UNO recognizes sanitation, water, and hygiene as human rights. Article 11 (1) of the International Covenant on Economic, Social, and Cultural Rights specifies a number of rights as crucial and indispensable for human survival as well as for the realization of an adequate and dignified standard of living. Among them are water and sanitation[145], recognized as fundamental to the right to human dignity. It was in line with this that water and sanitation were declared human rights in 2010.[146]

According to Murat[147], water, sanitation, and hygiene being human rights promote good health, dignity, comfort, and security. Indeed, where there is the availability of safe water and improved sanitation, the well-being of people is assured, and their comfort and security are also enhanced.

In *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration and Internal Security eKLR,* [148] the applicants were forcibly evicted from an informal settlement. In addition, they were cut off from access to water and sanitation. The applicants claimed that the action of the Local Government was in violation of Article 43 of the Constitution of Kenya, which provides for the protection of the right to water and sanitation. It was held that the action of the local authorities violated a constitutionally protected right as informed by international human rights law. The court also stressed that sanitation and water are essential for human dignity, freedom, and equality.

144 ibid

145 The Right to Water (articles 11 and 12 - International Covenant on Economic, Social, and Cultural Rights, General Comment 15, 26 November 2002).

146 UN General Assembly Resolution 64/292, 2010.

147 Murat Ersel, 'Water and Sanitation Standards in Humanitarian Action' (2015) Turkish Journal of Emergency Medicine15(1) 27.

148 [2011] High Court of Kenya at Embu, Constitutional Petition No. 2, November 16, 2011.

Agbadi[149] identified safe water and sanitation as human rights, the provision of which enhances good health, human growth, and development. As for human rights, he noted that state actors must ensure that they put in place policies and programs that ensure the accessibility of these rights. For efficient and sustainable delivery of safe water and sanitation services, they could equally partner with other stakeholders to achieve the above objectives.

Mason Meier[150] examined the development of human rights and their importance in addressing public health implications for water and sanitation. They noted that human rights are a normative framework for public policy, especially when it comes to the provision of safe water and improved sanitation. Robust public policy and an efficient legislative framework are crucial in the delivery of safe water and sanitation services. Such robust policies, the authors noted, must take into consideration recognition of water and sanitation as human rights which must be protected and safeguarded for the present and future generations. In addition, States must provide efficient normative and legislative frameworks aimed at the progressive realization of the human rights to water and sanitation.

Tortajada[151] stated that the fundamental issue to consider when it comes to water as a human right is its quality. For water to be considered a human right, the authors noted that it must be safe for human consumption. It is only when water is safe for human consumption that it qualifies as a human right.

In a study conducted by Gosling [152] in four countries, including Ghana, the authors hold the view that mere recognition of the rights to water and sanitation or incorporating the same in national legislation is not enough to fulfill the obligation imposed on states to

149 Pascal Agbadi, Ernest Darkwa, and Paul Kennedy 'A Multilevel Analysis of Regressors of Access to Improved Drinking Water and Sanitation in Ghana' (2019) Journal of Environment and Public Health 11: 1-11.

150 Benjamin Mason Meier and others, 'Implementing and evolving human rights through water and sanitation policy' (2013). Water Policy 15(1) 116-133.

151 Cecilia Tortajada, Asit K. Biswas 'Water as a Human Right' (2017) International Journal of Water Resources Development' Vol. 33, Issue 4, 509-511.

152 Louisa Gosling and others, 'Analysis of Experience Using Human Rights to Accelerate WASH Access in Four Countries (2022). H2Open Journal. Vol. 5, No. 2, 234.

provide those goods. They noted that even though many states, including Ghana, recognize the right to water and sanitation, they lag in providing them to their citizens. This demonstrates that the formal recognition of water and sanitation as human rights does not automatically guarantee improvement in their accessibility.

Furthermore, Albuquerque looks at the issue of human rights to water and sanitation in terms of state responsibility. She noted that all human rights impose three types of obligations on states. They must respect, protect, and fulfill human rights. The obligation to respect human rights means that states must not prevent people from enjoying their human rights to water and sanitation, for instance, by selling land with water sources without providing an alternative. The obligation to protect water and sanitation requires states to ensure that third parties do not interfere with people's rights to the commodities. Finally, the obligation to fulfill requires them to ensure that the necessary conditions are in place for everyone to enjoy the human rights to water and sanitation.

In *Dagoberto Bohorquez Forero c/EAAB Empresa de Acueducto y Alcantarillado de Bogota y Ostros*[153], the claimants sought through popular action the protection of collective rights and interests concerning the enjoyment of a healthy environment and access to water and sanitation services that guarantee public health. The court held that public authorities and public water companies were under an obligation to provide water and sanitation services efficiently and on time.

Reiterating the importance of water and sanitation as components of public health, especially during the outbreak of pandemics such as COVID-19, Madureira[154] observed that washing hands with clean running water was one of the means of preventing the spread of the virus. Therein lays the connection between water and health. Accordingly, states should be accountable and responsible in using resources at their disposal for the provision of water and sanitation as human rights.

153 [2012] Tribunal Administrativo (Cundinamarca) 11001-33-31-003-2007-00186-01.

154 Davi Madureira Victral and Leo Leller. 'The Human Rights to Water and Sanitation in Policy Responses to the COVID-19 Pandemic: An Analysis of Brazilian States' (2021) Journals/Water 13 (2), 228: < https://doi.org/1o.3390 w13020228> accessed 25 September 2022.

The UNO and other regional bodies have made a number of attempts to safeguard environmental sanitation in a number of treaties. For instance, the United Nations International Covenant on Economic and Social Rights stresses the improvement of environmental sanitation and industrial hygiene as a prerequisite to good health.[155] Article 11 of the Covenant provides that states must 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. Even though water and sanitation were not specifically mentioned, it has been argued by the United Nations Economic and Social Council that water is essential for the realization of the rights mentioned under Article 11 and hence referred to adequate water and sanitation as fundamental to the right of dignity and privacy.[156]

Article 24 (2) (c) of the United Nations Convention on the Rights of the Child (CRC) requires state parties to take appropriate measures to achieve full implementation of the right to combat disease and malnutrition, including primary health care, and the use of readily available technology and the provision of adequate nutritious food and clean drinking water, as well as to protect against the dangers and risks of environmental pollution. The provision thus imposes on states the responsibility to ensure the provision of clean water and nutritious food for the good health of all children within their jurisdiction.

The CEDAW also made provision for adequate water and sanitation for all women without discrimination. It provides under article 14 (2) (h) that states shall take all appropriate measures to eliminate discrimination against women, especially in rural areas, and that they should ensure that such women enjoy the right to adequate living conditions, particularly in relation to housing, sanitation, electricity, transport, water, and communication.

The UNGA Resolution 64/292[157] recognizes the right to safe and clean drinking water and sanitation as human rights that are essential for the full enjoyment of life and all human

155 UN Covenant on Economic and Social Rights, 1966 Article 12.
156 UN Economic and Social Council's General Comment No. 15 (2002).
157 UN General Assembly Resolution 2010.

rights. On the declaration of water and sanitation as human rights, states have been tasked to ensure that policies and programs are put in place for their full realization. Ghana has put in place a number of policies and programs aimed at the progressive realization of the rights to water and sanitation. notable among them is the establishment of environmental sanitation as a sub-sector. This policy led to the establishment of the Ministry of Sanitation and Water Resources, responsible for the regulation and management of sanitation and water resources in the country. The Ministry has so far been able to coordinate sanitation and sanitation-related activities in the country, though with little success. Another policy worth mentioning is the 'Clean Ghana Campaign' policy. The policy is aimed at making Ghana one of the cleanest cities in Africa. In order to realize its objectives, National Sanitation Day was instituted in 2016. The programme was meant to educate the people of Ghana on the importance of proper sanitation as a prerequisite for good health and dignified life. This good programme however failed due to lack of commitment on the part of implementing agencies such as the Sanitation and Water Resources Ministry and the MMDAs. Next are the policies of providing clean water for all by 2025 and ending open defecation by 2030. Considering Ghana's current sanitation and water situation, these two policies are far from being achieved—much effort, such as adequate planning and financial commitments, needs to be made by the government of Ghana so as to realize them.

The above treaties, conventions and policies give credence to environmental sanitation and call on governments to enhance efforts to provide the same to their citizens. Nation-states implement treaties conventions and covenants first and foremost by practicing them. Thereafter, they incorporate or include them in their municipal laws or national legislation and thence implement and enforce them. In the case of the *Government of the Republic of South Africa and Others* v *Grootboom and Other,* [158]the respondents, 510 children, and 390 adults were evicted from their settlement which was earmarked for a low-cost housing project. Their homes and possessions were destroyed in the process rendering them homeless. The victims took shelter on the nearby sports field, using mostly plastic sheeting which gave them little protection against winter rains. The respondents consequently instituted an action against the appellants for an order requiring the

[158] [2000] Constitutional Court CCT11/00, [2000] ZACC 19.

government to provide adequate shelter and housing to the victims until they obtain permanent accommodation. The High Court ruled in favour of the respondents ordering the government and its agencies to provide the children and their parents shelter, portable latrines, and a regular supply of water that would constitute the minimum. Dissatisfied with the decision, the appellants appealed to the Supreme Court of Appeal and finally to the Constitutional Court.

The Court held that even if resources were not available immediately, the State must have a reasonable plan of action to progressively fulfill the right in line with section 26 of the Constitution of South Africa. The provision obliges the State to put in place and implement comprehensive plans to meet its duty to provide housing and shelter to the citizenry. The Court emphasized that all socio-economic rights have to be read and interpreted jointly and made a special reference to sections 26 and 96 of the Constitution of South Africa which protects water rights in line with CESCR, CRC and CESCR General Comment No. 3, 1990.

The case demonstrates the extent to which South Africa has incorporated international covenants on water into their domestic legislation and how they apply same in the judicial decisions. Ghana on the other hand even though has ascribed to the principles and ideals of the UN as provided for under Article 11 of the 1992 Constitution, has no direct provision on water in its Constitution. This is a weakness as far as Ghana's water legislation is concerned.

The African Charter on Human and People's Rights (ACHPRs) provides that all people shall have the right to a generally satisfactory environment favourable to their development.[159] Article 5 of the Charter provides that every individual has the right to respect the dignity inherent in a human being. The above provisions refer to collective rights as opposed to individual rights. Collective rights are ascribed to groups of people or communities as opposed to the rights of individual members of the group or community as such. When it comes to lodging complaints over violation of human rights in an unsafe

[159] James Angel and Alex Loftus, 'With-against-and-beyond the right to water' (2019) 98 Geoforum 206-213 at 206.

environment to the African Commission, individuals or groups of individuals could lodge complaints.[160] The African Commission is the body established under the Charter to ensure that the principles enshrined therein are adhered to. It is expected to monitor enforcement or otherwise of rights ascribed in the charter by examining reports from state parties over the implementation of the Charter. It also receives complaints from, States, NGOs and individuals under Article 55 of the Charter. The Commission examines the complaints but since it has no power to bind States, it refers its findings and recommendations to the African Union for enforcement. Therein lies the African Union's procedure for protecting the right to a healthy environment.[161]

In the case of the *Institute for Human Rights and Development in Africa v Angola,*[162] some Gambian nationals working in Angola were systematically arrested, detained under inhuman conditions, in particular poor sanitation and later deported without any legal protection. A complaint was filed by the applicant on behalf of the victims with the Secretariat of the African Commission on Human and People's Rights (ACHPR) in 2004. The complainant alleged that the respondent State had violated articles 1 and 5 of the Charter. The government of Angola offered no response to the allegations in the communication. The ACHPR found that failing to provide detainees with adequate access to water and sanitation amounted to a violation of the right to human dignity under ACHPR.

The Charter has therefore considered a satisfactory environment as a human right. Members of the African Union owe it a responsibility to safeguard the environment for the well-being of their people. In line with this, the then Organization of African Unity (OAU), now the African Union (AU), adopted the African Convention on the Ban on the Importation of All Forms of Hazardous Wastes into Africa and the Convention on the Control of Transboundary Movement of Hazardous Wastes generated in Africa in 1988. Parties to these Conventions, recognizing the dangers that hazardous wastes pose to human health and the environment, adopted the Twin Conventions to prohibit the importation of the same

160 Evelyn A. Ankumah '*The African Commission on Human and Peoples' Rights Practice and Procedure'*(1996) Martinus Nijhoff Publishers, The Hague 184.

161 *Ibid* at 23-26.

162 [2008] African Commission on Human and Peoples' Rights 292/64.

into Africa. Article 4 of the Convention on the Ban on the Importation of All Forms of Hazardous Wastes into Africa prohibits both State Parties and non-state Parties from importing such wastes into Africa unless there is justification for it. Article 4(2) prohibits dumping of such wastes into internal waters, territorial seas, exclusive economic zones and the continental shelf. Any of such activities constitute illegality. Article 6 prohibits transboundary movement of hazardous wastes from a State of export to the State of import without a written consent from the State of import. In addition, the State of import must also confirm the existence of a contract between the exporter and the disposer specifying measures put in place to mitigate potential harm to life and the environment.

In the *Probo Koala* (*Trafigura*) case,[163] Toxic and dangerous waste products which belonged to Trafigura, were shipped from Amsterdam to Ivory Coast, Abidjan in 2006. The waste was improperly disposed of in several sites around the city without any further treatment. The situation deteriorated resulting in diseases leading to fatalities in certain instances. The UN Human Rights Council (UNHRC) sent a Special Rapporteur to investigate the adverse effects of the waste on Ivorians. The Special Rapporteur found that the Probo Koala incident constituted a serious violation of the right to life under the ICCPR and the right to health under the ICSECR. The HRC therefore called on the Ivorian government to put in place the necessary measures to forestall violation of the rights of the affected people of Ivory Coast.

Ghana, being a member of the African Union, is therefore mandated to adhere to the principles and objectives enshrined in the Charter and the Conventions therein mentioned. In order to execute this task efficiently, it has to formulate appropriate policies, programmes, and legislation that are effective enough to address its sanitation and water challenges, as this research seeks to explore. For instance, a singular legislation governing water and sanitation, as is the case of South Africa, would serve a good purpose instead of the current situation where legislation on the two subjects is scattered in the WRCA of 1996 (Act 522); the EPAA of 1994 (Act 490) s. 2 (a), (c), (f); the Local Governance Act of 2016 (Act 936) section 104; the Criminal and Other Offences Act of

[163] A. Cardesa-Salzmann, (CEDAT, Universitat Rovirai Virgoli) *The Trafgura Case* EJOLTS (2012) Factsheet No. 45, 8.

1960 (As amended) sections 296 and 300 and the Public Health Act of 2012 section 52. In addition, the MSWR could intensify its oversight responsibility over the institutions that govern or regulate water and sanitation services in order to meet the water and sanitation needs of Ghanaians.

The existing policy tasks the MSWR to ensure the provision of potable water and improved sanitation for all the people of Ghana by 2030.[164] While little effort is being made to achieve this policy objective, there exists much inequality in the accessibility of water and sanitation resources. In the big towns and cities, water is regularly accessible in areas inhabited by the elite while supply is erratic in areas occupied by the poor. A new policy should therefore address the issue of equitable distribution of water to all irrespective.

Secondly, to achieve the objective of ending open defecation in Ghana by 2030, the government has set in motion a programme to assist poor households financially to enable them to build toilet facilities in their homes. While the programme is laudable, the government has failed to provide the funds as expected. Poor households are therefore unable to provide toilet facilities as envisaged, thus increasing the prevalence of open defecation. The new policy in this regard, is to make it the sole responsibility of the government, through the MMDAs, to provide toilet facilities for poor households that cannot afford to fund such projects.

In addition, Ghana's water policy of providing water for all by 2025 has not addressed the issue of affordability adequately. The Public Utility Regulatory Commission (PURC), created by the Public Utility Regulatory Commission Act (PURCA),[165] is the regulatory body mandated to fix water and electricity consumption rates in Ghana. Section 16 of PURCA provides the criteria or guidelines to be followed by PURC in determining utility rates in the country, *inter alia*, to take into consideration the interests of consumers, and investors, the cost of production of the service and the assurance of the financial integrity of the public utility. No provision is made for poor consumers of water. Consequently, water

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164 National Sanitation Policy in Ghana: *A Case for Improved Coordination?* < www.lboro.ac.uk/wedc> accessed 25 July 2022.

165 1997 (Act 538) s 16,20.

tariffs currently do not take into consideration poor consumers as water utility charges are fixed uniformly for the entire country. The situation is worse when it comes to connecting water to residential houses. Those who cannot afford the fees resort to surface water, harvested rainwater and wells which are sometimes unclean and unsafe for consumption. A new water policy should consider a separate and lower tariff for the lifeline consumers so that they may access potable water. This could be done by identifying lifeline consumers and giving them separate water meters so as to give them reduced rates. It would enable them to have access to affordable water for use thereby reducing the possibility of using unsafe water with its associated health challenges.

There is a need for a policy to prohibit people from living close to riverbanks. The policy should equally take into consideration natural and man-made disasters which disrupt water supply to consumers and lead to communicable diseases such as cholera. This could be taken care of by MSWR investing in water drilling equipment to enable it to respond immediately to such disasters. Water resource management must therefore take into account the risk of floods, droughts and spillage of dams. Proactive measures such as buffers along rivers are needed to prevent loss of life and property in line with the WRCA[166]

Capacity building for water sector workers is needed in a frequent basis. The staff of the MSWR, Ghana Water Company (GWC), MMDAs, WRC and other allied agencies must undergo capacity training programmes regularly to enable them to discharge their responsibilities efficiently. These policy directives would enable Ghana to attain its goals of providing water and sanitation for all in Ghana. This would be realized if the government is committed to providing the required funding for the training programmes.

Ghana recognizes international law and has ratified a number of international treaties and conventions. Article 11 of the 1992 Constitution of Ghana enjoins the government in dealing with other states, *inter alia,* to promote respect for international law and treaty obligations. The government is to adhere to the principles and ideals of the United Nations Charter, notably to promote respect for human rights and fundamental freedoms for all

[166] 1996 (Act 522) s 31 and 33.

without distinction as to race, sex, language or religion, to safeguard the environment for good health and human dignity as well as to cooperate in solving international economic, social, cultural and humanitarian problems.[167]

Ghana has no direct provision for water and sanitation under the 1992 Constitution, neither has it a full legislation on same. However, Article 93 (2) of the Constitution mandates the Parliament of Ghana to make laws, hence there are many Acts of Parliament that provide for the regulation, management, and protection of water and sanitation. For instance, the 1992 Constitution of Ghana[168] recognizes the right to health and safety and safeguards the same by the English common law, statutes, customary law, (customs and traditions recognized in a particular community in Ghana) and other subsidiary legislation.[169] The Local Governance Act, [170] Criminal Offences Act, [171] the Public Health Act[172], and the Environmental Protection Agency Act are among the others.[173]

The customary law of Ghana is defined under Article 11(3) of the 1992 Constitution as the rules of law which by custom and tradition, are recognized and applicable to particular communities in the country. customary laws are hence not coded in Ghana but exist in the form of oral tradition. Customary law recognizes the right to safe drinking water and protects same by rules that prohibit pollution or contamination of water sources. Rivers and streams by Ghanaian customary law are considered essential to the good health and life of both individuals and the entire community. Thus, no one is allowed to wash in them, clear bushes along their banks or defecate in them. Women menstruating are not allowed to swim in rivers or streams for fear they may contaminate them.[174] Those who violate these customary water laws are sanctioned by a fine in the form of bottles of hard liquor and or rams. These customary law rules which were observed in every locality in Ghana previously offered much protection for water bodies and preserved them from being

167 Universal Declaration on Human Rights and the UN Charter Article 25.
168 African Charter on Human and Peoples' Rights Article 24.
169 1992 Constitution Article 11.
170 LGA 2016.
171 COA Sections 296 (a), (b), and (r), 297, and 300 (5) of the Act of 1960 (Act 29).
172 PHA 2012 (Act 851) s 52.
173 EPA 1994 (490), sections 2 (a) and (f).
174 J. Ofori Boateng, 'Environmental Law: Ghana Water Law' 9 Review of Ghana Law' (1977) 1-13-44.

polluted or contaminated.[175] In recent times, chiefs and community elders have not enforced customary water laws because the WRCA vests all water resources in the State.[176] Water pollution has thus become rampant.

In addition, Ghana has ratified a number of international conventions and treaties on water and sanitation. The Constitution provides that in its dealings with other nations, the government shall promote respect for international law and treaty obligations. It must also adhere to the principles enshrined in or, as the case may be, the aims and ideals of the Charter of the United Nations, the Charter of the African Union, the Commonwealth, and any other international organization of which Ghana is a member.[177] It is not surprising, therefore, that Chapter 5 of the Constitution, titled Fundamental Human Rights and Freedoms, contains a number of provisions on economic, social, and cultural rights that are similar to those enshrined in the International Covenants on Civil and Political Rights (ICCPRs), the International Covenant on Economic, Social, and Cultural Rights (ICESCRs), and the African Charter on Human and Peoples Rights (ACHPRs).

Surprisingly, however, the Constitution of 1992 has not made any direct reference to water and sanitation. It is, however, provided for under article 33(5) of the Constitution that the rights, duties, declarations, and guarantees relating to the fundamental human rights and freedoms specifically mentioned shall not be regarded as excluding others not specifically mentioned, which are considered inherent in a democracy and intended to secure the freedom and dignity of man. In this regard, though sanitation and water are not specifically mentioned as fundamental human rights, they could be couched *ejusdem generis*, under Article 33(5) of the Constitution. Democracy gives credence to life, and water and sanitation are essential components of life. Since adequate water and improved sanitation have been proclaimed human rights in 2010,[178] Suffice it to say that since Ghana owes allegiance to the United Nations and the AU,[179] and has ratified the above conventions

175 ibid
176 WRCA, 1996 (Act 522) s 2.
177 1992 Constitution Article 40 (c) and (d).
178 UN General Assembly Resolution 64/292 of 2010.
179 1992 Constitution of Ghana Article 40.

and treaties, it has to provide adequate, affordable, and accessible water and sanitation for the people of Ghana.

Research has shown that the provision and accessibility of safe water and improved sanitation have been a challenge in Ghana. Mansour[180] noted that Ghana had set a target to achieve 54% coverage of improved sanitation by 2015 under the Millennium Development Goals (MDGs). However, it only achieved 15% coverage by the end of 2015. Prior to the MDGs, the Government instituted the National Environmental Strategy and Action Plan in 1999 owing to the poor sanitation situation in the country at the time. The programme was under the auspices of the then Ministry of Local Government and Rural Development. The programme included sensitization of the populace over the need to protect the environment, including water resources.[181] The authors discovered that open defecation remained prevalent in many urban areas due to a lack of improved toilets, and even where they existed, affordability became another issue. Once there is poor sanitation, there is a likely negative effect on the health of the people of Ghana.

Agbadi[182] considers safe drinking water and sanitation prerequisites for health, human growth, and development. The authors identified a number of factors that inhibit access to safe water, sanitation, and hygiene in Ghana. They include a lack of political will to implement sanitation and water policies, a lack of people's proper attitude toward sanitation and water sources, the poor's inability to afford clean drinking water and sanitation facilities, and a lack of proper environmental hygiene. These challenges could be addressed through the implementation of policies and enforcement of sanitation laws in the country he believed. Such remedial policies must take into account the provision of water and sanitation facilities and services to all irrespective of social status. Currently, priority is given to the rich, political leaders, government officials and the elite in the

180 Goufrane Mansour and Harold Esseku, 'Situation Analysis of the Urban Sanitation Sector in Ghana' (2017) Environmental Science, Economics, Geography <url-https://api.semanticscholar.org> accessed 28 May 2024.

181 National Environmental Strategy and Action Plan 1999.

182 Pascal Agbadi, Ernest Darkwa, and Paul L. Kennedy. 'A Multilevel Analysis of Regressors of Access to Improved Drinking Water and Sanitation' (2019) Journal of Environmental and Public Health 11: 1-11 <https//doi.org/10.1155/2019/3983869> accessed 29 July 2023.

provision and distribution of water and sanitation facilities.[183] In addition, the policy must recognize and treat safe water and improved sanitation as human rights and hold responsible the State which is the duty bearer in the provision of same for failing to meet its obligations. The policy must also address the issue of affordability. The poor should be identified and given lifeline water tariffs. This would enable them to afford safe and clean drinking water. The policy must equally address the issue of enforcement of water and sanitation regulations efficiently. Currently, sanitation courts are only found in the Accra and Kumasi Metropolitan areas. In the other MMDA areas, sanitation and water-related offences are settled in the regular courts. This delays prosecution as there are often other numerous cases of equal importance to be settled by those courts and this hampers enforcement of sanitation and water laws eventually.

In a study conducted by Kangmennaag[184] on the security of drinking water and its accessibility in the urban slums of Accra, water security, in terms of cleanliness and safety for human consumption, is a challenge in most parts of Accra. The study revealed that owing to a lack of accessibility and, at times, affordability, people rely on water vendors and sachet water for domestic use. Unfortunately, most of these sources are unwholesome, thereby creating health problems for consumers. This finding was corroborated by Appiah-Effah[185] in his research on domestic water quality in Oforikrom Municipality. The findings revealed that even though water supply in its various forms, such as pipe-borne, borehole, surface water, wells, and rainwater, was prevalent, the safety and cleanliness of the water needed much to be desired. In a survey conducted by the Ghana Statistical Service,[186] about 44% of drinking water sources in Ghana were faecally contaminated, while 62% of household drinking water suffered a similar fate.

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183 Jacob Doku Tetteh and others, 'Spatial Heterogeneity in Drinking Water Sources in the Greater Accra Metropolitan Area (GAMA), Ghana' (2022) Population and Environment 44: 46-76 <https//doi.org/10.1007/5 11111-022-00407-y> accessed 28 May 2024.

184 Joseph Kangmennaag, Elijah Bisung and Susan J. Elliot. 'We Are Drinking Disease: Perception of Water Insecurity and Emotional Distress in Urban Slums in Accra, Ghana' (2020), International Journal of Research and Public Health Volume 17(3), 890 https://doi.103390/ijerph17030890 accessed 14 October 2023.

185 Eugene Appiah-Effah and others. 'Domestic Drinking Water Management in Oforikrom Municipality, Ghana' (2021) Science Progress < doi:10.1177/0036850421/0359-97>

186 Ghana Living Standards Survey (GLSS) Round 6, 2014.

In a recent survey conducted on a similar subject in 2019, it was discovered that only 19% of Ghanaians had access to safe drinking water.[187] According to Yeleliere, a number of factors, including population growth and constant exploitation of water sources by farmers, sand miners, and surface miners, pose a threat to the accessibility of water resources, particularly safe and clean fresh water. Other factors identified in the study were climate change, pollution of water bodies with chemical waste, and poor water management systems. State authorities must step up their game in addressing these challenges. Lambisso[188] identified the inability to create proper disposal points for solid waste, lack of enforcement of sanitation laws, population growth, poor financing of sanitation policies, rural-urban migration, poor sanitation infrastructure, and lack of sanitation technology, among others, as challenges bedeviling access to proper sanitation in Ghana.

Keziah[189] considered the issue of accessibility to safe water from the point of view of equitable distribution of the commodity. She stated that the people of Ghana generally have access to one or more sources of water. The problem is the inequality in the distribution of it. Urban centres or communities are usually given some sort of preferential treatment. Even in those urban areas, the rich are given priority in the distribution of water. For example, while the Accra Region had 95% access to basic water sources, such as pipe-borne water in 2019, only 27% of the population of Ghana had access to water in the same year.[190] In a similar vein, Deku Tetteh[191] a study conducted on heterogeneity in drinking water sources in the Greater Accra Metropolitan area discovered that poverty and wealth shaped the choices people made in respect of sources of drinking water. There are also issues regarding the quality of the water source involved. Thus, while the rich are most likely to access pipe-borne water, the poor may go to other sources like tanker vendors, sachet water, wells, and harvested rainwater. Lack of access to water and

187 Ghana Statistical Service (119). snapshots of key findings, January 2019 update.

188 RobeL Lambisso, 'Scaling-up sanitation coverage in Ghana' (World Vision Ghana Report 2 August 2017).

189 Illedge Keziah, 'A Systematic Literature Review on Water Access and Governance in Accra, Ghana' Thesis, (Georgia State University (2019) < https://doi.org/1057709/15058329 > accessed 21 August 2022.

190 UN Joint Monitoring Programme website, 2019.

191 Jacob Doku Tetteh and others, 'Spatial heterogeneity in drinking water sources in the Greater Accra Metropolitan Area (GAMA), Ghana' (2022) Population and Environment 44: 46-76 <https//doi.org/10.1007/5 11111-022-00407-y> accessed 28 May 2024.

sanitation results in discrimination, and this creates more difficulties in accessing the commodities. Often, poor people are the most affected.[192]

Accessibility to water and sanitation is also determined by Ghana's land tenure system, or land ownership, where land is vested in individuals, families, clans, and stools or skins. In a research conducted by Awunyo-Akaba,[193] the authors investigated factors that discourage landlords and landowners from investing in sanitation facilities in their homes or rented premises, especially in rural and peri-urban areas. They noted that increasing migration, coupled with high demand for housing accommodation in the face of limited available space, has resulted in a general unwillingness of landlords to establish private sanitation facilities in their homes. The trend has therefore worsened the already bad sanitation situation in the country.

Other researchers looked at the accessibility of water and sanitation in terms of their negative impact on the populace. In a study conducted by Abdul-Ghaffah Donkor,[194] it was discovered that lack of access to clean water and improved sanitation accounted for most of the cholera outbreaks in Ghana. The study revealed that between 1988 and 2017, there were 82,754 cholera cases in Ghana, with 519 deaths. The alarming situation calls for urgent attention from the government and other stakeholders in the sector to avert future outbreaks of the disease.

According to UNICEF's 2021 report on the state of Ghana's sanitation and water, even though access to water has improved significantly, people had to spend long hours to get access to improved sources. Women and children suffer the most. Gender inequalities in access to water are also prevalent, most especially in the rural communities of the country.

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192 Priscila Neves-Silva, Giselle Isabele Martins and Leo Heller. 'Human rights interdependence and indivisibility: a look at water and sanitation rights' (2019) BMC International Health and Human Rights 19:14, 2-8 https://doi.org/10.1186/s12914-019-0197-3 accessed 28 May 2024.

193 Y. Awunyo-Akaba and others. 'Sanitation investments in Ghana: An ethnographic investigation of the role of tenure security, land ownership, and livelihoods' (2016) BMC Public Health 16: 594 <DOI.10.1186/s 12889-016-3283-7> accessed 28 May 2024.

194 Abdul-Ghaffar and Donkor Namaitijian Maimaiti, 'The Cholera Outbreak in Ghana' (2019) Derteme Review <https//doi.org/10.35232/estudamhsd.608552> accessed 15 July 2023.

On the issue of the nationwide target of access to safe drinking water and improved sanitation, Boakye Oppong[195] noted that the Government of Ghana has targeted nationwide access to safe drinking water by 2025 and the elimination of open defecation by 2030 in line with the UN Millennium Development Goal six. The findings of the study, however, revealed that out of the 26,324 households engaged in the study, 8.9% used unimproved drinking water, 81.6% used unimproved sanitation, and 15.2% practised open defecation. It is evident that unless appropriate measures are put in place by the government, health authorities, and private individuals, the targets of universal access to safe drinking water by 2025 and the elimination of open defecation by 2030 appear impossible to achieve. The measures as already mentioned include government committing the required resources, financial and otherwise, to the provision of clean and safe drinking water and improved sanitation facilities to all the people of Ghana as of duty. The services and facilities provided must be accessible, affordable and acceptable. This would prevent the poor and the marginalized from resorting to the use of unsafe water and sanitation facilities and thereby improve their health and human dignity.

In 2013 and 2017, the government of Ghana's budgetary allocation towards sanitation services was woefully inadequate. For instance, data from the UN-Water Global Analysis and Assessment of Sanitation (GLAAS) indicated that the government of Ghana's water and sanitation budget was reduced from USD 278 million in 2012 to USD 68 million in 2017. This represented a drop from 0.66% to 0.15%, which would affect sanitation delivery in the country. The reduction in budgetary allocation implies that funding of water and sanitation projects would reduce drastically thereby depriving the people of Ghana the right to water and sanitation. To avert this occurrence, governments must always assess the demands of the water and sanitation sector and allocate appropriate budgets to them.

Mensah[196] identified inadequate financing as one of the major challenges of environmental sanitation in Ghana. Using the annual reports of the National Development Planning

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195 Felix Boakye Opong and others. 'Demographic disparities in unimproved drinking water and sanitation in Ghana' (2022) BMC Journals Volume 12 Issue 7.

196 Justice Mensah, 'Managing environmental sanitation in the catchment area of Benya Lagoon, Ghana: Education, regulation, or infrastructure management as a matter of strategic priority?' (2019) Cogent Social Sciences S:1 1709347.

Commission (NDPC) and the Ghana Statistical Service (GSS), he stated that inadequate financing of sanitation infrastructure, lack of education on sanitation, and poor enforcement of sanitation policies and regulations are the major contributory factors inhibiting improvement in Ghana's sanitation. He observed that the situation could improve if the government gave priority to the thematic areas**,** such as adequate allocation of financial resources to the sanitation and water sectors, educating the populace on their rights to water and sanitation, and efficient enforcement of sanitation and water-related laws by applying deterrent sanctions.

However, little or no attention is paid to looking at the sanitation challenge as a human rights issue. For example, Goufrane Mansour[197] carried out research on the urban sanitation situation in Ghana. The authors identified the unimproved sanitation prevalent in the urban communities of Ghana. They, however, did not consider the poor sanitation state a human rights violation. Similarly, Yeleriere[198] reviewed Ghana's water resources in a bid to determine the quality and safety of water sources available to the people of Ghana. The study, however, did not focus attention on the issues of safe drinking water and sanitation as human rights issues. While the authors had the freedom to decide the aspect of water and sanitation to research, it was equally probable that they did not focus on the human rights aspect because they had no persuasive reason to do so. None of the legislation in Ghana referred to sanitation and water as human rights, including the 1992 Constitution, as it is found for instance in the legislation of other countries, such as South Africa,[199] and Kenya.[200] Section 27 (1), (b) of the National Constitution of South Africa has made provision for the right to food and sufficient water a fundamental human right for all. To ensure the realization of this right, Section 27 (2) of the Constitution imposes an obligation on the State to take reasonable measures, including legislation to fulfill this right progressively taking into consideration available resources. In a similar vein, Article 43 of the Constitution of Kenya provides that everyone has the right to accessible and adequate

197 Goufrane Mansour and Harold Esseku. 'Situation analysis of urban sanitation sector in Ghana'(n 170).

198 E. Yeleriere, Cobbina S.J. and Duwiejuah A.B. 'Review of Ghana's water sources' (2018) Applied Water Science vol. 8: 93.

199 The Constitution of the Republic of South Africa, 1996 sections 26, 27 and 28; Water Services Act 108 of 1997; the National Water Standard Regulations of 2001.

200 Constitution of Kenya, 2010 Article 43, 47.

housing and to a reasonable standard of sanitation. In addition, everyone has the right to clean and safe water in adequate quantities. In the event that individuals are unable to meet their water and sanitation needs as provided for under the Constitution, Article 43(3) imposes an obligation on the State to meet the needs of such people. The two national constitutions have therefore made adequate provisions for water and sanitation which serves as a solid foundation for water and sanitation administration in their respective countries.

Again, Mensah,[201] in a study undertaken on environmental sanitation management in Ghana, identified Ghana as one of the developing countries battling with sanitation management and regulation. The findings of his study revealed that Ghana's sanitation could improve if the government gave financial priority to sanitation infrastructure, education, and regulation. The study did not look at the issues from a human rights perspective probably because the researchers had no persuasive reasons to do so as indicated in the preceding paragraph.

In another research conducted by Mensah[202] on public compliance with environmental sanitation regulations in Ghana, he identified non-compliance with sanitation laws as well as non-enforcement of sanitation laws as challenges that the nation must address. The study did not look at the challenges as human rights issues. Indeed, it is not difficult to adduce evidence of non-compliance with sanitation regulations in Ghana as indicated by the research. For instance, open defecation is prevalent in many parts of the country owing to the non-availability of toilet facilities in many homes across the country. Even though some townships have public toilets, those who operate them often fail to carry out the requisite maintenance hence many people do not patronize them but rather resort to open defecation**.** Another aspect of sanitation bylaws that is not being complied with concerns the management and disposal of liquid and solid waste. Bylaws of MMDAs have assigned the responsibility of management and disposal of waste to the Assemblies or their

201 Justice Mensah. 'Managing environmental sanitation in the catchment area of Benya Lagoon, Ghana. Education, regulation or infrastructure management as a matter of strategic priority?' (n 102).

202 Justice Mensah. 'Public compliance with environmental sanitation regulations in Ghana' (2022) Open Health Vol. 3:1-12 <https//doi.org. /10.1515 > accessed 26 October 2022.

agents.[203] On the contrary many homes refuse to procure the requisite garbage containers for use in their premises and rather choose to dump wastes in the nearby bushes and drains.[204] While this attitude may be attributed to indiscipline it is also true that some poor households cannot afford the waste disposal charges of the Assemblies.[205] To ensure compliance, the Assemblies may have to either dispose of wastes of poor households free of charge or at a minimal cost as prescribed under Article 43 (3) of the Kenyan Constitution which imposes an obligation on the State to meet the water and sanitation needs of the poor who cannot afford them. In addition, the Environmental Health Departments of MMDAs, which enforce sanitation laws must be adequately resourced, financially or otherwise, to educate the general public on health issues, such as diseases associated with poor sanitation and the use of unsafe water. This would ensure compliance with sanitation and water laws for good health and human dignity of everyone.

Furthermore, Mustapha Immurana,s[206] recent research on the effect of financial inclusion on open defecation and sharing of toilet facilities among households in Ghana, identified, *inter alia*, the practice of open defecation as a major source of health hazard in Ghana. Though the study suggested financial assistance to the poor to enable them to meet their sanitation needs, it never looked at the problem from the human rights perspective. Sanitation is a human rights concern that requires that States take up the responsibility to provide the same to their citizens. The neglect of the duty is an affront to the human rights of the affected who may hold the State accountable for human rights abuses.[207]

Another recent study on disparities in unimproved drinking water and sanitation in Ghana was conducted by Boakye Oppong.[208] The findings of the research showed that Ghana

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203 Accra Metropolitan Assembly Part II (Sanitation Bye-laws); Osu-Doku Municipal Assembly Sanitation Bye-laws section 25.

204 Jacob Doku Tetteh and others, 'Spatial heterogeneity in drinking water sources in the Greater Accra Metropolitan Area (GAMA), Ghana' (2022) Population and Environment 44: 46-76 <https//doi.org/10.1007/5 11111-022-00407-y> accessed 28 May 2024.

205 ibid

206 Mustapha Immurana and others, 'The effect of financial inclusion on open defecation and sharing of toilet facilities among households in Ghana' (2022) (n 41).

207 UNCESCR, General Comment No. 15, UNGA Resolution 64/292 of 2010.

208 Boakye Oppong, 'Demographic disparities in improved water and sanitation in Ghana: a nationally representative cross-sectional study' (2022) (n 114).

must work hard in order to attain its objective of nationwide access to safe water and sanitation by 2025 as well as eliminate open defecation by 2030. The study, however, was silent on looking at the issue from the human rights point of view. The current policies and measures put in place aimed at achieving the above targets, such as providing toilet facility in each household by landlords or property owners, the campaign of making Accra the cleanest city in Africa, supplying clean water to all the people of Ghana by 2025 and improved sanitation by 2030 are good. However, the government of Ghana must show more commitment by way of providing matching funds to enable the MSWR and the other stakeholders such as the MMDAs, and the WRC to discharge their responsibilities efficiently.

Kangmennaag[209] undertook research into the quality of the water accessible to the people of Ghana for consumption. Even though the research concluded that most of the water sources were not suitable for consumption, it did not address the issue of water as a human right. Yet another study carried out on Ghana's sanitation situation was on the regress of access to improved sanitation in Ghana. Agbadi[210] conducted yet another research on water and sanitation. The study focused on factors restricting access to water and sanitation and not on sanitation and water as human rights. Access to safe water and improved sanitation are global human rights issues and must be treated as such.[211] Access to water and sanitation in adequate quantities is an international human rights issue. The twin rights are indispensable leading to the realization of other human rights. States are duty-bearers in providing water and sanitation to the citizenry while the consumers are the right-holders. The right-holders have the right to enforce their right against the State if they fail to meet their demands[212] On the part of Abdul-Ghaffar Donkor,[213] the study was on the annual cholera outbreak in Ghana and the associated fatalities. The menace was connected to the consumption of unsafe drinking water and poor sanitation. Though the above issues bordered on human rights, the authors did not

209 Joseph Kangmennaag, Elijah Bisung and Susan J. Elliot. 'We Are Drinking Disease' (2020) (n 174).

210 Pascal Agbadi, Ernest Darkwa, Paul L. Kennedy. A Multilevel Analysis of Regressors of Access to Improved Drinking Water and Sanitation in Ghana' (2019) (n 172) .

211 See UNGA Resolution 64/292 of 2010.

212 See UNCESCR, General Comment No. 14, 15.

213 Abdul-Ghaffah Donkor, Namaitijian Maimaiti. 'The Cholera Outbreak in Ghana' (2019) (n 184).

focus on them. Cholera outbreak and its attendant consequences such as death are human rights issues that must be tackled from that angle. The menace could be tackled by addressing the sanitation deficit which compels people to take to open defecation and pit latrines. The government must provide the needed funds to the MMDAs to provide improved sanitation to those who cannot afford private water closet toilets.

Finally, another research conducted on heterogeneity in drinking water sources in the Greater Accra Metropolitan area, Ghana by Doku Tetteh[214] again focused on the various water sources available and the factors that determine people's choices of one or the other. The study never focused on the human rights aspect of the state of affairs which imposes an obligation on States to provide, protect and respect the rights to clean water and improved sanitation for all people under their care. International human rights law imposes on States the obligation to provide clean water and improved sanitation for all their citizens. As the research discovers, this duty has not been adequately fulfilled by Ghana as a nation hence Ghanaians continue to patronize unsafe water sources and unapproved sanitation facilities.

It is against this gap where sanitation is not linked to human rights, health, and dignity that this study makes an inroad to examine the existing water and sanitation legal framework of Ghana and establish their effectiveness or otherwise in tackling the age-old water and sanitation problems facing the country.

1.9 Methodology

The researcher relied on a literature review research method acceptable in legal research. The researcher reviewed and analyzed existing literature on the subject in order to get much more insight into the study. In this regard, reliance on the Ghana Law Reports, Statutes of Ghana, and literature from the Ghana Health Service, Metropolitan/Municipal/District Assemblies, the Ghana Statistical Service, Ministry of

[214] Jacob Doku Tetteh, and others, 'Spatial Heterogeneity in Drinking Water Sources in the Greater Accra Metropolitan Area (GAMA), Ghana' (2022) Population and Environment 44: 46-76 <https//doi.org/10.1007/5 11111-022-00407-y> accessed 28 May 2024.

Sanitation and Water Resources, and other relevant organizations, international legal instruments, and salient jurisprudence from other jurisdictions, particularly jurisprudence of South Africa and the United Kingdom. South Africa has a robust jurisprudence on water and sanitation. Its Constitution[215], the Water Services Act[216] and case law have made a tremendous impact on water and sanitation administration. The United Kingdom has equally robust water and sanitation legislation. They include the Environment Act of 2021, Water Act of 2014, Water Resources Act of 1991, and Water Industry Act of 1991 as well as case law. The candidate also relied on case law from other jurisdictions, including Africa, Europe, Asia, and Latin America. The case laws selected on water and sanitation demonstrate progressive realisation of the two economic goods and are useful for Ghana being a developing country.

1.10 The Importance of the Research

This study is aimed at looking at Ghana's poor water and sanitation situation as a critical challenge and problem, which violates human rights to the health, life, and dignity of the people of Ghana. The research established that the nation has several pieces of legislation and institutions to address its water and sanitation problems. However legislative reform is needed to make them robust for efficient water and sanitation services delivery. Leaders of the nation have an obligation in law to provide and deliver water and dignified sanitation to the people progressively. Consequently, their failure to give much-needed attention to water and sanitation challenges, leading to all manner of health conditions that frequently lead to fatalities, is a violation of the affected people's right to good health and life, and dignity.

The research equally aims at establishing responsibility and accountability for the failure of governments in Ghana to tackle water and sanitation challenges in the country.

215 National Constitution of South Africa Articles 24 and 27.

216 Act 108 of 1997

Conclusion

Sanitation and water are recognized human rights globally because they are essential for growth, development and survival of humans, animals and plants. They must therefore be available, accessible, safe, acceptable and affordable to all people as of right and as prescribed by the UNGA Resolution 292/64 and the UN Human Rights Council Resolution 24/42 respectively. In order to fulfil the rights to improved sanitation and safe water as required by international human rights law, a duty has been imposed on States to provide safe, affordable, accessible and acceptable water and improved sanitation to their citizens in a progressive manner. States as duty bearers are expected to protect and safeguard the rights to sanitation and water for the good health and dignity of their citizens by making laws that would ensure the realization of these rights in a progressive manner. However, provision and access, to safe water and improved sanitation is a great challenge in Ghana. Several urban and rural areas are without potable water and sanitation. Even where they exist, they are inadequate, insufficient and unaffordable in many instances and thus deprive people of their rights to these essential goods. A number of factors have been identified by research as responsible for this state of affairs. They include lack of enforcement of sanitation laws; population growth; inadequate financing of sanitation policies, progammes and strategies; rural-urban migration which exerts pressure on the already inadequate facilities; poor sanitation infrastructure; lack of appropriate sanitation technology, among others.

Several researchers and scholars attempted to find a solution to the sanitation and water problems of Ghana. They identified an important linkage between water and sanitation. Research conducted on sanitation and health revealed that adequate sanitation, together with safe and clean water, is fundamental to good health and socio-economic development. The three components of good health, namely, sanitation, water, and hygiene, are closely linked and are mutually supportive. Without water, for instance, adequate sanitation may be impossible or difficult to attain owing to their complementarity. In effect, improvement in the three components can help reduce the rates of morbidity and mortality, especially in children.

These initial efforts yielded little or no results in certain instances as sanitation and water situations in the country continue to deteriorate annually. Ghana has several laws, such as the Water Resources Commission Act, of 1996 (Act 522), the Environmental Protection Agency Act, of 1994 (Act 490), the Public Health Act, of 2012 (Act 851, the Criminal and Other Offences Act, 1960 (Act 29 and the Local Governance Act, 2016 (Act 936) which are capable of safeguarding and protecting the rights to water and sanitation for the citizenry. Unfortunately, the existence of this legislation has not made much difference in the water and sanitation sectors of the nation.

The study is aimed at looking at Ghana's poor water and sanitation situation as a critical challenge and problem, which violates human rights to the health, life, and dignity of the people of Ghana. It established that the nation has much legislation capable of addressing its water and sanitation problems and that leaders of the nation have an obligation in law to provide and deliver water and dignified sanitation to the people. The research therefore attempts to critically examine the sanitation and water laws of Ghana and to determine their effectiveness or otherwise in tackling the sanitation and water problems of the country.

The researcher relied on a literature review research method acceptable in legal research to achieve its objectives. The researcher reviewed and analyzed existing literature on the subject in order to get much more insight into the study. In this regard, it relied on the Ghana Law Reports, Statutes of Ghana, and literature from the Ghana Health Service, Metropolitan/Municipal/District Assemblies, the Ghana Statistical Service, Ministry of Sanitation and Water Resources. It also relied on other relevant literature of organizations, international legal instruments, and salient jurisprudence from other jurisdictions, particularly jurisprudence of South Africa and the United Kingdom that are robust and could be of much importance in transforming Ghana's water and sanitation situation.

In the next chapter, the research critically examines the theoretical framework of water and sanitation globally. In addition, it also examines the situation of Ghana to ascertain its efficiency or otherwise for the provision of safe water and dignifying sanitation for its people.

CHAPTER TWO

2.0 CRITICAL ANALYSIS OF THE HUMAN RIGHTS TO WATER AND SANITATION

Introduction

The habitat of human beings is the environment.[217] The human environment could be described as the total of human beings and their surroundings, ranging from their habitats, the food they eat, the air they breathe, their resources like land and water bodies, and their attendant impact on the lives of the people living in the said environment.[218] The environment is therefore essential for human survival since the very existence of human beings depends on its safety.[219] Three essential components are crucial in the human environment, namely, water, sanitation, and hygiene.[220] The three components are interconnected and mutually supportive that they are inseparable. They account for the safety, good health, and well-being of people. Water and sanitation have been declared basic human rights globally by both the UNGA Resolution 64/292 and the UNHRC in 2010.[221] The human right to water and sanitation are rights of natural persons. One of the promising approaches to solving water and sanitation challenges is that national governments, international organizations, and multi-national enterprises must recognize access to safe water and improved sanitation as human rights under international law. The UN and other international entities such as the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights (ACHR), the European Court of Human Rights (ECHR), the African Charter on Human and Peoples Rights (ACHPR) African Commission on Human and Peoples Rights, World Water Council (WWC) and Water Lex[222] recognize water and sanitation as human rights. As human rights, individuals and groups of people are entitled to enjoy them. This imposes a responsibility

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217 WCED, *Our Common Future* (Oxford, 1987) xi

218 WCED, ibid

219 WCED ibid

220 PLOS Medicine (n 42).

221 UN Resolution 64/292 of 2010.

222 WaterLex is an international development NGO and UN Water Partner dedicated to promoting water rights through policy initiatives. It seeks to be a "catalyzing link" for those interested in the Human Right to Water. WaterLex is a valuable resource for legal research on water rights and has developed a database for legal research relating to water.

on States as duty bearers to protect and respect these rights and ensure that their citizens enjoy them. The unfolding chapter looks at sanitation and water as human rights and discusses the extent to which sanitation and water are considered basic human rights in Ghana.

2.1 The Human Right to Sanitation

The concept of a healthy environment is not new. It has been discussed in several international forums over the years.[223] For instance, the Stockholm Conference in 1972 emphasizes the need to safeguard the environment, including water and sanitation by implication, which are two essential components of the environment necessary for health and human dignity.[224] It was followed by the Earth Summit in 1992, which addressed the effect of climate change on the environment and made an urgent call on all nations to avoid and prevent activities such as the destruction of vegetation and the use of harmful chemicals and gases that deplete the environment.[225] The European Charter on Environment and Health posited that every individual is entitled to a conducive environment and called on Member States to ensure that their citizens enjoy a safe environment, including safe water and improved sanitation at all times. The Organization of American States – Additional Protocol to the Inter-American Convention on Human Rights guarantees the right of all people to live in a healthy environment and gain access to public service – water and sanitation, by implication.[226] The African Charter on Human and Peoples Rights entitles all people to a generally satisfactory environment conducive to their well-being.[227]

The above international forums placed a high premium on the protection of the environment for good health and human dignity. It is important to note that even though no direct reference was made to water and sanitation in some of them, they form essential

223 M. Peter, 'Taking the Environment Seriously: The African Charter on Human and Peoples' Rights and the Environment' (1993) Review of the African Commission on Human and Peoples' Rights Vol.3 pts 1&2, 41.

224 Stockholm Conference, 1972 Principle 1.

225 The Earth Summit Press Release (UN Department of Public Information, New York 1992).

226 Additional to the Inter-American Convention on Huma Rights, 1988 Articles 11 and 12.

227 African Charter on Human and Peoples Rights, 1981 Article 24.

components of the environment. In effect, once the environment is protected, there is an assurance of protection of water and sanitation as well.

The linkage between a healthy environment and human rights is very strong.[228] Studies have shown that the dignity and health status of people living in a community is usually influenced by the prevailing conditions of the environment.[229] Poor environmental sanitation, usually created by improper liquid waste management reduces the protection of and preservation of human health.[230] When liquid waste is dumped in the sea and other river bodies as well as in the environment, it may lead to contamination of the said water body and people who may consume the water or come into contact with it are likely to be infested with diseases such as cholera.[231]

There is no doubt that adequate sanitation, together with good hygiene and safe water, are fundamental human rights that are essential to good health and socio-economic development of every nation.[232] Studies have revealed that improvement in good health, sanitation, good hygiene and safe water, can substantially reduce the rates of morbidity and severity of various diseases and impact positively on the quality of life of people, particularly children in developing countries.[233]

Sanitation is a very important topic for public health and well-being all the world over. Generally, sanitation refers to conditions and practices that prevent human contact with faces directly or indirectly when one consumes water that has been contaminated with faces.[234] Poor sanitation is associated with various diseases including cholera and dysentery, typhoid, intestinal worm infestations, and polio. Yet in 2022, only 57% (4.6 billion) of the global population used safely managed sanitation services. Over 1.5 billion

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228 M. Peter, 'Taking the Environment Seriously: The African Charter on Human and Peoples' Rights and the Environment' (1993) (n 212).

229 K. Edu-Boahen and others, 'Waste Management Practices in Ghana: Challenges and Prospects, Jukwa Central Region' (2014) International Journal of Development and Sustainability' vol.3:3 531.

230 ibid

231 Anna Grojec (Audaz), *Progress on Sanitation and Drinking Water (*Switzerland: WHO Press 2015.

232 ibid

233 ibid

234 WHO Fact Sheets 2023 < https//www.who.int/news-room/facts-sheet/detail/sanitation> accessed 2 January 2024.

did not have access to basic sanitation facilities such as private toilets or latrines. Of this number, 419 million still defecate in the open – in street gutters, behind bushes or into surface water bodies. Developing countries are the worst hit.[235]

International standards require that sanitation facilities should be used by one household. Where it becomes necessary that two or more households should use one toilet, it should always be separated by gender to ensure privacy as well as to meet the needs of women during menstruation.[236] This is crucial because sanitation facilities would only be acceptable to users if their design, positioning and conditions of use are sensitive to people's cultural preference. In providing sanitation by States to the citizenry therefore, it would be prudent to involve the users in the planning and construction of the facilities as much as possible.[237] Users must be involved in the design of the facilities and where possible in the construction process as well so as to meet their cultural preference as provided for under the ACHPR. The ACHPR provide that in their attempt to meet the water and sanitation needs of their citizens, States must consider facilities that address cultural preferences of users.[238] For instance, under the Rwanda Policy and Strategy for Water Supply and Sanitation Service, user communities are involved in project planning, construction and maintenance. The move is also meant to cut down the cost of construction.[239] The policy declares water and sanitation essential goods that must be accessible and affordable by the general public. It further states that the responsibility for water supply and sanitation services rests on the local governments but if they fail to deliver on their mandate, the Central Government must ensure that they comply with responsibilities. The policy also sets out specific objectives in the potable water supply, sewerage, stormwater and solid waste institutional and capacity-building framework that could be used for planning and monitoring.[240]

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235 WHO Fact Sheets 2023 (n 223)

236 Catarina De Albuquerque, '*Realising the Human Rights to Water and Sanitation: A Handbook by the UN Special Rapporteur* (2014) Precision Foto type Bangalore, India 36.

237 ibid

238 Article 15, 15 ACHPR

239 Rwanda Policy and Strategy for Water Supply and Sanitation Services section 4,6 (3).

240 ibid

The Rwandan water supply and sanitation service experience, that emphasizes maximum community participation in water supply and sanitation services delivery. Ghana has a similar arrangement to the Rwandan model. Under section (2) of CWSAA, water and sanitation services providers are expected to consult the end users over the type of facility preferable taking into consideration the people's culture and belief systems. Unfortunately, the practice is limited to only the rural areas and this a disincentive the city and urban dwellers. Allowing consumers of water and sanitation services to participate in the construction facilities for water supply and sanitation services would enable them to design facilities that are suitable for their use and are affordable. It would also enable them to maintain those facilities should they break down in specific instances.

2.2 International Recognition of Sanitation as a Human Right

The UNO, over the years, has made a number of attempts to safeguard the environment – sanitation. For example, in 1972, it convened the Stockholm Conference on the environment. The conference was aimed at conscientizing governments as well as international organizations on the need to protect the environment.[241] The Stockholm Declaration states that human beings have fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being.[242] In line with this, the United Nations Conference on the Human Environment (UNCHE) referred to the human environment as that which gives humans physical sustenance and allows them to develop intellectually, spiritually, morally and socially.[243] It added that the human environment consists of natural and man-made components and both are essential for the well-being and enjoyment of his fundamental human rights.[244]

The first consideration of sanitation as a human right issue could be found in the work of the Sub-Commission on Human Rights as well as in the context of other human rights, such as the right to housing.[245] The issue however gained popularity during the drafting

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241 Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment*, 3rd ed. (Oxford: University Press) 2009 4-5.

242 Stockholm Declaration, 1972 Principle 1.

243 Particia Birnie, (n 229).

244 ibid

245 Inga T. Winker, *Human Right to Sanitation* (2016) https//scholarship.law.upenn.edu/jil/vol37/iss 4/5

process of General Comment No. 15 by the Convention on Economic Social and Cultural Rights and subsequent developments in the Human Rights Council and the political declarations on the right to sanitation.[246] The events finally led to the United Nations General Assembly's declaration of sanitation as a human right in 2010.

Events leading to the recognition of sanitation as a human right unfolded in the following manner. In 1997, the Sub-Commission started dealing with sanitation and water as human rights.[247] In 2001, the Sub-Commission tasked the Commission on Human Rights to study the relationship between the enjoyment of economic, social and cultural rights as well as the promotion and realization of the right to drinking water supply and sanitation.[248] In 2006, the Sub-Commission adopted Guidelines on the realization of the right to safe drinking water and sanitation.[249] The works clearly state that everyone has the right to safe sanitation conducive to the protection of public health and the environment.

The UN recognizes safe sanitation and clean drinking water as inclusive rights which form an important determinant of health.[250] Sanitation is linked to public health. Where people practice open defecation, feces may contaminate the environment. When flies make contact with the feces and drop particles on food and other consumables it may result in diseases. When septic tanks or pits overflow or leak into groundwater or are dumped into the environment, it may contaminate people's water supply systems. When sewage is not properly treated or contained, it may contaminate water courses and the environment at large. Such contamination impacts negatively on people's right to health, life, food, and adequate standard of living as demonstrated in the case law below.

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246 ibid

247 Mr. El Hadji Guisse was tasked to draft a working paper on the "question of the promotion of the realization of the right of access to everyone drinking water supply and sanitation services.

248 Mr. El Hadji Guisse was tasked to spearhead the study.

249 Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10 *Promotion of the Realization of the Right to Drinking Water and Sanitation,* 4 at 39 U.N. Doc A/HRC/Sub.1/58/36 (Sep. 11, 2006).

250 General Comment No. 14 of Convention on Economic, Social and Cultural Rights.

In the case of *Marchiso Jose Bautista y Otros Ciudad de Cordoba Primera Instancia y*[251]a number of wells from which residents drew water were contaminated by fecal matter from a wastewater treatment facility that overflew with untreated sewage. The residents brought an action against the company, *inter alia*, alleging a violation of their right to health. The trial court decided in their favour and ordered the Municipality to take urgent measures to address the concerns of the victims and desist from violating their right to health.

Sanitation has also been closely linked to the right to housing. It is argued that adequate housing must contain facilities essential for good health. Furthermore, all housing facilities must have adequate access to sanitation and washing facilities.[252]In the case of the *Government of the Republic of South Africa and Others* v *Grootboom and Others*[253] the Constitutional Court held that the State is obliged to take positive action to meet the needs of people living in extreme poverty, particularly homeless people and those living in intolerable living conditions. It further held that the right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution of South Africa. Their interconnectedness needs to be taken into consideration in interpreting the socio-economic rights, and, in particular, in determining whether the state has met its obligations in terms of them.

The key components of the Grootboom case were access to water and sanitation. They provided the first occasion for the Constitutional Court to affirm the full justiciability of the obligation to fulfil socio-economic rights in the country.

Aside from the rights to health and housing, sanitation is also closely associated with other human rights, such as the right to education, water, work, life, a healthy

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251 8a Nominacion en lo Civil y Comercial Accion de Amparo [2004] (Exparte No. 50003/36) Argetina (October 19 2004).

252 U.N. Committee of the Rights of the Child (CRC), Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations Marshall Islands, 59, CRC/C/MHL/CO/2 (Nov. 19, 2007); CRC, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations Kazakhstan, 55-56, CRC/C/KAZ/CO/3 (June 19, 2007).

253 [2000] Constitutional Court CCT11/00, [2000] ZACC 19.

environment, and physical security, which are indispensable for the realization of safe sanitation.[254]

The right to sanitation is closely associated with the right to education. This is because formal education ought to take place in an environment that is safe and secure for human habitation. Such an environment must have water and sanitation as required by SDG 4.[255] The Special Rapporteur on the Human Rights to Water and Sanitation identified the need for educational institutions to provide for use in their institutions sanitation and water which are human rights for all. In instances where individuals are unable to do so, States must assume the responsibility of providing the same in those institutions concerned.[256] In the case of *Environmental and Consumer Protection Foundation* v *Delhi Administration,*[257] the Supreme Court held that the lack of toilet facilities in schools constituted a violation of the right to education. It was discovered that girls in their menstruation refused to go to school due to a lack of sanitation facilities in the school, thereby depriving them of the right to education. Article 21A of the Constitution of India[258] states that public authorities have an immediate obligation to ensure that they provide toilet facilities as well as safe drinking water for all.

The decision reiterates the close linkage between the right to sanitation and the right to education. In order to fulfil the right to education, a conducive environment has to be created for teaching and learning. A conducive environment in this regard must have water and sanitation facilities which are necessary for good health and human dignity. The absence of these two components of the human environment may hinder attendance to school by both students and staff of the affected institutions, thereby depriving them of their right to education.

Sanitation is also linked to the right to work as its availability and accessibility guarantee their right to a safe and healthy working environment as provided for by the International

254 ibid.
255 SDG 4(a).
256 Catarina de Albuquerque, Common Violations of the Human Rights to Water and Sanitation, , UN Doc. A/HCR/2755 (Jan.2014) 51-54.
257 [2013] AIR SC. 1111.
258 1949 (as amended).

Labour Organization (ILO).[259] The ILO Convention on Occupational Safety and Health defines health in relation to work to include physical and mental elements affecting health that are directly related to safety and hygiene at work.[260] One important factor that guarantees work health, safety and hygiene at work is sanitation. A work environment that lacks sanitation facilities may compel workers to devise their own means of attending to themselves, including open defecation. To fulfil the right to work, therefore, employers must provide employees with adequate sanitation facilities.

In the case of *Laurent X,*[261] the convict recruited several dozens of seasonal workers from Tunisia and Morocco to work on his farms. The workers were housed close to the farm but lived in deplorable conditions. Only six sanitation facilities were provided for about 100 people. The workers relied on water sources that were unsafe for consumption. A legal action was therefore instituted against the accused person alleging that the condition of the workers was contrary to the protected right to adequate housing, human dignity and safety of workers. The Cour de Cassation held that failure by the convict to accommodate and provide seasonal workers with sufficient sanitation facilities and suitable water for human consumption was contrary to the constitutionally protected right to human dignity and safety of workers under French Law.

Good sanitation guarantees a healthy life. The lack of it may equally result in diseases that may endanger life. Article 1 of the Universal Declaration of Human Rights (UDHR) recognizes the right to life and calls on all nations to ensure its protection. The human rights to water and sanitation are dispensable and are knit to the realization of other rights, including the right to life.[262] Article 4(1), 19, and 63 of the American Convention on Human Rights (ACHR) provides that all peoples have the right to full enjoyment of their human rights, including sanitation. In the case of *Sawhoyamaxa Indigenous Community* v *Paraguay*,[263] the court found that the human rights to sanitation and water are implicit in Article 4, which provides for the right to life under the ACHR. The court further held that

259 The ILO Convention on Occupational Safety and Health, 1981 (No. 155).
260 ibid
261 [2010] Cour de cassation (Crim) 09-84012.
262 CESCR, General Comment No. 14.
263 [2006] Inter-American Court of Human Rights, Series C.No.146.

Paraguay must put in place measures to protect and preserve the right to life, which in the opinion of the court, included the provision of sufficient water for consumption and personal hygiene and latrines (sanitation) to the members of the community.

Survival of human beings depend to a large extent on water, food and sanitation. This is the very reason why it is said that water is life. Sanitation also preserves life because its availability, accessibility as well as its affordability guarantees good health and quality life. Where sanitation is poor, people are most likely to fall sick due to contact with fecal matter. The decision in the Sawhoyamaxa case which reiterates the need to protect the right to life by providing adequate sanitation may be applied to the situation in Ghana for the protection of the right to life and sanitation of its citizens.

Aside from the right to life, sanitation is related to the right to food which is one of the necessaries of life. Section 27(1) (b) of the Constitution of South Africa recognizes the right to sufficient food and the right to water as human rights. This is in conformity with UN CESCR, General Comment No. 15 which provides, *inter alia,* that daily, people need 7.5 liters of water and improved sanitation, food and hygiene to guarantee a healthy life. Reading the two provisions together, there is a close relationship between sanitation, water and food. Water is needed to prepare food, while sanitation is needed to prevent contamination of food. Both sanitation and water are therefore needed to ensure food safety for human consumption. Therein lies the connectivity among them.

In the case of *Xakmok Kasek Indigenous Community* v *Paraguay,*[264] the court held that the State of Paraguay had a responsibility to provide the Xakmok Kasek Community with adequate water, sanitation, food and hygiene which are necessary for good health and human dignity. Failing to do so, the court held, that the State had violated human rights to sanitation, water, food and hygiene.

Sanitation is equally associated with physical security, which in context may be explained to mean freedom or protection against any condition or activity that may threaten life and human dignity. Sanitation facilities provided must take into consideration personal safety

[264] [2010] Inter-American Court of Human Rights, Series C. no 21.

or security while they are in use.[265] Pit latrines, which are common in Ghana for instance, must be well-built and maintained regularly to prevent people from falling into them. Surroundings of such facilities must be cleared often to ward off harmful reptiles and rodents that may attack users of the facilities. Appropriate lighting systems must be provided at night to ensure the physical safety of users.

In the case of *Eugen Gabriel Radu* v *Romania*,[266] the applicant was sentenced to 10 years and 4.5 years imprisonment respectively for aggravated theft. The prison in which he was kept was infested with rodents and other creatures. Sanitation facilities were malfunction; some were choked and were without running water while some of the toilets were flooded due to broken pipes. The applicant alleged that his condition of detention amounted to a violation of his human right to safety and security under Article 3 of the ECHR. The court held that the applicant's condition violated Article 3 of the ECHR which provided for safety and physical security for all peoples.

It is worthy of note that sanitation goes beyond being a determinant of the rights discussed above. It is a human right *suo motu*.[267] Sanitation is a distinct human right and an integral component of the right to an adequate standard of living. Adequate sanitation goes beyond the provision of toilets or latrines. It entails also disposal, treatment, and reuse in such a way that it does not come into contact with people. Violation of the right to sanitation is an affront to the health of all people living in a particular environment.[268] For instance, one or two households in a community or locality may not have sanitation facilities in their homes and may resort to open defecation. When flies peck on their feces and come into contact with food in the community, there is the likelihood of an outbreak of diseases. It may affect not only those who defecated but several other people in the community. If the chain of infection is not broken in time, it may spread to nearby

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265 CESCR, General Comment No. 4,11,12.

266 [2011] ECHR 760.

267 Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Miloon Kothari, 26, U.N. DOC. A/HRC/7/16 (Feb. 13, 2008) ("right to water"), and GA, Report on the right of health, supra note 85,63 (defining the human right to water a "self-standing right."

268 Takele Saboka Bulto, 'The Emergence of the Human Right to Water in International Human Rights Law: Invention or Discovery?' (2011) Melbourne Journal of Int. Law 12(2) 1,14.

communities as well and eventually become a national disaster. Therein lies the importance of providing proper sanitation for good health and human dignity.

In 2015, the right to sanitation was explicitly recognized as a distinct human right by the U.N. General Assembly.[269] The right to sanitation entitles everyone to have physical and affordable access to sanitation in all spheres of life. It should be safe, hygienic, secure, socially and culturally acceptable and must ensure privacy and dignity.[270] Sanitation, like many other human rights, such as housing, water and health, evokes the concept of human dignity.[271] The issue of managing bodily functions of urination, defecation and menstruation is at the heart of human dignity. Lack of sanitation then is not only an affront to an individual's dignity and right, but also poses a danger to the health and safe drinking water of other people owing to the contaminating nature of feces.[272]

The right to sanitation is derived from the right to an adequate standard of living, though not specifically stated in the ICESCR.[273] The right to sanitation entitles everyone to have physical, and affordable access to sanitation in all spheres of life, that is, it should be safe, hygienic, secure and socially and culturally acceptable and should provide privacy and ensure human dignity.[274]

In the case of *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR*,[275] the plaintiff filed a petition on behalf of 1,122 persons (the petitioners) who were evicted from areas around Medina Location in Garissa, Kenya. The evictions deprived the petitioners access to, *inter alia,* water and sanitation. They made numerous attempts to have an audience with the government but were unsuccessful. On 24 December 2010, the Government began to demolish their houses without prior written notice, court order, or consultation, and leaving the petitioners homeless as no alternative

269 Human Rights to Water and Sanitation – UN WATER, <unwater.org/water-facts/human-rights-water-sanitation> accessed 24 November 2023.

270 ibid

271 Introduction: 'Sanitation as Human Right' < hrw.org/report/2017/04/19/going-toilet-when-you-want/sanitation-human right> accessed 13 November 2023.

272 ibid

273 ibid

274 UN General Assembly Resolution 70/169.

275 High Court of Kenya at Embu, Constitutional Petition no 2 of 2011 16 November 2011.

accommodation was given them. They were forced to live and sleep in the open or in make-shift temporary structures without access to water and sanitation and exposed to the vagaries of nature, health risks, and insecurity.

The petitioners filed an interim order to stop the respondents from evicting them and demolishing their houses without a court order and the provision of suitable alternative accommodation. They further sought declarations that the respondents had violated their fundamental rights, including the right to life, protection of property, accessible and adequate housing, clean and safe water, sanitation, and health care services. They furthermore requested the Court to order the respondents to provide suitable and permanent alternative housing, and not to carry out further demolitions, and to provide punitive damages.

In its ruling, the Court applied the Constitution of Kenya, the ICESCR, and the ICCPR. It explained that recognizing and protecting human rights and fundamental freedoms preserves the dignity of individuals and communities. It held that the State has to address the needs of vulnerable groups within society. It further held that the petitioners were entitled to the fundamental rights to accessible and adequate housing and reasonable standards of sanitation, health care, clean and safe water in adequate quantities, and education as guaranteed by Article 43 of the Constitution and international treaties. In addition, according to Article 47 of the same Constitution, they were entitled to be given written reasons regarding the evictions. Citing Article 21(3) of the Constitution, the Court also indicated that ‘it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. It therefore concluded that the forced eviction grossly undermined their right to be treated with dignity and respect.

Despite the fundamental relationship between human dignity and the right to sanitation, national and international programs that address water and sanitation concerns invariably invest more in water than in sanitation. While water and sanitation are sacrosanct, much more attention is given to water supply to the detriment of sanitation. Consequently,

billions of people live without sanitation.[276] International human rights law addresses governments' obligations in relation to sanitation. States are duty bearers of providing water and sanitation services to their populace who are right holders in that respect.[277] States ought to guarantee the rights to sanitation and water equally and without discrimination. They may do so by ensuring that water and sanitation facilities and services are provided for all people irrespective of social status, and political, cultural or religious affiliations**.** Equally important is the issue of affordability. Policymakers and regulators must take cognizance of the poor when fixing tariffs for water supply and sanitation services. This could be done in Ghana for instance, by identifying the poor who may not be able to afford water and sanitation bills and either providing the said services to them by subsidy or for free. Separate water meters could be provided for them so that they access water under the dispensation. Currently, water tariffs are fixed by the Public Utility Regulatory Commission (PURC) which does not have any special package for the poor even though the PURC Act provides for it under section 2 of the law.[278] Section 2 of the PURC Act provides that the PURC may vary tariffs considering status or classes of people. The said provision is not being complied with as water tariffs are uniform in Ghana. Consequently, those who cannot afford to settle their water bills resort to other water sources such as wells, streams and water tanker services whose safety cannot be guaranteed.

States must direct their interventions, in terms of providing water and sanitation services to those in need. and develop capabilities of State institutions that provide water and sanitation in order to fulfill their obligations.[279] Unfortunately, sanitation issues in certain parts of the world are treated as an individual affair. In Ghana for instance, the government, through the MMDAs[280] is supposed to provide sanitation facilities, such as latrines for communal use and services such as collection and disposal of fecal matter to

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276 The UN Millenium Development Goals (2000-2015) targeted halving the portion of those without access to safe drinking water which was formally met in 2010, yet progress on sanitation lagged behind. Inga T. Winkler, 'Human Right to Sanitation' (2016) < https// scholarship.law.upenn.edu/jil/vol/37/1534/51331> accessed 22 November 2023.

278 PURC Act, 1997 (Act 538) ss. 3, 16, 20.

279 UN Human Rights Council Resolution of 2009. It recognizes that states have an obligation to address and eliminate discrimination with regard to access to sanitation.

280 Local Governance Act of Ghana, 2016 (Act 936) section 104.

ensure safety and hygiene in communities under their jurisdiction. These services are either not provided or done inappropriately. Sanitation issues are left in the hands of individuals and communities to manage. Hence in communities where there is a leadership crisis, sanitation becomes a problem. The MSWR, the MMDAs, the WRC, and the CWSA must step up their game, implement and enforce the laws that establish them so that they would be able to provide the people of Ghana safe water and improved sanitation for the well-being and dignity for the people of Ghana.

States or governments have the obligation, *inter alia*, to adopt affirmative steps in light of the special sanitation needs of girls and women. They must remove all barriers, such as discrimination and corruption which hinder access to sanitation and its services.[281] Sanitation issues in relation to women and children need to be given special attention in line with article 4(2)(h) of CEDAW and article 15 of the ACHPR. Women need proper sanitation facilities especially when they are menstruating. Such facilities must have adequate water and hygiene facilities to protect them from infections and other related diseases.

In the case of *Habeas Corpus Colectivo presentado por Víctor Atencio* c/ *el Ministerio de Gobierno y Justicia, Director General del Sistema Penitenciario,*[282] 3 civil society organizations, 245 persons (the plaintiffs), visited the Nueva Esperanza Rehabilitation Centre, the Women's Rehabilitation Centre, and the Public Jail, all in the Province of Colón. They found that the detention conditions, including the sanitation facilities and the drinking water supply systems in the three prisons, were woefully inadequate for both male and female prisoners. The plaintiffs applied for a collective *habeas corpus* at the Supreme Court of Justice (Corte Suprema de Justicia) against the Minister of State and Justice and the General Director of the Penitentiary System.

The Court held that persons deprived of their liberty retain their fundamental and inalienable human rights as enshrined in the Constitution of Panama and in other

281 UN Human Rights Council (n 267).

282 [2011] Corte Suprema de Justicia 298 - 09.

international instruments ratified by the State. They included the rights to health, education, privacy, information and communication, equal treatment, and non-discrimination. These must be respected by prison authorities in conformity with Article 5 of Law 55 and Article 5 of Executive Decree No. 393. Concerning the UN Standard Minimum Rules for the Treatment of Prisoners, the Court added that the Panamanian authorities must 'seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings. The Court concluded that the penitentiary authorities must safeguard certain detention conditions, including ensuring hygiene conditions, as well as adequate sanitary installations, clean and decent bathing and shower installations, and the provision of drinking water, in conformity with Law 55 of 2003. The Court concluded that the State must respect, monitor, and guarantee the implementation of human rights.

Research has shown that barriers to the realization of the right to sanitation go beyond the availability of resources to provide such services.[283] Discrimination, based on old age, gender, and disability deprives people of their right to adequate sanitation. Corruption or mismanagement may equally negatively affect governments in investing in sanitation facilities and services.[284] Governments may also fail to recognize the essence of sanitation and thus may relent in their efforts to ensure access to it.[285]

As governments and nation-states work towards achieving Goal 6 of the Sustainable Development Goals by 2030, more needs to be done than chatting resources or committing resources to the provision of sanitation services. More efforts must be geared towards addressing the barriers against realizing the right to sanitation in all spheres of life, such as discrimination, corruption, and mismanagement of resources earmarked for sanitation.[286] On the issue of discrimination in terms of design and location of sanitation facilities which most of the time are inaccessible to the aged, the physically challenged, women, and children, putting in place robust legislation, such as those of South Africa

283 Introduction: Sanitation to Human Rights (n 259)
284 ibid
285 ibid
286 ibid.

and Kenya, that address the concerns of the victims would curb the menace. In Ghana, for instance, MMDAs tasked to provide sanitation for communities under their jurisdiction must put in place policies that address sanitation concerns of the vulnerable. The policy of providing water and sanitation at subsidized rates could be a step in the right direction for those who may not be able to afford the same. They must equally make by-laws that would effectively address discrimination against the aged, physically challenged, women, and children in providing sanitation for all.

Secondly, corruption by sanitation service providers deprives individuals and communities of their right to sanitation.[287] Funds allocated for the provision of sanitation end up in private accounts at times instead of being used for their intended purpose. Institutions mandated to ensure that resources earmarked for sanitation must be well-resourced, both financially and human resource-wise, to knit corruption in the bud.[288] Similarly, mismanagement of sanitation resources could be checked by stringent monitoring mechanisms that would ensure efficient management of and provision of sanitation services.[289]

2.3 The Human Right to Water

Closely connected to the human right to sanitation is the water right**.** The human rights legal system from which the human right to water was derived began after World War II.[290] The post-World War II international community has progressively recognized access to safe drinking water within the human rights framework. For instance, Articles 24 and 27 of the CRC recognized the right of children to access safe water essential for their growth and development. Children need safe water for consumption and other domestic uses in their early stage of development and state agencies must make adequate provision for children.[291] Article 14(2) of CEDAW also makes provision for the recognition

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287 Pascal Agbadi, Ernest Darkwa Paul and L. Kennedy. 'A Multilevel Analysis of Regressors of Access to Improved Drinking Water and Sanitation in Ghana". (2019) Journal of Environmental and Public Health vol. 2019 11: 1 <https//doi.org/10.1155/2019/3983869> accessed 12 December 2023.

288 ibid

289 ibid

290 Jootaek Lee, 'Researching the Human Right to Water with an Annotated Bibliography' (2019). <nyulawglobal.org/globalex/Human-Right-to Water.html> accessed 13 December 2023.

291 Convention on the Rights of the Child, 1989, articles 24 and 27.

and protection of the right of women, especially the vulnerable, to safe water. It emphasizes the important role water plays in the lives of women in terms of personal hygiene and domestic usage.[292] The ACHPR under article 16 also recognized the right of children to safe drinking water. The ILO Convention No. 161, under Article 5, recognizes the right of workers to safe water for consumption and other uses, especially during working hours. Similarly, Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD) provides for the need to have targeted programmes aimed at meeting the right of persons with disabilities to water.[293]

Despite growing international agreement on the need for recognition of a human right to water, the human rights principles, and standards regarding the human right to water, it was not until 2010 that water and sanitation were declared human rights by the UN General Assembly.[294] Nations all over the globe have issues relating to water quality, quantity, and access which require immediate and efficient solutions because of water's critical importance to human health, life, and dignity.[295] Matters concerning accessibility, availability, affordability and acceptability of water originate from multiple sources, including political, economic, social, cultural, and environmental causes.[296]

Politics, to a large extent, may improve or negatively affect the supply of safe water for consumption and other domestic uses. Whilst one political party may choose to make it a priority, another may not.[297] In Ghana, for instance, there is no sustainable national development programme.[298] A political party that wins power determines priorities in terms of development. Hence if a particular government does not consider the provision or supply of safe water a necessity, it may not commit enough resources to the sector. As a result, sections of the populace would not have an adequate supply of water for

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292 Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1979, article 14(2).

293 Convention on the Rights of Persons with Disabilities, adopted in 2006 article 28.

294 UN General Assembly Resolution 64/292 of 2010.

295 Jootaek Lee. (n 280).

296 ibid

297 Pascal Agbadi, Ernest Darkwa Paul L. Kennedy. 'A Multilevel Analysis of Regressors of Access to Improved Drinking Water and Sanitation in Ghana' (2019) Journal of Environmental and Public Health vol. 2019 11: 1 <https//doi.org/10.1155/2019/3983869> accessed 14 Decembr 2023.

298 Ibid

consumption**.** The most affected, as in Ghana are the poor who are deprived of their right to safe water. This problem may be addressed by putting in place a sustainable national development programme which must be followed by successive governments. In this way, the right to safe and clean drinking water for the people of Ghana would be realized progressively.

Economic factors may also affect the supply, access and affordability of water. Provision and sustainable management of water supply facilities are quite expensive. Thus, countries, especially those in Africa and parts of Asia, face an enormous task in fulfilling their obligation to provide, respect and fulfil the human right to water and sanitation.[299] in order to fulfil the right to clean water in Ghana, governments must allocate adequate resources to the section to ensure a sustainable supply of safe water.

The supply of safe water can also be hampered by socio-cultural factors, such as belief systems and customary practices. In Ghana, for instance, it is a common belief that every river or stream is inhabited by the gods.[300] Hence, generally, there are days people are prohibited from going to the river either to fetch water or wash around it. Women in their menstruation are not allowed to go the stream to fetch water. The prohibition also extended to clearing along the riverbanks which are believed to be the abode of the gods. It is believed that those who refuse to comply with the prohibition are punished by the gods. Even though these beliefs protect the river bodies from pollution and sustain them, they deprive people of their right to water.

Environmental pollution and degradation affect water quality greatly. Water bodies from which water supply companies provide water for public consumption form part of the environment. Therefore, once the environment is polluted it impacts negatively on water quality as well. Environmental pollution also affects the cost of treatment thereby increasing water tariffs. Treatment of polluted water requires the use of more of the chemicals that may be applied ordinarily. In Ghana for instance, most of the river bodies

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299 UN General Assembly Resolution 64/292 of 2010.

300 Maxwell Opoku-Agyemang, 'Shifting Paradigms: Towards the Integration of Customary Practices into the Environmental Law and Policy in Ghana' (Unpublished Paper) 1- 6.

lying in the gold mining areas, such as rivers Pra, Birim, Ankobra, Tano and Offin have been heavily polluted by activities of illegal mining popularly known as "galamsey."[301] The cost of treatment of water for consumption has increased and this has deprived most residents of their right to safe and clean water as they cannot afford to pay the high tariffs. The solution lies in strict enforcement of the mining laws of Ghana to serve as deterrence to potential illegal miners. The South African case law on pollution of a water source as discussed below may offer some useful lessons for Ghana in its fight against water pollution by miners.

In the case of *Federation for Sustainable Environment and Others* v *Minister of Water Affairs and Others*[302] due to acid mine water contamination of the water supply in Silobela and Carolina, about 20 water tanks were brought in from the neighbouring towns of Breyten and Chrissiesmeer around February 2012 to provide water to these localities. The water supply system however proved to be inadequate to supply drinking water from March to May 2012, as several tanks were not refilled or had been left empty. Some of the residents had to walk long distances to access the water from the tanks. The applicants alleged that the lack of access to an effective and reliable supply of potable water constituted a breach of the right to water as guaranteed under Section 27 of the South African Constitution. They requested the court to declare the failure of the respondents to supply them with adequate potable water unlawful and unconstitutional. They further requested the court to order the respondents to engage meaningfully with them as regards any future supply of water to the affected communities.

The Court held in favour of the applicants ordering the relevant respondents to supply temporary potable water to residents of Silobela and Carolina within 72 hours, under regulations 3(b) of Regulations Relating to Compulsory National Standards and Measures to Conserve Water. It further ordered the relevant respondents to engage actively and meaningfully with the applicants as regards steps undertaken to ensure that drinking water can be supplied again, and as to where, when what volume and how regularly

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301 Joy News Documentary, 'Water pollution in mining areas in Ghana' [Television Broadcast] (6 November, 2023)

302 [2012] High Court (North Gauteng, Pretoria) 35672/12, [2012] ZAGPPHC 128.

temporary water will be made available in the interim. The Court further ordered the relevant respondents to report within one month to the Court on measures adopted to ensure the supply of water through the water service.

The Federation for Sustainable Environment case could be applied to the pollution of water bodies by illegal mining activities in Ghana and could be used to prescribe solutions to the Ghanaian experience. The government and its agencies responsible for mining could be held accountable for their failure to bring the illegal miners to book as well as their failure to provide residents in the affected areas safe drinking water. They could equally be held responsible for failing to engage the affected residents on a lasting solution to the problem.

One of the most promising approaches to solving water issues is for national governments, international organizations, and multinational enterprises to put in place robust legal frameworks, policies, and programmes for the progressive realization of the human right to water under international law.[303] Many countries, such as South Africa, Kenya, the United Kingdom, (UK), and Argentina have already put in place efficient water legislation, including their national constitutions, which have recognized water as a human right in line with UNGA 64/292. For instance, Section 27 of the Constitution of South Africa,1996 provides for the right to water in adequate quantities and imposes an obligation on the State to ensure access to the same by all citizens. In addition, the Water Services Act, Act 108 also provides for water administration in South Africa. Article 43 of the Constitution of Kenya recognizes the right to adequate and a reasonable standard of sanitation and water. It also imposes an obligation on the State to make them available and accessible to everyone, especially the poor. The UK, under its Water Act of 2014, Environmental Act of 2021 and Water Resources Act of 1991, has made comprehensive provisions for water use and administration. In Argentina, Article 124 of the 1994 Constitution acknowledges that the 23 provinces and the autonomous Buenos Aires own water resources under their respective jurisdictions and manage the same for the well-being of everyone. Ghana on the other hand, though has made provision for the

303 Joy News Documentary (n 291).

protection of the right to water in its secondary legislation, such as the WRCA, EPAA, and CWSAA, the 1992 Constitution has yet to be amended to include water and sanitation as human rights. This is a setback to the full realization of the twin rights. This gap could be filled by amending the 1992 Constitution to make room for human rights to water and sanitation. in addition, the WRCA of 1996 could be revised to make provision for sanitation as is the case of the South African Water Services Act of 1997.

2.4 International Recognition of the Right to Water

The earlier human rights documents, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), did not include specific reference to the human right to water. However, the right to life could be implied under the provisions of the foundational human rights documents enumerated above. For instance, article 6(1) of ICCPR provides an inherent right to life. As water is necessary to sustain life, the right to life referred to in the ICCPR has been thought to include the human right to water. Similarly, Article 25(1) of the UDHR provides that everyone has the right to a standard of living adequate for his health and well-being of himself and his family, including food, clothing, housing and other necessary social services. Though water is not specifically mentioned, one of the essential goods that guarantees good health and well-being is safe water. Hence water could be added to the list of goods that are essential for good health and well-being because the use of the word 'including' suggests that the list is inexhaustive. Moreover, the ICESCR, under Article 11(1) recognizes the right of everyone to an adequate standard of living as does UDHR. To attain an adequate standard of living safe water is needed to complement the other necessities of life such as food, shelter, clothing and housing.

In the case *of Marchisio José Bautista y Otros c/ Superior Gobierno de la Provincia de Córdoba y Otros,* [304] it was held that the pollution of the water of the river Suquía and, as a result, the contamination of water wells, supplying water for human consumption, due to the malfunctioning of a wastewater treatment plant, under the control of the municipality

[304] [2004] Juzgado de Primera Instancia Civil y Comercial (Ciudad de Córdoba) 500003/36.

compromises the right to health and to a healthy environment as protected by the National Constitution of Argentina and the Constitution of the Province of Córdoba. Concerning the contamination of the water wells, the Court considered as proved that the applicants' only source of water had been contaminated with fecal coliforms and as a result was not fit for human consumption. It referred that the Universal Declaration of Human Rights, in Article 25, states that everyone has the right to a standard of living adequate for the health and well-being of himself and his family; and that this is reiterated in more detail by Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. It further referred to General Comment No. 15 where the Committee noted that 'the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Court concluded that access to clean water is a right, which is implicit in the right to health, and is recognized as such in the Regulatory Framework. The right to health comprises positive obligations and the supply of safe drinking water is a preventive measure, which is indispensable for the enjoyment of the right to health.

The concerns were further addressed by Costa Rican domestic laws as applied in the case of *Ileana Vives Luque c/ Empresa de Servicios Públicos de Heredia*.[305] The facts of the case were that Heredia's Public Services Company (PSC), the only water company in the Province of Heredia, denied Mrs. Luque's request for the connection of her property to the public water supply system. Heredia's PSC based this decision on the following technical reasons: the scarcity of water in the area during the summer months, the vicinity of Mrs. Luque's property to the chlorination station, and the fact that, although technically possible, it was inconvenient to make a connection to the leading/main pipeline. Following the denial of her request, she applied for a mandamus order to the Constitutional Chamber of the Supreme Court of Justice, seeking the protection of her fundamental rights.

It was held that denying the connection of a property to the public water supply system amounts to a violation of the right to safe drinking water as derived from the rights to

305 Corte Suprema de Justicia, Constitutional Chamber 27 May 2003 238.

health, life, a healthy environment, food, and adequate housing under the Costa Rican Constitution

There were a few efforts to address the human right to water before the 1990s, though not general and systematic. For instance, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 was the first primary human rights instrument to explicitly refer to the human right to water. Under Article 14(2)(h) of CEDAW, in order to truly eliminate discrimination against women in rural areas, states were to ensure that such women enjoy the right to adequate living conditions, particularly in relation to sanitation, electricity and water supply. This right has been interpreted not to require equal access to water, but a right to clean water. In Ghana, governments over the years have instituted the Community Water and Sanitation Programme (CWSP) as a measure to ensure that rural women have access to safe and affordable water. To oversee its implementation at all levels, the Community Water and Sanitation Agency (CWSA) were established in 1996.[306] Among its functions, the CWSA was to assist the District Assemblies in providing safe drinking water to all rural communities in Ghana. The Agency was also tasked to mobilize funds for the realization of this objective.[307] The CWSP has greatly assisted many rural communities in Ghana to gain access to clean and safe water. Women as primary collectors and consumers have been assigned a central role in the design and management of the water supply facilities. This has tremendously improved the lot of rural women in Ghana.[308] Regrettably, however, the CWSP non-existent in many rural communities in Ghana in recent times due to the failure of the CWSA to perform its role efficiently. As a step towards improving the water and sanitation demands of Ghana, the CWAP should be revived and made to cover more rural communities in the country. The CWSA must be well-resourced financially and its officers and agents must be adequately trained to provide safe water and sanitation to rural communities in the country.

306 The CWSA was established under the CWSA Act, 1996 (Act 564).

307 ibid section 2.

308 Kwadzo Mensah, 'Water Law, Water Right, and Water Supply (Africa) Ghana-study country report DFID' (Cranfield University, 1999 Silsoe) 15-16.

It is important to note that Article 14 of CEDAW only applies to rural women, as opposed to women in urban settings.[309] Article 14 of CEDAW addresses rural women exclusively and specifically, stating that they like their urban counterparts, ought to enjoy fundamental human rights to health care, education, economic advantages, access to land, and adequate and healthy living conditions. The focus on rural women was intentionally made by the drafters of the convention because they realized that rural women, who formed two-thirds of women globally lagged accessing basic facilities like health care facilities and equate living conditions including water and sanitation compared to their urban counterparts.[310] The UNGA declaration of safe water and sanitation in 2010[311] has however cured the defect as it applies to both rural and urban women and it is universal.

Another treaty that addressed the human right to water was the Convention on the Rights of the Child (CRC).[312] Article 24(1) of the CRC addresses water, recognizing the child's right to the highest attainable standard of health. Article 24(2) specifically imposes on State Parties a duty to take appropriate measures to combat disease and malnutrition by providing clean drinking water, considering the dangers and risks of environmental pollution. The CRC directly links safe drinking water to health and includes the human right to water under the right to health. Like all other human rights, States are obliged to provide safe water for all, especially children. They could fulfill this obligation by putting in place policies and legislation that address the issues of funding, management, and maintenance of water supply systems and issues of accessibility, affordability, sustainability, and acceptability of water supplied for consumption. In Kenya for instance, the Kenya National Commission on Human Rights (KNCHRs) has instituted water programme, by which the KNCHRs conducts research and produces reports on the performance index of water companies in the provision of safe water to citizens, could be replicated by the WRC. This would help the nation determine the shortfalls and put in place measures, such as prosecuting those who pollute water bodies and deprive citizens of safe water. In addition, pre-payment meters could be installed for the poor who cannot

309 Naela Gabr. 'General Recommendation on Article 14 of CEDAW Rural Women' (2012) 1-4. <https//www.ohchr.org> accessed 16 December 2023.

310 ibid

311 UNGA Resolution 64/292.

312 It was adopted by the UN in 1989.

afford the water bills as decided by the Constitutional Court of South Africa in the case of *Muzibuko v City of Johannesburg.*[313] The court held that the free water policy adopted by the City was reasonable and lawful. The implementation of this policy in Ghana would help alleviate the plight of the poor, in terms of accessibility and affordability of water in the country. Furthermore, victims of violations of the right to water and sanitation in Ghana often belong to the marginalized and discriminated groups, such as the urban and rural poor. To assist them in accessing safe water and help them assert their rights, the Legal Aid Commission could assign a special desk to victims of such circumstances to enable them have their issues addressed promptly.

Agenda 21, part of the UN Programme of Action, recognizes water as essential to life and an integral part of the ecosystem. It emphasizes that the scarcity of water requires integrated water resource planning and management and sets specific goals to be reached by 2000 and 2025.[314] For instance, it recognized water as a social good and encouraged states to make water accessible and affordable to all. It also mandated states to adopt sustainable means of water supply to ensure integral human development.[315] The Peruvian case of *Red de Vigilancia* has addressed the issue of sustainable supply of water as discussed in the subsequent paragraph.

In the case of *Red de Vigilancia y Exigibilidad de los Derechos Económicos, Sociales y Culturales Región Junín c/ Municipalidad Provincial de Huancayo,*[316]a series of reports and statements were issued concerning the quality of the water supplied by the public water company, SEDAM Huancayo, to the city of Huancayo and neighbouring districts. A laboratory analysis was subsequently carried out in 1999 by the Microbiology Laboratory of the National University of Peru. The findings revealed that the water exceeded the limits established by international standards. The Health Ministry (DIGESA) assessed the

313 Constitutional Court of South Africa (CCT 39/09) [2009.]

314 Created at the UN Conference on Environment and Development in Rio de Janeiro in 1992 includes Chapter 18: Protection of the Quality and Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management and Use of Water Resources.

315 Created at the UN Conference on Environment and Development in Rio de Janeiro in 1992 includes Chapter 18: Protection of the Quality and Supply of Freshwater Resources: Application of Integrated Approaches to the Development, Management and Use of Water Resources.

316 [2005] Corte Superior de Justicia (Junín) 1230-2005.

service infrastructure of the water company and concluded that it required expansion and rehabilitation. A report by the WHO concludes that the water distributed in the districts of Huancayo is contaminated with total and fecal coliforms. Despite several requests addressed to the Municipality by the Network for the Monitoring and Enforcement of Economic, Social, and Cultural Rights, from the Junín Region, to inform the population about the danger of consuming the water from the public network without previously boiling it, the Municipality did not respond.

The Network for the Monitoring and Enforcement of Economic, Social and Cultural Rights, from the Junín Region filed a judicial constitutional procedure to the Second Civil Court of the Huancayo Province against the Provincial Municipality of Huancayo, *inter alia*, to seek compliance by the Huancayo Provincial Municipality of its obligation to protect the life, health, and environment of the population that lives in the districts supplied by the water and sanitation services of SEDAM Huancayo.

The Court in the first instance granted the Network's application, and the Court of Appeal upheld the same. It ordered the Provincial Municipality of Huancayo to conform with Articles 3 and 5 of the General Law on Sanitation Services, and Articles I to IV of the General Health Law, which mandate the defendant to inform the population, through the mass media, of the current danger to their life and health resulting from the consumption of the water provided without previously boiling it as well as to regularise the quality of the water delivered by the public company SEDAM Huancayo.

The case highlighted the importance attached to quality water supply as a prerequisite to good health, life, and human dignity in line with the goals of Agenda 21. It demonstrated the need for state parties to ensure the provision of quality water for their citizens.

These various actions by states and international organizations and efforts by non-governmental activists culminated in the adoption of General Comment No. 15 by the Committee on Economic, Social, and Cultural Rights in 2002. The human right to water was recognized as indispensable for leading a life with human dignity. General Comment No. 15 Interpreted Articles 11 and 12 of the ICESCR to include a human right to water.

General Comment No. 15 states that the expression, “including adequate food, clothing and housing” under Article 11(1) of the ICESCR is not exclusive; it identifies water as an essential element for an adequate standard of living, one of the most fundamental conditions of survival. General Comment No. 15 also indicates that the human right to water is inextricably connected to the right to health under Article 12(1) of the ICESCR and the right to adequate housing and adequate food under Article 11(1) of the ICESCR. This General Comment is certainly the most important precursor to the formal establishment of water as a human right.

In the case of Ghana, the 1992 Constitution has not specifically mentioned water as a human right. However, the provisions under Articles 11 and 12 of ICESCR and General Comment No. 15, which have made room for the inclusion of the right to water a fundamental component of rights that are essential for an adequate standard of living, could be applied to the Ghanaian situation. In that regard, water would be given due attention as a fundamental human right which should be given all the attention that it deserves. In addition, Article 33(5) of the 1992 Constitution of Ghana provides that the fundamental human rights stated in Chapter Five are not exhaustive. Similar rights that are recognized and taken care of in other jurisdictions could be included in the Bill of Rights under the Constitution. Therein lies the implicit inclusion of water as a fundamental right in Ghana. Unfortunately, not much attention has been given to all these important human rights. Water issues have almost become an individual affair. The duty imposed on the nation to fulfil, protect and respect these rights is relegated to the background.

Tortojada,[317] in their study on the human right to water in Ghana noted that the nation had not made adequate provision for the realization of the right in reference. He indicated that States are responsible and legally accountable for the provision, protection and management of water resources. Hence, failure in that direction entitles affected individuals and communities the right to enforce their human right to water as

[317] Cecilia Tortajoda Asit K. Biswas ‘Water as Human Right’ (2017) International Journal of Water Resources Development vol. 33: 4, 509-511.

in the case of the *Government of the Republic of South Africa and Others* v *Grootboom and Others*.[318] In that case, the respondents instituted a legal action against the government of South Africa for denying them the right to basic adequate shelter and housing under South African law. The Constitutional Court held, *inter alia*, that the right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. It further held that an obligation has been imposed on the State to provide access to housing, health care, sufficient food and water, and social security to everyone unable to support themselves and their dependents. Consequently, even if resources are unavailable, the government could take steps to realise the rights above mentioned progressively.

The people of Ghana can change the current state of the water situation by taking a cue from the *Grootboom case* they could hold the government and its agencies responsible for their failure to adequately supply safe water for consumption and other domestic uses progressively. They could resort to Article 12(1) of the 1992 Constitution for the enforcement of their water rights. Article 12(1) provides that fundamental human rights enshrined in the Constitution must be respected and upheld by the Executive, Legislature and the Judiciary and that in the event of violation of those rights, the affected person may have their rights enforced by the courts. Water constitutes a fundamental human right hence the people of Ghana, being right holders, could enforce the same against the State in the face of its violation.

In 2010, the UN General Assembly, a high-level UN body formally recognized the human right to water.[319] In September of that year, the Human Rights Council quickly followed suit, declaring that the human right to water is binding.[320] These rights had been emphasized in the Eastern Bloc states, including the Soviet Union, and the Global South.[321] Many areas such as health, education, labour and employment, food, water, housing, and development, which were traditionally considered benefits provided by

318 [2000] Constitutional Court CCT11/00, [2000] ZACC 19.
319 UN General Assembly 64/292 0f 2010.
320 Human Rights Council Res. 15/9, U.N. Doc. A/HRC/RES/15/9 (Oct. 6, 2010).
321 Jootaek Lee (n 280)

states are now approached from the perspective of human rights.[322] The situation in Ghana is not the same as has been described. Issues of water, housing and food are not being approached from the human rights perspective. This may have accounted for the inadequate provision of these rights to the people of Ghana. Furthermore, there has been growing attention to the right to water and its intersection with other rights, including the right to health and development. This issue has received enough attention that the UN General Assembly declared the period from 2005 to 2015 as the International Decade for Action.[323] The primary goal of the International Decade for Action "Water for Life" was, *inter alia*, to promote efforts to fulfil international commitments to ensure the provision of safe water for at least half of the world's population by 2015. The Resolution called on all nations to focus on water-related issues at all levels and on the implementation of water-related projects and programmes for the attainment of the objectives of the Decade. The Resolution also called on the UN and all its agencies to use available resources at their disposal in order to achieve the objectives of the Decade.

2.5 Provision of Water and Sanitation and State Obligation

The human right to water is a fundamental right.[324] It entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. 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, and personal and domestic hygienic requirements.[325] From the look of things, Ghana has so far not shown much commitment towards the provision of safe water to all as a fundamental human right. In terms of availability, accessibility, and affordability of water in Ghana, the urban and peri-urban areas are the worst affected.[326] In many parts of Ghana, water does not run through the GWC pipelines. Even in areas where it does, it is

322 ibid

323 General Assembly Res. 58/217 (Dec. 23, 2003 "Water for Life."

324 Committee on Economic, Social and Cultural Rights, Twenty-ninth session Geneva, 11-29 November 2002 Agenda item 3.

325 Ibid

326 Felix Boakye Oppong and others 'Demographic Disparities in Uniproved Drinking Water and Sanitation in Ghana: A Cross-Sectional Study' (2022) BMJ Journals Vol. 12, Issue 7.

most often rationed.[327] Hence, affected communities are supplied with potable water either once or twice a week and at times, once fortnightly.[328] This state of affairs has the potential of depriving the majority of the people of Ghana of their fundamental human right to water and sanitation. it is the aim of this research therefore, to draw the attention of the government of Ghana to the importance of water and sanitation being integral components of fundamental human rights of the people of Ghana that are requisite for an adequate standard of living and human dignity.

International human rights law envisages the equal enjoyment of all rights by all people. The principle of non-discrimination and equality is therefore a cornerstone of human rights practice.[329] It encompasses both the prohibition of discrimination and the obligation on states to work towards equality in water and sanitation services provision.[330]

First and foremost, States have the responsibility to provide water and sanitation facilities and services for all, irrespective of land tenure, property rights, and social status.[331] States are obliged to take positive measures to fulfill the rights to water and sanitation of the most marginalised and vulnerable individuals and groups, such as indigenous peoples, nomadic and traveler communities, refugees, asylum seekers, internally displaced persons and returnees, victims of natural disasters, prisoners, older persons, people with disabilities, people with serious or chronic illnesses, children and women.[332]

Putting in place positive and sustainable measures for the provision of safe water and improved sanitation for all, irrespective of social status, political affiliation, and gender is encouraged in Ghana. The practice of discriminating against the poor in the supply of

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327 ibid

328 ibid

329 See for example Art. 2 (2) International Covenant on Economic, Social and Cultural Rights and Art. 2 (1) International Covenant on Civil and Political Rights: International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

330 ibid

331 ibid

332 See UN CESCR 'General Comment 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 (UN CESCR 'General Comment 15').

potable water is common in urban areas, such as Accra, Kumasi, Tema, and Cape Coast, and peri-urban areas such as Kasoa, Ho, and Koforidua.[333] Regular water supply to the rich and the elite in society is a common occurrence in the country. On the other hand, water is rationed for residential areas inhabited by the poor. Thus, while water is available, accessible, and affordable to the rich, the same cannot be said about the poor and the marginalised.[334] In some situations, where safe water is available, it is not accessible to the poor and vulnerable groups because they cannot afford in most cases the tariffs.[335] Consequently, they resort to water from streams, hand-dug wells, sachet water producers, and supplies by water tankers but the safety of these water sources cannot be guaranteed.[336]

The sanitation situation in the country is worse than the water situation. According to the Ghana Statistical Service WASH Summery Sheet of 2024, only 23.3% of the people of Ghana had access to improved household toilets. The provision of sanitation facilities such as toilets, latrines, and wastewater disposal facilities is becoming an individual and a private matter in the country.[337] Statutorily, the provision of sanitation facilities is under the jurisdiction of the MMDAs.[338] Most of the Assemblies are not well-resourced and thus are not able to provide the needed services and facilities. As decided in the *Grootboom* case,[339] the solution lies in putting in place comprehensive plans so that progressively, the government would discharge its responsibilities concerning sanitation. The human right principle of non-discrimination in the provision of water and sanitation was addressed in the Mazibuko case.

In *Mazibuko and Others v City of Johannesburg and Others (Centre on Housing Rights and Evictions, Amicus Curiae)*[340] the issue was whether Johannesburg's Free Basic

333 Felix Boakye Oppong, and others 'Demographic Disparities in Unimproved Drinking Water and Sanitation in Ghana: A Cross-Sectional Study' (2022) BMJ Journals Vol. 12, Issue 7, 8-9.
334 ibid
335 ibid
336 Felix Boakye Oppong and others, (n 323).
337 Ibid
338 See the Local Governance Act, 2016 (Act 936) s. 104.
339 [2000] Constitutional Court CCT11/00, [2000] ZACC 19.
340 Constitutional Court of South Africa (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC).

Water Policy and the installation of pre-paid water meters in poorer sections of the municipality were discriminatory or otherwise.

The Constitutional Court concluded that the City's efforts to counteract the problem of acute water losses and history of non-payment for water use were appropriate and not discriminatory against the applicants. It noted that the prohibition of unfair discrimination does not mean that the government, in deciding how to provide essential services, must always opt for a uniform system if local circumstances vary. It also found that the pre-paid meter installation was lawful, particularly since the supply of water was only suspended and not discontinued. The Court concluded that it was not unreasonable for the City to have supplied more free basic water than provided under the City's Free Basic Water policy and that the City's policy had changed in the course of the litigation, which was evidence of the constitutionality of the City's Free Basic Water programme.

The *Mazibuko case* has a lesson for Ghana as far as the provision of water and sanitation is concerned. The decision of the courts suggested that governments are expected to prohibit discrimination in the provision of safe water and sanitation to the general public. However, in providing the said services, policies, plans and programmes may always not be uniform. Local circumstances may vary such policies and programmes. Ghana could take a cue from this decision in fixing water tariffs. Water tariffs could be fixed in accordance with one's ability to pay. As it stands now, water tariffs are uniform and discriminatory against the poor. Secondly, the Free Basic Water Policy of Johannesburg is one that Ghana can consider especially for rural and urban poor communities. This would help in the realization of the right to water in the country.

The second duty of the state as regards sanitation and water concerns making information on them available, including for example the provision of services, tariff systems, and the quality of water and sanitation. This is important because only informed users of water and sanitation services will be able to voice concerns and hold entities responsible for their provision to account.[341] Consequently, states must make resource

[341] UNHRC 'Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation' (2011) UN Doc A/HRC/18/33 (UNHRC Planning Report) [72]

allocations and relevant financial information on public and private water service providers publicly available. In addition, they should disseminate information through channels that are easily accessible by all and ensure the widest possible circulation of the same.[342]

In Ghana apart from water tariff increases, information service provisions concerning water supply cuts or interruptions are rare.[343] It a common to come across pipe bursts that interrupt water supply to affected localities and create wastage as well. It is however unfortunate that Ghanaians hardly raise concerns about water and sanitation as compared with concerns about poor road networks and erratic electricity power supply. It seems that many people are yet to come to terms with the fact that safe water and sanitation are human rights and that the State is the duty bearer in their provision. The research is therefore aimed at educating the people of Ghana on their entitlement to water and sanitation as human rights as well as their right to the same.[344] to hold the State responsible for failing to provide them.

For instance, in *Federation for Sustainable Environment and Others v Minister of Water Affairs and Others,*[345] The applicants requested the High Court, among other issues, to order the respondents to engage actively and meaningfully with them on steps taken to ensure the provision of drinking water and provide them information on the volume and regularity of the supply of temporary water to the communities of Silobela and North Carolina.

The facts of the case were that due to contamination by 'acid mine water' of the water supply in Silobela and Carolina, about 20 water tanks were brought in from the neighbouring towns of Breyten and Chrissiesmeer to provide water to these localities. While seven tanks were set up around Silobela, the system proved to be inadequate to supply drinking water to the affected people as several tanks were not refilled or had been

342 ibid

343 See Study of the Institutional, Policy, Financial and Legal Aspects of the Water and Sanitation Sector in Ghana (2021).

344 See the 1992 Constitution of Ghana Article 12.

345 [2012] High Court (North Gauteng, Pretoria) 10 July 2012.

left empty. Some of the residents had to walk long distances to access the water from the tanks.

The Court granted the urgent motion, ordering the relevant respondents to supply temporary potable water to residents of Silobela and Carolina within 72 hours. It further ordered the relevant respondents to engage actively and meaningfully with the applicants as regards steps undertaken to ensure that drinking water can be supplied again, and as to where, when what volume and how regularly temporary water will be made available in the interim.

The decision of the court in the *Federation for Sustainable Development case* could be used by the people of Ghana by instituting legal action against the state and its agents for failing to provide information on water and sanitation issues. This would compel the state to provide consumers with water and sanitation services in order that would be able to channel their concerns to the appropriate institutions for redress.

Another State responsibility associated with the human right to water and sanitation is accountability. For the rights to water and to sanitation to be realised, service providers and public officials must be accountable to users.[346] States are free to delegate the operation of water and sanitation services to private operators on the condition that independent monitoring and remedies are in place to ensure accountability of private actors towards users and the states.[347] Mechanisms must be enacted that establish oversight and control between both public and private actors in water and sanitation provision. The independent monitoring mechanisms could include regular visits to the water supply facilities as well as public toilets to verify their compliance levels. In terms of water supply, the institution responsible for supervision could test acidity and level of cleanliness to ensure the safety of consumers. In the case of *Subhash Kumar* v *State of Bihar*, the Supreme Court of India held that the right to life was a fundamental right under Article 21 of the Constitution, and it included the right to enjoy pollution-free water for the

346 C. de Albuquerque and V. Roaf, 'On the right track – Good practices in realising the rights to water and sanitation'177, 2012 www.ohchr.org/EN/Issues/WaterAndSanitation/ SRWater/Pages/SRWaterIndex.aspx accessed 18 December 2023.

347 ibid

full enjoyment of life. Individuals or groups who feel that their rights have been violated must have access to independent review mechanisms and courts to have their complaints heard and resolved. Remedies provided should include restitution, compensation, legally binding assurances of non-repetition, and corrective action. States must raise awareness and make information on remedies available to all.[348] Restitution is often ordered by a court to achieve fairness and prevent unjust enrichment. This remedy could be applied in instances where water or sanitation service providers failed to render services already paid for. For instance, failure to supply water to individuals who have paid for the goods to be connected to their residence. Compensation could also be applied in similar circumstances. The failure of service providers such as GWCL, to discharge their responsibilities towards individuals or groups of people may result in the remedy of legally binding assurances. This would ensure the commitment of the service providers concerned to meet the water or sanitation needs of the people involved. Corrective action could be resorted to when water and sanitation service providers commit errors in the installation, designing or redesigning an equipment. The remedy compels them to rectify the error complained of and ensures that the right thing is done.

Accountability of State actors and private individuals who provide water and sanitation services is another problem in Ghana. The major stakeholders in the provision of water are the GWC and the CWSA. These two institutions are expected to supply safe water and improved sanitation nationwide to the people of Ghana. The Water Resources Commission was set up under Article 269 of the 1992 Constitution to be the single agency responsible for coordinating water policy in Ghana. The Water Resources Commission Act, 1996 (Act 522) established the Commission. The Commission is responsible for the regulation, management and coordination of policy in connection with water.[349] It is supposed to propose comprehensive plans for the utilisation, conservation, development and improvement of water resources in Ghana. It has the mandate to initiate; control and co-ordinate activities connected with the development of water resources. It grants water rights. It can also require water user agencies to conduct research into water resources.

348 ibid

349 Act 522 Section 2.

It has also the authority to monitor and evaluate programmes for the operation and maintenance of water resources in Ghana. It advises the government on issues that are likely to adversely affect water resources in the country.

Regrettably, even though such legally well-equipped regulatory bodies, such as the WRC, the GWCL, the CWSA and the EPA exist in Ghana, one wonders why most of Ghana's water resources, especially in the mining areas are gravely polluted. Individuals, groups of people, organizations whose rights to water may have been violated by the inefficiencies in service delivery in the water and sanitation sectors may address their concerns to the complaint desks of the MSWR. In this way appropriate interventions, including legal and policy reforms could be set in motion for a lasting solution to the menace. The government agencies involved in the provision of water and sanitation, such as the MMDAs, the GWCL, the CWSA and the EPA must be well-resourced so as to meet the growing demand in relation to water and sanitation of the people of Ghana.[350] In that regard, the Columbian case of *Herman Galeano* could be of help to the people of Ghana.

In the *Hernán Galeano Díaz c/ Empresas Públicas de Medellín ESP, y Marco Gómez Otero y Otros c/ Hidropacífico SA ESP y Otros*,[351] it was held that failing to connect a property to the water and sanitation networks, and failing to supply a daily, minimum essential amount of water to a user, constituted violations of the right to water under the Colombian Constitution and international human rights law. The Court first referred to the status of the right to water under national and international law. It noted that according to the Political Constitution of Colombia the right to water is protected under the right to a healthy environment[352] and water service provision was a duty of the State.[353] It added that under international human rights law, water right is an economic and social right derived from Articles 11 and 12 of the ICESCR, and also an essential element of the right of women to adequate living conditions and part of the right of children to health. The

350 Illedge Keziah, A Systematic Literature Review on Water Access and Governance in Accra, Ghana. Thesis, (Georgia State University, 2019) <doi:https//doi.org/10.57709/15058329> accessed 17 December 2023.

351 Corte Constitucional, Ninth Chamber of Revision T- 616/10.

352 Article 79.

353 Article 366.

Constitutional Court noted that the interpretation of the content and scope of the water right must be complemented with General Comment No. 15 on the water right, which states that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. The Court noted that compliance with these standards guarantees the full enjoyment of the right to water for human consumption and creates immediate and progressive obligations for States, subject to budget availability and internal regulation.

Ghana can learn a lot from the decision of the court in the *Herman Galeano Diaz* case by making concrete efforts to meet the water and sanitation needs of the people of Ghana. It may do so by adequate budgetary allocations to the Ministry of Sanitation and Water Resources to enable it to fund water and sanitation projects under its jurisdiction. The MMDAs should be equally resourced to enable them to finance water and sanitation projects under their control**.** The responsibility of connecting water to residential properties in Ghana is the responsibility of the GWCL in urban areas, and in the rural communities, the duty of the CWSA.[354] However, owing to inadequate financial resources, they are most often unable to discharge their responsibilities efficiently. Services concerning water connection to new premises are quite high which prevents the poor from accessing them thereby making people resort to unsafe water sources for domestic uses.[355] The research advocates for free water connection to identifiable poor households who cannot afford the payment of the bills or at subsidized rates to such residential premises. This would enable the poor and the needy to assert their rights to water.

States also have to ensure the sustainability of water and sanitation for present and future generations. States must therefore establish clear responsibilities for the sustainable operation of service provision.[356] Article 2 (1) ICESCR and article 92 (s) of the ACHPR demand that water and sanitation are progressively realised for all. This includes the

354 See Ghana WASH Sector Development Programme (GWASHSDP) 2021-2030 9-12.

355 ibid

356 UNHRC Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, 'Good Practices' related to Access to Safe Drinking Water and Sanitation: Questionnaire' (2010) [question no 10].

obligation of non-retrogression and water and sanitation to be available over the long term, including for future generations. States must ensure that all can enjoy a minimum level of services and when resources are constrained due to for example financial crisis, measures must include the use of targeted programs aimed at those most in need.[357] With the growing recognition of environmental rights, judges worldwide have shown sensitivity to the protection of the interests of future generations and the prevention of irreversible damage.[358] The precautionary principle is among the principles the judiciary has integrated for the protection of future interests. The precautionary principle is generally built on the premise that in using natural resources, care must be taken not to exploit them to the detriment of future generations.[359] In that light, water resources such as rivers and streams from which water is usually drawn for domestic and other uses must be protected so that they do not dry up. One of the effective ways by which this could be done is to create a buffer along rivers and streams. This would prevent farmers from felling trees and clearing vegetation along the riverbank, a practice which may lead to the river or stream being dried up. Other strategies that may be adopted for the sustainability of water resources and sanitation include; reducing depletion of water resources through unsustainable extraction, diversion, and damming; reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals, and human excreta; ensuring that proposed developments do not interfere with access to adequate water; reducing water wastage in its distribution for efficient service delivery.[360]

Application of the precautionary principle is crucial for Ghana taking into consideration its current state of water resources most of which have been heavily polluted by mining activities. As it stands currently, the precautionary principle, though provided for in the Water Resources Commission Act, 1996 (Act 522) seems not to be in force. Section 15 of Act 522 provides that where it appears to the Commission that the use of water resources for a purpose at a place poses a serious threat to the environment or to public

357 UN CESCR 'General Comment 15' (no 1) [13].
358 UNHRC, UN HABITAT Fact Sheet No. 33 Human Right to Water 40
359 ICESCR Article 2(1
360 See UN CESCR 'General Comment 15' (n 1) [28].

health, the Commission may serve the user of the water resources, an enforcement notice requiring the user to take the necessary steps to prevent or stop the activities. In instances where the person or groups of persons involved refused to comply with an enforcement notice, the Commission may institute a legal action against them and if pronounced guilty, they would be fined or imprisoned or both. Despite the existence of this provision in Act 522, most of the water bodies in Ghana have been polluted, especially in the mining areas. The Commission must step up its game and enforce the law to ensure a sustainable water supply to Ghana's people. The *Gad Kaufman* case reiterates the need to supply water in a sustainable manner.

It was held in *Gad Amit Kaufman y Otros c/ Municipalidad de Carrillo y Otros*[361] that public institutions should make responsible and prudent use of available water resources, which implies the need to be certain about the amount of water available to be exploited. In addition, they are to ensure the present provision and the future sustainability of the service and to avoid current water uses that cause an environmental threat, compromising the existence and the future of water provision. The Court further held that Article 50 of the Constitution on the right to a healthy and balanced environment translates into Costa Rican law the precautionary principle recognised under Principle 15 of the Rio Declaration on Environment and Development. It mentioned that access to drinking water is essential to ensure the right to life and is associated with the development and socio-economic growth of the population, ensuring each individual a dignified standard of living.

It is worthy of note that Costa Rica incorporated the precautionary principle into its Constitution and the same was applied by the court in its decision concerning the need to use water resources in a sustainable manner. Ghana could do the same by consolidating the principle in the 1992 Constitution.

States also bear the responsibility to ensure that water and sanitation facilities are available and physically accessible for both domestic and commercial use.[362] Water,

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361 Corte Suprema de Justicia, Constitutional Chamber 14 January 2009.

362 UNHRC 'Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation' (2011) UN Doc A/HRC/18/33 (Planning Report) [8(a)].

sanitation, and hygiene facilities and services must be available at the household level or its immediate vicinity and in all places where people spend significant amounts of time. States bear a special responsibility to provide people with access to water and sanitation in public institutions (e.g., prisons, schools, hospitals, refugee camps) and public places (e.g., markets).

In the case of *Sudan Human Rights Organization and Centre on Housing Rights and Evictions v Sudan*[363] The Centre on Housing Rights and Evictions (COHRE) alleged gross, massive, and systematic violations of human rights in the Darfur Region of Sudan, including forced evictions, destruction of public facilities and properties, looting and destruction of foodstuffs, crops and livestock, poisoning of wells and denial of Black Sudanese access to water. The Government disputed the allegations and challenged the complaints on admissibility grounds under Article 56(5) of the African Charter.

The African Commission on Human and People's Rights found violations of the rights to be heard, life, dignity, property, health, liberty and security of the person, freedom of movement and residence, protection of the family, and the right to economic, social and cultural development as guaranteed in the African Charter on Human and Peoples Rights. The Commission found a violation of Article 1 of the African Charter as it places a general obligation on states to recognize the rights contained in it and to adopt measures to give effect to the rights. Importantly, the decision reaffirms and elaborates upon the right to water in the African Charter, including as a component of the right to health. the Commission held that violations of the right to health can occur through the direct action of States or other entities insufficiently regulated by States and that States should refrain from unlawfully polluting air, water, and soil and should also ensure that third parties do not limit people's access to health-related services and that failure to enact or enforce laws to prevent the pollution of water violated the right to health.

The COHRE case would be of great importance to Ghana if the decision is applied in solving our water pollution problem by miners, some of whom have been licenced by the State. Their activities, relying on the decision in the COHRE case constitute a violation of

363 African Commission on Human and Peoples' Rights 27 May 2009.

the right to safe and clean drinking water, implicit under Article 33(5) of the 1992 Constitution of Ghana. The said provision states that fundamental human rights under Chapter Five of the Constitution, such as the right to life, right to own property, right to be heard, right to health, etc. are inexhaustive and that similar rights recognized by other democracies could be implicit in the Constitution. The State must therefore strengthen its law enforcement mechanisms, such as swift adjudication of cases and imposition of tougher penalties, on offenders to serve as deterrent to other people.

Finally, it is the responsibility of states under international law to ensure that water and sanitation services are available and are of quality, and safe for human consumption.[364] Access to sanitation and water facilities and services must be affordable for everyone. Affordability of water and sanitation services as well as associated hygiene must ensure people are not forced to resort to other, unsafe alternatives. Water and sanitation services should be provided in such a way as to protect the health of users and the general public. Water must be safe for human consumption and for personal and domestic hygiene. States must take positive measures to ensure hygiene promotion and education to all and to take positive measures to monitor water quality standards, tackle water pollution and ensure compliance with national wastewater purification regulations, especially for drinking water suppliers.

In the case of *Carolina Murcia Otálora c/ Empresas Públicas de Neiva ESP* [365] the applicant who lived with her husband and two children had water to their residence disconnected due to their inability to settle their outstanding bills. The applicant claimed that the disconnection of the water supply constituted a violation of her (and her family's) fundamental rights to life, equality, and due process. The courts of the first, second, and third instances found that after the disconnection, the applicant resorted to illegal connections of water to the facility and therefore held that the disconnections did not constitute a violation of human rights. The Constitutional Court further explained that

364 UNHRC Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, 'Good Practices' related to Access to Safe Drinking Water and Sanitation: Questionnaire' (2010) Question no 3.

365 Corte Constitucional 6 August, 2009.

payment for public services is a constitutional duty as it depends on the normal functioning of solidarity mechanisms, which sustain the system and facilitate the provision of an efficient and continuous service not just for the applicant, but for everyone. Therefore, there was a general need for sanctions to discourage non-payment, which may include suspension of the water supply. However, the Court held that even if, as a general rule, water and sanitation services may be disconnected for non-payment of bills, it is prohibited by the Constitution to formulate this possibility as categoric or definitive as when analyzing the legitimacy of a disconnection, the body responsible for the disconnection must take into account the reasons for non-payment, the fundamental rights that, as a result, might be undermined or the living conditions of those affected.

Disconnection of water to homes for non-payment of bills is a common occurrence in Ghana. Most of these disconnections are done without notice to dwellers of affected homes. The GWC, which distributes water bills and carries out disconnections to people's homes does not take into consideration people's ability to pay or otherwise. The Carolina case suggests that even though it is a constitutional duty to honour payment of water bills so that the relevant institutions sustainably supply water, issues of the human right to water essential for the survival and development of the human person must not be overlooked.

Mohammed Aminu Sualiha and Others undertook a study on the unwillingness of water utility customers in the Greater Accra Region of Ghana (GARG) to settle their water bills on time and in other instances, the failure to settle them.[366] They found out that many water customers were unwilling to pay their bills due to its irregular supply, the long hours spent in the payment process, and the poor quality of the water supplied in some cases by the GWC. Despite this setback, the GWC continues to supply water to the general public owing to its essential nature to human survival. The paper suggested that service providers should educate customers on the importance of safe water as a valuable economic resource for good health and vitality. In addition, it would also enable customers

[366] Mohammed Aminu Sualiha, M. Arifur Rahman and Zakiya Tofik-Abu, 'The Payment Behavoiur of Water Utility Customers in the Greater Accra Region of Ghana' [2017] SAGE Open 1, 10. < DOI: 10.1177/2158244017731494.

to understand that water service delivery systems are cost-intensive processes that require their financial support.

Ghana can take a cue from the decision in the *Carolina case* and make for the poor who cannot afford the bills, a special package which would enable them to settle the bills by instalment. The importance of educating the water utility customers on the need to honour their financial obligations is also crucial for improved water and sanitation service delivery in the country.

It is important to note that international law attaches great importance to the obligation of states to ensure that they discharge their duties to their citizens to enjoy sanitation and water rights to live healthy and dignified lives. Ghana is not exempted from this obligation, being part of the international community. It, therefore, has to ensure that the people of Ghana are provided with improved sanitation and safe, accessible, affordable and acceptable water for the health and dignity of individuals and communities which lack them. It can deliver safe water and improved sanitation to the people of Ghana by allocating sufficient money in its annual budgets to the water and sanitation sector, and properly protecting the existing water bodies for a sustainable supply of water all year round. The State could also strengthen the existing bodies, namely. The GWCL, CWSA and the WRC manage and regulate water supply and sanitation for efficient delivery through human resource training, capacity building and encouraging private partnerships.

2.6 The Human Right to Sanitation and Water in Ghana

There is no direct provision in the 1992 Constitution of Ghana that refers to sanitation as a human right. There is however national legislation on sanitation, water, hygiene, and the environment in general, including the WRCA of 1996 (Act. 522), the CWSAA of 1997 (Act 538), the EPAA of 1994 (Act 490), the Local Governance Act of 2016 (Act 936, the Criminal and other Offences Act of 1960 (Act 29). The Constitution of Ghana has also given recognition to international law. Article 40 of the Constitution[367], mandates the government of Ghana to promote respect for international law and treaty obligations. The

[367] 1992 Constitution of Ghana.

same provision indicates that Ghana must adhere to the principles and ideals of the United Nations Charter and those of other international bodies and institutions of which Ghana is a member. Ghana has ratified some treaties and covenants, including the ICCPR on 7th September 2000, the ICESCR on the same date and the ACHPR. A number of them have been incorporated into the Constitution of Ghana and other subsidiary legislation. For example, a closer look at the Fundamental Human Rights under Chapter 5 of the 1992 Constitution reveals that a number of them are reproductions of texts from the covenants already mentioned. Article 27 of ICCPR prohibits arbitrary arrest and detention, and so does Article 14 of the 1992 Constitution of Ghana. Article 15(2) (a) of the 1992 Constitution prohibits torture or other cruel, inhuman or degrading treatment, as does Article 2-5 of the ICCPR. Article 14 of the ICCPR provides for a fair hearing, and so does Article 19 of the 1992 Constitution. In a similar respect, the ICESCR, under Articles 6 and 7 provides for the right to work under satisfactory conditions, and so does Article 14 of the 1992 Constitution of Ghana. Article 18 of the Constitution recognizes the right to privacy in the home, economic well-being and protection of health. Article 11 of the ICESCR equally recognizes an adequate standard of living, including adequate food and housing.

One can therefore argue that having given recognition to international law and having ratified the aforementioned international covenants on human rights and incorporated provisions thereunder in the 1992 Constitution, Ghana ought to apply those international legal frameworks on water and sanitation, as well as its domestic legislation to resolve its water and sanitation problems. No wonder, Article 33(5) of the Constitution[368] provides that the rights, duties, declarations, and guarantees relating to the fundamental human rights and freedoms specifically mentioned in the Constitution shall not be regarded as excluding others not specifically mentioned, which are considered inherent in a democracy and intended to secure the freedom and dignity of man. In this regard, though sanitation and water are not specifically mentioned as fundamental human rights in the Constitution, they could be couched *ejusdem generis*, under Article 33(5) of the Constitution. Democracy gives credence to life, and water and sanitation are essential

368 ibid

components of life. Since adequate water and improved sanitation have been proclaimed human rights in 2010,[369] Ghana ought to put in place the necessary measures for its realisation. Suffice it to say that since Ghana owes allegiance to the United Nations and the African Union, and has ratified the above conventions and treaties, it has made provision for the protection and safeguarding of sanitation in many legislation. For instance, the Water Resources Commission Act, 1996 (Act` 522) has been purposefully promulgated to offer protection to water resources throughout Ghana. The Water Use Regulation, 2001 L.I. 1692 provides for regulations regarding the use of water and related matters. Dam Safety Regulations, 2016 L.I. 2236 addresses the issues of protection of dams and related matters. The Local Governance Act, 2016 (Act 936), section 104 provides for sanitation and related matters.

Thus, legislation on sanitation and water in Ghana, including but not limited to Article 36(9) of the Constitution[370] which provides that the State shall take appropriate measures to protect and safeguard the national environment, and under Article 35(4) of the Constitution[371], the State is to ensure that the people of Ghana respect fundamental human rights and freedoms and the dignity of the human person. These two provisions even though did not specifically mention water and sanitation; they could be implied as the two most essential components of the environment are water and sanitation.[372]

Principle 1 of the Stockholm Conference on the Environment emphasizes the need to safeguard the human environment for posterity. Articles 11 and 12 of the Additional Protocol to the Inter-American Convention on Human Rights (APICHR) guarantees to all people the right to live in a healthy environment. Water and sanitation were implicit in a healthy environment. Similarly, Article 24 of the ACHPR provides that all people are entitled to a generally conducive environment for their well-being and development. Ghana, having ratified the AU Charter is under an obligation to provide to the people of Ghana, a conducive environment for their well-being and development. Such an

369 See General Assembly Resolution 64/292 of the United Nations.
370 1992 Constitution of Ghana.
371 ibid
372 Murat Ersel, (n 137).

environment must take into account adequate and safe water for personal consumption and domestic purposes. It must also be composed of improved sanitation which is necessary for good health and human dignity.

The Local Governance Act[373] makes throwing trash and abandoning stray domestic animals on the street criminal offenses. It tasks the Metropolitan Municipal and District Assemblies to have offenders prosecuted. The Criminal Offences Act,[374] makes any act, omission, or conduct which constitutes a nuisance, as provided for under section 295, a criminal offence and punishable on conviction by a fine or imprisonment. Section 296 makes throwing rubbish in a street, yard, or enclosure an offence. Under the same section, occupiers of land are mandated to keep their surroundings clean of filth. They must, as well, keep drains or gutters clean of dirt or filth. Under section 300 of the Act, cattle found at large in a public place are to be impounded and the owner or herdsman prosecuted. The rationale behind this provision is that cattle droppings create nuisances that affect sanitation. Stray cattle could also contaminate water bodies, thereby violating people's right to a clean environment. The objective of these provisions is to ensure that the human environment is clean and suitable for habitation.[375]

The Environmental Protection Agency Act,[376] *inter alia*, mandates the Agency to control and prevent the discharge of waste into the environment. Furthermore, they are to act in liaison and cooperate with government agencies, district MMDAs, and other institutions to control pollution and generally protect the environment.

Community Water and Sanitation Agency Act[377] established the Community Water and Sanitation Agency to facilitate the provision of safe water and sanitation-related services to rural communities throughout the country. The function of the Agency, *inter alia,* was to support the District Assemblies to promote the sustainability of water supply and sanitation services in rural and small towns and villages.

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373 LGA sections 13 (2) (a) and (b), 96, 104 (1) (c), and 181 of Act 936 of 2016.

374 COA of 1960 Act 29, sections 296 (1) (a), (b), (r), and 300 (5).

375 See Vincent C.R.A.C Crabbe (2004) Laws of Ghana Vol. 3 LexisNexis Butterworths (PTY) LTD 1802-1805.

376 EPAA 490 of 1994, sections 2 (a), (c), and (f).

377 CWSAA 1998 (Act 564)

In addition to the above legislation on sanitation and water, Ghana also has a comprehensive policy on sanitation and water dating back to 1999[378] The Environmental Sanitation Policy (1999) was revised in 2010. Under the revised policy, a number of basic elements and policy strategies to promote accelerated development of the sanitation and water sectors were identified.[379] For instance, the government in 2016 established the Ministry of Sanitation and Water Resources, which *inter alia,* was to spearhead the agenda of the government by ensuring the provision of safe water and improved sanitation for all.[380] In fulfilment of this provision, the government instituted National Sanitation Day in 2014. It was aimed at cleaning towns and cities in Ghana every first Saturday of each month. The rationale of this policy was to provide clean and a safe environment for human habitation in consonance with human rights law.[381] There has also been private sector involvement in water and sanitation service delivery. Key among them in Ghana are World Vision Ghana, the Danish International Development Agency (DANIDA), and Zoomlion Company Limited, which have assisted in diverse ways in providing water and sanitation services to many rural and urban communities.[382]

Furthermore, in 2015, the United Nations General Assembly developed the Sustainable Development Goals (SDGs). Goal six (6) has been dedicated to the provision of water, sanitation, and hygiene for all by 2030. In order to achieve the above objective, the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) were assigned the responsibility for water supply and sanitation-related goals. The United Nations has assigned the responsibility of providing water and sanitation services to state parties.[383] This fundamental responsibility requires state parties to meet a minimum threshold of providing water and sanitation services to their citizens. As a member of the UN, Ghana has embraced the SDGs in general and in particular, in reference to this study

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378 Sanitation and Water Resources Ministry < mswr.gov.gh/sanitation-policies-of-Ghana> accessed 12 November 2023.
Felix Boakye Oppong, and others. 'Demographic disparities in improved water and sanitation in Ghana: a nationally representative cross-sectional study' (2022) British Medical Journal vol. 12: 7 1-11.

380 ibid

381 Felix Boakye Oppong, and others. 'Demographic disparities in improved water and sanitation in Ghana: a nationally representative cross-sectional study' (2022) British Medical Journal vol. 12: 7 1-11.

382 ibid

383 UNCESCR 'General Comments 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN DOC. HR/GEN/1/Rev.9".

Goal 6 on water and sanitation. In line with the objective of the UN to ensure that safe and affordable water and improved sanitation are available and accessible to all by 2030, Ghana has set targets of providing water to all by 2025 and sanitation for all by 2030. However, looking at the water and sanitation situation of the country currently, achieving the set targets would be a difficult task.

Conclusion

A number of international instruments, including the ICESCR and its general comment No. 15, the ICCPR, CEDAW, CRC, ECHR and the ACHPR have all emphasized the importance of clean and safe water and improved sanitation as essential for growth, development, good health and human dignity. Even though some of these conventions did not specifically pronounce water and sanitation as distinct human rights, they set the pace for the recognition of the same in 2010 under UNGA Resolution 64/292. UNGA Resolution 64/292 stresses that State parties must fulfil, respect and protect the human rights to water and sanitation at all material times and purposes. They must therefore ensure the availability, accessibility, affordability, acceptability and sustainability of safe water and improved sanitation for all. The human right to water and sanitation are rights of natural persons against States, international organizations and multi-national cooperations. Countries all over the globe, rich or poor have some level of difficulty in providing quality water in the desirable quantities as well as improved sanitation to their citizenry. It is in this light that section 2 of the ICESCR emphasises that States must put in place comprehensive measures, such as efficient budgetary allocations to the water and sanitation sectors of their economies, setting in motion the right managerial mechanism and recruiting the qualified human resources to manage water and sanitation sectors for the progressive realization of the human rights to water and sanitation effective and efficient service delivery in their respective jurisdictions.

In order to achieve this objective, there has been growing attention to the right to water and its intersection with other rights, including the right to health and development. This topic has received enough attention that the UN General Assembly declared the period

from 2005 to 2015 as the International Decade for Action.[384] The primary goal of the International Decade for Action "Water for Life" was, *inter alia*, to promote efforts to fulfil international commitments to ensure the provision of safe water for at least half of the world's population by 2015. The Resolution called on all nations to focus on water-related issues at all levels and on the implementation of water-related projects and programmes for the attainment of the objectives of the Decade. The Resolution also called on the UN and all its agencies to use available resources at their disposal in order to achieve the objectives of the Decade. This was followed in 2015 by the Sustainable Development Goals (SDGs). Goal 6 of the SDGs has tasked all nations on the globe to provide clean water and improved sanitation for all by 2030.

The Constitution 1992 of Ghana, and the other subsidiary legislation have not directly pronounced sanitation and water as human rights. However, one could deduce from Articles 36 (9), 34(5) and 33(5) that water and sanitation are human rights that need attention like other fundamental human rights under Chapter Five of the 1992 Constitution. Other legislation that provides for safe water and improved sanitation in Ghana includes, the Water Resources Commission Act, 1996 (Act 522) which has been purposefully promulgated to offer protection to water resources throughout Ghana; The Water Use Regulation, 2001 L.I. 1692 provides for regulations regarding the use of water and related matters; Dam Safety Regulations, 2016 L.I. 2236 addresses the issues protection of dams and related matters; the Criminal and Other Offences Act which prohibits sanitation related nuisances and the Local Governance Act, 2016 (Act 936) which provides for sanitation and related matters.

As a member of the UN, Ghana has embraced the SDGs in general and in particular, in reference to this study Goal 6 on water and sanitation. in line with the objective of the UN to ensure that safe and affordable water and improved sanitation are available and accessible to all by 2030, Ghana has set targets of providing water to all in Ghana by 2025 and sanitation for all by 2030. However, looking at the water and sanitation situation of the country currently, achieving the set targets would be a difficult task.

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384 See UN General Assembly Res. 58/217 'Water for Life' (Dec. 23, 2003).

It is important therefore that much more attention is paid by the government of Ghana to the provision, accessibility, affordability, and safety of water and sanitation to meet international standards. Equal attention must also be paid to implementing and enforcing all the good quality water and sanitation laws in Ghana for efficient service delivery. Above all, it would be appropriate to provide for the recognition of water and sanitation as human rights in the 1992 Constitution and other relevant legislation discussed. This would make the relevant authorities mandated to enforce water and sanitation legislation attach much more importance to the subject and thus ensure respect for human rights and dignity as discussed in the next chapter. The next chapter discusses the water and sanitation situation of Ghana and provide some useful suggestions that are likely to improve the current situation

CHAPTER THREE

3.0 THE STATE OF SANITATION AND WATER IN GHANA

Introduction

Ghana is undergoing rapid urbanization.[385] This positive development comes with its challenges. Notable among them is the issue of improved sanitation and the provision of potable water to the nation's growing population, most especially in urban and peri-urban areas.[386] With the recognition of water and sanitation as human rights that are requisite and necessary for good health and human dignity as well as for the attainment of an adequate standard of living, international human rights law has emphasized the involvement of States in the provision of water and sanitation for all. States owe it a responsibility to fulfil, protect and respect human rights to save water and improve sanitation. The obligation to fulfil imposes a duty on States to ensure that they provided their citizens with safe drinking water for personal and domestic uses. If resources are unavailable, they may fulfil the duty progressively. The obligation to protect requires States to put in place an efficient legal system that could protect the human rights to water and sanitation in their jurisdictions. In terms of the obligation to respect, States are expected to ensure that third parties or government agencies do not engage in activities that are detrimental to the provision of safe water and improved sanitation to the citizenry.

The 1992 Constitution of Ghana has no direct provision for safe water and improved sanitation. However, the combined effect of Articles 33(5), 34(6) and 36 suggests that safe water and improved sanitation, being human rights could be construed under the 1992 constitution of Ghana. Other subsidiary legislation, such as the Water Resources Commission Act, 1996 (Act 522, Water Use Regulation, 2001 L.I. 1692, Dam Safety Regulations, 2016 L.I. 2236, Local Governance Act, 2016 (Act 936) and the Criminal and Other Offences Act, 1960 (Act 29) and the Environmental Protection Agency Act have also made provisions for safe drinking water and sanitation. some judicial decisions have also made pronouncements on the rights to water and sanitation in Ghana. The nation's

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385 See Ghana News Agency, 'Promote environmental cleanliness' *Daily Graphic* (Accra, 7th November, 2018).

386 Ibid.

water and sanitation situation are, however, not in good shape. This chapter explores the sanitation and water situation of Ghana to access whether it meets international benchmarks as regards the provision and protection of the rights to water and sanitation. The research intends to look at the topic within the framework of international human rights law thematic areas of availability, accessibility, affordability, acceptability, and quality to determine whether Ghana has met these standards or not.[387] The research is also aimed at offering useful suggestions as regards the provision of safe drinking water and improved sanitation to the people of Ghana for the realization of the said human rights.

3.1 Sanitation and Water Situation in Ghana

Sanitation encompasses the availability of proper and improved facilities for the safe disposal of fecal matter, sewage, or waste as well as the provision of clean and safe water for human consumption and domestic use.[388] Sanitation and water are complementary. Both play important roles in ensuring that human beings live in good health and dignity.[389] For instance, water is needed in the disposal of human excreta and urine as well as for consumption thereby providing good health and dignity.

Availability of sanitation and water according to international law requires that facilities and services of water and sanitation meet people's needs now and in the future.[390] In other words, water must be available in quantities and quality that are sufficient for consumption, for domestic use such as cooking, washing clothes, and dishes, sanitation, and personal hygiene. It means that sanitation facilities should be handy and that there

387 Catarina De Albuquerque, 'Realizing the Human Rights to Water and Sanitation' (2014) <C:/User/USERS/Downloads/ohchr-realizing-the-human-rights-to-water and sanitation-a handbook-2014.> accessed 17 November 2023.

388 Godfred Safo-Adu and Ruby Hanson, 'Practices and Knowledge of Environmental Sanitation and Hygiene Among Urban Dwellers in Gomoa East District, Ghana,' (2019 European Journal of Earth and Environment, 6:1, 2056-5860.

389 Ato Armah Frederick and Ekumah Bernard, (n 40)

390 Catarina De Albuquerque, '*Realising the Human Rights to Water and Sanitation: A Handbook by the UN Special Rapporteur* (2014) Precision Fototype Bangalore, India 36.

should be facilities to aid the transportation of fecal matter and garbage to the appropriate disposable sites.

It is evident that sanitation facilities and water are available in Ghana. As noted by Deku Tetteh,[391] water could be accessed by the people of Ghana in different forms according to preference and choice. Water is supplied by the Ghana Water Company Limited, either from river bodies or at times from boreholes. Some private individuals have equally sunk their own boreholes for domestic and other uses. Others depend on rivers and streams to which they have free access and yet others rely on sachet water for domestic use, especially for consumption. Others rely on rainwater, which they harvest during the rainy season.[392] The issue of availability in quantities that meet the daily needs of users, accessibility, affordability, acceptability, cleanliness and safety are the challenges that the research intends to delve into and address.

Availability of water in adequate quantities requires that it is available in quantities that are sufficient to users at all material times and daily. The issue of accessibility has to do with proximity to water points. International standards require that the time spent from one's residence to a water source must not exceed 30 minutes. In Ghana, however, it is possible to spend several hours in search of potable water because some of those water sources may not be close by. It may not be possible to provide free of charge to all, however, in any case, water must be affordable by all as required by the UNGA Resolution 64/292 and the ACHPR. If water tariffs cannot be catered for by the poor, the State must provide subsidies to the affected or supply them with water free of charge. The water supplied must be acceptable to the consumers**.** Sanitation must also be acceptable to its users as well. Many Communities may have some cultural preferences when it comes to the design of water supply and sanitation facilities. These must be taken into consideration when designing water and sanitation facilities for those communities.**[393]** It

391 Jacob Deku Tetteh, Michael R. Templeton, Alicia Cvanaugh et al. 'Spartial Heterogeneity in Drinking Water Sources in the Greater Accra Metropolitan Area (GAMA) Ghana (2022) Springer Link.

392 ibid

393 Justice Mensah and others, 'Public compliance with environmental sanitation regulations in Ghana'(2022) <https://doi.org/10.1515/openhe-2022-0001> 8-11.

also required that water supplied for consumption must be clean and safe to prevent waterborne diseases and other infections.

As of 2025, Ghana, as a nation had not met its water and sanitation need.[394] The major factors that account for this include, population growth and rural-urban migration, aging infrastructure in the water sector and inadequate budgetary allocation by the government to the sector.[395] Consequently, the majority of the people in Ghana rely on water and sanitation sources which are often not safe enough to guarantee good health and human dignity.[396] The rural populations are the worst affected. People still rely on hand-dug boreholes as well as water from streams that are often shared by both human beings and animals.[397] The practice often results in the contraction of communicable diseases, such as cholera and diarrhea among others.[398] Ghana has a number of sanitation facilities and services.[399] The challenge has always been the adequacy of these facilities and services.[400] While population increases sanitation infrastructure ought to be provided to meet increasing demands. Unfortunately, this is not the case. People must scramble for the limited sanitation facilities located in their communities, making the issue of accessibility a great challenge.[401] Consequently, people resort to open defecation which results in communicable diseases, such as cholera and diarrhea.[402]

Closely linked to the issue of adequacy of water and sanitation facilities in Ghana is the quality of the sanitation facility and the water resource in question. In localities where sanitation services and facilities exist, they are most often in dilapidated conditions and

394 ibid

395 ibid

396 ibid

397 Eugen Appiah-Effah, Emmanuel Nketia Ahenkora, Godwin Armstrong Duku et al, 'Domestic Drinking Water Management: Quality Assessment in Oforikrom Municipality, Ghana' (2021). Science Progress <https//doi.org/10.1177/00368504211035997>.
Jacob Doku Tetteh and others, 'Spatial heterogeneity in drinking water sources in the Greater Accra Metropolitan Area (GAMA), Ghana' (2022) Population and Environment 44: 46-76 <https//doi.org/10.1007/5 11111-022-00407-y> accessed 28 May 2024.

399 ibid

400 Joseph Kangmennaag, Elijah Bisung and Susan J. Elliot. 'We Are Drinking Disease' (2020) (n 174).

401 Abdul-Ghaffah Donkor, Namaitijan Maimaiti "The Cholera Outbreak in Ghana' (2019) Derteme Review <https//doi.org/10.35232/estudamhsd.608552> accessed 14 May 2023.

402 ibid

do not befit and promote good health and human dignity.[403] This fact has been corroborated by the Ghana Statistical Service in 2019 where a survey conducted by the service revealed that only 19% of the total population of 25 million in Ghana had access to safe drinking water.[404] In 2024, it was estimated that only 23% of the population of over 33 million had access to improved sanitation facilities.[405] The use of water packaged in transparent plastic bags, popularly known as 'sachet' water has become prevalent in Ghana. Many people believe that it is safe for human consumption and for other domestic uses, but the irony is that the array of chemicals used in its production at times makes it unsafe for human consumption.[406]

The next major huddle associated with water and sanitation in Ghana is accessibility. Access to water sources, such as, pipe-borne water usually supplied by the Ghana Water Company and mechanized boreholes for public use is a great difficulty.[407] According to the household sanitation data of 2021, 59.3% of households had access to basic sanitation facilities. About 50% of households had limited access to the same,2.4% relied on unimproved facilities and 18% resorted to open defecation.[408] In the same vein, 55% had access to basic household hygiene, including water, 42% had limited access to same and 2.4% had no access to such facilities.[409] On the basis of urban-rural households, only 65.9% of urban households had access to basic sanitation, 44.1% had limited access or no access. In relation to rural households, only 5.1% had basic sanitation. Open defecation was prevalent in all the 16 Regions of Ghana, but more severe in the Northern part of the country. Households without toilets openly defecate in bushes, open fields, gutters or in drains. Those along the sea defecate at the beaches [410] The statistics

403 Appiah-Effah and others, (n 381).

404 See Ghana Statistical Service. Ghana multiple indicator cluster survey 2017/18 (snapshots of key findings Updated Version January 2019).

405 Ghana Statistical Service WASH Summary Sheet, 2024

406 Ghana 2021 Population and Housing Census (General Report Vol. 3 M) Ghana Statistical Service February 2022, 41-45.

407 Ibid.

408 Ibid.

409 ibid.

410 ibid.

demonstrate that Ghana's water and sanitation situation, in terms of availability and access is a challenge and needs urgent attention.

The next assessment of Ghana's water and sanitation situation has to do with the affordability of the said facilities and services where they exist. As a human right criterion, affordability requires that access to water and sanitation facilities and services should be priced in such a way that all people, especially the poor can pay for such services.[411] In Ghana, many people are unable to pay for safe water and sanitation due to poverty. As a result, they resort to unsafe water sources, such as wells and running water.[412] This challenge could be resolved by subsidies provided either by the government or non-governmental agencies to the poor who may not be able to afford the rising water tariffs. Safe water could also be supplied to such identifiable poor as done in South Africa for instance. In the case of *Mazibuko* v. *City of Johannesburg,*[413] the Court ordered the city to provide Phiri residents with 50 liters of free water per person per day. This was an increase from the previous allocation whereby each household (on average containing 16 persons) was provided with 200 liters per day. The Court noted that 25 liters per person were insufficient, especially for people living with HIV/AIDS. The Court noted that the City had the water and the financial resources to provide 50 liters per person per day. Ghana could adopt the decision of the court and design a special package for the poor to enable them to have access to basic water free of charge.

Another factor that inhibits the affordability of water and sanitation services is privatization. Owing to the Ghana government's inability to finance and resource the GWC to provide adequate water to all the people of Ghana, it occasionally resorts to contracts with private service providers.[414] These service providers are usually interested in recouping their profit and not in human rights and dignity. Therefore, they price water and sanitation services high making it difficult for the poor and the needy to afford their

411 A/HRC/45/10 'Progressive Realization of the Human Rights to Water and Sanitation' Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, (Sept. 14 – October 2, 2020).

412 See Ghana WASH Sector Development Programme (GWASHSDP) 2021-2030 19.

413 Constitutional Court of South Africa (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) 8 October 2000.

414 ibid.

services. Privatization does not only stifle access and affordability to water and sanitation, but also shirks the established obligation of government to protect and preserve access and affordability of safe water.[415] Primarily, the right to sanitation is usually considered a private responsibility in Ghana. It requires individuals to build their own latrines or pay to be connected to the sewage.[416] Where however, individuals are unable to afford the charges associated with the provision of the mentioned services, the state must bear the duty to provide the required services to the affected individuals or groups of individuals.[417] The State may do so in two respects. It may first and foremost adopt measures such as tariff schemes and subsidies to cushion the poor and the needy to enable them to afford safe water and sanitation services. Secondly, it must provide the said services to those who cannot afford them at no cost.[418] This is not the situation in Ghana. Individuals have no alternative but to provide safe water and improved sanitation for their private use because at times such services are irregular.[419] Those who have the means and are enlightened do so for convenience and safety. In cases where they are even provided for public usage, the charges are high, and many poor people cannot afford such services. In recent times hikes in water tariffs are attributed high cost of treatment of potable water due to mining, agricultural, and human activities along the riverbanks of Densu, Pra, Tano, and Ankobra which supply water to the general public in western part of the country. The poor vulnerable people who cannot afford the charges resort to the use of unsafe water and open defecation.[420]

In the case of *City of Cape Town* v *Strumpher,*[421] the Supreme Court of South Africa held that under section 27(1)(b) of the Constitution of South Africa and section 3(1) of the Water Services Act, water right is a basic right and that everyone has the right under the Constitution to have access to it in sufficient quantities. The court emphasized that the

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415 ibid

416 ibid

417 See UN CESCR 'General Comment 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 (UN CESCR 'General Comment 15').

418 Felix Nana Kofi Ofori, (n 235).

419 See Ghana WASH Sector Development Programme (GWASHSDP) 2021-2030 19.

420 ibid

421 [2012] Supreme Court of Appeal 104/2011, [2012] ZAS CA 54.

State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. Namely, the right to safe water and the right to access safe water.

Being a basic human right, everyone, rich and poor alike, is expected to have equitable access to it. To ensure that this constitutional duty is fulfilled, South Africa has put in place measures to enable the poor to afford safe water for consumption. In the *Mazibuko* case, it was held that the city authorities of Johannesburg were under an obligation to provide 50 liters of safe water to the Phiri community free of charge. Ghana can learn a great lesson from this legal authority and apply the same to resolve its water challenges. The poor should be provided water free of charge or at least on a government subsidy in fulfilment of their human rights to water and sanitation. Just as the State has committed resources to the Free Senior High School education policy, whereby students access their right to education without paying for tuition, it should extend the same commitment to water and sanitation sectors as well.

Ghana has set a target of universal access to safe drinking water and improved sanitation by 2025. It has also pledged to eradicate open defecation by 2030.[422] In 2016 therefore, the MSWR was created to provide leadership in sanitation and water sectors. Unfortunately, no concrete plans have been put in place to achieve the set targets. Consequently, as of 2022 1 out of every 10 households in Ghana still resort to open defecation. The practice is prevalent in the northern part of the country as well as in the rural and peri-urban communities.[423] With this scenario, one could conclude that taking into consideration Ghana's economic situation at present, achieving the set targets for water and sanitation may be a difficult task. More commitment is needed from the State to achieve the targets of provision of water for all by 2025 and ending open defecation by 2030 respectively. For instance, the entire country could be zoned into four. The MSWR could draw a programme to provide water supply facilities and sanitation infrastructure for each zone based on their peculiar needs. The matching funding is then sought, either by way of budgetary allocations or grants from non-governmental organizations and the

422 Felix Boakye Oppong, and others, (n 371)

423 Ibid.

private sector. With strict supervision by the sector Ministry, Ghana can achieve the set targets progressively.

3.2 Obstacles to Improved Sanitation and Safe Water in Ghana

Several factors may obstruct the efforts of governments, State agencies, and other stakeholders to provide safe water and improved sanitation to the people of Ghana. Identification of such factors may help to find solutions to the poor sanitation situation in Ghana. This chapter identifies some of the major factors that inhibit the provision of the two commodities to the people of Ghana.

3.2.1 Improper Waste Management

Waste is any unwanted matter or material of any type, especially what is left after useful substances or parts of it have been removed.[424] It could also be described as refuse or superfluous material of any type, especially that which remains after the manufacturing of chemical processes.[425] It is important to note that waste, as referred to above, is not always useless. Waste could be recycled into other useful consumable goods if it is managed properly. For instance, plastic waste could be recycled into plastic bottles. In a similar vein, solid waste could equally be generated into fertilizer for agricultural purposes.[426] Waste management essentially connotes proper and useful means of handling generated waste such that it does not create a nuisance to people.

One of the major factors that inhibit accessibility to improved sanitation and safe water in Ghana is the failure of city authorities and or government agencies to manage the waste generated either by industries or by the populace.[427] In Ghana, about 12.710 tons of solid waste is said to be generated daily. Out of this, only 10% is collected and disposed of at designated sites.[428] It has been identified that the collection and disposal of solid waste

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424 A. Bryan Garner, *Black's Law Dictionary*, 8th ed. sub verbo "waste."

425 https//dictionary.cambridge.org/dictionary/English/waste.

426 Definition: Waste according to UNEP/GRID-Geneva (online): www.grid.unep.ch/waste download/waste0607-PDF.

427 Malcolm Longford, and others, *The Human Right to Sanitation.* Cambridge University Press: 2017.

428 Samuel Yaw Lissah, and others, 'Managing urban solid waste in Ghana: Perspectives and experiences of municipal waste company managers and supervisors in an urban municipality'(2021) <https//doi.org/10.1371/journal.pone 1248392> accessed 22 June 2023.

are mostly labor-intensive and thus expensive.[429] Affordability, therefore, becomes a challenge to households, communities as well as city authorities. In addition, city authorities are often overwhelmed by the volume of waste generated and hence posing problems of proper management to them.[430] Poor waste management results in poor sanitation and water pollution or contamination and thus affect negatively the health and well-being of people as well as their human dignity.

Section 104 of the Local Governance Act,[431] has assigned the responsibility of waste management, both liquid and solid, generally to the MMDAs. The Act also empowers the MMDAs to make bylaws to facilitate their operations. For instance, section 1 of the Accra Metropolitan Assembly (AMA) (Sanitation Bylaws, 2017 assigns management of waste to the AMA. Section 2 of the Bylaws permits the Assembly to delegate waste management duties to companies, but they must be well supervised. In the case of *C.F.C Construction Company v Accra City Council*,[432] the plaintiffs instituted a legal action against the defendants for damages and an interim injunction for dumping garbage and refuse in a quarry in the residential area of the plaintiffs. They alleged that the garbage caused offensive and pestilential smell within the environment to the extent that if left unattended, it could create health challenges. The plaintiffs further averred that the stench emanating from the refuse had seriously interfered with the comfort and enjoyment of the land occupied by the residents. In its defence, the defendants sought refuge in its statutory authority functions under the Local Government Act.[433] The Act[434] required the defendant Council to establish, maintain and carry out services for the removal and destruction of all refuse, filth, and carcasses of animals from any public or private place which may be injurious to public health. The court held *inter alia,* that where a statute has authorized the performance of a particular act or the use of land in a particular way, which act or use will cause nuisance inevitably, all reasonable precautions must be taken to prevent the nuisance from occurring. It further held that the person relying on statutory authority to

429 ibid
430 ibid
431 LGA 1996 (Act 936).
432 [1964] GLR 496.
433 1961 Act 54.
434 ibid s. 47(2).

commit a nuisance must prove that such authority is express or implied. In the instant case, the statute relied on by the Council expressly authorized the elimination of mosquitoes and the collection and burning of refuse; but not the filling up of quarries with refuse. Accordingly, the court held that the defendant Council acted unreasonably in choosing to dump refuse only a few yards from the plaintiffs' residential area without taking steps to remedy the bad situation.

Regrettably, however, the court did not grant the order of interim injunction against the defendant. In the reasoning of the court, even though an injunction may lie against a statutory authority, taking into consideration the public duties performed by the authority, it would not make an order that would virtually make it impossible for such an authority to perform its functions. It further opined that an injunction against the Council would encourage others to make applications for injunctions to abet smells in other places which would prevent the Council from discharging its functions.

From the environmental sanitation perspective, the decision is retrogressive as it fails to take into consideration the fact that the State and its agencies ought to be at the forefront to ensure that environmental sanitation is provided and protected as required under international law. In any case, however, the decisions emphasis the fact that State authorities in exercising their statutory duties, must take cognizance of the human right to sanitation and do all in their power to protect same.

The State enforces sanitation bylaws against individuals who flout them. The MMDAs have entrusted this duty to their Health Departments, which take charge of the prosecution of offenders. For instance, in the case of *The Republic* v *Emma Barasu and Others,* [435] the accused persons were arrested and charged for dumping human excreta and refuse within their premises contrary to section 296(1) and (2) of the Criminal and Other Offences Act.[436] They were convicted of the offence and were subsequently sentenced to a fine of 30 penalty units each (Three Hundred and Fifty Ghana Cedis).

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435 [2020] District Court, Kpando Case No. B.15/50/20 (10 December 2019)

436 COA 1960 Act 29.

The MMDAs seem overwhelmed by waste generated in the country. This may be attributed to a number of factors, including population growth, rural-urban migration, lack of funding and weak law enforcement mechanisms. Population growth and rural-urban migration come with the generation of volumes of waste management of which becomes a challenge to the MMDAs which lack logistics such as waste disposal vehicles and funds. Waste management comes with a cost. The Assemblies are not well-resourced as the District Assemblies Common Fund, the only source of financial support from the State, is meager and does not come regularly. Liquid and effluent collection and disposal is very expensive. It costs a household over One Thousand Five Hundred Ghana Cedis to have liquid waste from their cesspit tank disposed of. Sanitation laws are also not strictly enforced, probably due to corruption by the officials involved. At times cases commence in the MMDAs but do not end up in the court as the offenders bribe their way out. At other times, the sentences imposed on convicts range between One Hundred Ghana Cedis and Five Hundred Ghana Cedis which is not deterrent enough. Political interference is also prevalent when it comes to enforcement of sanitation laws. There are times when officials are instructed by politicians to discontinue one case or the other. To surmount these challenges, the State would have to adequately resource the MMDAs to enable them to live up to expectations. Sanctions imposed on people who flout sanitation laws should be deterrent enough to similar offenders. Fines may range between Five Hundred and One Thousand Ghana Cedis.

3.2.2 Pollution of Water Bodies and Resources

Water is the most precious of all the renewable resources of the world and the basic requirement for the sustenance of all forms of life.[437] It is almost impossible to get an immediate or future replacement for most water uses, unlike other resources such as fuel.[438] A number of factors have contributed to the pollution of most of the water resources in Ghana making them unclean and unsafe for human consumption. Notable among them are human activity such as farming and animal husbandry, environmental

[437] E. Yeleliere, S.J. Cobbina, A. B. Dawiejuah 'Review of Ghana's water resources; the quality and management with particular focus on freshwater resources' (2018). Applied water Science, 8.93.

[438] Ibid

pollution from both industrial and municipal waste, pollution from mining in general, and illegal mining popularly known in Ghana as 'galamsey' in particular, chemicals used in mining such as dynamite, chemicals used in fishing as well as rapid population growth among others.[439] It is estimated that about 60% of water bodies are polluted in Ghana with most of them in critical condition. Owing to this, people have to resort to the use of rainwater, surface water and shallow ground water for survival.[440]

The solution to the problem of pollution of water sources lies in the enforcement of the laws that protect water in bodies or sources in Ghana. The WRC is generally responsible for the regulation and management of the utilization of water resources in Ghana under section 2(1) of Act 522.[441] In addition, under section 2(h) of Act 522, the Commission is mandated to advise pollution control agencies, such as the EPA to help mitigate or prevent pollution of the general environment and water bodies. It is therefore incumbent on them to discharge their supervisory duties to the latter. However, pollution of water bodies and sources by mining activities and the destruction of vegetation along riverbanks is prevalent in the country. The Commission may have to step up its game by ensuring that those who pollute water bodies or destroy vegetation along riverbanks are prosecuted as provided for under section 15 of Act 522. It could do so in collaboration with EPA, by having those who carry out mining activities along the riverbanks and pollute the rivers arrested and prosecuted. Those found guilty should be sentenced to severe sanctions to serve as a deterrent to potential offenders. In addition, it would also be beneficial to educate the people of Ghana on the need to protect water resources for sustainable water supply and the dangers associated with the use of unsafe water. It is believed that this would go a long way in resolving the problem of water pollution in Ghana.

439 ibid

440 B. Amponsah, Water Resources Commission Report on Ghana's water situation, Ho. G.N.A., May 13, 2017.

441 See section 2(1) Act 522.

3.2.3 Lack of enforcement of sanitation laws

Enforcement has been defined as the act of compelling observance of or compliance with a law, rule, or obligation.[442] Enforcement, therefore, connotes the existence of policies, rules, and regulations concerning a particular activity that ought to be complied with. Failure to comply with the rules and regulations results in sanctions being imposed. Ghana has a few legislation which are aimed at safeguarding and protecting water resources and sanitation. They include the Local Governance Act 2016 (Act 936),[443] the Public Health Act, 2012 (Act 851),[444] the Criminal and Other Offences Act, (1960), and the Water Resources Commission Act, 1996 (Act 522) Community Water and Sanitation Agency Act, (Act 564). Others are the Minerals and Mining Act, 2006 (Act 703), Water Use Regulation, 2001 L.I. 1692 and Dam Safety Regulations, 2016 L.I. 2236, The legislation mandated the MMDAs, the police, the WRC, the Inspectorate Division of the Minerals Commission and other officials to enforce the sanitation laws of Ghana. However, this most of the time seems to be a mirage.[445] The failure of these institutions and bodies to discharge their duties may be attributed to a number of reasons. Firstly, most of them are not well-resourced, financially and otherwise to enable them to carry out their mandates efficiently. It is believed that with adequate financial support and qualified human resources, they would be able to live up to expectations. The second reason that may have hindered the enforcement of water and sanitation laws is corruption**.** Officials who carry out sanitation inspections could be bribed by those who flout water and sanitation laws and may discontinue the legal action instituted against them. Another reason is political interference in legal proceedings instituted against offenders. For fear of victimization and other repercussions, such as transfers to remote villages, law enforcement officers may sometimes abandon the cases.**[446]** Yet another factor is the fact that many people in Ghana are ignorant of their human rights to water and sanitation. Thus, they hardly enforce them against State agencies when those rights are violated

442 E. Yeleiere, 'Review of Ghana's water resources; the quality and management with particular focus on freshwater resources' (n 427).

443 Section 104.

444 Section 52.

445 See Yaw Lissah, (n 417).

446 See Ghana WASH Sector Development Programme (GWASHSDP) 2021-2030 12- 19.

unlike South Africa where citizens are very well informed of their rights to water and sanitation. The evidence of this can be found in cases such as the case of *City of Cape Town* v *Strumpher,*[447] *Mazibuko* v. *City of Johannesburg*[448] and the case of *Federation for Sustainable Environment and Others v Minister of Water Affairs and Others.*[449] These, and many more decisions in South Africa and in many other countries should awaken Ghanaians to their rights to water and sanitation to enable them to hold the non-performing institutions responsible for the violation of those rights.

The 1992 Constitution of Ghana,[450] imposes a duty on all citizens of Ghana to protect and safeguard the environment. While this is not bad, it seems to have shifted the responsibility imposed on States in international law to protect and safeguard the environment for the safety and well-being of people to the citizens. It is regrettable as it may lead to laxity on the part of the governments of Ghana to stand up to their responsibilities pertaining to the provision, protection and respect of safe water and improved sanitation to their people.[451] States are duty bearers when it comes to provision, protection and respect for people's rights to safe water and improved sanitation. The 1992 Constitution of Ghana must emphasis this under its provisions it could then impose a shared responsibility on its citizens to do the same. in the instant case, it appears that the Constitution has shelved its responsibility and has imposed it on the citizenry. It may be one of the factors that demotivates the State in the discharge of her duties and obligations in relation to the provision, protection and respect of the human rights to safe water and improved sanitation for the people of Ghana

3.2.4 Inadequate allocation of funds to the water and sanitation sectors

The provision of water and sanitation services is capital-intensive. As such, funding is crucial in achieving its objectives. In Ghana, the release of budgeted funds to attend to

447 [2012] Supreme Court of Appeal 104/2011, [2012] ZAS CA 54.

448 Constitutional Court of South Africa (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) 8 October 200.

449 High Court (North Gauteng, Pretoria) 10 July 2012

450 Under article 41(k).

451 See G. A. Sarpong, 'Environmental Justice in Ghana' (1999-2000) Review of Ghana Law Vol.XX 91-114

the nation's water and sanitation needs has often become challenging.[452] According to the MSWR 2019 and 2020 performance reports, 6.32% and 18% respectively of the approved budget for water and sanitation were released by the government for the years in review. This implied that goods and services, and Capital Expenditure suffered the most. The delivery of water, sanitation and hygiene services to the people of Ghana was also constrained. The Track Financial Report 2022 of MSWR revealed that between 2013 and 2019 only 69% of total water, sanitation and hygiene expenditure went to water supply while 29% went to sanitation. in addition, 1% went to hygiene and the rest 1% was applied to support services. This has affected water supply and sanitation services tremendously. For instance, 1000 mechanized water systems were earmarked in 2018. As of 2020 730 were completed and 80 more in 2021. In the same year's budget, 767 toilets were to be constructed but only 10 were completed in the year 2020.[453] The MSWR Medium Term Expenditure Framework, the 2021 approved budget for the Ministry stood at 560,933.110.00 Ghana Cedis. However, only 58.58% of the total was released to the Ministry as of October 2021. This is inadequate for carrying out any impactful activity or program nationwide.[454]

Similarly, MMDAs face annually a predictability challenge. They are not certain of when and how much of the budget allocated to them would be received and when it would take effect. This makes it difficult for them to plan the provision of water and sanitation infrastructure and water supply facilities to the people of Ghana.

In order to reverse this state of affairs, the State would have to show more commitment to improving the water and sanitation sectors by making adequate budgetary allocations to them. It must also show commitment by releasing funds budgeted for the sectors on time so MSWR and MMDAs can discharge their responsibility to the latter.

If the trend continues it would be difficult for Ghana to make water and sanitation accessible to all Ghanaians by 2025. This state of affairs demonstrates a lack of

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452 The National Development Planning Commission and the Ghana Statistical Services Report (2018).

453 Analysis of WASH Component of 2023 National Budget < https//www.washghana.net/sites/default/files/2023> accessed 25 July 2023.

454 2022-2025,

commitment on the part of the Ghana government to the provision of water and sanitation in terms of their safety, efficiency as well as accessibility. The nation needs to commit more resources to the provision of water and sanitation to the people of Ghana. Funds allotted to both sectors must be released on time to enable the MSWR and the MMDAs to plan their activities toward their mandate to provide water and sanitation needs to the people of Ghana. Water and sanitation sectors must be prioritized and be given special attention as fundamental human rights.

3.2.5 Attitude and Perception of Peoples Towards Sanitation

Another contributory factor to Ghana's poor sanitation is the attitude and conduct of people to the issue. Generally, people care less about the environment in which they live.[455] Most people lack a sense of cleanliness in their surroundings. In urban communities, for instance, it is a common site to behold solid waste in many homes unattended for weeks.[456] Once they see the clouds forming, they dump the waste into the drains expecting the rains to take care of them. These practices are contrary to sections 296 and 300 of the Criminal and Other Offences Act, 1960 (Act 29) which prohibits throwing solid and liquid waste onto drains, and in the open. This practice most often results in flooding and its consequences of the destruction of property and at times loss of lives.[457]

The negative attitude of many Ghanaians towards sanitation is also informed by socio-cultural considerations.[458] Some cultural beliefs encourage people to resort to open defecation. While some consider human excreta harmless, others regard it as dirt and public latrines as evil places.[459] However, sections 296 and 300 of the Criminal and Other Offences Act, 1960 (Act 29) frown upon open defecation and the creation of solid and

455 Bob Manteaw, 'National Sanitation Day: Why it Failed' *The Daily Graphic* (6 February 2017) 48.

456 Ibid

457 Ibid

458 See Eugene Appiah-Effah and others, Perception of peri-urban farmers on fecal sludge compost and its utilization: a case study of three peri-urban communities in Ashanti Region of Ghana' (2015) Compost Science and Utilization 23 (4) < https//dioi.org/10.1080/1065657X2015.1046616> accessed 1 August 2023.

459 F. Nimoh, 'Farmers' perception on excreta reuse for peri-urban agriculture in Southern Ghana' (2014) Journal of Development and Agricultural Economics 6 (1) <https//doi.org/10.5897/JDAE 2014.0575> accessd 1 August 2023.

liquid waste. In effect the practice of open defecation, no matter how one justifies it constitutes a criminal offence under the laws of Ghana. This was the case of the *Republic v Emma Barasu and Others,*[460] the respondents placed human excreta and refuse within their premises contrary to sections 296 (1) and (2) of the Criminal and Other Offences Act.[461] They were arrested, charged with the offence and subsequently prosecuted. They were found guilty by the court and sentenced to a fine of Ghc. 360.00 each.

In a study conducted by Water Aid[462] in four West African countries, Burkina Faso, Ghana, Mali, and Nigeria on cultural beliefs and practices which promote open defecation, factors such as shame, social status, and ancestral practices, *inter alia,* were identified as barriers to abandoning open defecation in the study communities. People feel ashamed and embarrassed when they are seen going toward the latrine. In effect, they prefer going to defecate in the bushes and isolated places.[463] It was also discovered that open defecation was considered an ancestral practice passed on through generations. It is therefore considered a taboo to defecate in homes and buildings.[464] The study further revealed that some communities in northern Ghana resort to open defecation because they believe that public toilets are surrounded by evil spirits and hence should be avoided. Others believe that the use of latrines would strip them of their magical powers.[465] Yet others prefer to defecate in the open for fear of bad odour or smell which emanates from latrines. It is important to conclude that, once the practice of open defecation is outlawed in Ghana, no matter how reasonable one may argue in support of it, there is no justification for it.

Attitudinal change towards waste generated is essential in finding a lasting solution to the poor sanitation situation of Ghana. Much education and sensitization must be done to improve Ghana's poor sanitation situation.[466] The Ghana Education Service may take the

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460 District Court Kpando, Court Case No B.15/50/2020 (10 December 2019) unreported.

461 1960 Act 29.

462 WaterAid Country Strategy 2010–2015, 'Sanitation and Water for All by 2015 and beyond' Accra, Ghana.

463 ibid

464 ibid

465 ibid

466 This call was made by the Chief Executive Officer of Juspong Group of Companies and the Minister of

initiative to inculcate sanitation studies in the curriculum of both basic and second-cycle schools in the country. This, would instill values of cleanliness in the students who are the future of the nation.

3.2.6 Lack of commitment of State governments towards the provision of safe water and sanitation.

Safe drinking water and sanitation are prerequisites for health, human growth, and development. Hence, the promotion of policies aimed at improving access to safe water sources and sanitation facilities in a progressive manner is crucial to public health and the human rights agenda.[467] There are several factors that inhibit access to safe water, sanitation, and hygiene in Ghana. They include a lack of political will to implement sanitation and water policies, a lack of people's proper attitude toward sanitation and water sources, the poor's inability to afford clean drinking water and sanitation facilities, and a lack of proper environmental hygiene.[468] These challenges could be surmounted by frantic efforts, financially and human resource-wise, by the government to implement the Ghana WASH Development Sector Programme (GWASHSDP) 2021-2030. The GWASHSD aims to increase water and sanitation availability and accessibility throughout the country by 2030. In addition, educational programmes on the importance of safe water and improved sanitation could be included in the syllabi of the basic and second-cycle schools in the country. This is most likely to help the youth appreciate the importance of water and sanitation as human rights. The challenge of the poor accessing water and sanitation services could be resolved by identifying those who cannot afford such services and granting them subsidies. The Environmental Health Departments of the MMDAs should equip officials, by supplying them with the necessary logistics such as vehicles or motorbikes so that they can effectively inspect households and ensure compliance with water and sanitation laws and regulations in the country.

Water and Sanitation during the commissioning ceremony of a Multi-Purpose Recycling Plant in Accra in 2019. (Ghana Television News, 5th April, 2019).

467 Pascal Agbadi, Ernest Darkwa Paul L. Kennedy. 'A Multilevel Analysis of Regressors of Access to Improved Drinking Water and Sanitation in Ghana' (2019) Journal of Environmental and Public Health vol. 2019 11: 1 <https//doi.org/10.1155/2019/3983869> accessed 14 December 2023.

468 Ibid

Among competing demands such as education, health, and electricity, sanitation has not been given financial priority[469] because the governments of Ghana have not considered inadequate sanitation and unsafe water in the country serious human rights violations.[470] For instance, Ghana has introduced Free, Compulsory Universal Basic Education, and has even extended it up to the Senior High School level in line with Article 25 of the 1992 Constitution of Ghana. The Constitution recognizes education as a fundamental human right and has made basic education free and compulsory for all under Article 25(1). Article 25 (2) makes provision for the availability of secondary education as a human right and calls on State actors to ensure that it is accessible to all. Currently, the State has rolled up the policy of free secondary education. Even though it is welcome news, it is regrettable that the State has not extended the same importance to water and sanitation which are recognized human rights. Similarly, Ghana has started the implementation of a health delivery programme dubbed "Agenda 111" Under the programme the Government is expected to construct a well-equipped hospital in every District. Most of these buildings are ongoing throughout the country yet water and sanitation, which are also human rights, have not been given a similar attention. There are water and sanitation infrastructure and service delivery deficits in some schools, health facilities, market centres and similar other facilities throughout the country.[471] The situation results in the transmission of communicable diseases such as diarrhea and cholera, which most often lead to fatalities, especially among children under five years old and adults alike.[472] As Ghana has made steady progress in the provision of potable water to the people of Ghana,[473] it is hoped that it would extend a hand to the sanitation sector as well as the sector is not performing quite well.[474]

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469 Justice Mensah and others, 'Public compliance with environmental sanitation regulations in Ghana'(2022) Open Health 3: 1-12 https://doi.org/10.1515/openhe-2022-0001 accessed 23 August 2023.

470 ibid

471 See Ghana WASH Sector Development Programme (GWASHSDP) 2021-2030 12- 19.

472 Eugene Appiah-Effah and others, 'Perception of peri-urban farmers on fecal sludge compost and its utilization: a case study of three peri-urban communities in Ashanti Region of Ghana' (2015) Compost Science and Utilization 23 (4) < https//dioi.org/10.1080/1065657X2015.1046616> accessed 1 August 2023. Access to water has improved to 92.7% as of 2022. In the sanitation sector, on the other hand, it has been able to attain only 18.5% coverage nationwide as of 2022. See Martin Kofi Kanyagui, P. K. Viswanathan 'Water and Sanitation Services in India and Ghana: An assessment of implications for rural health and related SDGs'(2022) Water Policy Vol. 24 No. 6 1073 <doi:10.2166/wp. 2022.079> accessed 17 March 2023.

474 ibid

3.2.7 Rural-Urban Migration

Another factor that accounts for poor sanitation and lack of access to potable water in Ghana is the incidence of people leaving the rural areas to settle in the urban towns and cities.[475] The issue of rural-urban migration has consequences for the environment and human beings as well. One such consequence has to do with the increase in the volume of waste generated and its attendant problems of disposal.[476] It is therefore evident that while waste management and poor sanitation are common challenges in most towns and cities in Ghana, the same cannot be said about the rural areas of the country.[477] Similarly, population growth equally influences the supply of potable water to affected communities. As the population swells so is the difficulty of meeting its daily demand for safe water for domestic and other uses. This is the situation in many urban areas of the country as a result, water has to be rationed. This state of affairs also compels people to resort to unsafe water sources for use which invariably results in the spread of communicable diseases. Ideally, the provision of water and sanitation should be commensurate with population growth. The population of a community should be used to determine the quantity of water to be supplied and the number of sanitation services needed. In infrastructural development planning, the various MMDAs should undertake some survey or research to determine the average population growth rate and the quantity of water and sanitation facilities to be provided. This would go a long way to close the gap between population growth in the big towns and cities about meeting their human rights to water and sanitation.

For instance, in the case of *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR*, the Court held that the Petitioners were entitled to the fundamental rights to accessible and adequate housing and reasonable standards of sanitation, health care, clean and safe water in adequate quantities and education as

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475 Hadizatu Abagrey Seidu, 'Assessing Sanitation Management and its Implications on Health in the Bawku Municipality, Ghana' (MPhil Thesis, School of Allied Health, University of Development Studies, Tamale Ghana 2018).

476 Ibid

477 Appiah-Effah, (n 453). Martin Kofi Kanyagui and P. K. Viswanathan 'Water and Sanitation Services in India and Ghana: An assessment of implications for rural health and related SDGs' (2022) Water Policy Vol. 24 No. 6 1073 <doi:10.2166/wp. 2022.079> accessed 17 March 2023.

guaranteed by section 43 of the Constitution of South Africa and international treaties, and according to section 47 were entitled to be given written reasons regarding the evictions. Citing section 21(3) of the Constitution of South Africa, the Court also indicated that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights and held that the forced eviction grossly undermined their right to be treated with dignity and respect.

This South African authority reiterates the responsibility and obligation of the State to provide safe water and sanitation to the citizenry and to ensure that they are accessible, affordable and acceptable to the people of Ghana. To fulfill this obligation in the midst of rural-urban migration, the State must do two things, namely, to tackle the issue of rural-urban migration and its associated challenges about provision and accessibility to water and sanitation by providing social amenities to the rural folks as provided for under Articles 140 to 156 of the 1992 Constitution of Ghana. Under the said articles of the Constitution, central governance is to be decentralized to all parts of Ghana. This has been carried out by the creation of the MMDAs that are expected to execute government policies in areas under their jurisdiction. It is believed that if the MMDAs are well-resourced and can perform their duties efficiently, rural-urban migration would be minimized. The pressure on water and sanitation services and facilities would then be reduced in the urban areas to make accessibility effective. On the other hand, the State could commit more resources to provide water and sanitation in the urban areas of the country in fulfilment of its obligation under international law.[478]

3.2.8 The Legal Framework of Water and Sanitation in Ghana

For an effective and efficient delivery of human rights to water and sanitation, a robust legal framework is a *sine qua non*. Such a framework must take into account the entitlement of individuals, groups of people as well as communities to the rights of water and sanitation. It must also take into account the responsibility of States as duty bearers to provide, protect and respect the human rights to water and sanitation. Water and

[478] UNGA Resolution 64/292.

sanitation laws must also address in considerable detail the enforcement of water and sanitation legislation to achieve meaningful results. The main aim of this research is to identify the laws that govern and protect water and sanitation in Ghana and verify if they have the potency to protect the human rights to water and sanitation in the country. This aspect of the research, therefore, delves into the legal framework of water and sanitation, identifying the various legislation that governs or protects the rights to water and sanitation. The legislation to be looked at includes; the 1992 Constitution of Ghana, the Water Resources Commission Act, 1996 (Act 522), the Environmental Protection Agency Act, 1994 (Act 490), the Public Health Act, 2012 (Act 851), the Criminal and Other Offences Act, 1960 (Act 29), the Local Governance Act, 2016 (Act 936) and Water Use Regulations, 2001 L.I. 1692.

The 1992 Constitution of Ghana

The 1992 Constitution of Ghana has no direct provision on water and sanitation.[479] There are a few provisions from which one could derive the rights to water and sanitation, however. Article 36(9) mandates the State to take appropriate measures needed to protect and safeguard the national environment for posterity. This provision, though has no direct reference to water and sanitation, but it could be implied that the human environment is not complete without safe water and improved sanitation.[480]

In its efforts to safeguard the environment (water and sanitation), the EPA Act[481] was passed in 1994, a year after the promulgation of the 1992 Constitution. Sections 2 (c), (g), and (f) specifically mandate the EPA safeguards the environment by coordinating the activities of such bodies as it considers appropriate for controlling the generation, treatment, storage, transportation, and disposal of industrial waste. The EPA is also responsible for issuing environmental permits and pollution abetment notices for controlling the volume, types, constituents and effects of waste discharges, emissions, deposits or other sources of pollutants and substances that are hazardous or potentially

479 Justice Joseph Bawah Akamba 'The Role of the Courts in Combating Emerging Environmental Offences in Ghana' (Conference of Superior Court Justices of Ghana, Accra 18 July 2013}).

480 Additional Protocol to the Inter-American Convention on Human Rights (APICHR) Articles 11 and 12.

481 EPAA (Act 490).

dangerous to the quality of the environment or any segment of the environment. It is also supposed to prescribe standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution, including the discharge of waste. In addition, in 1996 the WRC Act[482] came into being. The Act, *inter alia*, created the WRC and empowered it to manage all water resources within the country. The Commission is also mandated to enforce by way of warning notices, withdrawal of licenses and court proceedings against those who flout its regulations. These provisions hence offer the right foundation for the protection of the environment for the good health and well-being of the people of Ghana.

The State is also required under section 36(9) of the WRCA to seek cooperation with other States and bodies to protect the wider international environment for mankind. In line with the provision, Ghana participated in the Earth Summit in Rio de Janeiro, in 1992, which sought to tackle the issue of climate change and its effect on the environment and human beings. It has four major documents that were adopted at the end of the summit, namely, the Framework Convention on Climate Change; the Convention on Biological Diversity; the Forest Principles; the Rio Declaration on Environment and Development, and Agenda 21. The Rio Declaration provides *inter alia* that even though States have the sovereign right to exploit their resources in pursuit of their respective development agenda, they must take cognizance of the environment and put in place policies and laws to sustain same.[483] It is unfortunate to note that the current state of pollution of water bodies in Ghana by mining firms and the State grants of mining licenses in forest areas is an affront to the Rio Declarations. The Minerals Commission of Ghana must take immediate steps to remedy the situation.

Article 41(k) of the 1992 Constitution of Ghana imposes an obligation on every citizen or people of Ghana to protect and safeguard the environment while exercising and enjoying the rights and freedoms under the Constitution. The provision extends the responsibility of protecting the environment (water and sanitation) to the citizens of Ghana. It is thus a

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482 WRCA (Act 522).

483 See Rio Conference on Environment and Development, Environmental Policy and Law 22/4 (1992); Earth Summit Press Release (UN Department of Public information, New York, 1992).

shared responsibility between the State and every individual living in Ghana. Regrettably, many Ghanaians do not see the need to protect the environment but rather destroy it with impunity by pollution through the burning of charcoal and illegal mining activities. I believe that strict and consistent enforcement of laws on the environment, water and sanitation would improve the current situation.

The above provisions under the Constitution 1992, have not categorically mentioned water and sanitation. However, Chapter Five of the Constitution provides for several human rights, including the right to life, health, liberty, protection of property and education but not for water and sanitation as human rights. One could however argue that water and sanitation are essential components of the environment, and hence once the Constitution mandates both the State and citizens to protect and safeguard the environment, it calls for their protection as well. Perhaps, it could also be said that the framers of the Constitution were silent over their mention so that the relevant State agencies such as the Ministry of Justice and the Attorney-General's Department and Parliament would enact specific legislation to govern them as is evident in the EPA and the WRC Acts. Whichever way it is looked at, the omission seems to be a weakness in the legislative framework of water and sanitation considering the supremacy of the Constitution and the fact that it is the fundamental law of Ghana.[484]

The Environmental Protection Agency Act (EPAA)[485]

The EPAA is aimed at safeguarding the environment for human health and development. In order to achieve this objective, the Environmental Protection Agency (EPA) was tasked to oversee issues or matters pertaining to the environment. The main functions of the EPA are[486] to advise the Minister-in-charge of the sector on the formulation of policies on all aspects of the environment and in particular, make recommendations for the protection of the same. it is also expected to coordinate the activities of bodies concerned with the technical and practical aspects of the environment and serve as a channel of

484 1992 Constitution of Ghana Article 1(2).
485 EPAA (Act 490).
486 ibid section 2.

communication between such bodies and the Ministry. In addition, the EPA is to coordinate the activities of such bodies as it considers appropriate for the purposes of controlling the generation, treatment, storage, transportation and disposal of industrial waste within the country.

Furthermore, it is its duty to secure, in collaboration with such people as it may determine the control and prevention of the discharge of waste into the environment and the protection and improvement of the quality of the environment. In so doing, it is supposed to collaborate with such foreign and international agencies necessary for the purposes of achieving its objectives.

By way of enforcement of laws and regulations, the EPA is to issue environmental permits and pollution abetment notices for controlling the volume, types, constituents and effects of waste discharges, emissions, deposits or other sources of pollutants and substances that are hazardous or potentially dangerous to the quality of the environment or any segment of the environment. It is also within its mandate to prescribe standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution, including the discharge of waste.

In the performance of its duties, the EPA is to act in liaison and in cooperation with government agencies, District Assemblies, and other bodies and institutions to control pollution and generally protect the environment. It is expected through the collaboration to conduct seminars and training programmes and gather and publish reports and information relating to the environment to conduct investigations into environmental issues and advise the Minister responsible for the sector thereon.

The EPAA[487] has given wide functions and powers to the EPA to safeguard or protect the environment for the well-being and health of the people of Ghana. For instance, the Agency has been empowered[488] to regulate or assess the impact of activities on the environment. Under the provision, it may by notice in writing require a person responsible

[487] Environmental Protection Agency Act, (Act 490).

[488] ibid section 12.

for an undertaking which in the consideration of the Agency, is likely to harm the environment, to submit within the period specified in the notice an environmental impact assessment.[489] Environmental impact assessment is intended to expose any potential adverse effects that the proposed activity may have on the environment. This would enable it to determine whether to grant the permit or not and thus protect the environment, including water and sanitation.

Several undertakings, concerning water and sanitation have been listed under L.I. 1652 which requires environmental impact assessment before construction.[490] They include waste treatment and disposal, construction of an incineration plant, construction of a wastewater and treatment plant, construction of a secure landfill facility, construction of municipal solid waste and landfill facility, night soil treatment, and water supply. In addition, water tapped for domestic use and those located within controlled and or protected areas declared by the Agency, are considered sensitive environmental areas that require special attention.[491] The regulations aimed at protecting and safeguarding sanitation and water resources for health and human dignity for the people of Ghana. The poor water and sanitation situation of the country suggests that these regulations are not being effectively enforced. They have the potency to solve the water and sanitation woes of Ghana if they are applied and enforced by the EPA and the other bodies such as the Environmental Health Unit of the MMDAs and the police service. To make this practicable and effective, the State must resource the EPA, both financially and human resource-wise to enable them to provide efficient service delivery. Aside from funding, it is believed that if the EPA supervises effectively the bodies or agencies that are responsible for waste collection, such as the MMDAs and the officials of the EPA, the situation will improve considerably.

The Act prescribes a penalty of two hundred and fifty units (250) or a term of imprisonment or both for a person found guilty on summary conviction for acting contrary to an

489 ibid.

490 Environmental Impact Assessment Regulations, 1999 (L.I. 1652), Regulation 3, Schedule 2

491 ibid Regulation 30(2) Schedule 5.

enforcement notice.[492] Under the same provision, when the Agency considers an activity a threat to the environment or public health, it is required to serve the person responsible for the undertaking, an enforcement notice to take steps to stop the activities. In my opinion, the 250 penalty units are not deterrent enough taking into consideration the health hazards associated with poor sanitation and the use of unsafe water. A penalty unit at the moment is equivalent to Ghc. 12.00. hence, the 250 penalty units would amount to Ghc.750.00. Considering the high level of inflation in the country, the said amount of money is not difficult to raise and hence may not deter people from violating laws on sanitation and water resources. If the penalty units are increased to about 500, it may serve as a deterrent to potential offenders. Secondly, the EPA's responsibility to serve enforcement notices on people who carry out activities detrimental to the health and safety of people and the environment at large is important for preserving life. While this provision in the law is enforced, it is not done consistently owing to laxity on the part of the Environmental Health Officer (EHO) to carry out the mandate, probably due to lack of supervision. In other instances, it may be due to the officials' corruption. Proper supervision of the EHOs, it is believed would help transform the current situation.

For instance, in the case of *The Republic v Rose Gborne,*[493] the accused person was charged for refusing to construct latrine in her premises contrary to section 13 (6) (a) of Hohoe Municipal Assembly Bye laws, 2018. Section 13 (6) (a) mandates all households within the Municipality to provide toilet facilities on their premises. She pleaded guilty to the offence and was sentenced to a fine of 100 penalty units and 50 Ghana Cedis in damages to the Assembly. In imposing the sentence on the accused person, the Court took into consideration the efforts of the EHO of the Hohoe Municipal Assembly to educate the public within the Municipality against open defecation and its effects, including diseases such as typhoid and cholera. The court therefore imposed the sentence in deterrence.

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492 Section 13 (1) (Act 490).

493 District Court Hohoe [2022] Case No.CC 44/22 (8 July 2022) unreported.

The EPAA[494] therefore is generally aimed at protecting the environment and not particularly, water and sanitation, although a few provisions in the Act captured sanitation and water. Water and sanitation are two essentials of the environment,[495] and it is important to protect them. It is equally important, on the other hand that the law addresses other essential obligations of States, such as ensuring availability, accessibility, affordability, acceptability, and quality to reflect international standards.[496] It is believed that this could be done by amendment to the EPAA to make room for issues of availability, accessibility, affordability and acceptability. The amendment should also create an opportunity for the populace to be able to hold EPA, its officials and agents directly accountable for failure to deliver on their mandate. This could be done by opening complaint desks in all offices of the EPA within the country to enable people to file their concerns. Direct provision should also be made in the law to enable individuals or groups of people who are affected by EPA's neglect of its duties to institute legal action against them. It is believed that these interventions would transform the current water and sanitation and make it robust for the delivery of safe water and improved sanitation for the people of Ghana.

Water Resources Commission Act (WRCA)[497]

The WRC was established to regulate and manage utilization of water resources in Ghana and to provide for other related matters.[498] The EPAA[499] defines water resource to include all water flowing over the surface of the ground or contained in or flowing from any river, spring, stream natural lake or part of a swamp or in or beneath a watercourse and all underground water but excluding any stagnant pan or swamp wholly contained within the boundaries of any private land. The Act[500] vests all water resources in Ghana

494 EPAA 1994 (Act 490).
495 Sylvester Agbezuge 'The State of Ghana's Environmental Sanitation: A Violation of Human Right?' (MA Dissertation, School of Law, University of Ghana, Legon July 2019).
496 Caterina Albuquerque, Human Rights to Water and Sanitation: Achieving the Goals A Handbook by the UN Special Rapporteur, 2014.
497 WRCA1996 (Act 522).
498 See the Preamble to Act 552.
499 EPAA (n 474) section 37.
500 WRCA (n 477) section 12.

in the President to be held in trust for the people of Ghana. The law requires the President to delegate his powers to the Minister designated to the water sector.

The functions of the WRC, *inter alia,* are to regulate and manage the utilisation of water resources, and for the co-ordination of any policy in relation to them. Thus, the main purpose of the WRCA is to manage the use of water resources in the country. It is clear from the onset therefore that the WRC is not mandated to provide water to the people of Ghana, but to manage the existing resources. As a major regulator in the water industry, it would be appropriate to amend the current law and assign the WRC the responsibility to provide where necessary water to the people of Ghana. This must go with the needed funding from the State in order to attain an effective service delivery to Ghanaians.

Secondly, the Commission is required to propose comprehensive plans for the utilisation, conservation, development and improvement of water resources. It is also expected to initiate; control and coordinate activities connected with the development and utilisation of water resources. It is also mandated to grant water rights, and collect, collate, store and disseminate data or information on water resources in Ghana. The Commission is further required to ensure that water user agencies undertake scientific investigations, experiments or research into water resources in Ghana; and monitor and evaluate programmes for the operation and maintenance of water resources. While these provisions are robust for the improvement of the water sector, implementation does not seem visible. The WRC should be decentralized to enable it deliver effectively on its mandate. As it stands at the moment, the WRC is not represented in many parts of the country. It is believed that the presence of the WRC in at least every district capital would go a long way to resolving the poor water situation of the country.

It is also required to advise the Government on any matter likely to have an adverse effect on the water resources of Ghana and to advise pollution control agencies in Ghana on matters concerning the management and control of pollution of water resources. Section 13 prohibits the diversion, damming, abstraction and any other related use of water resources of Ghana without lawful authority. Section 14 allows the holder of water right to use water abstracted from a water source for domestic purposes.

Section 15 makes provision for an enforcement notice against the use of water sources that may pose a threat to health and human life. The Commission is empowered in such instances to serve the notice on the user of the water course to prevent the offending activity and remedy any harm that might have been caused. Failure to comply with the order may lead to a fine or imprisonment on conviction.

The Act also provides for a grant of water rights to deserving applicants for either their exclusive use or supply to the public.[501] The right may be granted when the Commission is satisfied that it may not pose any danger to the public or if no objection is raised by people living close to the watercourse involved.[502] The Commission reserves the right to vary or revoke the right if the holder fails to fulfil the conditions attached thereto.[503]The Act prohibits pollution of water courses and makes it an offence punishable by a fine or imprisonment or both.[504]

In the South African case of *the Trustees for the Time Being of the Corneels Greyling Trust and Another* v *The Minister of Water and Sanitation and Another*[505] the applicants applied for suspension of the WUL of the 3rd Respondent (Kangra Coal (PTY) Ltd. They contended that its mining activities pose a risk to the quantity and quality of the water they rely on for farming. The court found that the mining activities of the 3rd Respondent were damaging to water resources and the environment in general. It therefore suspended its license under section 12 of the National Water Act of 1998.

The Trustees for the Time Being case would be of great benefit to the water situation of Ghana if the WRC discharged its mandate under section 16 of the WRCA. The provision empowers the WRC to revoke licenses of grantees of water rights who fail to ensure the safety of the environment and water resources in their operations. It may to a large extent, for instance, minimize the activities of illegal miners that pollute water resources in the country.

501 WRCA (Act 522) section 16.
502 ibid
503 WRCA (Act 522) sections 20, 22, 23.
504 ibid section 24.
505 [2023] High Court of South Africa, Gauteng Division Johannesburg. Case No: 2023/069111.

Like the EPAA[506] already discussed, the WRCA[507] satisfied the international law obligation on States to protect water for domestic and other uses.[508] One could therefore conclude that the law has not fully addressed the issue of provision of making water available, accessible, affordable, acceptable and safe for the people of Ghana as required by international law.[509] Consequently, it is important to amend it to make room for the provision of water by the WRC and not only to manage what is provided, which in many cases is even not available.

Water Use Regulations[510]

In order for the WRC to be able to exercise the powers conferred on it under section 35 of the WRCA[511] the Water Use Regulations were promulgated to regulate water use in Ghana. The Regulation makes it mandatory for people or institutions to apply for and obtain the requisite permit for the use of water for various purposes.[512]

The Commission is required to grant permits to applicants under the regulations where it has sufficient evidence to believe that the grant would promote public safety, health, water sustainability, environmental protection and national security.[513] The permit granted is

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506 EPAA 1994 (Act 490).

507 WRCA 1996 (Act 522).

508 See Caterina Albuquerque, Human Rights to Water and Sanitation: Achieving the Goals A Handbook by the UN Special Rapporteur, 2014.

509 See Committee on Economic, Social and Cultural Rights, Twenty-ninth session Geneva, (11-29 November 2002) Agenda item 3.

510 2001 L.I.1692

511 WRCA 1996 (Act 522). Section 35 provides that the Commission may, by legislative instrument, make Regulations (a) for preserving existing uses of public water; (b) for controlling any change in the course, current or cross current of any contained surface water in order to obtain the most beneficial use of the water; (c) (d) (e) relating to the declaration of water emergencies; for regulating the use of contained water and ground water; for the carrying out of investigations in respect of a function of the Commission; (j) for the protection of watersheds; (g) for the granting of permits to discharge waste into water bodies; (h) for prescribing the acceptable levels of pollution; (i) to regulate or prohibit the doing of an act by a person in a protected catchment area; (j) for the levying of charges under this Act; and (k) generally for the purpose of giving effect to the provisions of this Act. (2) An instrument under subsection (1) of this section shall be signed personally by the chairman of the Board.

512 Environmental Impact Assessment Regulations, 1999 (L.I. 1652), Regulation 1 lists the following uses of water for which permit must be obtained - (a) domestic water use (b) commercial water use, (c) municipal water use, (d) industrial water use, (e) agricultural water use, (f) power generation water use, (g) water transportation water use, (h) fisheries (aquaculture) water use (i) environmental water use (j) recreational water use, and (k) under water (wood) harvesting.

513 ibid Regulation 13.

subject to renewal by the Commission periodically. It may as well be revoked where the holder has failed to comply with responsibilities associated with the permit.[514] The Regulations make it a criminal offence for a holder of a permit to transfer it to another person or allow another person to interfere with it. Offenders, if found guilty may be fined or imprisoned.[515]

Water Use Regulations are meant to complement the already established responsibilities assigned to the WRC under the WRCA. It emphasizes the importance of protecting water resources in the country in line with international requirements. The MSWR must exercise its supervisory jurisdiction over the WRC to ensure that it discharges its responsibility of managing the water resources efficiently.

Local Governance Act[516]

The Act makes throwing trash on the street and abandoning stray domestic animals on the street criminal offenses. It empowers Metropolitan, Municipal, and District Planning Officers to enact sanitation bylaws and prosecute those who cause a nuisance in the form of refuse or filth, unwholesome or polluted water. The provision empowers the government authorities mentioned above to ensure the cleanliness of towns and cities under their jurisdiction. They also have a legal mandate to have offenders prosecuted. These provisions are supposed to address Ghana's sanitation challenges as the case may be. Again, the legislation addresses the issue of protection of sanitation, leaving others such as availability, accessibility, affordability, acceptability and safety.

Criminalizing sanitation and its associated offences under the law is a step in the right direction. The sentences imposed on offenders most of the time are not deterrent enough. For instance, Secondly, the various MMDAs should also adopt the strategy of educating the public on the health benefits of improved sanitation. As it stands, most Ghanaians are ignorant of the dangers associated with poor sanitation, such as cholera, and typhoid

514 ibid Regulations 14, 15 and 18.
515 ibid Regulation 24.
516 LGA 2016 (Act 936) sections 13 (2) (a) and (b), 96, 104 (1) (c), and 181.

which at times results in fatalities. Constant education coupled with enforcement of the relevant laws by court processes are likely to achieve the desired results.[517]

For instance, in the case of the *Republic v Japhet Edem Akator*[518] the accused person operated a preparatory school at Kitikpa, a suburb of Hohoe in the Hohoe Municipality. The EHO of the Hohoe Municipal Assembly, while on their regular compliance check around Kitikpa, on 10th February 2020 discovered the accused person had no toilet facility within the school premises contrary to section 13 (6)(a) of the Hohoe Municipal Assembly Sanitation Byelaws of 2018. The EHO instructed the accused to ensure that toilet facilities were provided for staff and students of the school before May 2020. On 18th May 2020, the EHO returned to the school on a compliance check and detected that the accused person failed to carry out the orders of the Assembly. Between May and October 2020, the EHO carried out similar visits to no avail. The Assembly therefore instituted a legal action against the accused on 11th November 2020 for his failure to provide toilet facilities in his premises contrary to section 13 (6)(a) of the Hohoe Municipal Assembly Byelaws. He pleaded guilty to the offence and was sentenced to a fine of 100 penalty units or default serving a term of 6 months in prison.

The case reiterates efforts being made by local government authorities to ensure that proper sanitation and hygiene practices are adhered to prevent communicable diseases like typhoid and cholera outbreaks.

The Criminal Offences Act[519]

The law makes any act, omission, or conduct which constitutes a nuisance a criminal offence and punishable on conviction by a fine or imprisonment. Section 296 prohibits the throwing of rubbish in a street, yard, or enclosure and makes it an offence. Under the same section, occupiers of land are mandated to keep their surroundings clean. They

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517 Joseph Kangmennaag, Elijah Bisung and Susan J. Eliot. 'We are Drinking Diseases: Perception of Water Insecurity and Emotional Distress in Urban Slums in Accra, Ghana' (2020) International Journal of Environmental Research and Public Health, Vol.17(3) 890 <doi; 10.3390/ijerph.1030890> accessed 20 September 2023.

518 District Court Hoheoe, Court Case No. CC.83/2022 (11 November 2020).

519 COA 1960 (Act 29) Sections 296 (1) (a), (b), (r), and 300 (5).

must, as well, keep drains or gutters clean of dirt or filth. Section 297 prescribes the sanction of a fine for offenders pronounced guilty of creating a nuisance, in the form of dirt or filth or contaminated water under section 296 above. Under section 300 of the Act, cattle found at large in a public place are to be impounded and the owner or herdsman prosecuted.

The rationale behind this provision is that cattle droppings create nuisances that affect sanitation. Stray cattle could also contaminate water bodies, thereby violating people's right to a clean environment. The objective of these provisions is to ensure that the human environment is clean and suitable for habitation.[520] The provisions thus seek to protect sanitation as well as water resources within the country. In the case of the *Republic v Emma Barasu and Others,*[521] the respondents placed human excreta and refuse within their premises contrary to section 296 (1) and (2) of the Criminal Offences Act.[522] They were arrested, charged with the offence and subsequently prosecuted. They were found guilty by the court and sentenced to a fine of Ghc. 360.00 each. The fines imposed on the convict were not deterrent enough. The courts, in imposing sentences on sanitation-related offenders should take into consideration the negative consequences of their actions and impose stiffer punishments on them.

In Ghana, criminal laws are generally enforced by the Ghana Police Service. Article 200 (1) of the 1992 Constitution of Ghana has generally given the Ghana Police Service the mandate to maintain law and order in the country. The Ghana Police Service Act of 1970 (GPSA)[523] spelt out the duties of the police service, *inter alia,* as prevention, detection of crime, apprehension of offenders, maintenance of public order and the safety of persons and property. Reading the two provisions together, it is the responsibility of the Ghana Police Service to ensure compliance with law and order in the country. They are expected to discharge this responsibility by preventing crime, detecting crime when committed, arresting suspected criminals and prosecuting them in a court of law. In line with their law

520 See Vincent C.R.A.C Crabbe (2004) Laws of Ghana Vol. 3 LexisNexis Butterworths (PTY) LTD 1802-1805.
521 District Court Kpando, Court Case No B.15/50/2020 (10 December 2019)
522 COA 1960 (Act 29).
523 GPSA 1970 (Act 350) as Amended section 1.

enforcement responsibility under sections 296, 297 and 300 of the Criminal Offences Act,[524] The service is expected to prosecute sanitation offences and those found guilty are either fined or imprisoned or both.

The Police Service has almost abandoned this responsibility in relation to sanitation while concentrating on first-degree and second-degree felony offences mostly. Taking into consideration the precarious nature of Ghana's sanitation, it would be of great benefit to the country should the police take up enforcement of sanitation laws which have been provided for under the Criminal Offences Act.

The Public Health Act (PHA)[525]

Section 52 of the PHA prohibits the sale of food in an unclean environment, for instance, near refuse dumps, toilets, filth, and open drains. The rationale for this provision is to ensure proper sanitation for good health and human dignity for food vendors, sellers, and the general public. The legislation addresses the issue of protecting existing consumers from patronizing food prepared in an environment with poor sanitation. It thus seeks to promote food rites which require that consumers of food items are safe from eating food prepared with unsafe water and in an environment with poor sanitation. Even though the Act criminalizes sanitation-related offences, much education is needed to change the attitude and conduct of the people of Ghana towards sanitation. Attitudinal change coupled with enforcement is most likely to transform the nation's poor sanitation situation.

Section 54 (a) (i) prohibits keeping or rearing cattle on premises. The rationale behind the provision is to prevent cattle from contaminating domestic water and the environment in general. Cattle droppings could create a nuisance and lead to diseases. In the case of *Republic* v *Awal Jibril*[526] the accused person was discovered by the EHO of Hohoe Municipal Assembly rearing and keeping cattle in his premises contrary to section 54 (a) (i) of the Public Health Act 2012, Act 851. He was charged with the offence to which he pleaded guilty and was sentenced to a fine of 70 penalty units or in default serve a prison

524 COA 1960 (Act 29) as Amended.
525 PHA 2012 (Act 851).
526 District Court Hohoe Court Case No. B15/02/2023 (9 August 2023).

term of 3 months. The case demonstrates the commitments of the local government authorities to ensure the well-being of the general public. The sanctions imposed by the court on the offender would also deter others from violating sanitation bylaws of the country.

The Community Water and Sanitation Agency Act (CWSAA)

The CWSAA[527] established the Community Water and Sanitation Agency (CWSA) to facilitate the provision of safe water and related sanitation services to rural communities in the country. The functions of the Agency were *inter alia,* to support the District Assemblies to promote the sustainability of water supply and sanitation services in small towns and villages. To realise its objectives, the Community Water and Sanitation Programme (CWSP) was instituted. The CWSP assists rural and remote villages or communities to set up water and sanitation services to promote good health and human dignity in those areas. The programme ensures that there is a minimum water supply available and accessible to the communities concerned, which is sustainable all year round. The programme is aimed at supplying 20 liters of water per capita per day. The water supply facility is located within 500 meters of the community concerned. A water point must not serve more than 300 people.[528] Communities involved in the programme are expected to contribute five percent (5%) of the cost of providing the facilities.

Issahaku Malonga Bukari noted in a study that some NGOs in Ghana have introduced mechanisms to educate rural communities against the use of unsafe water and sanitation facilities in their communities in support of SDG 6.[529] Goal 6 calls on all States to ensure that their citizens have access to clean, safe and affordable water and improved sanitation by 2030. For instance, the Centre for Indigenous Knowledge Organizational Development (CIKOD), an NGO in Ghana has developed methodologies for sustainable use of water and sanitation services in the Lawra Municipality in the North-Western Region of Ghana.

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527 CWSAA 1998 (Act 564)

528 See Community Water and Sanitation Programme Implementation Manual 1996 1.

529 Francis Issahaku Malonga Bukari, Raymond Aabayir and Adams Sulemana Achanso 'The Role of Non-Governmental Sector in Community Water, Sanitation and Hygiene Technologies and Services in North-Western Region Ghana' (2023). Ghana Journal of Georgraphy 15(2) 1,3 and 4.

CIKOD's intervention included mobilization of local resources for the provision of water and sanitation facilities and services for schools and women in particular for good health and human dignity,[530] This initiative is in line with the objectives of the CWSP, that is to make water and sanitation services available and accessible to rural communities in the country.

The CWSP has helped rural communities tremendously. Through it, many rural communities have had access to potable water. Issues of accessibility, affordability and acceptability of water particularly have been addressed to a large extent. Intense supervision of the project must, however, be carried out throughout the country to sustain it. Proper and regular maintenance must also be carried out on the water pumping and supply machines in order to extend their life span. The emphasis on the importance of water has almost overshadowed improved sanitation. sanitation is equally important and should be given more attention to prevent people from open defecation. Toilets that were built so many years back need renovation or reconstruction. The CWSA must solicit funds to build more water supply and sanitation facilities to supplement the existing ones. A free water policy for the poor should be put in place to alleviate their plight and to enable them access to safe water. This would minimize the use of unsafe water and sanitation as well as reduce health problems associated with using the same.

Case Law on Water and Sanitation

The courts in Ghana are divided into two, namely the superior courts and the lower courts. The superior courts comprise the Supreme Court, the Court of Appeal, and the High Court. Decisions or judgments from these courts constitute properly so-called case law or judicial precedent in Ghana. This does not mean that the decisions of the lower courts are not binding but that they have persuasive force only. Judicial decisions on water and sanitation emanating from the superior courts are rare in Ghana. Combining the Ghana Law Reports, one comes across a 1964 High Court judicial decision on sanitation. In *C.F.C Construction Company v Accra City Council*,[531] the plaintiffs instituted a legal action

530 Ibid

531 [1964] GLR 496.

against the defendants for damages and an interim injunction for dumping garbage and refuse in a quarry in the residential area of the plaintiff. They alleged that the garbage caused offensive and pestilential smell within the environment to the extent that if left unattended to, it could create health challenges. The plaintiffs further averred that the stench emanating from the refuse had seriously interfered with the comfort and enjoyment of the land occupied by the residents. In its defense, the defendants sought refuge in its statutory authority functions under the Local Government Act.[532] The Act required the defendant Council to establish, maintain and carry out services for the removal and destruction of all refuse, filth and carcasses of animals from any public or private place which may be injurious to public health.[533] The court held *inter alia,* that where a statute has authorized the performance of a particular act or the use of land in a particular way, which act or use will cause nuisance inevitably, all reasonable precautions must be taken to prevent the nuisance from occurring. It further held that the person relying on statutory authority to commit a nuisance must prove that such authority is express or implied. In the instant case, the statute relied on by the Council expressly authorized the elimination of mosquitoes and the collection and burning of refuse; but not the filling up of quarries with refuse. Accordingly, the court held that the defendant Council acted unreasonably in choosing to dump refuse only a few yards from the plaintiffs' residential area without taking steps to remedy the bad situation.

Regrettably, however, the court did not grant the order of interim injunction against the defendant. In the reasoning of the court, even though an injunction may lie against a statutory authority, taking into consideration the public duties performed by the authority, it would not make an order that would virtually make it impossible for such an authority to perform its functions. It further opined that an injunction against the Council would encourage others to make applications for injunctions to abet smells in other places which would prevent the Council from discharging its functions.

From the environmental sanitation perspective, the decision is retrogressive as it fails to take into consideration the fact that the State and its agencies ought to be at the forefront

532 1961 Act 54.

533 ibid section 47(2).

to ensure that environmental sanitation is provided and protected as required under international law.[534]

In another case titled *Mould v Devine*[535] Mr. de Vine, former occupier of House No. A.162/3 Korle Gonno, Accra had run up water bills to the tune of £G12 2s. 6d. The Waterworks Department cut off water supplies to the house pending the payment of all arrears of water bills. On the 8th of November 1961, as a result of a court action, ownership in the house was vested in Mould, the applicant herein. The Waterworks Department refused to reconnect the water unless she paid the arrears. She contended that the arrears were a debt due from the previous occupier, which the department could recover through a civil suit, and that she was entitled to have the house reconnected. She applied for an order of mandamus to compel the Waterworks Department to restore the water supplies to the house. It was held that mandamus lies to compel a public body to perform a public duty that it has failed to discharge and that the Waterworks Department has a duty to the public to supply water to their homes. it must show good cause why a particular house should not be connected.

The decision in the *Mould v Divine* case could be a good precedence to the people of Ghana who often experience water disconnections due to the inability to settle their water bills. Water cuts for non-payment of bills are common in Ghana and this amounts to human rights abuse. Ghanaians may therefore take advantage of the decision and institute legal actions against the Ghana Water Company (GWC) when their premises are disconnected from the water supply unjustifiably. In the South African case of *City of Cape Town v Strumpher,* [536] the Court held that pursuant to section 27 (1) (b) of the Constitution of South Africa and section 3 (1) of the Water Services Act 1997, everyone has the right to sufficient water and that the right supply water to the respondent, whose water was disconnected, should not be construed purely contractual. From a human rights perspective, the applicants could have resorted to some settlement with the respondent so that she could have access to water in her premises, the Court held. The GWC, in line

[534] G.A. Sarpong, Environmental Justice in Ghana. 1996-2000 Volume XX Review of Ghana Law pp. 91-114.
[535] [1962] 1 GLR 533.
[536] [2012] Supreme Court of Appeal ZASCA 54.

with this ruling, could negotiate with those who fail to pay their water bills instead of disconnecting their premises thereby depriving them of the right to water.

It is important to note that most of the court decisions on sanitation especially are found in the lower courts. The lower court does not have the jurisdiction to impose stiff sentences on offenders.

Conclusion

Safe water and improved sanitation are necessary for the attainment of an adequate standard of living, good health and human dignity. As a result, safe water and improved sanitation are recognized human rights globally declared by UNGA Resolution 64/292 of 2010. International human rights law has emphasized the involvement of States in the provision of water and sanitation for all. States owe it a responsibility to fulfil, protect and respect human rights to safe water and improved sanitation. The water and sanitation situation in Ghana is in a deplorable state. Availability, accessibility, affordability, acceptability and cleanliness or safety of water and sanitation are challenges in the country. There are many towns and cities in Ghana which have no potable water and proper sanitation. The GWCL which is a state institution responsible for the supply of water to urban areas of the country is unable to meet the demands of the populace. Even where its supply facilities are available, the water supply is erratic and inaccessible to many especially the poor. In places where water is available and accessible, affordability becomes an issue owing to high water tariffs which do not take into consideration the poor and the vulnerable who cannot settle the bills. Consequently, they resort to the use of water from wells, streams, sachet water and tanker services which may not be safe for consumption and thereby lead to diseases such as cholera and typhoid.

Ghana's sanitation situation is worse than that of water. There are many households, schools, workplaces, hospitals markets and many more public places without sanitation facilities. Even where they exist, many of them lack maintenance and are therefore in a deplorable state. The MMDAs have been tasked under section 104 of the Local Governance Act, 2016 (Act 936) to ensure that sanitation is available and accessible to

the people of Ghana. This responsibility is not being carried out by the latter due to a lack of funding and corruption by some government officials who misuse or misapply funds for maintenance in a deplorable state. This demotivates people to use them and resort to defecating in the open.

Many factors account for Ghana's worrying water and sanitation situation. Notable among them is improper management of both liquid and solid wastes in the country, especially in the big towns and cities. Wastes are not collected on schedule and are sometimes not disposed of in the right place and in the proper manner. This leads to the outbreak of communicable diseases. Provision of water and sanitation are capital-intensive projects, yet funds allocated to these sectors are not adequate at times. Even though Ghana has recognized water and sanitation as human rights, it is not showing much commitment towards the progressive realization of these rights, by way of providing them to the people of Ghana. It is time the governance of the country maps up plans and strategies, such as raising funds from donor agencies, such as Water Aid, Water Lex, and DANIDA to enable it to provide safe water and improved sanitation progressively to the people of Ghana.

Ghana has several legislation capable of solving its water and sanitation woes. Notable among them is the WRCA, 1996 (Act 522), which mandated the WRC to manage all water resources within the country. The MMDAs have bylaws that impose on them the responsibility to ensure improved sanitation within areas under their jurisdiction for the good health and human dignity of Ghanaians. The EPAA, 1994 (Act 490), assigns the general protection of the environment, including water and sanitation for the benefit of all Ghanaians. The Criminal Offences Act, 1960 (Act 29) prohibits activities, such as throwing rubbish on streets and in drains, which are likely to create sanitation problems. Offenders are to be arrested, and prosecuted and those found guilty are sentenced to a fine or imprisonment. The issue of enforcement of water and sanitation laws in Ghana is another challenge, however. The laws are not strictly enforced by the various institutions such as the MMDAs, the Ghana Police Service, the EPA, the WRC and the Minerals Commission as required of them. This may be due to corruption and lack of commitment on the part of the institutions concerned.

The reality of rural-urban migration is another setback. The cities become choked due to rural-urban migration making demand of water and sanitation very high. The GWC, which is the sole government agency for the supply of water to the urban population in particular, is overwhelmed by the situation making it very difficult for the urban folks to have access to potable water. As the urban population increases there is the need to expand water supply facilities to meet the growing needs of the populace. The State must commit more funds to do this and eliminate corruption in the sector an efficient delivery of safe water to the people of Ghana. The CWSAA[537] established the Community Water and Sanitation Agency (CWSA) to facilitate the provision of safe water and related sanitation services to rural communities in the country. The functions of the Agency were *inter alia,* to support the District Assemblies to promote the sustainability of water supply and sanitation services in small towns and villages. The CWSP has helped rural communities tremendously. Through it, many rural communities have had access to potable water. Issues of accessibility, affordability and acceptability of water particularly have been addressed to a large extent. Intense supervision of the project must, however, be carried out throughout the country to sustain it.

To surmount the challenges associated with the delivery of safe water and sanitation to the people of Ghana, the State needs to commit more of its resources to the provision of water and sanitation to the people of Ghana as required under international law. It must treat water and sanitation as human rights requisite for good health and human dignity. Institutions that have been mandated to provide water and sanitation and manage same such as the GWCL, MSWR, CWSA, WRC, and the MMDAs must be well resourced both financially and human resource wise to fulfill the rights to water and sanitation to the people of Ghana.

The research, in the next chapter examines the impact of the use of unsafe water and unimproved sanitation on the people of Ghana. It offers some useful suggest concerning improving the current situation for the well-being and dignity of the people of Ghana.

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537 CWSAA 1998 (Act 564)

CHAPTER FOUR

4.0 THE IMPACTS OF POOR SANITATION AND UNSAFE WATER ON THE FUNDAMENTAL HUMAN RIGHTS OF GHANAIANS

Introduction

Good sanitation and safe water are essential for human development, growth and dignity. Access to clean water and sanitation is therefore recognized as a human right globally[538] Indeed, recent academic discourses and debates have recognized sanitation, water, and hygiene as fundamental human rights that are indivisible, interdependent, and interconnected and constitute a birthright for all.[539] For instance, the United Nations International Covenant on Economic and Social Rights stresses the improvement of environmental sanitation and industrial hygiene as a prerequisite to good health.[540] Article 11 of the Covenant provides that states must 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. According to the World Health Organization (WHO), and United Nations International Children Emergency Fund (UNICEF) Joint Monitoring Programme Report, 2017, water and sanitation are closely related such that neither can be fully realized without the other. Improved sanitation, according to the report, is achieved when excreta is separated from human contact. Poor sanitation and the use of unsafe water, or inaccessibility of potable water could result in health complications and equally affect human dignity. As already established, even though the availability and accessibility of water have improved considerably in Ghana, its sanitation situation has seriously declined.[541] This is attributable to many factors, including inadequate funding of water and sanitation

538 See Sayed Mohammad and others, 'Water Sanitation and Hygiene for Homeless People' (2016) Journal of Water and Health, Vol. 14, 1.

539 ibid.

540 UN Covenant on Economic and Social Rights, 1966 Article 12.

541 Access to water has improved to 92.7% as of 2022. In the sanitation sector, on the other hand, it has been able to attain only 18.5% coverage nationwide as of 2022. See Martin Kofi Kanyagui and P. K. Viswanathan 'Water and Sanitation Services in India and Ghana: An assessment of implications for rural health and related SDGs'(2022) Water Policy Vol. 24 No. 6 1073 <doi:10.2166/wp. 2022.079> accessed 31 October 2023.

activities which has affected the adequate supply of water to so many communities within the country; lack of government's commitment to its duty to provide, protect and respect human rights to water and sanitation; ignorance of many Ghanaians of their right to safe water and improved sanitation; failure of government institutions, such as the police, EPA, Environmental Health Department of the MMDAs to efficiently enforce water and sanitation laws and the challenge of rural-urban migration and the inability of the State to meet the associated demand for water and sanitation resulting thereby. This chapter examines the effects of Ghana's poor sanitation and water situation and their impact on the fundamental rights to health, dignity, life, housing, food, education, and water of the people of Ghana.

4.1 Effect of Poor Sanitation and Use of Unsafe Water on Health

The World Health Organization (WHO) defines health as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.[542] Water and sanitation are said to contribute a great deal to good health**.** Sanitation is defined as conditions of the environment that relate to and enhance public health.[543] The Statistical Service of Ghana, in its annual report of 2022, defined sanitation as facilities for the safe disposal of human waste (faces and urine) as well as having the ability to maintain hygienic conditions through services such as garbage collection, industrial/hazardous waste management and wastewater treatment and disposal. It further defined safe water to include water sources that are likely to be protected from outside contamination such as pipe-borne water, boreholes, tube wells, protected rainwater, protected springs, bottled water and sachet water**.** These definitions suggest water and sanitation are essential for the attainment of good health. The quality and quantity of water consumed determines one's safety. Consumption of improved water largely guarantees good health or improved sanitation promotes good health and well-being of people and is thus a necessary condition of health. The WHO's primary decision-making organ proclaimed, in 2011, its adoption of General Assembly Resolution 64/292, which declared water and sanitation

542 L. Kelley, 'The World Health Organization (WHO)' World Health Organ 2008 (April 1948) 1-157.

543 *The Oxford Dictionary of English, sub verbo* 'sanitation' <https://www.oxforddictionaries.cc> accessed 17 June 2023.

human rights. It further adopted Human Rights Committee Resolution 15/19, a follow-up resolution that elaborates the obligation of States to provide safe water and improved sanitation for all. It further urged states to make sure that their national health strategies contribute to the fulfilment of the water/sanitation-related Millennium Development Goals. This gesture makes the WHO another organ that recognizes the human right to water and sanitation, including it under the penumbra of rights guaranteed by the right to health.[544]

The water and sanitation situation of Ghana is however poor and has affected the health of people in varied degrees. This is evident in the annual cholera outbreaks, especially in the urban and densely populated areas within the country. Other health challenges which are the consequences of the use of unsafe water and poor sanitation include typhoid, diarrhea, and skin infections. Some of these health challenges sometimes result in fatalities. Some lesson could be drawn from the Costa Rican case law discussed below to improve Ghana's situation.

In the case of *Ileana Vives Luque c/ Empresa de Servicios Públicos de Heredia*,[545] it was held that denying the connection of a property to the public water supply system amounts to a violation of the right to safe drinking water as derived from the rights to health, and life, a healthy environment, food, and adequate housing under the Costa Rican Constitution.

The decision reiterates the essential nature of water to the survival of man as well as the connectivity between water to life, housing, food and a healthy environment. It, therefore, is important for Ghana to ensure that it discharges its obligation to provide adequate, safe and clean water to safeguard the health of its citizens.

The European Charter on Environment and Health[546] entitles everyone to the right to an environment conducive to the highest attainable level of his or her health and wellbeing. It equally entitles them to have access to information and consultation on the state of the

544 World Health Assembly Resolution 64/24 'Drinking-Water, Sanitation and Health. (May 24, 2011).
545 Corte Suprema de Justicia, Constitutional Chamber 27 May 2003, 238
546 European Environment and Health Charter, 1989.

environment and on plans, decisions and activities likely to affect both the environment and health. It also imposes a responsibility on States and individuals to protect the environment for the good health and well-being of all. The programmes of the Regional Office on environmental health include water supply and sanitation, air and water pollution control, solid waste management, chemical and food safety, radiation protection, housing and settlements, and occupational health. The Charter takes all these into account. The Organization of American States,[547] under Article 11 of the Additional Protocol of the Inter-American Convention on Human Rights equally recognizes water and sanitation as important determinants of good health. Article 24 of the African Charter on Human and People's Rights[548] also provides for the protection and safeguarding of water and sanitation so as to attain good health for all.

The importance of the provisions of this organization on water and sanitation is that, to attain good health human beings need safe and clean water for consumption and other domestic uses and improved sanitation to enhance hygiene. As a result, it is incumbent on the government of Ghana to ensure that safe water and improved sanitation are available, accessible and affordable for all**.**

In a research conducted on sanitation and health by Mura,[549] it was revealed that adequate sanitation, together with safe and clean water, is fundamental to good health and socio-economic development. The three components of good health, namely, sanitation, water, and hygiene, are closely linked and are mutually supportive.[550] Without water, for instance, adequate sanitation may be impossible or difficult to attain owing to their complementarity. In effect, improvement in the three components can help reduce the rates of morbidity and mortality, especially in children. It is therefore important that national legislation on water and sanitation is activated and enforced to prevent the occurrence of water and sanitation-related diseases in Ghana. The existing bylaws of the MMDAs in the country should be enforced strictly. The WRC has been empowered under

547 Additional Protocol to the Inter-American Convention on Human Rights, 1988 Article 11.

548 African Charter on Humans and People's Rights, 1981 Article 24.

549 Duncan Mara and others, 'Sanitation and Health' (2010) Vol. 7, Issue 11 of PLoS Medicine journal pmed.1000363

550 *Ibid*

section 15 of the Water Resources Commission Act, to institute legal action against those who engage in activities that pollute or contaminate water sources leading to diseases.[551] Strict enforcement of these laws would help improve safe water and sanitation delivery for good health and vitality. For instance, in the case of the *Republic v Yahaya Abubakar*[552] the accused person was charged following spillage of effluent from a septic tank in his premises into the environment contrary to section 13(10) (i) of the Hohoe Municipal Assembly byelaws. He pleaded guilty to the offence and was subsequently convicted and sentenced by the court to a fine of Ghc.1,200.00 or in default of payment, serve a prison term of 6 months. In pronouncing the sentence, the judge noted that spillage of effluent into the environment could degenerate into diseases such as cholera, and typhoid. The court also took judicial notice of the prevalence of the practice and cautioned the public to desist from it.

The sentence is deterrent enough and if other courts would apply similar sentences, violation of sanitation law in the country would be reduced drastically. On the other hand, sanitation-related diseases, such as typhoid would reduce as well.

A study conducted by Murat,[553] emphasized water, sanitation, and hygiene as human rights that promote good health, dignity, comfort, and security. Indeed, where there is the availability of safe water and improved sanitation, the well-being of people is assured, and their comfort and security are also enhanced. The reverse could also be true. Where there is a lack of sanitation or poor or unimproved sanitation, the health and dignity of the affected community are at stake as is the situation in Ghana. The current poor water and sanitation could be reversed through enforcement of the relevant water and sanitation legislation such as section 297 of the Criminal Offences Act,[554] which prohibits the creation of nuisance in the form of filth, dirt, or the contamination of water.

In another study conducted by Abdul-Ghaffah Donkor, it was discovered that lack of access to clean water and improved sanitation accounted for most of the cholera

551 WRCA 1996 (Act 522).
552 District Court, Hohoe, Ghana (Court Case No. B15/11/2023 (6 April 2023) unreported
553 Murat Ersel, (n 137).
554 COA1960 (Act 29).

outbreaks in Ghana. The study revealed that between 1988 and 2017, there were 82,754 cholera cases in Ghana, with 519 deaths. The alarming situation, which remains the same over the years, calls for urgent attention from the government and other stakeholders in the sector to avert future outbreaks of diseases. In Ghana, diarrheal diseases resulting from the consumption of contaminated water are one of the most reported illnesses in health facilities.[555]

The practice of open defecation, which is prevalent in Ghana, results in an extensive spread of fecal pollution of water bodies as well as private homes. This state of affairs often leads to communicable diseases such as diarrhea and cholera and most of the time leads to fatalities in the affected communities.[556] The PHA prohibits the preparation and sale of food and beverages close to toilets, and solid or liquid waste under section 50 of the Act.[557] The section criminalizes the act and prescribes sanctions in the form of a fine or imprisonment for offenders found guilty. Strict enforcement of this legislation would help reduce the diseases associated with poor sanitation and the use of unsafe water.

Another occurrence that threatens the well-being and dignity of the people of Ghana is air pollution as a result of improper disposal of both solid and liquid waste. Air pollution is rated as Ghana's number one risk to public health. It is the sixth out of the nineteen risks of death in Ghana.[558] Air pollution, emanating from poor and improper waste disposal as well as poor environmental sanitation management generally may lead to cancer, stroke, and heart diseases, including heart attack and childhood pneumonia among children.[559] The EPA of Ghana has been tasked under section 2 of Act 490 to see to the protection and preservation of the environment. It has been given powers under the provisions of the law to have people who pollute the environment prosecuted. Air and water pollution

555 Felix Boakye Oppong and Others, 'Demographic disparities in unimproved drinking water and sanitation in Ghana: a national representative cross-sectional study' (2022) BMS Open 2022 <12e060595. Doi:10.1136/bmjopen-2021-060595> accessed 34 November 2023.

556 Doris A. Tay and Reginald T.H. Ocansey 'Impact of Urbanization on Health and Well-Being in Ghana. Status of Research, Intervention Strategies and Future Directions: A Rapid Review' (2022) Frontiers in Public Health <Doi:10.3389/fpbh.2022.877920> accessed 12 October 2023.

557 Public Health Act 2012 (Act 851).

558 ibid

559 ibid

are under their purview and jurisdiction. Enforcement of its laws would help prevent and reduce the menace of air and water pollution-related diseases.

Studies have shown that there is a high level of mercury in water bodies in some urban areas. This predisposes affected communities to food insecurity and thus affects people's mental and physical health and dignity.[560] Many lagoons in Ghana accrue pollutants, such as heavy metals which render them hazardous to the health and wellbeing of people.

From the foregoing, it is evident that safe water and good sanitation promote good health and human dignity. When the environment in which people live has improved sanitation and available, safe, and affordable water supply, they are most unlikely to resort to the use of indecent toilets and open defecation which do not promote good health and human dignity. On the other hand, the absence of the above facilities may compel people to resort to the use of what is available. As has already been indicated, Ghana's water situation has improved considerably in terms of availability, though much needs to be done on affordability, accessibility, and quality in most cases.[561] In the sanitation sector, on the other hand, much work needed to be done as the statistics indicated.[562] People continue to defecate in the open, while others use dilapidated toilet facilities which pose health hazards to their health. Many intervention strategies must be put in place to enable Ghana to meet SDG 6 by the end of 2030. Notable among them is the need to enforce the relevant legislation enacted to protect water and sanitation, providing adequate funding to the relevant institutions such as the EPA, WRC, CWSA, MSWR and the MMDAs which have been tasked to protect water sources and ensuring provision of improved sanitation for all. The human resources base of these institutions should also be strengthened in order to achieve results of providing the people of Ghana with accessible, affordable and clean water for their well-being and dignity.

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560 ibid

561 Access to water has improved to 92.7% as of 2022. In the sanitation sector, on the other hand, it has been able to attain only 18.5% coverage nationwide as of 2022. See Martin Kofi Kanyagui, P. K. Viswanathan (2022) 'Water and Sanitation Services in India and Ghana: An assessment of implications for rural health and related SDGs' Water Policy Vol. 24 No. 6 1073 <doi:10.2166/wp. 2022.079> accessed 25 June 2023.

562 ibid

4.2 Effects of Poor Sanitation and Unsafe Water on Human Dignity.

The word dignity takes its root from the Latin word "*dignitas*" meaning worthiness. The notion of dignity, therefore, connotes the universal worth of all human beings without exception.[563] Human dignity points to a universal value to which everyone is entitled and which is linked to the autonomy and liberty of individuals from all walks of life.[564] Historically, human dignity was considered a fit to be achieved, a social or political status that gives respect to those deserving of it. Today, however, it implies that members of society ought to respect one another as fundamentally equal and thus respect the rights of other people.[565] All peoples are free and equal in their human dignity and their rights are derived from an inherent human dignity. To respect dignity then, means to accept values or qualities that are believed worth holding in esteem and having dignity. A decent society is therefore one which promotes and respects the human dignity of all peoples.[566]

One of the values or qualities that are held in high esteem, and which promote human dignity universally is water and sanitation. As observed by Caterina de Albuquerque,[567] access to sanitation and safe water are essential for people to live in dignity. Yet most people the world over do not have basic sanitation. She reiterated the fact that access to sanitation goes hand-in-hand with human rights and human dignity. Contamination of food and water caused by sanitation problems undermines the right to food and safe water and lack of sanitation or poor sanitation is an affront to human dignity, she noted. The current deplorable sanitation and water situation in Ghana is an affront to human dignity. Households lacking sanitation facilities such as toilets making people share such facilities with their neighbours and others defecating in open spaces, bushes and into the sea, affect the dignity of the people of Ghana generally. Section 196 of the Criminal

563 Katrin Grossmann, Elena Trubira 'How the Concept of Dignity is Relevant to the Study of Energy Poverty and Energy Justice' (2021) Frontiers in Sustainable Cities <3.644231, doi:10.3389/frsc.2021.644231> accessed 14 November 2023.

564 ibid

565 Katrin Grossmann, (n 537)

566 ibid

567 She was appointed by the UN Human Rights Council as the Independent Expert on the issue of human rights obligations in relation to access to safe drinking water and sanitation at its Ninth Session in September, 2008. She assumed office on November 1 2008.

Offences Act,[568] prohibits the creation of nuisances in the form of liquid and solid waste and any other form of filth-sanitation problems. In addition, section 104 of the Local Governance Act,[569] assigns the responsibility of provision of sanitation to the MMDAs. Under the said provision, the Assemblies are to make byelaws to ensure the enforcement of sanitation laws throughout the country. These provisions could provide the solution to the sanitation challenge of Ghana when it is strictly enforced.

In the case of the *Republic v Peter Asare*[570] officials from the Nkawkaw Municipal Environmental Health Unit (NMEHU) discovered a collection of wastewaters flowing from the premises of the respondent onto the open. On entering the premises, they realized that the wastewater was from a bathhouse for which no sewer was constructed to channel the wastewater in the appropriate direction. The respondent was therefore arrested and charged with creating a nuisance to wit, contrary to section 2 of the Nkawkaw Municipal Assembly byelaw on sanitation which prohibits the creation of nuisance in the form of throwing refuse or leaving wastewater unattended to in an open space. He was found guilty of the offence and sentenced to a fine of Ghc.500.00 or in default serve a term of two months in prison. Additionally, the court ordered him to construct a soak-away pit to contain the wastewater within two months under the supervision of the NMEHU of the Assembly.

The decision addresses one of the responsibilities of the State, namely, to enforce sanitation laws against individuals and at times groups of individuals who flout sanitation laws of the country. While this is a step in the right direction, citizens and the people of Ghana in general should equally hold the State accountable for its failure to address the water and sanitation needs of the people of Ghana. This holistic way of addressing the country's water and sanitation challenges is most likely to change the status quo. On this score, the Kenyan case of *Ibrahim Sangor Osman* offers some useful insights worthy of emulation by Ghana.

568 COA 1960 (Act 29)
569 LGA 2016 (Act,936)
570 Magistrate Court, Nkawkaw Ghana (Court Case No. B.15/22/2023 (28 February 2023) unreported.

In the case of *Ibrahim Sangor Osman v Minister of State for Provincial Administration & Internal Security eKLR*,[571] a petition was filed on behalf of 1,122 persons (the petitioners) who were evicted from areas referred to as the 'Medina Location' in Garissa, Kenya. The evictions cut off the petitioner's access to, *inter alia*, water and sanitation. The petitioners had lived in the Medina Location since the 1940s. The petitioners sought, *inter alia*, declarations that the respondents had violated their fundamental rights, including the right to life, protection of property, accessible and adequate housing, clean and safe water, sanitation, and health care services.

The Court applied the Constitution of Kenya, the ICESCR, and the ICCPR in its decision. The Court explained that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities. The Court held that the Petitioners were entitled to the fundamental rights to accessible and adequate housing and reasonable standards of sanitation, health care, and clean and safe water in adequate quantities as guaranteed by Article 43 of the Constitution of Kenya. It also held that the forced eviction grossly undermined their right to be treated with dignity and respect.

The decision of the court in the instant case is of great importance to the people of Ghana. It should serve as a wake-up call to the people of Ghana to hold the State accountable for its failure to live up to expectations with respect to its three-fold duty to provide, protect, and respect the human rights to water and sanitation. It is believed that this would help in addressing the prevailing water and sanitation situation in Ghana.

Even though the sanitation and water situation of Ghana is not in very good shape, there is some improvement in the water sector.[572] According to a survey carried out in 2022 by the Statistical Service of Ghana, nine in 10 households (92.0%) have access to improved

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571 High Court of Kenya at Embu, Constitutional Petition no 2 of 2011 16 November 2011.

572 Martin Kofi Kanyagui and P. K. Viswanathan 'Water and Sanitation Services in India and Ghana: An assessment of implications for rural health and related SDGs'(2022) Water Policy Vol. 24 No. 6 1073 <doi:10.2166/wp. 2022.079> accessed 21 October 2023. See also Jacob Doku Tetteh and others, 'Spatial heterogeneity in drinking water sources in the Greater Accra Metropolitan Area (GAMA), Ghana' (2022) Population and Environment 44: 46-76 <https//doi.org/10.1007/5 11111-022-00407-y> accessed 24 October 2023.

sources of drinking water and the proportion is higher for urban (97.8%) than rural (83.0%) households. At least 90 percent of households in nine regions have access to improved sources of drinking water, of which Greater Accra (98.3%), Bono (97.5%) and Upper West (97.3%) have the highest, and Oti (77.1%), Northeast (74.8%) and Savannah (70.5%) regions, the lowest. The sanitation sector on the other hand has seen only a little growth.[573] Three in five households (59.3%) have access to a household toilet facility and the proportion is higher among urban (65.9%) than rural (49.1%) households. About 18 percent of households do not have access to a toilet facility with the proportion being over three times as much among rural (31.3%) as urban (8.9%) households. Access to water, per international standards, has not yet been achieved by Ghana.[574] Even though water is available in many communities, the water sources are not close to the people. Moreover, the cost involved in buying it is mostly not within the means of the poor. Such people have no choice but to resort to other sources that most often, are not safe or clean for human consumption.[575] Coupled with that, people rely on water vendors who erect poly tanks over tricycles or trucks whose sources cannot easily be ascertained. Many people rely on water tankers, hand-dug wells, steam, and sachet water for domestic use. Most of these water sources are often contaminated by human and animal activities, such as farming, animal husbandry, irrigation, and mining.[576] The use of unsafe water and at times sharing the same with animals affect the dignity of the individuals, homes, and communities that patronize the same. It is against human rights to safe water and improved sanitation and serious interventions are needed by the government and other stakeholders to avert the trend. Such interventions include the allocation of resources,

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573 ibid

574 The normative content category of 'physical accessibility' demands that infrastructure must be built and located in a way that facilities are accessible for all at all times, including for people with particular needs, such as children, older persons, persons with disabilities or chronically ill persons. The location of public sanitation and water facilities must furthermore ensure minimal risks to the physical security of users. In order to ensure that all needs are considered, participation is vital. See The Human Rights to Water and Sanitation in Courts Worldwide. A Selection of National, Regional and International Case Law. Water Lex 2014.

575 Joseph Kangmennaag, Elijah Bisung, and Susan J. Elliot. 'We Are Drinking Disease: Perception of Water Insecurity and Emotional Distress in Urban Slums in Accra, Ghana' (2020) Vol. 17(3), 890, International Journal of Research and Public Health <https://doi.103390/ijerph17030890> accessed 25 October 2023.

576 Appiah-Effah and others, 'Ghana's Post-MDGs Sanitation Situation: An Overview' (2019) Journal of Water, Sanitation and Hygiene Development https://waponline.com washdev/article pdf accessed 28 October 2023.

both financial and human resources to the water and sanitation sectors to mitigate the degrading effects that the situation brings on the people of Ghana.

Access to improved sanitation is another challenge that degrades the dignity of the people of Ghana. In Ghana, about 12.71 tons of solid waste is generated daily with only 10% collected and disposed of at the designated dumping sites.[577] The rest 90% of waste that is left unattended usually emanates horrible stench which affects people living in such environments, an affront to human dignity. Many factors have been identified as accounting for the situation. Notable among them are, rapid population growth especially in the urban areas with the corresponding waste generation, adequate supply of waste bins, inadequate waste transportation facilities, inadequate creation of public awareness on the health implications of poor sanitation, weak enforcement of existing sanitation regulations and negative attitude of many people towards sanitation in general among others.[578] Addressing the above challenges would help remedy the current volatile situation and enhance the dignity of the people living in the affected communities. For instance, the State should allocate adequate financial resources to the MMDAs which have been mandated to ensure improved sanitation for all within the country. In addition, sanitation laws, which are expected to be enforced by the Public Health Departments of the MMDAs should be carried out in a consistent manner and without fear or favour so as to enhance the human dignity of Ghanaians.

Another practice that degrades human dignity in Ghana is open defecation. The practice is prevalent in both urban and rural communities of Ghana.[579] There are a number of reasons why people engage in the practice. Many homes and communities have made provisions for public toilets. However, most often they become inconvenient to use due

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577 Samuel Yaw Lissah and others, 'Managing urban solid waste in Ghana: Perspectives and experiences of municipal waste company managers and supervisors in an urban municipality'(2021) <https//doi.org/10.1371/journal.pone 1248392> accessed 28 October 2023.
See also Ghana News Agency. "Promote environmental cleanliness", *Daily Graphic* (Accra, 7 November 2018)

578 ibid

579 Appiah-Effah and others, 'Perception of peri-urban farmers on fecal sludge compost and its utilization: A case study of three peri-urban communities in Ashianti Region of Ghana' (2015) Compost Science and Utilization 23 (4), <https//dioi.org/10.1080/1065657X2015.1046616> accessed 28 October 2023.

to lack of maintenance. Consequently, people resort to defecating in the bushes and even open spaces.[580] Others resort to the practice due to religious beliefs. Some believe that toilets are inhabited by evil spirits. Hence, the use of such facilities may provoke such spirits or those who have some magical powers may lose their potency in patronizing public toilets. In any case, the practice of defecating in the open poses a lot of health hazards and degrades human dignity.

Open defecation constitutes an offence under section 104 of the Local Governance Act, (Act 936) (LGA) and by extension, under the byelaws of the MMDAs. For instance, Part II, section 11(g) of the LGA makes open defecation a criminal offence, punishable by a fine or imprisonment. The Environmental Health Departments of the MMDAs, which have been mandated to enforce the law prohibiting open defecation by educating the public on the negative effects of the practice, must be resource in order to discharge their mandate as demonstrated in the case of the *Republic v Tawiah.*[581] The facts of the case were that the Nkawkaw Environmental Health Unit, while on their routine checks within the Municipality, found the accused person wrapped human excreta in six polythene bags and dumped them in a communal refuse container. She was arrested and charged with abatement of nuisance contrary to sections 3(2) and (6) of the Nkawkaw Municipal Assembly Bylaws on sanitation. The trial court of found her guilty of the offence, convicted her and sentenced her to a fine of Ghc. 2,000.00 or in default, serve a prison term of one month. In pronouncing the judgment, the court noted that the practice of dumping human excreta in garbage containers or leaving them in the open could lead to communicable diseases such as typhoid and cholera which would endanger good health and human dignity.

4.3 The Impacts of Poor Sanitation and Unsafe Water on the Right to Housing.

Sanitation and safe water have been closely linked to the right to housing. It is argued that adequate housing must contain facilities essential for good health. Such facilities may include toilets, waste disposal facilities, for example, bins which must be emptied

580 ibid

581 Magistrate Court, Nkawkaw Ghana (Court Case No. B/55/68/22 (25 July 2023)

regularly, hygiene facilities such as hand-washing basins and safe water to match them. In the absence of water, it would be difficult, if not impossible to maintain proper hygiene at home. Furthermore, all housing facilities must have adequate access to sanitation and washing facilities.[582]

The ACHPR[583] provides that the human right to adequate housing is the right of every person to gain and sustain a safe and secure home and community in which to live in peace and dignity. It includes access to natural and common resources, safe drinking water, energy for cooking, heating, cooling and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. The right to housing imposes, amongst others, the following obligations on States parties to refrain from and protect against forced evictions from home(s) and land, including through legislation. All evictions must be carried out lawfully and in full accordance with relevant provisions of national and international human rights and humanitarian law. States should apply appropriate civil or criminal penalties against any public or private person or entity within its jurisdiction that carries out evictions in a manner inconsistent with applicable national and international law, including due process.

In a research conducted by Prince Antwi-Agyei into the failure of many landlords to provide toilets for their tenants[584], it was discovered that many landlords and tenants in the Ga-West Municipality of the Greater Accra Region of Ghana did not understand the importance of sanitation as an essential component of good health and human dignity. Consequently, many landlords within the locality did not see the need and the urgency of providing toilets within their premises. The research shows that intensive education on

582 See, e.g., U.N. Committee of the Rights of the Child (CRC), Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations Marshall Islands, 59, CRC/C/MHL/CO/2 (Nov. 19, 2007); CRC, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations Kazakhstan, 55-56, CRC/C/KAZ/CO/3 (June 19, 2007).

583 See article, 14,16 and 18(1)

584 Prince Antwi-Agyei and others, 'Toilets for tenants: a cooperative approach to sanitation bye-law enforcement in Ga West, Accra' (2018) International Institute for Environment and Development (IIED). 293 Vol 31(1): 293–308. <10.1177/0956247818800654 www.sagepublications.com> accessed 23 February 2024.

the importance of WASH would help in changing the attitude of people towards the use of unimproved sanitation facilities as it leads to communicable diseases such as cholera.

In the case of the *Government of the Republic of South Africa and Others* v *Grootboom and Others*[585] the Constitutional Court held that the State is obliged to take positive action to meet the needs of people living in extreme poverty, in particular homeless people or those living in intolerable living conditions. It further held that the right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and other socio-economic rights such as the right to a healthy environment, sanitation, and water. Socio-economic rights must all be read together in the setting of the Constitution of South Africa as a whole. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and, in particular, in determining whether the state has met its obligations in terms of them.

The decision on the *Grootboom case* reiterates the responsibility of the State to provide adequate housing to the poor and the needy who may not be able to afford it. Unfortunately, in Ghana, the reverse of this decision is the reality. The state-built houses or State-owned houses, which contain sanitation and water facilities, are very expensive, and only the rich can afford them. The poor and needy rely on wells, streams and other water sources which at times are unsafe for human consumption. Others use public toilets most of which are not hygienic and still others to defecate in the open. The poor and the homeless are therefore deprived of their right to adequate housing.

Perhaps the community-based water and sanitation approach instituted by NGOs and adopted by the Lawra Municipality and the Nandom Districts of the North-Western corridor of Ghana would serve a great purpose when replicated in other parts of the country. Spearheaded by the Centre for Indigenous Knowledge and Organizational Development (CIKOD), many communities in the Lawra and Nandom Districts have had access to WASH services within their households.[586] The programme used a community-

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585 [2000] Constitutional Court CCT11/00, [2000] ZACC 19.

586 See Francis Issahaku and others, 'The Role of Non-Governmental S ector in Community Water, Sanitation and Hygiene Technologies and Services in NorthWestern Ghana' (2023) Ghana Journal of Geography Vol. 15 (2) 1-32. <Doi: https://dx.doi.org/10.4314/gjg.v15i2> accessed 28 February 2024.

based approach where WASH committees were formed to participate actively in its implementation. As a result, many households and schools had improved latrines and clean water for use in the districts.[587]

The solution to the housing deficit in Ghana lies in de-politicizing housing issues in the country. One political party in power may start an affordable housing project meant for the poor. Another political party may come and abandon it to its fate. A typical example is the Seglemi Affordable Housing Project in Tema which was started by the previous government but has been left unattended by the current one. A national housing policy may help curb the recurrence of the practice. In addition, it should be compulsory for all landlords or landladies to provide sanitation and have water connected to their premises so that tenants would enjoy the right to adequate housing.

4.4 Effects of Poor Sanitation and Use of Unsafe Water on the Right to Education

Article 25 of the 1992 Constitution of Ghana recognizes the right to education for children of school-going age. The constitutional provision has also made basic education tuition-free and compulsory for all children. Additionally, it has made second-cycle education progressively free of tuition charges. Unfortunately, the Constitution has not made provision for sanitation and water as essential for the realization of the right to education in line with SDG 4. Goal 4 enjoins all nations to provide a congenial environment, sanitation, and water inclusive, for the realization of the right to education. In other words, students and teachers need places of convenience when they are pressed. They also need facilities such as basins for hand washing to maintain personal hygiene. They need running water as well to enable them to maintain personal hygiene. Regrettably, many schools in Ghana lack basic sanitation facilities like toilets and water. Women and girls menstruating are unable to attend school due to the inconveniences associated with the condition at the time.[588]

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587 ibid

588 See Ghana WASH Sector Development Programme (GWASHSDP) 2021-2030.

The State bears the responsibility of providing water and sanitation to the affected schools as required by SDG 4. This could be achieved by allocating funds through the Ministry of Education for the provision of water and sanitation to all schools throughout the country. The Indian case of *Environmental and Consumer Protection Foundation* may offer some guidelines to Ghana. In the case of *Environmental and Consumer Protection Foundation* v *Delhi Administration,*[589] the Supreme Court held that the lack of toilet facilities in schools constituted a violation of the right to education. It was discovered that girls in their menstruation refused to go to school due to a lack of sanitation facilities in the school, thereby depriving them of the right to education. Article 21A of the Constitution of India[590] states that public authorities have an immediate obligation to ensure that they provide toilet facilities as well as safe drinking water at their premises.

The decision reiterates the close linkage between the right to sanitation and the right to education. To fulfill the right to education, a conducive environment must be created for teaching and learning. A conducive environment in this regard must have water and sanitation facilities which are necessary for good health and human dignity. The absence of these two components of the human environment may hinder attendance to school by both students and staff of the affected institutions, thereby depriving them of their right to education. The problem could be resolved by the State and its agencies such as the Ministry of Education and MMDAs which have direct and oversight responsibility for providing such facilities to the affected schools. They should make realistic budgetary allocations for water and sanitation specifically to be provided in all schools. Special appeals could also be made to donor agencies such as DANIDA, Water Aid and Pencil of Promise to come to the aid of schools without basic water and sanitation facilities. In addition, the Parent-Teacher Association of affected schools could also take up the challenge of providing the needed water and sanitation facilities for their schools. Lastly, Old Students Associations could also assist in the provision of the needed facilities to their former schools.

589 AIR 2013 SC. 1111.

590 1949 (as amended).

In a study carried out by Felix Boakye Oppong on disparities in the choice of drinking water sources in Ghana[591], it was discovered that there was a connection between a choice of drinking water source and people's educational background. Household heads who had formal education-maintained sanitation, hygiene, and safe water as against those who were not educated formally. The study concluded that education empowers people to make better choices to use safe water, proper sanitation, and general hygiene, and make better decisions concerning their health.[592] In line with Felix Boakye Oppong's research findings, it is recommended that WASH studies be inculcated in the syllabi of basic and second-cycle schools in Ghana so that students are taught the importance of WASH as a fundamental human right and its health implications at the early stages of their education. It is believed that this would change the current state of the nation's WASH status and enhance the good health and dignity of Ghanaians.

4.5 Impacts of Poor Sanitation and Unsafe Water on the Right to Work

Sanitation and water are linked to the right to work and a healthy working environment. Availability and accessibility of a healthy working environment guarantee the right to life as provided for by the International Labour Organization (ILO).[593] The ILO Convention on Occupational Safety and Health defines health at work to include physical and mental elements affecting health that are directly related to safety and hygiene at work.[594] The two most important factors that guarantee health, safety, and hygiene at work are sanitation and water. The adverse effect of a work environment that lacks water sanitation facilities is that it may compel workers to devise their means of attending to nature's call, including open defecation and defecating in plastic bags. Most of these bags find themselves in drains and waste containers. Others are thrown into the open where birds, including poultry and animals, feast thereon exposing people to diseases such as cholera and typhoid. To fulfill the right to work therefore, employers must provide employees with

591 Felix Boakye Oppong, and others 'Demographic disparities in unimproved drinking water and sanitation in Ghana: a national representative cross-sectional study' (2022) BMS Open 2022 <12e060595. Doi:10.1136/bmjopen-2021-060595> accessed 26 March 2024.

592 Felix Boakyi Oppong, (n 564).

593 See the ILO Convention on Occupational Safety and Health, 1981 (No. 155).

594 ibid

adequate water and sanitation facilities within their premises in line with Article 24 of the 1992 Constitution of Ghana. Article 24(1) guarantees everyone the right to work in a safe, satisfactory, and healthy environment. This Constitutional provision ought to be enforced by workers against the employers when in breach to assure them of their right to work.

In a study conducted by Parthsarathi[595] on the impact of workplace hygiene and sanitation among employees, it was revealed that sanitation and hygiene are essential for maintaining healthy conditions and preventing diseases among workers. They also safeguard overall industrial health. His study established a strong association between workplace hygiene and factors such as availability and access to washing facilities, sanitation, and safe drinking water.[596]

In the case of *Laurent X*,[597] the convict recruited several dozens of seasonal workers from Tunisia and Morocco to work on his farms. The workers were housed close to the farm but lived in deplorable conditions. Only six sanitation facilities were provided for about 100 people. The workers relied on water sources that were unsafe for consumption. A legal action was therefore instituted against the accused person alleging that the condition of the workers was contrary to the protected right to adequate housing, human dignity, and safety of workers. The Cour de Cassation held that failure by the convict to accommodate and provide seasonal workers with sufficient sanitation facilities and suitable water for human consumption was contrary to the constitutionally protected right to human dignity and safety of workers. Article 225-14 of the French Penal Code, provided that subjecting a person, whose vulnerability or dependence is obvious or known to the offender, to working or living conditions incompatible with human dignity is punishable by five year's imprisonment.

The decision of the court in the case of *Laurent X* case could be applied to Ghana's situation, to protect the rights of workers under Article 24(1) of the 1992 Constitution.

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595 Parthsarathi Dehury, K. Anil Kumar and Ranjit Kumah Dehury 'Assessment of Workplace Hygiene among Contractual Workers in the Steel and Power Industry of Oditsa, India' (2022) Indian Journal of Community Medicine 47(3): 449-452.

596 ibid

597 [2010] Cour de cassation (Crim) 09-84012.

Article 24(1) provides for the right to a fair hearing. In instances where employers fail to provide water and sanitation within their work premises, workers have to protect their rights to work in a safe and a healthy environment by way of legal action.

4.6 The Impact of Poor Sanitation and Unsafe Water on the Right Food

The recently held Food Systems Summit by the UN[598] reiterates the importance of food as a human right. The Summit calls on all nations to promote and protect the human right to food for the attainment of good health and preservation of life. In order to prepare food for consumption, clean and safe water is needed at all costs. Water is needed for washing food items, cooking, washing plates and cutlery or hand for maintenance of hygiene and after eating washing cooking utensils. In effect, water is needed for the attainment of the right to food.

Sanitation is equally related to the right to food, which is one of the necessities of life. Section 27(1) (b) of the Constitution of South Africa recognizes the right to sufficient food and the right to water as human rights. This conforms with UN CESCR, General Comment No. 15 which provides, *inter alia,* that daily people need 7.5 liters of water and improved sanitation, food and hygiene to guarantee a healthy life. Reading the two provisions together, there is a close relationship between sanitation, water and food. Water is needed to prepare food, while sanitation is needed to prevent contamination of food. Both sanitation and water are therefore needed to ensure food safety for human consumption. Therein lies the connectivity among them. The ACHPR equally emphasizes the importance of food as a human right linked to water. It provides that the right to adequate food is an individual right that is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights. that are also enshrined in the African Charter, including, in particular, the rights to health, education and political participation. Enjoyment of this right will particularly depend on the enjoyment of the right to water and access to affordable energy for cooking.[599]

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598 It was held in New York on 23 September 2021.

599 See articles 4, 16 and 20 of the African Charter.

Ghana's deplorable sanitation and water situation has affected the right to food as has been discovered by a number of research. For instance, in a study conducted by Kangmenaag[600] on water insecurity in urban slums of Accra, Ghana, it was discovered that most people in Ghana rely on water vendors, wells, streams and sachet water for domestic uses. Unfortunately, most of these water sources are not safe for human consumption. Where sanitation is poor, there is the likelihood of flies perching on human excreta and dropping on food and food items, such as fish, cooked food and vegetables. The use of these unsafe water sources, and poor sanitation account for cholera outbreaks and other diseases such as typhoid almost every year.

In the case of *The Republic v Christiana Oforiwaa*[601] the respondent was arrested by the EHO of the Nkawkaw Municipal Assembly while selling cooked food without the requisite certification by the Assembly contrary to section 9 of the Nkawkaw Municipal Assembly Byelaws of 2018. Section 9 of the Byelaws requires those who wish to sell food to the public to be certified by the Assembly. The rationale is to ensure that the environment where the food is sold is clean and safe for preventing diseases. The court found her guilty of the offence and sentenced her to a fine of Ghc. 500.00 or in default serve a prison term of one month.

Again, research has shown that reliable access to sufficient quantity and quality of water is crucial for any nutrition-related activity, including cooking diverse foods, food production and preparation, using water to flush toilets, and maintaining personal hygiene.[602]Water in sufficient quantities and quality is a prerequisite for good health and human dignity. The research findings concluded that the inaccessibility of water affects the right to food because the people who may be affected may not be able to meet their nutritional needs.[603]

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600 See Joseph Kangmennaag, Elijah Bisung and Susan J. Eliot 'We Are Drinking Disease: Perception of Water Insecurity and Emotional Distress in Urban Slums in Accra, Ghana' (2020) Volume 17(3), 890, International Journal of Research and Public Health < https://doi.103390/ijerph17030890> accessed 23 March 2023.

601 District Magistrate Court Nkawkaw, Court Case No. B.15/55/2023 (9 April 2023).

602 Joshua D. Miller and others. 'Water Security and Nutrition: Current Knowledge and Research Opportunities' (2021) PMC PubMed Centra Adv. Nutr v. 12(6) PMC8634318.

603 ibid

In order to avert the recurrence of these waterborne and sanitation-related diseases, the MMDAs, tasked to enforce sanitation bylaws must be accountable to the people of Ghana ensuring that improved sanitation is assured in their respective districts. The Public Health Act, under section 52, prohibits the sale of food in an environment with poor sanitation. Strict enforcement of this law would help in the realization of the right to food. For instance, in the case of *Xakmok Kasek Indigenous Community* v *Paraguay,*[604] the court held that the State of Paraguay had a responsibility to provide the Xakmok Kasek Community with adequate water, sanitation, food, and hygiene which are necessary for good health and human dignity. Failing to do so, the court held that the State had violated the human rights to sanitation, water, food, and hygiene.

The laws of Ghana do not impose any responsibility on the State to provide food to Ghanaians, except for emergencies. However, the decision would help individuals and groups of people to hold the State and its agents accountable for their failure to provide them with water and sanitation which are essential in the realization of the right to food.

4.7 Effects of Poor Sanitation and Unsafe Water on the Right Life

Article 1 of the Universal Declaration of Human Rights (UDHR) recognizes the right to life and calls on all nations to ensure its protection.[605] Article 4(1), 19, and 63 of the American Convention on Human Rights (ACHR) provides that all peoples have the right to full enjoyment of their human rights, including sanitation. Article 4 of the ACHPR has also made provision for respect of life and arbitrarily prohibits its violation. In 2010, the United Nations General Assembly (UNGA) adopted Resolution A/64/292 on the HRWS, recognizing 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 UN Human Rights Council (HRC) adopted in the same year another resolution recognizing the existence of a human right to access safe drinking water and sanitation, while also affirming the outcomes of UN Resolution A/64/292. In 2015, the UNGA adopted a new resolution

604 [2010] Inter-American Court of Human Rights, Series C. no 21.

605 CESCR, General Comment No. 14.

separating the right to water from the right to sanitation, given that the latter is often neglected.

Imad Antoine Ibrahim reiterated the importance of water for the survival of humans and indeed, all living things.[606] He noted that water is important for well-being and health and that its management requires regulations to prevent the depletion of this resource. After air, water is the second-most vital resource, as humans can only survive for a few days without it, while its importance to business and industry is well-known.[607] Water is a unique resource needed to conduct all types of human activities. Water is one of the few exceptionally precious elements that must be dealt with through a holistic approach given its vital role. As a unique raw material needed for human survival and economic activities, this resource must be managed and protected.[608] Water is not only perceived in terms of being a necessary source for satisfying human needs but also for playing an important role from environmental and economic development perspectives that equally support life.[609]

South Africa adopted a new constitution that entered into force in 1996. According to section 27(1), everyone has the right to have access to sufficient food and water. The State has the responsibility in accordance with the Constitution to achieve the rights stated within. According to Section 27(1)(b), the state must take reasonable legislative and other measures within its available resources, to achieve the progressive realization of the rights to food and water. The Water Services Act was adopted in 1997 and defined terms such as basic water supply and basic sanitation as requisite for good health and life. A National Water Act was adopted in 1998 to address the competition over limited water resources in the country, where policymakers had to ensure the promotion of the HRWS within the Act. Since the adoption of the laws, great progress occurred to ensure that citizens would have access to water.

606 Imad Antoine Ibrahim (2022) Water as a human right, water as a commodity: can SDG6 be a compromise? The International Journal of Human Rights, 26:3, 469-493, DOI: 10.1080/13642987.2021.1945582.

607 Ibid

608 Ibid

609 Ibid

Article 13(1) of the 1992 Constitution of Ghana calls for the protection of life and prohibits deprivation of same. The human rights to water and sanitation are indispensable and are closely tied to the realization of other rights, including the right to life. Water and sanitation are the two important ingredients needed for the protection and preservation of life. Ghana has to strengthen its water and sanitation legislation to ensure good health and well-being for its citizens as was the case of *Sawhoyamaxa Indigenous Community* v *Paraguay*,[610] where the court found that the human rights to sanitation and water are implicit in Article 4 of the Constitution of Paraguay, which provides for the right to life under the ACHR. The court further held that Paraguay must put in place measures to protect and preserve the right to life, which in the opinion of the court, included the provision of sufficient water for consumption and personal hygiene and latrines (sanitation) to the members of the community.

Survival of human beings depends largely on water, food, and sanitation. This is the very reason why it is said that water is life. Sanitation also preserves life because its availability, accessibility, and affordability guarantee good health and quality of life. Where sanitation is poor, people are most likely to fall sick due to contact with fecal matter. The decision in the Sawhoyamaxa case reiterates the need to protect the right to life by providing adequate water and sanitation. It may be applied to the situation in Ghana for the protection of the right to life and sanitation of its citizens. Ghana could learn from the South African experience and strengthen its water and sanitation legislation for efficient service delivery.

Conclusion

Good Access to clean water and sanitation is recognized as a human right globally. Water and sanitation are fundamental human rights because they are essential for human development, growth, and dignity. They are equally important for the full realization of other rights, including the right to housing, health, food, education, work, and life. Ghana's water and sanitation situation is not in good shape and has affected the full realization of fundamental human rights of health, dignity, housing, education, food, and life. The

610 [2006] Inter-American Court of Human Rights, Series C.No.146.

negative impact of unsafe water and sanitation on health is evident in the annual cholera outbreaks, most especially in the urban and densely populated areas within the country. Other health challenges that are the consequences of the use of unsafe water and poor sanitation include typhoid, diarrhea, and skin infections. Some of these health challenges sometimes result in fatalities.

The right to human dignity of Ghanaians is affected by the use of unsafe water and poor sanitation because it deprives them of their worth as human beings. Animals and humans sharing the same water source degrades the worth of people and their dignity. Contamination of food and water caused by sanitation problems undermines the right to food and safe water and lack of sanitation or poor sanitation is an affront to human dignity. The current deplorable sanitation and water situation in Ghana is an affront to human dignity. Households lacking sanitation facilities such as toilets making people share such facilities with their neighbours and others defecating in open spaces, bushes and into the sea, affect the dignity of the people of Ghana generally.

The right to housing is fulfilled when a house has basic sanitation facilities and safe water for consumption. This right is affected in Ghana where most households do not have basic toilet facilities and safe water for domestic use. Many educational and other institutions in Ghana lack basic sanitation and water for personal hygiene. Even where they are available, they are inaccessible sometimes due to a lack of maintenance. The situation compels those affected to resort to open defecation when there is no public sanitation facility close by.

Lack of basic sanitation and safe water affects the right to food. Food safety requires that food is prepared in a hygienic environment and that safe water is used in preparing food. Consumption of unsafe food leads to health complications and may in extreme situations lead to fatality. In order to prepare food for consumption, clean and safe water is needed at all costs. Water is needed for washing food items, cooking, washing plates and cutlery or hand for maintenance of hygiene and after eating washing cooking utensils. In effect, water is needed for the attainment of the right to food. Unfortunately, most of the water sources in Ghana are not safe for human consumption. Additionally, because sanitation

is poor in Ghana, there is the likelihood of flies perching on human excreta and dropping on food and food items, such as fish, cooked food and vegetables. This may lead to the spread of communicable diseases such as cholera and typhoid. In order to avert the recurrence of these waterborne and sanitation-related diseases, the MMDAs, tasked to enforce sanitation bylaws must be accountable to the people of Ghana ensuring that improved sanitation is assured in their respective districts.

Article 25 of the 1992 Constitution of Ghana recognizes the right to education for children of school-going age. The constitutional provision has also made basic education tuition-free and compulsory for all children. Regrettably, many schools in Ghana lack basic sanitation facilities like toilets and water. Women and girls menstruating are unable to attend school due to the inconveniences associated with their condition at the time. The State bears the responsibility of providing water and sanitation to the affected schools as required by SDG 4. This could be achieved by allocating funds through the Ministry of Education for the provision of water and sanitation to all schools throughout the country.

Ghana has many legislation to address its water and sanitation problems. Notable among them are the Water Resources Commission Act, 1996 (Act 522), the Public Health Act, 2012 (Act 851), the Environmental Protection Agency Act, 1994 (Act 490), the Local Governance Act, 2016 (Act 936) and the Criminal and Other Offences Act, 1960 (Act 29). This legislation has made provisions for the supply or provision of water and sanitation for all, the protection and preservation of same, and enforcement of the laws against individuals or groups of individuals who violate those laws. Unfortunately, the laws do not seem to be potent in solving the nation's water and sanitation problems. Additionally, they do not have clear provisions for individuals or groups of people to hold the State and its agencies accountable for their failure to deliver to the people of Ghana water supply and sanitation services. Generally, enforcement of water and sanitation laws in Ghana is a challenge. While many people are ignorant of their human rights in relation to water and sanitation, the State agencies are also negligent or corrupt in the enforcement of the relevant laws.

In sum, Ghana's water and sanitation situation constitutes a violation of fundamental human rights to health, life, food, education, work, housing and human dignity.[611] The situation is alarming as it appears the measures so far put in place by the governments of Ghana, such as the sanitation policies and legislation have not been able to address the challenges satisfactorily.[612] It also appears the governments of Ghana have not tackled the issue of water and sanitation from the human rights perspective.[613] As it stands, for Ghana to meet the requirements of Sustainable Development Goal Six, by ensuring sustainable water and sanitation for all by 2030, many more interventions must be brought on board to transform the current state of affairs into a proper one.

611 Sylvester Agbezuge 'The State of Ghana's Environmental Sanitation: A Violation of Human Right?' (MA Dissertation School of Law, University of Ghana, Legon 2019) 17-24.

612 ibid

613 ibid

CHAPTER FIVE

5.0 THE EFFECTIVENESS OF WATER AND SANITATION LAWS OF GHANA FOR THE PROTECTION OF THE FUNDAMENTAL RIGHTS TO HEALTH, DIGNITY AND LIFE

Introduction

The rights to health, human dignity, and life are recognized nationally, domestically and internationally.[614] The UNO recognizes sanitation, water, and hygiene as human rights and has assigned the responsibility of providing water and sanitation services to state parties.[615] This fundamental responsibility requires state parties to meet a minimum threshold of providing water and sanitation services to their citizens**.** Article 11 (1) of the ICESCR specifies a number of rights as crucial and indispensable for human survival as well as for the realization of an adequate and dignified standard of living. Among them are water and sanitation, recognized as fundamental to the right to human dignity.[616] All human rights are interconnected and indispensable by nature.[617] The protection or otherwise of one right could affect the others. It is therefore important to offer holistic protection to all human rights. In line with this, UNCESCR General comment No. 15 emphasizes that water is a limited natural resource and a public good and fundamental to life and health. States are therefore obliged to ensure that they provide water in safe, accessible, acceptable, affordable, and enough for domestic and other uses without discrimination.

Sanitation issues in relation to women and children need to be given special attention in line with article 4(2)(h) of CEDAW. Women need proper sanitation facilities especially

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614 See Introduction: Sanitation as Human Right <hrw.org/report/2017/04/19/going-toilet-when-you-want/sanitation-human right> accessed 11March 2024.

615 See UNCESCR 'General Comments 15' in "Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (2008) UN DOC. HR/GEN/1/Rev.9".

616 See, for example, The Right to Water (articles 11 and 12 - International Covenant on Economic, Social, and Cultural Rights, General Comment 15, 26 November 2002).

617 United Nations Human Rights Council (UNHRC). Vienna Declaration and Programme of Action. Vienna: UNHRC; 1993.

when they are menstruating. Such facilities must have adequate water and hygiene facilities to protect them from infections and other related diseases.

Articles 24 and 27 of the CRC recognized the right of children to access safe water essential for their growth and development. Children need safe water for consumption and other domestic uses in their early stage of development and state agencies must make adequate provision for children.

ECHR and the ACHPR have all emphasized the importance of clean and safe water and improved sanitation as essential for growth, development, good health, and human dignity. Even though these conventions did not specifically pronounce water and sanitation as distinct human rights, they set the pace for the recognition of the same in 2010 under UNGA Resolution 64/292. UNGA Resolution 64/292 stresses that State parties must fulfill, respect, and protect the human rights to water and sanitation at all material times and purposes.

Ghana's water and sanitation situation has not been the best over the years.[618] The situation has had a lot of negative impacts on the health and dignity of the people of Ghana. Several factors may account for this state of affairs. This research focuses on the laws governing the two sectors. Hence, this chapter critically examines the water and sanitation laws of the nation to determine their efficiency and effectiveness or otherwise for the protection of the rights to health, life and human dignity of the people of Ghana.

5.1 Effectiveness of Human Rights Legislation

A legal system is always purposive.[619] It has its goals and objectives which are designed by those in authority in order to shape or transform the society for which the laws are made. The laws thus made either prescribe what is permitted or forbidden and institutions are established to see to their enforcement.[620] A general test of the effectiveness of a law

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618 Felix Boakye Opong, Dennis Boateng, Ephraim Kumi Senkyere, Divine Darlington logo 'Demographic disparities in unimproved drinking water and sanitation in Ghana' (2022) Vol. 12 Issue 7 of BMC Journals.

619 See Anthony Allott. 'The Effectiveness of Laws' (1981) U. L. Vol. 15 Rev. 229-242 <https//scholar.valpo.edu/vulr/vol/iss 2/1> accessed 23 December 2023.

620 Anthony Allott. (n 586).

is therefore to see how far it realizes its objectives or fulfils its purposes. The effectiveness of a law can also be measured by compliance. The level at which people comply with a particular law implies that they embrace it and believe that it would solve challenges confronting them in identifiable spheres of life.[621] At times, the implementation of laws fails owing to insufficient implementing norms and orders, institutions, and processes. Even where there are implementing norms, a lack of zeal on the part of the implementing authorities may render them ineffective. Lack of zeal may arise from the belief that if a matter gets to adjudicating authorities, there is the likelihood that appropriate sanctions may not be meted out to offenders.[622] Law may become ineffective even if they were originally effective due to the social setting in which they operate. This is why customary law often relies on consensus building to achieve its efficacy.[623]

What then are effective laws within the context of the human rights to water and sanitation? To be able to answer this question appropriately, one has to resort to international law on the subject which has set the standards and requirements for water and sanitation laws. In 2010, the United Nations declared safe drinking water and sanitation human rights which are essential for the full enjoyment of life and all human rights. In resolution 15/9, the United Nations Human Rights Council (UNHRC) also reaffirmed that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.[624] It therefore imposes on member States of the United Nations the responsibility to respect, protect, and fulfil the rights above mentioned.[625] The obligation to respect human rights means that States must not prevent people from enjoying their human rights to water and sanitation, for instance, by selling land with water sources without providing an alternative. The obligation to protect water and sanitation requires States to ensure

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621 See A. Ross, Directives and Norms 1968, 97

622 Anthony Allot, (n 606).

623 ibid

624 United Nations Human Rights Council (UNHRC). *Resolution on the human right to safe drinking water and sanitation*. Geneva: UNHRC; 2014. Resolution A/ HRC/RES/27/7.

625 See UN General Assembly (UNGA). *Human Right to Water and Sanitation*. Geneva; UNGA 2010. UN Document A/RES./64/292. See also Caterina Albuquerque, *Human Rights to Water and Sanitation: Achieving the Goals*: A Handbook by the UN Special Rapporteur, 2014.

that third parties do not interfere with people's rights to the commodities. The obligation to fulfill calls on State parties to ensure that safe drinking water and sanitation are provided sustainably and progressively to the citizenry.[626] States are obliged to incorporate the rights to water and sanitation into their national legal systems. Jurisprudence on these human rights adds another crucial layer to ensure these rights are enforced in practice and will become a reality for everyone, not just on paper.[627]

An effective law on water and sanitation must therefore reflect the human rights principles of non-discrimination, access to information, participation, accountability, and sustainability. The principle of non-discrimination states that no one should be discriminated against in terms of the provision of water and sanitation services. The principle imposes an obligation on States to ensure equality in the provision of water and sanitation services and facilities to their citizenry.[628] The principle is reflected in the Articles 21 and 43 of the Constitution of Kenya.[629] Article 21 provides that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote, and fulfill the rights and fundamental freedoms in the Bill of Rights. Under Article 43 accessible and adequate housing and reasonable standards of sanitation, health care, clean and safe water in adequate quantities, and education are made fundamental human rights. The principle was also applied by the courts in their judicial decisions.[630] In the case of *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security,* the applicants were forcibly evicted from an informal settlement. In addition, they were cut off from access to water and sanitation. The applicants claimed that the action of the Local Government was in violation of Article 43 of the Constitution of Kenya, which

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626 UN General Assembly (UNGA). *Human Right to Water and Sanitation*. Geneva; UNGA 2010. UN Document A/RES./64/292. See also Caterina Albuquerque, *Human Rights to Water and Sanitation: Achieving the Goals*: A Handbook by the UN Special Rapporteur, 2014.

627 Helen Boussard and others, 'The Human Rights to Water and Sanitation in Courts Worldwide: A Selection of National, Regional and International Case Law' (2014) Geneva: Water Lex www.waterlex.org accessed 3 February 2023.

628 UN CESCR 'General Comment 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 (UN CESCR 'General Comment 15').
The Constitution of Kenya, 2010 http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf accessed 15 February 2024.

630 See *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR* High Court of Kenya at Embu, Constitutional Petition no 2 of 2011 16 November 2015.

provides for the protection of the right to water and sanitation. It was held that the action of the local authorities violated a constitutionally protected right as informed by international human rights law. The court also stressed that sanitation and water are essential for human dignity, freedom, and equality.

In the case of Ghana, Article 12(1) of the 1992 Constitution calls on the Executive, Judiciary and Legislature and all other organs of government and their agencies, and where applicable all natural and legal persons to uphold and respect the fundamental human rights and freedoms enshrined in Chapter Five of the Constitution. Article 12 (2) confers on all the people of Ghana entitlement to the fundamental human rights and freedoms enshrined in Chapter Five of the Constitution, including the right to life, security, work in a safe environment, right to property, right to education and dignity of persons. Unlike the Constitution of Kenya, which specifically provides for the protection of the rights to water and sanitation, the Constitution of Ghana has no direct provision for the rights to water and sanitation. Thus, enforcement of those rights against the State becomes difficult. It is important therefore, taking into consideration the importance of the twin rights, that Ghana amends its Constitution and makes room for a direct provision to cater for the protection of the two human rights.

The principle of access to information refers to the public entitlement to seek and receive information about current and planned water and sanitation laws, policies, and programmes. This encompasses the duty of the state to make information available, including for example on the provision of services, tariff systems, and the quality of water and sanitation.[631] The principle reflected in the Constitution of the Republic of South Africa[632] and Regulations Relating to Compulsory National Standards and Measures to Conserve Water[633] and was applied in the case of *Federation for Sustainable Environment and Others* v *Minister of Water Affairs and Others High Court*[634] where the court ordered the respondents to engage actively and meaningfully with the applicants on

631 UN CESCR 'General Comment 15.'
632 Constitution of the Republic of South Africa 1996 (as amended). S. 27 and 152.
633 Regulation 3(b).
634 North Gauteng, Pretoria 10 July 2012.

steps taken to ensure the provision of drinking water, and on information on the volume and regularity of the supply of temporary water to the affected community.

The principle of participation says that human rights to water and sanitation can only be realized effectively when people become part of all the processes that relate to the realisation of these rights. Participation ensures better implementation and enhances the effectiveness and sustainability of interventions, as it ensures that local conditions and needs can be taken into account.[635] The principle was applied in the South African case of *Beja and Others v Premier of the Western Cape and Others*[636] where it was held that failure to provide for the meaningful participation of the Makhaza community and failure to take account of the needs of vulnerable groups also rose to violations of the Constitution and relevant legislation.[637]

The principle of accountability provides that for the rights to water and to sanitation to be realised, service providers and public officials must be accountable to users. Two different requirements need to be taken into account to ensure accountability. The first is that individuals or groups of people who feel that their rights have been violated must have access to redress, either in the courts or by other adjudicating bodies. Secondly, mechanisms must be enacted that establish oversight and control between both public and private actors in water and sanitation provision.[638] Monitoring is essential in order to ensure all actors can be held accountable. This is especially relevant when water and sanitation service provision is decentralised, in order to prevent fragmentation of responsibilities and a lack of coordination and control.[639] The principle found expression in many national legislation and judicial decisions.[640]

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635 UN CESCR 'General Comment 15.'

636 High Court (Western Cape) 29 April 2011.

637 Constitution of the Republic of South Africa, ss 1(a), 7(2), 10, 12, 14, 26 and 2779; National Housing Act, ss 2(1) and 9(1)80; National Housing Code 81; Regulations Relating to Compulsory National Standards and Measures to Conserve Water, reg 2.

638 Helen Boussard and others, 'The Human Rights to Water and Sanitation in Courts Worldwide: A Selection of National, Regional and International Case Law' (2014) Geneva: Water Lex <www.waterlex.org > accessed 27 January 2024.

639 ibid 15

640 South Africa, High Court (2012): *Mandla Bushula* v *Ukhahlamba District Municipality*; Argentina, Cámara

For instance, in the case of *Federation for Sustainable Environment and Others* v *Minister of Water Affairs and Others,*[641] the applicants alleged that the lack of access to an effective and reliable supply of potable water constituted a breach of the right to water as guaranteed under Sec. 27 of the South African Constitution. The applicants notably requested the Court to declare the failure of the various respondents to provide the residents of the Carolina area with a reliable supply of drinking water for more than seven full days, together with the provision of temporary potable water within 24 hours as unlawful. It was held that the respondents owed it a duty to supply potable water to the Silobela and the adjoining communities. They must equally have a progressive plan to achieve this objective and must engage and inform the community of the steps and progress of doing so since the respondents are accountable to the communities.

Similarly, in the case of the *Institute for Human Rights and Development in Africa* v *Angola*[642] it was held that failing to provide detainees with adequate access to sanitation and failing to take steps to amend this situation amounts to a violation of the right to human dignity under the African Charter of Human and Peoples' Rights. The Commission further found that this conduct amounted to a violation of Article 1 of the African Charter, which provides that every State party to the Charter must recognize the rights, duties, and freedoms enshrined in Chapter 1 on Human and Peoples Rights and shall undertake to adopt legislative or other measures to give effect to them.

The rights to water and sanitation must be realised for present and future generations. Water and sanitation facilities, services, and water as a resource must be economically, environmentally, and socially sustainable. The sustainability principle operates under three factors, namely operation and maintenance, priotisation of uses and non-

Federal de Apelaciones (2003): *Asociación para la Protección del Medio Ambiente y Educación Ecológica* '18 de Octubre' c/ Aguas Argentinas SA y Otros; Colombia, Corte constitucional (2010): *Hernán Galeano Díaz c/ Empresas Públicas de* Medellín ESP, y *Marco Gómez Otero y Otros c/ Hidropacífico* SA ESP y Otros and United States of America, Court of Appeal (2011).

641 [2012] High Court (North Gauteng, Pretoria) 35672/12, [2012] ZAGPPHC 128.

retrogression.[643] The principle of sustainability is reflected in several legislation and judicial pronouncements across the globe.[644]

In the case of *Federation for Sustainable Environment and Others* v *Minister of Water Affairs and Others,*[645] it was held that taking into consideration the objectives provided under section 152 of the Constitution of South Africa, including the objective to provide services to communities in a sustainable manner, the Court found that within these obligations, the municipality must strive to resolve as speedily as possible the water problem in Silobela and Carolina. It must equally have a progressive plan to achieve this objective and must engage and inform the community of the steps and progress of doing so since the respondents are accountable to the communities.

In the *Federation for Sustainable Development case*, the principles of prioritization of uses and non-retrogression have been applied. Every State owes it a responsibility to prioritize the use of water and the supply of same to its citizens. In a similar vein, they must ensure that their water supply systems are well maintained and utilized sustainably to serve the present and future generations. Ghana's current water situation suggests that the commodity is not prioritized. There are several communities in the country without potable water, but the State does not commit enough resources to the provision of same. In order to fulfill the requirement of sustainable use of water, the State must channel enough resources to the sector for efficient service delivery.

Coupled with the human rights principles, the normative content of the human rights to water and sanitation must also be well reflected in national legislation to enable them to fulfill the responsibilities imposed on them under international law.[646] The first criterion

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643 Helen Boussard and others, 'The Human Rights to Water and Sanitation in Courts Worldwide: A Selection of National, Regional and International Case Law' (2014) Geneva: Water Lex 17-18 < www.waterlex.org> accessed 3 February 2023.
See *Federation for Sustainable Environment and Others* v *Minister of Water Affairs and Others* High Court North Gauteng, Pretoria) 10 July 2012; *Halalt First Nation* v *British Columbia (Environment)* Supreme Court (British Columbia) 13 July 2011; *Gad Amit Kaufman y Otros c/ Municipalidad de Carrillo* y Otros Corte Suprema de Justicia, Constitutional Chamber 14 January 2009; *Dubetska and Others* v *Ukraine European Court of Human Rights*, Fifth Section 10 February 2011.

645 [2012] High Court (North Gauteng, Pretoria) 35672/12, [2012] ZAGPPHC 128.

646 Helen Boussard and others, 'The Human Rights to Water and Sanitation in Courts Worldwide: A Selection

deals with the availability of safe water and sanitation. The normative content category of availability demands that water, and sanitation must be available to everyone in the household or its immediate vicinity, in sufficient quantity and continuously, for personal and domestic uses.[647]

The African Charter on Human and People's Rights (ACHPR)[648] has a detailed normative content of the human rights to water and sanitation. It provides that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal, domestic, and agricultural uses. Water should be treated as a social and cultural good, and not primarily as an economic good.

Sufficient water means an adequate and continuous water supply for each person's personal and domestic use. This normally includes drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene. Safe water is water that, in particular, is free from hazardous substances (micro-organisms, chemical substances and radiological hazards) that could endanger human health, and whose colour, odour and taste are acceptable to users.

Sanitation under the Charter comprises at least, a clean toilet or latrine, together with collection, disposal and treatment of human excreta, wastewater, solid waste and storm water removal and hygiene education. It provides that everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.

The right to safe water and improved sanitation imposes on State parties a core minimum obligation to ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic use, including preventing disease, together with access to adequate sanitation. They must also ensure safe physical access to water facilities or services that provide sufficient, safe and regular water; that have an adequate

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of National, Regional and International Case Law' (2014) Geneva: Water Lex, 20 < www.waterlex.org> accessed 17 January 2014.

647 ibid

648 See Articles 4, 5, 15, 16, 22, 24

number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household; educational institution, workplace or health institution. They must refrain from using access to water as a political tool.

In order to realise these objectives State parties must adopt a national strategy or plan of action to realize the right to water and sanitation and take appropriate measures for the national management of water resources and the preservation of water against pollution. In addition, they must adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. They must formulate and implement national water and sanitation strategies and plans of action that should respect, *inter alia*, the principles of non-discrimination and ensure the right of everyone to participate in decision-making affecting their right to water and sanitation;

For purposes of equitable access to water and sanitation, State parties must ensure appropriate water and sanitation pricing policies, including through flexible payment schemes and cross-subsidies from high-income users to low-income users. Subsidize water and sanitation services for low-income households and poor areas that lack the means to secure access to such services. Subsidies should normally be used for connection to distribution networks or for the construction and maintenance of small-scale water supply and sanitation facilities, such as wells, boreholes and latrines.

Several States have incorporated this criterion in their legislation and the same in their judicial decisions about the rights to safe drinking water and sanitation.[649]

For instance, in the case of *Government of the Republic of South Africa and Others* v *Grootboom and Others,*[650] the Constitutional Court held that the State is obliged to take

649 See *Matsipane Mosetlhanyane and Gakenyatsiwe Matsipane* v *The Attorney General Court of Appeal (Lobatse)* 27 January 2014; *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR* High Court of Kenya at Embu, Constitutional Petition no 2 of 2011 16 November 2011; *Mazibuko and Others* v *City of Johannesburg and Others (Centre on Housing Rights and Evictions, Amicus Curiae)* Constitutional Court of South Africa (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) 8 October 2009; *Highveldridge Residents Concerned Party* v *Highveldridge TLC and Others,* High Court (Transvaal Provincial Division) 17 May 2002 and Habeas Corpus Colectivo presentado por Víctor Atencio c/ el Ministerio de Gobierno y Justicia, Director General del Sistema Penitenciario Corte Suprema de Justicia, Plenary chamber 29 December 2011.

650 [2000] Constitutional Court CCT11/00, [2000] ZACC 19.

positive action to meet the needs of people living in extreme poverty, in particular homeless people or those living in intolerable living conditions. It also held that State measures must be reasonable in their conception as well as in their implementation. The programme on water must be balanced and flexible and must take into account the short-medium- and long-term needs of consumers. Although the rationale of this case was the right to adequate housing, the Court stated repeatedly that all socio-economic rights have to be read and interpreted jointly and made explicit allusion to section 27 of the Constitution which protects water rights.

The next criterion is the physical accessibility of safe drinking water and sanitation for all. Physical accessibility requires that infrastructure be built and located in a way that facilities are accessible for all at all times, including for people with particular needs, such as children, older people, persons with disabilities, or chronically ill persons. The location of public sanitation and water facilities must ensure minimal risks to the physical security of users.[651] The provision finds its way into several national legislation and has also been applied to the relevant cases.[652] In the case of *Matsipane Mosethanyane and Gakenyatsiwe Matsipane* v *The Attorney General*[653], it was held that preventing a well-established Bushmen community from using a borehole, their traditional source of water amounts to inhuman and degrading treatment contrary to Article 7 of the Constitution of Botswana and the international consensus reflected by General Comment 15 and UNGA Res 64/292. As lawful occupiers of land, they had a right to access water for domestic use. The decision reiterates the importance of water as a human right to the extent that where people occupy land or facilities illegally, they still have the right to the supply of water.

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651 UN CESCR 'General Comment 15' (n 1) [12(c)(i)] and[37(c)]; UNHRC Sanitation Report (n 4) [75-76].

652 See *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR,* High Court of Kenya at Embu, Constitutional Petition no 2 of 2011 16 November 2015; *Matsipane Mosetlhanyane and Gakenyatsiwe Matsipane* v *The Attorney General Court of Appeal (Lobatse*) 27 January 2014; *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR,* High Court of Kenya at Embu, Constitutional Petition no 2 of 2011 16 November 2011; *Abdallah Abu Massad and others* v *Water Commissioner and Israel Lands Administration,* Supreme Court, sitting as the Court for Civil Appeals 5 June 2011; *Environment & Consumer Protection Foundation* v *Delhi Administration and Others*, Supreme Court 3 October 20122

653 *Matsipane Mosetlhanyane and Gakenyatsiwe Matsipane* v *The Attorney General,* Court of Appeal (Lobatse) 27 January 2014.

The *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR*[654] case involves an informal settlement that was forcibly evicted, resulting in, *inter alia*, cut off from access to water and sanitation. The Court found a violation of constitutionally protected social rights as informed by international human rights law. The Court referred to sanitation and water as essential for human dignity. It recognized the indivisibility and interdependence of human rights as well as the basis for locating the rights to water and sanitation within the right to an adequate standard of living and the overarching rights of human dignity, freedom, and equality.

The cases cited highlight the need to make water and sanitation physically accessible to all in order to fulfil the rights inherent in them. Ghana may apply decisions in the cases and thus attach some urgency to its water and sanitation situation.

Another criterion worth considering is the acceptability of water and sanitation available for use. The principle of acceptability requires that water and sanitation services take into account the cultural needs and preferences of users.[655] Many States have incorporated the principle in their legislation and in decided cases.[656] In the case of *Abadallah Abu Massad and others v Water Commissioner and Israel Lands Administration*[657] the applicants alleged denial of access to water supply for Bedouins living in so-called Unrecognised Villages in the Negev desert, located in the southern region of Israel. In its decision, the Court applied Israeli Basic Law; Human Dignity and Liberty 300, Israeli Water Law 301, and CESCR General Comment no 15. The Court assessed the reasonability and proportionality of the State's policy. It concluded that generally, the implementation of the state planning policy on the level of accessibility of residents of the unrecognized Bedouin villages to water sources involves a violation of their right to water,

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654 *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR,* High Court of Kenya at Embu, Constitutional Petition no 2 of 2011 16 November 2015.

655 UNHRC Sanitation Report (n 4) [80]; UNHRC Planning Report (n 3) [8(c)] and [71].

656 See *Beja and Others* v *Premier of the Western Cape and Others*, High Court (Western Cape) 29 April 2011; *Asociación Civil por la Igualdad y la Justicia c/ Gobierno de la Ciudad de Buenos Aires Cámara de Apelaciones en lo Contencioso Administrativo y* Tributario (Ciudad Autónoma de Buenos Aires) 18 July 2007; *Environment & Consumer Protection Foundation v Delhi Administration and Others,* Supreme Court 3 October 2012.

657 [2011] Supreme Court Civil Appeal 9535/06.

which is afforded them as a human right. It further held that the realization of the full water right requires the legal arrangement of settlements, and this is contingent on the residents' choice and open to their decision.

The import of the case lies in the need of States and their agencies to allow communities and settlements to whom they provide water and sanitation to determine or accept the design, location quality, and even quantity of water that may be supplied to them for domestic uses. While decision-making on water and sanitation is not common in the urban areas in Ghana, the practice exists in the rural areas, especially under the CWS Programme. The community members concerned, especially women are given the opportunity to partake in the design of the water supply facilities, such as hand pipes and toilets or latrines in line with international best practice.[658]

The next criterion concerns the affordability of water and sanitation services. Access to sanitation and water facilities and services must be affordable for everyone. The payment for services must not limit one's capacity to acquire other basic goods and services, including food, housing, health, and education, guaranteed by human rights. Affordability of water and sanitation services and associated hygiene must ensure people are not forced to resort to other, unsafe alternatives. While human rights do not generally call for services to be provided free of charge, this necessitates free services when people are unable to pay.[659] As usual, the principle is applied in several judicial decisions.[660] In the Venezuelan case of *Condominio del Conjunto Residencial Parque Choroní II c/ Compañía Anónima Hidrológica del Centro* (Hidrocentro),[661] it was held that the disconnection of the water supply to a group of users for non-payment of excessive water bills due to malfunctioning meters installed by the public service provider is not in conformity with the principle of proportionality and puts at risk the rights to life and health

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658 See Kwadzo Mensah Water Law, Water Right and Water Supply (Africa) Ghana-study country report DFID, Cranfield University, Silsoe(1999) 15-16.

659 See UN CESCR 'General Comment 15' (n 1) [12(c)(ii)] and [37(h)]; UNHRC Non-State actors Report (n 14) [47] and [50]; UNHRC Planning Report (n 3) [57(j)]. See also UN CESCR 'General Comment 15' (n 1) [12]. See Beja and Others v Premier of the Western Cape and Others High Court (Western Cape) 29 April 2011; Juge de Paix Fontaine-l'Evêque 15 October 2009 and Case no HD 200.018.358 Gerecht Hof ('s-Hertogenbosch) (Court of Appeal) 2 March 2010.

661 [2005] Tribunal Supremo de Justicia AP42-N-000628.

protected by articles 83 and 117 of the Venezuelan Constitution. The facts of the case were that Condominio del Conjunto Residencial Choroní II (hereinafter the Condominium), representing 234 families living in this residential area, was notified by the public water company Hidrocentro of the eminent disconnection of their water supply if the accumulated debt for water bills was not paid. The excessive monthly amounts to be paid since March 2004 were due to the malfunctioning meters installed by Hidrocentro. The Condominium complained to Hidrocentro about the excessive water bills and asked for an adjustment of the debt, which was not accepted.

The decision in the case brings to the fore the essential nature of water for good health, life, and human dignity. It also places on the service provided the duty of accountability to consumers. The decision is relevant to Ghana where consumers of water and sanitation are rarely involved in decision-making concerning the provision of sanitation and supply of water respectively. It could be incorporated into policy decisions concerning water and sanitation to encourage participation in the design and management of water and sanitation facilities**.**

The final criterion is about safety and quality of water and sanitation. Water and sanitation services should be provided in such a way as to protect the health of users and the general public. Water must be safe for human consumption and for personal and domestic hygiene. Sanitation facilities must be hygienically and technically safe to use and must effectively prevent human, animal, and insect contact with human excreta to protect the health of users and the community.[662] As noted earlier, the provision has been included in some national legislations and judicial decisions.[663] In the case of *María de Jesús Medina Pérez y otros* v *Alvaro Vásquez*[664] the plaintiffs had been using and managing a community aqueduct for over 20 years. The aqueduct's water was considered safe until the defendant built a pig farm near the main water basin for the

662 UN CESCR 'General Comment 15' (n 1) [12(b)]; UNHRC Sanitation Report (n 4) [72].

663 See *Federation for Sustainable Environment and Others* v *Minister of Water Affairs and Others,* High Court North Gauteng, Pretoria) 10 July 2012; *Red de Vigilancia y Exigibilidad de los Derechos Económicos, Sociales y Culturales* Región Junín c/ Municipalidad Provincial de Huancayo Corte Superior de Justicia (Junín) 2 September 2005.

664 [1994] Sala Séptima de Revisión de la Corte Constituciona.

aqueduct. Numerous community members, particularly children, began suffering from gastrointestinal infections and skin infections as a result of using the polluted water. The Court held that the right to a healthy environment is linked to the ability to consume clean water and that the protection of the purity of water in its source is part of the national policy on renewable natural resources, which ensures its sustainable use also for future generations. It added that, according to the Constitution, the State's social goal to achieve a better standard of living for its population implies the State's duty to solve the problem of non-potable water under section II, 2, B, 1.1 of the Constitution, the State's social goal to achieve a better standard of living for its population implies the State's duty to solve the problem of non-potable water.

Ghana could take a cue from this decision and in line with article 41(k) of the 1992 Constitution which calls on the State to protect and safeguard the environment and provide clean water and improved sanitation to the people of Ghana. The State must commit more resources to provide safe water and sanitation for all. To achieve this objective, it must also enforce water and sanitation laws through designated agents.

In conclusion, an effective law within the context of human rights to safe drinking water and sanitation is the legislation that reflects the human rights principles of non-discrimination, access to information, participation, accountability, and sustainability. Similarly, the legislation must address the normative content of human rights, such as availability, physical accessibility, acceptability, affordability, quality, and safety of water and sanitation services.

5.2 Effectiveness of Water and Sanitation Laws of Ghana

The law is settled on what an effective legal framework to protect the human rights of water and sanitation ought to be – it must comply with the internationally acceptable human rights principles concerning the normative content of the rights to water and sanitation.[665] The research intends to analyse the country's existing water and sanitation

[665] United Nations Human Rights Council (UNHRC). *Resolution on the human right to safe drinking water and sanitation*. Geneva: UNHRC; 2014. Resolution A/ HRC/RES/27/7.

laws, to determine whether they can address the nation's water and sanitation challenges. For clarity, the researcher intends to categorise them into three; the 1992 Constitution of Ghana, statutes, and case law.

5.2.1 The 1992 Constitution of Ghana[666]

Like many other constitutions, the Constitution of Ghana is the basis and fundamental law of Ghana. The Constitution is the supreme law of the land and any other law contrary to any of its provisions shall be declared null and void.[667] The supreme law of the land provides the framework for all legislation in the country.

Chapter Five of the Constitution provides for fundamental human rights and freedoms, such as the right to life, personal liberty, human dignity, protection from slavery and forced labour, equality and freedom from discrimination, protection of privacy of home and other property, fair trial, protection from deprivation of property, property right of spouses, economic rights, educational rights, women rights, cultural rights, children's rights, rights of the disabled and rights of the sick.[668] Surprisingly, however, water and sanitation have not been included in the plethora of rights provided for under the Constitution. It could be said that Ghana has not yet given safe drinking water and sanitation their rightful places as human rights as declared by the United Nations Human Rights Council.[669] Suffice it to say that even if it is argued that water and sanitation were not considered human rights at the time the 1992 Constitution came into force, one would have expected that thirteen years down the line, the Constitution would have been amended to make room for the two rights in reference. The fact that the Constitution of Ghana has no provision on the human rights to water and sanitation is a weakness in its water and sanitation laws as far as their protection, provision and sustainability are concerned.

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666 Came into force on 8th May 1992 and Gazetted on 15th May 1992. It was amended in 1996 by the Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527).

667 See 1992 Constitution of Ghana Article 1(2

668 Constitution 1992 Articles 12-30.

669 See UN General Assembly (UNGA). *Human Right to Water and Sanitation*. Geneva; UNGA 2010. UN Document A/RES./64/292.

The Constitution provides that in dealing with other nations as part of her foreign policy, Ghana should promote respect for international law, and treaty obligations as well as adhere to the principles and ideals which are enshrined in the aims and ideals of the Charter of the United Nations and any other international organization of which Ghana is a member.[670] Ghana, a member of the United Nations was expected to give cognizance to international law and hence, provide for the human rights to water and sanitation.

The Constitution[671] imposes a duty on the people of Ghana to protect and safeguard the environment. While this may fall in line with the international human rights principle of participation,[672] regrettably, it has failed to accord the people of Ghana the right to safe drinking water and improved sanitation which promote good health and human dignity.[673] Failure of Ghana to accord her citizens the rights to sanitation and water in the Constitution implies that it would be difficult for the citizenry to hold the government and its agencies responsible when the rights in reference are abused. This probably may account for the scarcity of cases in the superior courts on abuse of human rights to water and sanitation in the country. The state of affairs exposes another weakness in the nation's constitutional law for the protection of the rights to water and sanitation which have been acclaimed internationally.

In sum, international law has defined what an effective and standardized law for the protection of human rights to water and sanitation is. Such legislation must encompass the principles and normative content of human rights in their constitution.[674]

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670 Article 40 (c), (d).

671 1992 Constitution Article 36(9), 41(k) and 73.

672 UN CESCR 'General Comment 15.'

673 See G. A. Sarpong, 'From Stockholm to Rio: Some Ghanaian Responses to the Problems of the Environment'1993-1994 Vol. XIX University of Ghana Law Journal 53-82 at 79.

674 E.g. Constitution of the Republic of South Africa ss 1(a), 7(2), 10, 12, 14, 26 and 277; Article 21(3) of the Constitution of Kenya; Constitution of the Republic of Botswana, s 7. National Constitution of Argentina – Arts. 14 19, 33 and 75, paras. 17 and 19; Constitution of the Federative Republic of Brazil – Arts. 1 (III), 170 (V), 175 (IV); Constitution of Canada, s 35(1) and 52; Political Constitution of Colombia – Arts. 88, 365 – 370; Political Constitution of the Republic of Costa Rica Arts. 9, 21, 33 and 50; Constitution of the Republic of Ecuador – Arts. 12, 164, 166, and 318; Political Constitution of the Republic of Panama – Arts. 21, 23, 28; Constitution of the Bolivarian Republic of Venezuela, Arts 83, 117 and 156(29); Constitution of India, Art 21A; Constitution of the Kingdom of Nepal, Art. 25; Constitution of the Kingdom of Belgium, Art 23(1); Constitution of the Republic of Ireland, Arts 40(3)(2) and 40(4)(2); Constitution of the Portuguese Republic

Consequently, people whose rights concerning water and sanitation have been violated could seek redress in the courts of law within those jurisdictions. As has already been identified, Ghana has no provision on the human rights to water and sanitation in the 1992 Constitution about thirteen years after the declaration of water and sanitation as human rights which are necessary for the realization of all other human rights. There are, however, provisions under the Constitution that indirectly refer to the protection or safeguarding of the environment, and by extension, water and sanitation. Article 36(9) for instance requires the State to take appropriate measures to protect the national environment sustainably and where necessary or applicable seek international cooperation in doing so. The provision therefore imposes a duty on the Stata to ensure the safety and sustainable use of the environment, including water and sanitation which are essential components of the human environment. In the case of *María de Jesús Medina Pérez y otros v Alvaro Vásquez,*[675] the court held that the right to a healthy environment is linked to the ability to consume clean water and that the protection of the purity of water in its source is part of the national policy on renewable natural resources, which ensures its sustainable use also for future generations. Ghana could rely on this decision and put in place robust national policies and strengthen enforcement of existing legislation on water and sanitation for good health and human dignity.

Article 41(k) imposes on the citizenry the duty to protect and safeguard the environment for the present and future generations. The duty to protect and safeguard the environment is therefore a shared one. Individuals, groups of people, communities, and institutions are expected to cooperate with the State and its agencies to provide and make physically accessible, affordable, acceptable clean water and improved sanitation for the people of Ghana**.**

Besides, Article 93(2) vests legislative power in the Parliament of Ghana. Parliament has accordingly enacted several legislation for the provision and protection of the rights to water and sanitation. They include the *Environmental Protection Agency Act* 1994 (Act

– Arts. 13, 18, 64, 65 and 66; Constitution of the Republic of Slovenia, Arts15(3) and 33 and Constitution of Fiji, s 25.

675 [1994] Sala Séptima de Revisión de la Corte Constituciona.

490), the Water Resources Commission Act, 1996 (Act 522), the Local Governance Act, 2016 (Act 936), the Criminal Offences Act, 1960 (Act 29), the Public Health Act, 2012 (Act 851) and the Water Use Regulations, L. I. 1692 of 2001. The relevant provisions of this legislation are discussed below.

5.2.2 Legislation on Water and Sanitation in Ghana

The *Environmental Protection Agency Act*[676] established the EPA and has given it the mandate to protect the environment generally. The Act[677] has given wide functions and powers to the Agency to safeguard or protect the environment for the well-being and health of the people of Ghana. For efficient implementation of the Act, the Environmental Impact Assessment Regulations[678] were promulgated. Regulation 3, Schedule 2 lists several undertakings concerning water and sanitation that require environmental impact assessment before commencement of the construction of those facilities. The facilities include waste treatment and disposal plants, the construction of an incineration plant, the construction of wastewater and treatment plants, the construction of a secure landfill facility, the construction of municipal solid waste and landfill facilities, night soil treatment, and water supply facilities. In addition, water tapped for domestic use and water located within controlled and or protected areas declared by the Agency is considered sensitive environmental areas and the law requires that special attention is paid by the EPA in granting licenses or permits to tap the water resource concerned.[679]

While the regulations are potent for protecting and safeguarding sanitation and water resources for health and human dignity to some extent, implementation and enforcement of the same have not been efficient. Corruption has also affected their work. The supervisory Ministry, must carry out its supervisory role and ensure that the EPA discharges its responsibilities for the efficient delivery of water and sanitation services to the people of Ghana.

676 EPAA 1994 (Act 490).
677 ibid.
678 1999 (L.I. 1652).
679 Ibid Reg. 30(2) Schedule 5.

The second legislation is the *Water Resources Commission Act*[680] The WRC was established under the WRCA, to regulate and manage utilization of the water resources in Ghana and to provide for other related matters.[681] The functions of the WRC include the regulation and management of the utilisation of water resources and the coordination of them. The Commission is also required to propose comprehensive plans for the utilisation, conservation, development and improvement of water resources in the country. the WRC is also required to initiate, control, and coordinate activities connected with the development and utilisation of water resources in Ghana. It is also expected to grant water rights and collect, collate, store, and disseminate data or information on water resources in Ghana.

It is further required to ensure that water user agencies undertake scientific investigations, experiments, or research into water resources in Ghana; monitor and evaluate programmes for the operation and maintenance of water resources. The WRC has not been able to carry out this responsibility efficiently due to weak financial support from the government. Consequently, the water sector has not seen much improvement in water service delivery to the people of Ghana.[682]

The Water Resources WRCA[683] satisfied the international law obligation on States to protect water for domestic and other uses.[684] It also satisfied the requirement to fulfil and respect human rights. The WRC's mandate to regulate and manage the utilization of water resources is in fulfilment of the international obligation imposed on States to protect water resources in the country. The WRC, by this mandate, is empowered to make bye-laws to complement the existing legislation. The WRC is further mandated to formulate and implement comprehensive plans for the utilization of water resources in a sustainable manner and develop others for efficient use in the country. This is in line with the normative contents of availability and physical accessibility under international human

680 WRCA 1996 (Act 522).

681 See the Preamble to Act 552.

682 See Ghana WASH Sector Development Programme (GWASHSDP) (2021-2030), 97.

683 WRCA 1996 (Act 522)

684 See Caterina Albuquerque, Human Rights to Water and Sanitation: Achieving the Goals A Handbook by the UN Special Rapporteur, 2014.

rights law.[685] The mandate to investigate, experiment or research into water resources fulfils the international requirement of safety and cleanliness of water so as to assure good health and human dignity.[686] The issues of affordability and acceptability have, however, not been addressed by the Act.

Despite this, the WRCA is potent in delivering an efficient water supply system in the country. The current poor and inefficient water supply system in the country is an indication that the WRC is not discharging its mandate as it should.[687] Perhaps the situation could be attributed to institutional failure, lack of competent and qualified personnel, lack of detailed provisions concerning its mandates corruption and inadequate funding.[688] The MSWR is expected to perform its supervisory role in order to assure efficient water delivery service to the people of Ghana. The MSWR could develop or review their respective capacity building and training plans for their own operations, undertake training needs assessments for staff, and develop a training plan to fill the gap. They could also explore various options such as mentoring, coaching, workshops, seminars, and formal training in partnership with universities and other training institutions.

The next legislation is the *Water Use Regulations.*[689] The Water Use Regulations were promulgated to regulate water use in Ghana. The Regulation makes it mandatory for people or institutions to apply for and obtain the requisite permit for the use of water for various purposes.[690] Failure to do so constitutes an offence and on conviction, a guilty person may be fined or imprisoned.[691] The Water Use Regulations are to enable the WRC to discharge its management responsibility and protect water resources mandates as

685 See Caterina Albuquerque, Human Rights to Water and Sanitation: Achieving the Goals A Handbook by the UN Special Rapporteur, 2014.

686 ibid

687 See Ghana WASH Sector Development Programme (GWASHSDP) 2021-2030.

688 ibid

689 2001 L.I. 1692.

690 ibid Regulation 1 list the following uses of water for which a permit must be obtained - (a) domestic water use (b) commercial water use, (c) municipal water use, (d) industrial water use, (e) agricultural water use, (f) power generation water use, (g) water transportation water use, (h) fisheries (aquaculture) water use (i) environmental water use (j) recreational water use, and (k) underwater (wood) harvesting.

691 Regulation 24.

required under the WRCA.[692] Thus, the Regulations are complementary by nature and satisfy only an aspect of the responsibilities imposed on States to protect water for good health and dignity of people within their borders. It would have been of immense benefit to the people of Ghana if it had addressed the issues of availability, accessibility, affordability and acceptability for the protection of good health and well-being of the people of Ghana.

The *Local Governance Act*[693] imposes a responsibility on all the people of Ghana to ensure that streets and public and private surroundings are cleared of filth and garbage and that water bodies are kept clean and devoid of contamination and pollution. The Act thus seeks to protect improved sanitation and safe drinking water as well as promote the same. Hence, it constitutes an offence under the Act to engage in acts or omissions which create sanitation and water problems. Regrettably, provisions that border on water and sanitation are only aimed at promoting and protecting sanitation and water services which are not available or physically accessible or inadequate in many areas of the country Ghana.

The lawmakers unfortunately failed to mandate the MMDAs to ensure adequate provision of water and sanitation services for the people of Ghana and regard them as human rights. The Local Governance Act of 2016 post-dated the declaration of water and sanitation as human rights, essential for the realization of all other human rights in 2010.[694] One would have expected that provisions reflecting the human rights principles as well as the normative content of human rights in relation to water and sanitation were incorporated in the law.[695] In the absence of those provisions, one would conclude that the law in its current form is capable of improved sanitation and water services delivery. Implementation and enforcement of the law is however a challenge. The Ministry of Local Government and Rural Development (MLRD) must be well-resourced, financially and by

692 WRCA 1996 (Act 522).

693 LGA 2016 (Act 936) S. 13 (2) (a) and (b), 96, 104 (1) (c), and 181.

694 See UN General Assembly (UNGA). *Human Right to Water and Sanitation*. Geneva; UNGA 2010. UN Document A/RES./64/292.

695 See Caterina Albuquerque, *Human Rights to Water and Sanitation: Achieving the Goals*. A Handbook by the UN Special Rapporteur, 2014.

training personnel so that they can assume their oversight responsibility to ensure efficient water and sanitation service delivery in Ghana. In addition, they should equip the various MMDAs under their jurisdiction by training personnel of the Environmental Health Departments so that they can enforce sanitation laws efficiently.

The *Criminal and Other Offences Act*[696] like all criminal offences, prescribes sanctions for identifiable offences in relation to sanitation provided for under the Act. The Act, which dates back to 1960 was aimed at ensuring a clean and healthy environment for human habitation and thus offers protection for sanitation. It prohibits acts and omissions that may result in the creation of filth and garbage in human settlements within the country and has therefore addressed the issue of a clean and safe environment. One could therefore conclude that this piece of legislation offers partial protection for the human rights to safe water and sanitation for the people of Ghana and has therefore not met international law requirements for protecting the twin rights.

The Public Health Act[697] prohibits the sale of food close to filth, toilets, open drains and any other area considered unclean for that purpose. The rationale behind this provision is to ensure proper sanitation for good health and human dignity for food vendors, sellers, and the general public. Like the previous legislation, the provision on sanitation has covered one of the requirements of the normative content on the right to sanitation, namely, sanitation facilities and services must be safe and clean.[698] It is therefore not capable of offering a holistic protection for the human rights to water and sanitation to the people of Ghana. The legislation could be expanded to address the issues of the use of clean water for food preparation, water for hand washing, cleaning of cooking utensils and the general hygiene of the environment for food preparation and sale.

The Community Water and Sanitation Agency Act[699] established the Community Water and Sanitation Agency to facilitate the provision of safe water and related sanitation

696 COA 1960 (Act 29) (as Amended)

697 PHA 2012 (Act 851) s. 52

698 UN CESCR 'General Comment 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 (UN CESCR 'General Comment 15').

699 CWSAA 1998 (Act 564).

services to rural communities in the country. The functions of the Agency were *inter alia,* to support the District Assemblies to promote the sustainability of water supply and sanitation services in small towns and villages. It was also to enable the Assemblies to involve the rural communities and women especially, in the design, planning, construction and community management of water and sanitation projects as required by international law. The legislation thus fulfils the human rights requirement on States to respect, protect and fulfil the rights to water and sanitation.

5.2.3 Case Law on Water and Sanitation

Case law or judicial precedence on water and sanitation is not common in Ghana, especially at the superior court level. There may be several reasons that one could deduce from the legal framework on water and sanitation already discussed. Chapter Five of the Constitution which provides for human rights has not listed water and sanitation as human rights.[700] In addition, none of the statutes which provide for water and sanitation considered them human rights. However, legal action could be instituted against the State or individuals or institutions relying on international legal instruments such as the African Charter on Human and People's Rights (ACHPR). It would have been easier and more convenient if there were direct and clear provisions on water and sanitation in the Constitution and the other statutes. This may have accounted for the scarcity of decided cases on the subject matter. The scarcity of decided cases on the subject matter may also suggest that the institutions mandated under the various legislations, such as the police, the MMDAs, WRC, and officers of the EPA have not been carrying out their law enforcement duties to the latter.

A few case laws on water and sanitation are found in the lower courts, namely the District and Circuit Courts. Many of them are about sanitation law enforcement and general education on good and proper sanitation practices. For instance, In the case of the *Republic v Tawiah,*[701] the court sentenced the accused person to a fine of 2,000 Ghana Cedis for abatement of nuisance contrary to sections 3(2) and (6) of the Nkawkaw

[700] 1992 Constitution of Ghana.

[701] Magistrate Court, Nkawkaw Ghana (Court Case No. B/55/68/22 (25 July 2023).

Municipal Assembly Bylaws on sanitation. In pronouncing the judgment, the court noted that the practice of dumping human excreta in garbage containers or leaving them in the open could lead to communicable diseases such as typhoid and cholera which would endanger good health and human dignity. Similarly, in the case of the *Republic v Yahaya Abubakar*[702] the accused person was charged following the spillage of effluent from a septic tank in his premises into the environment contrary to section 13(10) (i) of the Hohoe Municipal Assembly by-laws. He pleaded guilty to the offence and was subsequently convicted and sentenced by the court to a fine of Ghc.1,200.00. In pronouncing the sentence, the judge noted that the spillage of effluent into the environment could degenerate into diseases such as cholera, and typhoid. The court also took judicial notice of the prevalence of the practice and cautioned the public to desist from it.

In some cases, the sanctions imposed by those courts on offenders are limited to a fine ranging between 50 penalty units to 500 penalty units on a count or imprisonment of not more than six months. These are not deterrent enough hence conformity becomes a problem. The law enforcement officers mandated to enforce sanitation and water laws in Ghana must be well-resourced and properly trained to be able to discharge their responsibilities effectively.

South Africa on the other hand, has several case laws that address the various aspects of water and sanitation, including water and sanitation administration, management and law enforcement. For instance, in the case of *Mazibuko and Others v City of Johannesburg and Others (Centre on Housing Rights and Evictions, Amicus Curiae),*[703] the applicants challenged the constitutionality of Johannesburg's Free Basic Water Policy and the installation of pre-paid water meters in poorer sections of the municipality. The Constitutional Court dismissed the appeal of the applicants and upheld the cross-appeal by the respondents. However, the Court noted that the case illustrates how litigation concerning social and economic rights can exact detailed accounting from the government and, impact beneficially on the policy-making process. The consequence of

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[702] District Court, Hohoe, Ghana (Court Case No. B15/11/2023) (6 April2023).

[703] Constitutional Court of South Africa (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC).

the litigation was beneficial. Having to explain why the Free Basic Water policy was reasonable shone a bright, cold light on the policy that undoubtedly revealed its flaws. The continual revision of the policy in the ensuing years has improved the policy in a manner entirely consistent with an obligation of progressive realization.

Similarly, in the case of *Highveldridge Residents Concerned Party v Highveldridge TLC and Other*,[704] the water supply of several households in the Lebohang Township had been disconnected by the respondent company. It argued that there was no such disconnection and that a possible interruption of the water supply could have been due to the erection of a new water reservoir or a faulty valve. It also emphasized that according to agreements with consumers, the water supply was to be disconnected in case of non-payment. The court ordered that water supply should be restored to the affected areas as an interim relief. The Court, in arriving at the decision, considered that irreparable harm to the applicant existed if the interim relief was not granted. It assessed the balance of convenience and emphasized that any pecuniary losses that the respondents might suffer cannot outweigh human need and possibly human suffering which will probably occur due to a lack of fresh water. The case addresses administrative compliance and enforcement of water legislation and the importance of water as a human right, which is indispensable in all circumstances.

Conclusion

The rights to health, human dignity, and life are recognized nationally, domestically and internationally. The UNO recognizes sanitation, water, and hygiene as human rights and has assigned the responsibility of providing water and sanitation services to state parties, so do ICESCR, CEDAW, CRC, ECHR and ACHPR. In 2010, the United Nations declared safe drinking water and sanitation human rights which are essential for the full enjoyment of life and all human rights. In resolution 15/9, the United Nations Human Rights Council (UNHRC) also reaffirmed that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right

[704] [2002] High Court (Transvaal Provincial Division) 28521, (2002) (6) SA 66.

to life and human dignity. It therefore imposes on member States of the United Nations the responsibility to respect, protect, and fulfil the rights above mentioned. To fulfil this obligation, States need effective legislation to provide safe water and improved sanitation for their citizens.

A law is said to be effective when it addresses or is able to fulfil or is capable of serving the purpose for which it was made. An effective law on water and sanitation must reflect and address the human rights principles of non-discrimination, access to information, participation, accountability and sustainability. The principle of non-discrimination states that no one should be discriminated against in terms of the provision of water and sanitation services. The principle imposes an obligation on States to ensure equality in the provision and distribution of water and sanitation services and facilities to their citizenry. The principle of access to information refers to the public entitlement to seek and receive information about current and planned water and sanitation laws, policies and programmes. The principle of participation says that human rights to water and sanitation can only be realized in an effective manner when people become part of all processes that relate to the realisation of these rights. The principle of accountability provides that for the rights to water and to sanitation to be realised, service providers and public officials must be accountable to users.

Effective legislation for the protection of the rights to water and sanitation must equally reflect the normative content of the human rights to water and sanitation. Water and sanitation must be available in quantities sufficient for daily use. It must also be accessible physically, such that a consumer may not take 30 minutes to get to a water supply point. People who need water must be able to pay for it. Water bills must not be too high to prevent people from accessing it. The water and sanitation facilities and the water itself must be acceptable to consumers and must be safe for consumption. Case law or judicial precedence on water and sanitation is not common in Ghana, especially at the superior court level. A few case laws on water and sanitation are found in the lower courts, namely the District and Circuit Courts. Many of them are about sanitation law enforcement and general education on good and proper sanitation practices. The scarcity of decided cases on the subject matter may also suggest that the institutions mandated under the various

legislations, such as the police, the MMDAs, WRC, and officers of the EPA have not been carrying out their law enforcement duties to the latter.

A critical analysis of the water and sanitation legislation of Ghana reveals that its water and sanitation laws, though have inadequacies, generally reflect and address international legal requirements of an effective law for the protection of water and sanitation rights. The laws do not adequately provide for the progressive supply of safe water and improved sanitation for Ghanaians. There is a need for legislative reforms to address the inadequacies. The MSWR must put in place an efficient monitoring mechanism to ensure that the State agencies, tasked to supply water to the public such as the GWC and the CWSA deliver on their mandate. The MLGRD must also ensure that the MMDAs live up to expectations in terms of providing improved sanitation facilities to both urban and rural dwellers, schools and hospitals. The needed funds must be sought by budgetary allocations or from donor agencies in order to provide safe water and improved sanitation to all Ghanaians in fulfilment of their human right.

CHAPTER SIX

6.0 CRITICAL ANALYSIS OF THE ENFORCEMENT OF RIGHTS TO WATER AND SANITATION IN GHANA

Introduction

Laws are made generally for public good and development. Laws made for a particular purpose must be implemented by the body mandated to do so and whose duty it is to comply with law must equally obey them. Law enforcement is the system in which society ensures compliance with laws. It typically involves the police, or any designated person assigned the responsibility. The function of law enforcement involves managing the sanction for people who have been convicted of crimes up to and including the process of confinement. Law enforcement seeks to achieve two goals, namely, to prevent the occurrence of crimes and to ensure that suspected criminals are tried and punished by the law. Law enforcement also seeks to correct offenders and put them on the right track. There are several laws which govern water and sanitation in Ghana.[705] Notable among them is the Environmental Protection Agency Act 1994 (Act 490), the Water Resources Commission Act, 1996 (Act 522), the Local Governance Act, 2016 (Act 936), the Criminal Offences Act, 1960 (Act 29), the Public Health Act, 2012 (Act 851) and the Water Use Regulations, L. I. 1692 of 2001. Despite the existence of this legislation, Ghana is grappling with the supply of water and the provision of sanitation to its citizens. This chapter critically examines the extent to which sanitation and water laws of the country are enforced and offers some useful insight into the way forward.

6.1 Enforcement of Water and Sanitation Laws in Ghana

The sanitation laws of Ghana may be looked at from two angles. The first component is those that impose on the State obligations or duties which must be fulfilled by the State and its agencies. Article 36(9) of the 1992 Constitution of Ghana imposes a duty on the State to put in place appropriate measures to protect the national environment for

[705] Tatum Malcom (2004) My Law Questions.

posterity and to explore international cooperation in that direction. By implication, the State is obliged to ensure a safe and sustainable environment, including water and sanitation for the well-being and dignity of the people of Ghana. The duty to provide a safe and sustainable environment for the attainment of human rights to water and sanitation is assigned to the EPA[706] and the WRC.[707] This implies that failure to carry out this responsibility, citizens have the right to demand accountability from the State.

In the case of *Mould v Devine*[708] Mr. de Vine, former occupier of House No. A.162/3 Korle Gonno, Accra had run up water bills to the tune of £G12 2s. 6d. The Waterworks Department cut off water supplies to the house pending the payment of all arrears of water bills. On the 8th of November 1961, as a result of a court action, ownership in the house was vested in Mould, the applicant herein. The Waterworks Department refused to reconnect the water unless she paid the arrears. She contended that the arrears were a debt due to the previous occupier, which the department could recover through a civil suit, and that she was entitled to have the house reconnected. She applied for an order of mandamus to compel the Waterworks Department to restore the water supplies to the house. It was held that mandamus lies to compel a public body to perform a public duty that it has failed to discharge and that the Waterworks Department has a duty to the public to supply water to their homes. It must show good cause why a particular house should not be connected.

The *Mould v Divine* case reiterates the importance of the responsibility imposed on the Water Works Department to supply water to the public. Failure to do so entitled the applicant to the right to seek redress in a court of law. This is an example of a citizen enforcing her right to safe water against the State, the duty bearer. Citizens consequently have the right to enforce their right to water and sanitation against the State. If the State fails to honour this responsibility, the citizenry may institute legal action against it for redress. Similarly, those that impose responsibility on individuals in the community must be complied with. Failure to obey the laws attracts sanctions of varied degrees.

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706 See EPAA, 1994 (Act 490) section 2.

707 WRCA, 1996 (522) section 2.

708 [1962] 1 GLR 533.

Similarly, in the case of C.F.C *Construction Company v Accra City Council*,[709] the plaintiffs instituted a legal action against the defendants for damages and an interim injunction for dumping garbage and refuse in a quarry in the residential area of the plaintiff. The plaintiffs alleged that the garbage caused offensive and pestilential smells within the environment to the extent that if left unattended, it could create health challenges. The plaintiffs further averred that the stench emanating from the refuse had seriously interfered with the comfort and enjoyment of the land occupied by the residents. In its defense, the defendants sought refuge in its statutory authority functions under the Local Government Act.[710] The Act required the defendant Council to establish, maintain and carry out services for the removal and destruction of all refuse, filth and carcasses of animals from any public or private place which may be injurious to public health.[711] The court held *inter alia,* that where a statute has authorized the performance of a particular act or the use of land in a particular way, which act or use will cause nuisance inevitably, all reasonable precautions must be taken to prevent the nuisance from occurring. It further held that the person relying on statutory authority to commit a nuisance must prove that such authority is express or implied. In the instant case, the statute relied on by the Council expressly authorized the elimination of mosquitoes and the collection and burning of refuse; but not the filling up of quarries with refuse. Accordingly, the court held that the defendant Council acted unreasonably in choosing to dump refuse only a few yards from the plaintiffs' residential area without taking steps to remedy the bad situation.

The case is another example of a government agency failing to carry out its statutory duties and being held accountable by a court of law for its unreasonable conduct. It is a case of enforcement of violation of sanitation laws against the State. The courts have held that the State, in carrying out its duty of providing water and sanitation to the citizenry, must do so with care and skill. It must also ensure that its agents perform their responsibilities effectively and efficiently, bearing in mind the human rights of their citizens.

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709 [1964] GLR 496.

710 1961 Act 54.

711 ibid section 47(2).

The South African case of *Federation for Sustainable Environment and Others v Minister of Water Affairs and Others,*[712] could equally provide some useful lessons for Ghana. The facts of the case were that, water supply in Silobela and Carolina was contaminated by acid due to mining. Consequently, about 20 water tanks were brought in from the neighbouring towns of Breyten and Chrissiesmeer around February 2012 to supply potable water to the affected localities. Though seven tanks were set up around Silobela, they were inadequate to supply drinking water from March to May 2012 to the applicants because several of these tanks were not refilled or had been left empty. In effect, some of the residents had to trek long distances to access water from those tanks. It was the case of the applicants that the lack of access to an effective and reliable supply of potable water constituted a breach of the right to water as guaranteed under Section 27 of the South African Constitution. In addition, the allocation of 25 liters of water to a household daily was insufficient. The Court granted the motion and ordered the respondents to supply temporary potable water to the affected residents of Silobela and Carolina within 72 hours. The Court further ordered the respondents to report within one month to the Court and provide measures adopted to ensure a regular supply of water through the water service to the applicants.

The decision of the trial court emphasizes the importance and the extent to which the legal duty imposed on States about water and sanitation rights ought to be respected. The onus lies on States to protect, respect, and fulfil their human rights obligations as required under human rights norms on water and sanitation.[713] Citizens and those affected when a State performs below standard have the right to seek redress in a court of law. The *Federation for Sustainable Environment* case could be of great benefit to the people of Ghana. Irregular and erratic water supply in Ghana is a daily affair in Ghana. The GWC which supplies water to the urban communities within the country does not assign any reason why are unable to supply water to meet the demands of the people of Ghana. Perhaps Ghanaians have not yet asserted their right to potable water in order to hold the State and its agents accountable for abuse of their right to water. The research

712 [2012] High Court (North Gauteng, Pretoria) 35672/12,

713 See ICESCR, General Comment No. 15 and UNGA Resolution 64/292 of 2010.

believes that the decision of the court, which compelled the agents of the State to supply safe water to the affected communities of Silobela and Carolina, would enable the people of Ghana to appreciate the need to hold the State accountable for failure to provide them with water in adequate quantities.

The second aspect of law enforcement is about the State ensuring that water resources and sanitation are protected to fulfil the purpose of providing good health and human dignity. It is provided for under Article 41(k) of the 1992 Constitution that every citizen must protect or safeguard the environment for posterity. In an attempt to ensure that this constitutional provision is complied with, Ghana has criminalized most of the offences relating to water and sanitation. This has paved the way for offenders to be arrested and prosecuted. Section 15(1) of the WRCA empowers the WRC to serve an enforcement notice on a user of water resources whose activities pose a danger to the resources in issue or its consumers. Section 15(4) prohibits the offending activity therein and imposes liability on offenders to face prosecution and on conviction they are sentenced to a fine or a term of imprisonment. Section 24 of the EPAA also makes pollution, altering the flow of water or fouling a water source without approval or beyond EPA standards a criminal offence. Section 34 prescribes penalties for offences of diversion damming, abstracting water resources without lawful authority and general disregard for the orders of the WRC. These provisions of WRCA and EPAA are aimed at the enforcement of water laws against consumers or activities of those who pollute water sources to have safe water in Ghana. The current state of Ghana's water and sanitation calls for strengthening law enforcement avenues that have been provided for under the WRCA.

The WRC should laisse with the EPA in the fight against pollution of river bodies by miners in the country. Arrest and prosecution of offenders would serve as deterrence to other people who may want to engage in the same venture. Sanctions imposed should be severe, lest people take it for granted. Article 200 (1) of the 1992 Constitution of Ghana has generally given the Ghana Police Service the mandate to maintain law and order in the country. The Ghana Police Service Act[714] spelled out the duties of the police service,

[714] 1970 (Act 350) as Amended section 1.

inter alia, as prevention, detection of crime, apprehension of offenders, maintenance of public order and the safety of persons and property. The Ghana police should assume its enforcement of water laws responsibility to improve the current water situation in the country.

The MMDAs were created under Article 241 (3) of the 1992 Constitution of Ghana and the then Local Governance Act 1993 (Act 462). Under the provisions of the two legislations, the governance of Ghana was decentralized to the various localities within the country for easy and convenient accessibility to services of the government, hence the country has been divided into MMDAs. These MMDAs have been mandated to make byelaws for the protection of water and sanitation for the well-being and dignity of the people of Ghana. For instance, the sanitation byelaws of Accra Metropolitan Assembly (AMA), *inter alia,* prohibit the following activities: throwing waste into drains, defecating in drains, throwing wastewater into the open or in drains, defecating in the open and leaving overflowing effluent from septic tank unattended. In line with the bylaws, the Accra Metropolitan Assembly (AMA) has prosecuted 115 persons for flouting the various sanitation bylaws between January and March 2022.[715] It is important to note that even though enforcement of the sanitation laws by the AMA was in the right direction, it was inadequate considering the extent to which sanitation laws are flouted in urban areas especially. The AMA, through its Environmental Health Unit, must vigorously pursue its sanitation law enforcement strategy in order to assure the populace of their right to improved sanitation.

All the other MMDAs have similar bylaws as those of the AMA. Enforcement of sanitation bylaws is usually carried out by Environmental Health Officers (EHOs). For instance, In the case of the *Republic v Tawiah*[716] the Nkawkaw Environmental Health Unit, while on their routine checks within the Municipality, found the accused person wrapped human excreta in six polythene bags and dumped them in a communal refuse container. She was arrested and charged with abatement of nuisance contrary to sections 3(2) and (6)

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715 Laud Nartey 'AMA Prosecutes115 Persons for Sanitation Offences' *Myjoy- Online* (Accra, 31 May 2022 <www.graphic.com.gh/newsgeneral-news/ama-prosecutes 115 people> accessed 27 May 2024.

716 Magistrate Court, Nkawkaw Ghana (Court Case No. B/55/68/22 (25 July 2023).

of the Nkawkaw Municipal Assembly Bylaws on sanitation. The trial court found her guilty of the offence, convicted her and sentenced her to a fine of Ghc. 2,000.00 or in default serve a prison term of one month. In pronouncing the judgment, the court noted that the practice of dumping human excreta in garbage containers or leaving them in the open could lead to communicable diseases such as typhoid and cholera which would endanger good health and human dignity.

The sentence imposed on the convict is deterrent enough and would help in curbing the practice of defecating in plastic bags and throwing them in the open or in garbage containers. The practice poses great a risk to human health. The decision also educated the general public on the dangers of throwing human excreta in the open. The practice may lead to diarrhea or typhoid and hence must be avoided.

In the case of the *Republic v Oforiwaa*,[717] the respondent, a food vendor was arrested by the officials of the Health Directorate of the Nkawkaw Municipal Assembly for selling food to the public without the requisite Health certificate contrary to section 9 of the Nkawkaw Municipal Assembly Bylaw. Section 9 of the byelaw prohibits the sale of food without certification by the Assembly. She was found guilty of the offense and was sentenced to a fine of Ghc.500.00 or in default serve a prison term of one month.

The decision highlights the importance of environmental cleanliness around places where food is sold to the public. This is aimed at preventing diseases associated with consuming contaminated food, such as cholera, and ensuring good health and human dignity.

Similarly, in the case of the *Republic v Abubakar Yahaya*[718] the respondent was the landlord of a residential house and the owner of a public septic tank latrine and a public bathhouse, all at Hohoe and about 10 meters from the residential house. In March 2022, a team of Environmental Health and Sanitation officers within the Hohoe Municipality detected spillage of effluent into the environment and indiscriminate dumping of household refuse into the growth of weeds behind the respondent's public toilet. After

[717] Magistrate Court, Nkawkaw Ghana (Case No. B. 15/55/2023 (9 April 2023) unreported.
[718] District Court, Hohoe (Court Case No. B15/11/2023 (6 April 2023) unreported.

several warnings to the respondent to abate the nuisance and the failure of the respondent to comply with the directive, he was charged with the offence of allowing spillage of effluent from the septic tank into the environment contrary to section 13(10) (i) of the Hohoe Municipal Assembly bylaws, and indiscriminate dumping of refuse behind public latrine contrary to section 56(a) of Public Health Act, 2012 (Act 851). The trial court pronounced him guilty on both counts and sentenced him to a fine of 100 penalty units on the first count or in default serve a term of 6 months in prison and 150 penalty units on the second count or I year in prison in default.

The sentence is deterrent enough and if other courts would apply similar sentences, violation of sanitation law in the country would be reduced drastically. On the other hand, sanitation-related diseases, such as typhoid would reduce as well.

In the case of the *Republic v Emma Barasu and Others,*[719] the respondents placed human excreta and refuse within their premises contrary to section 296 (1) and (2) of the Criminal Offences Act.[720] They were arrested, charged with the offence and subsequently prosecuted. They were found guilty by the court and sentenced to a fine of Ghc. 360.00 each.

All the above judicial decisions point to the importance of sanitation bylaw enforcement by State agencies and institutions in Ghana. While this is good and must be commended, the State must commit more resources and human resources to fight the abuse of sanitation rights in the country. This would go a long way to educate the population on the importance of good sanitation and potable water.

6.2 Procedure of Sanitation Law Enforcement in Ghana

In Ghana, enforcement of water and sanitation-related offences goes through a number of stages. They are Pre-arraignment, Arraignment, and Post-arraignment stages. Each of the stages has procedures that must be adhered to by law enforcement agencies.[721]

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719 District Court Kpando, Court Case No B.15/50/2020 (10 December 2019) unreported.

720 1960 Act 29.

721 See Prince Antwi-Agyei and others. 'Toilets for tenants: a cooperative approach to sanitation bye-law

The Pre-arraignment stage includes the arrest of the culprit, charging him or her for the offence committed and processing him or her for court. In certain cases, the enforcement process ends at this stage especially when the offender is ready to remedy the activity that has created sanitation or the water problem. For instance, in the case involving one *Mr. Jibril Awal* of Hohoe Sabu Zongo, in the Hohoe Municipality of the Volta Region of Ghana, the accused person was arrested by EHO of the Hohoe Municipal Assembly for rearing cattle and goats in his house contrary to sanitation byelaws of the Hohoe Municipal Assembly (HMA). The EHO invited him to come to their office for education and relocation of the animals to the appropriate place. He, however, refused to comply with the directive. The EHOs consequently reported the matter to the Municipal Environmental Health Officer (MEHO). The MEHO subsequently summoned him to his office and ordered him in writing to relocate the animals within thirty days (30 days) and report to his office or in default be prosecuted in a court of law. The accused person failed to comply with the orders of the MEHO and was subsequently arraigned before a District Court.

In the instant case, the matter could have been delt with amicably if the offender had obeyed the orders of the MEHO and not have ended up in the court of law. One could therefore conclude that Alternative Dispute Resolution (ADR), may also be adopted by law enforcement agencies in resolving sanitation-related cases. ADR involves the use of mediation, negotiation, conciliation and arbitration in resolving conflicts. The use of ADR may be more beneficial to the resolution of water and sanitation cases rather than the adversarial court system where parties become antagonistic towards each other. In the use of ADR as a conflict resolution mechanism, there is a win-win situation for both parties, with no winner and or loser. It thus builds relations between the parties and also helps the offender to understand his conduct and the need to remedy the same. It is important to note however that the pre-arraignment stage can also bring about corruption. Offenders can bribe or attempt to bribe the EHOs when they are arrested. It therefore behooves the MEHO monitoring mechanisms to put in place mechanisms, such as the use of report forms which would assist them in assessing their performance.

enforcement in Ga West, Accra International Institute for Environment and Development (IIED)' (2018) Vol 31(1): 293–308. <10.1177/0956247818800654 www.sagepublications.co.> accessed 15 April 2024.

The Arraignment Stage involves the trial of the accused person in court and the sentencing him or her if found guilty of the sanitation offence. In the case of the *Republic v Jibril Awal*[722] the accused person was found rearing and keeping cattle in his premises endangering the health and sanitation of the public contrary to section 54(a), (b) of the Public Health Act, 2012 (Act 851). He pleaded guilty of the offence, was convicted and sentenced on his plea to a fine of Ghc.840.00 or in default serve a term of three months in prison. Similarly, in the case of the *Republic v Mohammed Sani*[723] the accused person was charged for his failure to construct a household latrine on his premises contrary to section 13(6) (a) of the HMA bylaws of 2018. He pleaded guilty to the offence was convicted and sentenced to a fine of 60 penalty units or in default served a term of 3 months in prison.

While these judicial decisions demonstrate efforts of the EHOs of the MMDAs to enforce sanitation byelaws, they don't seem to resolve Ghana's sanitation woes. Perhaps the MMDAs may have to look at other alternatives of enforcement or compliance, such as education on good and proper sanitation which promotes good health and human dignity. They may also adopt the ADR method of resolving sanitation issues to achieve desirable results.

The final stage of enforcement, the Post-Arraignment Stage, involves a follow-up inspection carried out to ensure that the culprit remedies the offending situation for which he or she was sanctioned. This stage, though very important, is often neglected by the EHOs. The MMDAs, the MSWR and the State in general must provide adequate funding and motivation packages for the EHOs to enable them to engage in post-arraignment activities to ensure compliance with sanitation laws in the country. This, to a large extent, would help to improve the sanitation situation in the country.

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722 District Court Hohoe, Court Case No. B15/02/2023 (9 August 2023) unreported

723 District Court, Hohoe. Court Case No. B15/03/2023 (10 March 2013) unreported.

Conclusion

Laws generally are made to govern people and regulate their conduct. Hence, they enhance human growth and development. Laws made for a particular purpose must be implemented by the body mandated to do so and those whose duty it is to comply with law must equally obey them. Law enforcement is the system in which society ensures compliance with laws. Law enforcement seeks to achieve two goals, namely, to prevent the occurrence of crimes and to ensure that suspected criminals are tried and punished by the law. Law enforcement also seeks to correct offenders and put them on the right track.

In fulfillment of the human rights to water and sanitation, States are the duty bearers who are responsible for providing safe water and improved sanitation to the citizenry. In fulfilment of this objective, they make laws to regulate the supply of safe water and improve sanitation in their respective countries. Several legislation govern water supply and sanitation service delivery in Ghana, they include; the Environmental Protection Agency Act 1994 (Act 490), the Water Resources Commission Act, 1996 (Act 522), the Local Governance Act, 2016 (Act 936), the Criminal Offences Act, 1960 (Act 29), the Public Health Act, 2012 (Act 851) and the Water Use Regulations, L.I. 1692 of 2001. Enforcement of water and sanitation-related legislation is expected to improve service delivery in the country. However, despite the existence of this legislation, Ghana grapples with the supply of safe water in adequate quantities and the provision of improved and safe sanitation to the people of Ghana.

Enforcement of sanitation legislation generally goes in two directions. The duty bearer, the State, for that matter, should be held accountable for its actions and inactions in terms of water and sanitation service delivery. Human rights law emphasizes that people are rights holders and governments are primary duty bearers not only of the rights to water and sanitation but of all human rights. Thus, if they fail in the discharge of this duty, the right holders, the citizens are entitled to demand from them accountability, usually by legal action in the courts of law. In Ghana, the right holders of water and sanitation, Ghanaians, do not adequately hold the government and its agencies accountable for its failure to fulfil

its obligation of providing safe water and improved sanitation in the country. There are therefore a few judicial decisions in the law reports of Ghana on water and sanitation. Perhaps, this is one of the reasons why Ghana's water supply and sanitation service delivery is poor. The people of Ghana must hold the State and its agencies accountable for their failure to protect, respect and fulfil their human rights to water and sanitation as required by international law. This is the surest way of improving the water and sanitation service delivery in the country.

Another leg of enforcement of water and sanitation laws concerns rights holders or consumers. Article 41(k) of the 1992 Constitution of Ghana calls on all citizens of Ghana to safeguard the environment, including water and sanitation for the present and future generations. It is therefore the responsibility of the government to ensure that this constitutional provision is adhered to by the people of Ghana. Thus, the State has assigned the responsibility of enforcement of water legislation to the WRC and the EPA, and enforcement of sanitation-related legislation to the EHOs of the MMDAs and the Ghana Police Service in general. In an attempt to ensure that this constitutional provision is complied with, Ghana has criminalized most offences relating to water and sanitation. This has paved the way for offenders to be arrested and prosecuted. Section 15(1) of the WRCA empowers the WRC to serve an enforcement notice on a user of water resources whose activities pose a danger to the resources in issue or its consumers. Section 15(4) prohibits the offending activity therein and imposes liability on offenders to face prosecution and on conviction they are sentenced to a fine or a term of imprisonment.

The sanitation byelaws of the MMDAs are criminal in nature and the EHOs enforce them in three different stages, namely the Pre-Arraignment Stage, the Arraignment Stage and the Post-Arraignment Stage. The pre-arraignment stage involves all the preliminary processes leading to the trial stage. The Arraignment Stage involves prosecution, trial, conviction and sentencing while the Post-Arraignment Stage includes monitoring of compliance with court orders. While several cases of sanitation and its related offences are prosecuted by EHOs of the MMDAs, some of the penalties or fines imposed by the courts needed to be enhanced to serve as deterrence to potential offenders. In addition, the ADR method of conflict resolution could be applied at the pre-trial level to promote

good neighborliness between the EHOs and the accused persons and assure compliance.

In sum, Ghanaians, as rights holders to safe water and sanitation could hold the State accountable for the current poor state of the delivery of the human rights to safe water and improved sanitation in Ghana. They could do so by instituting legal action against the State and its agencies, such as the WRC, EPA, MMDAs and the MSWR. This would compel them to protect, respect and fulfil the rights to safe water and sanitation as required under international human rights law. They may also do so by ADR where civil society organization, faith-based organizations, communities and other stakeholders in the water and sanitation sectors, would engage the government on issues pertaining to improvement in water and sanitation service delivery. It is believed that with the proper mechanisms of funding and implementation of the various legal regimes, Ghana's water and sanitation situation would be realized progressively.

CHAPTER SEVEN

7.0 THE PROTECTION OF HUMAN RIGHTS TO WATER AND SANITATION IN GHANA: PROSPECTS AND EXISTING OBSTACLES

Introduction

The water and sanitation situation of Ghana has not been the best for several decades. In recent times, however, there has been some improvement in its water provision to the people of Ghana. Sanitation has also slightly improved. More, however, needed to be done to improve on the gains made so far. This chapter explores the avenues through which Ghana may be able to surmount its water and sanitation deficits. Some useful suggestions have been made that the research believes are capable of transforming positively Ghana's water and sanitation narratives.

7.1 Protection of the Rights to Water and Sanitation: Existing Obstacles

There exists a number of obstacles to the provision of safe drinking water and improved sanitation in Ghana. Failure of the framers of the 1992 Constitution to ascribe direct provisions to water and sanitation in the Constitution, though not fatal, is a drawback to enforcing one's right to water and sanitation against the State to some extent. There is no doubt that Ghana recognizes international law as provided for under Article 40 of the 1992 Constitution and that Ghanaians may rely on internal jurisprudence on water and sanitation to enforce their rights against the State. For instance, in the *Matsipane Mosetlhanyane and Gakenyatsiwe Matsipane* case, it was held that the Court was entitled to accede to international consensus on the importance of access to water. Reference was made to two important documents, General Comment 15, paragraphs 1 and 16(d), and UNGA Res 64/292, which provided for the human rights to water and sanitation, were made and relied upon by the court in arriving at its decision. Ghanaians could do the same by relying on Articles 36(9) and 40 of the Constitution which provide for the safeguard of the environment and recognition of international law, and enforce their rights

against the State. That notwithstanding, having direct provisions on water and sanitation in the Constitution, as is the case of other nations, such as South Africa,[724] and Kenya,[725] could have been of great benefit to the people of Ghana. It was easy for the citizens of those jurisdictions to enforce their rights to water and sanitation against the respective States as a result.

In order to implement the human rights to water and sanitation, the government of Ghana must ensure that existing legal, policy and regulatory frameworks incorporate human rights considerations, and reform them where this is not the case.[726] These frameworks would clarify the commitments of the State with respect to human rights principles in general and access to water and sanitation in particular. Without a clear legal framework, the State can be held accountable by the individuals, or 'rights-holders', who live within its jurisdiction.[727] As it stands at the moment, it would be difficult for Ghanaians to hold the government accountable under the 1992 Constitution for its failure to protect their rights to water and sanitation.

Aside from the issue of inadequacy of provisions of legislation governing water and sanitation in Ghana, is the challenge of law enforcement.[728] Enforcement of water and sanitation laws and regulations have been assigned to the MMDAs, the Ghana Police Service, the EPA, the WRC and other agencies.[729] However, the laws are hardly enforced.[730] The failure of the institutions and bodies to discharge their duties to law enforcement may be attributed to a number of reasons. Firstly, most of these institutions are not well-resourced, financially and otherwise enable them to carry out their mandates

724 See Articles 26 and 27 of the 1996 Constitution of South Africa.

725 See Article 43 of the 2010 Constitution of Kenya.

726 See Caterina Albuquerque, *Assessing Human Rights to Water and Sanitation: Achieving the Goals*. A Handbook by the UN Special Rapporteur, 2014.

727 Ibid

728 Justice Mensah, 'Public Compliance with environmental sanitation regulations in Ghana' (2022) Open Health: 10.1515/openhe.2022-0001

729 E. Yeleliere, S.J. Cobbina, A. B. Dawiejuah 'Review of Ghana's water resources; the quality and management with particular focus on freshwater resources, (2018) Applied water Science, 8.93.

730 Ibid

efficiently. It is believed that with adequate financial support and qualified human resources, they would be able to live up to expectations.

The second reason which may have hindered the enforcement of water and sanitation laws is corruption. Officials are most of the time bribed by those who flout water and sanitation laws and discontinue at times the legal action instituted against them. Consequently, Ghana's water and sanitation situation has not seen any appreciable improvement over decades.[731] This challenge could be resolved by resourcing and retooling the water supply and sanitation agencies by the State to enable them to deliver efficiently. Thirdly, monitoring and supervising institutions, such as the MSWR, the WRC, and the MLGD should assume their monitoring roles so as to curb the menace of bribery and corruption in the water and sanitation sectors.

Another obstacle is that the existing water laws, namely the WRCA, the EPAA, the COA, and the CWSAA have not provided mechanisms to reconcile or recognized customary law and practice on water. Customary law played a vital role in protecting water bodies in the past.[732] For instance, the practice of clearing vegetation along rivers and springs was customarily prohibited in some communities in the past because such rivers were considered sacred. Inhabitants of the concerned communities strictly adhered to these customary prohibitions because defaulters were sanctioned by fines. With the introduction of statutes, such as WRCA. to regulate and protect water bodies, these customary regulations lost their potency hence the current water crises in Ghana.[733]

Another major obstacle to safe water and improved sanitation in Ghana is the lack of affordability of sanitation technologies and infrastructure. People must be able to afford water and sanitation services and associated hygiene. In Ghana many people are unable to afford sanitation facilities and services due to poverty and some instances, ignorance. As a result, many people depend on public latrines and open defecation which have their

731 ibid

732 E. Yeleliere, S. J. Cobbina and A. B. Duwiejuah 'Review of Ghana's water resources: the quality and management with particular focus on freshwater resources' (2018) Applied Water Science 8:93 1,9-12. < https// doi:org/10.1007/s.13201-2018-0736-4.

733 ibid

attendant problems such as diseases.[734] The solution to this menace lies in the State offering some financial support by way of subsidies to support the poor against high water tariffs. The State should also construct more public toilets to enable the poor to access them. The water and sanitation infrastructure and technologies must be user-friendly so that the communities may be able to own them and repair them when they break down.

Lack of clarity of guidelines and roles for sanitation service delivery is another obstacle to improved sanitation in Ghana. Management and supervision of sanitation services have been assigned to several government institutions and agencies, including the MSWR, the MMDAs, the Ghana Police Service, the WRC and many more. This has brought about role conflicts between and among the many agencies and institutions concerned. For instance, while the MMDAs are required to manage sanitation in their various jurisdictions, most of them focus on the disposal of solid waste only leaving liquid waste unattended to. This has resulted in poor sanitation in many parts of the country, especially in the urban areas.[735] In addition, many of the institutions also lack technical expertise and the appropriate tools and equipment to deliver the services expected of them.[736] It would be appropriate to entrust all sanitation and water issues to one agency, for instance, the WRC, so as to avoid the role conflicts being experienced presently between and among the various institutions. The chosen institution would then be well-resourced and tooled to enable it to discharge its responsibilities to the latter.

The next obstacle in perspective is the poor maintenance culture prevalent in Ghana. Water and sanitation technologies and facilities need regular maintenance; however, this

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734 Awunyo-Akaba Y and others. 'Sanitation investments in Ghana: An ethnographic investigation of the role of tenure security, land ownership, and livelihoods' (2016) BMC Public Health 16: 594 <DOI.10.1186/s 12889-016-3283-7> accessed 28 May 2024.
See Robel Lambisso. Scaling-up Sanitation Coverage in Ghana (2017) World Vision Ghana. See also Samuel Yaw Lissah, and others, 'Managing urban solid waste in Ghana: Perspectives and experiences of municipal waste company managers and supervisers in an urban municipality' (2021) < https//doi.org/10.1371/journal.pone 1248392> accessed 23 April 2024; Jacob Doku Tetteh and others, 'Spatial heterogeneity in drinking water sources in the Greater Accra Metropolitan Area (GAMA), Ghana' (2022) Population and Environment 44: 46-76 <https//doi.org/10.1007/5 11111-022-00407-y> accessed 28 May 2024.

735 Eugene Appiah-Effah and others 'Ghana's Post-MDGs Sanitation Situation: An Overview' (2019) Journal of Water Sanitation and Hygiene for Development 9(3), 397-415 < https//doi.org/10.2166/washdev.2019.031> accessed 25 April 2024.

736 ibid

is not common in Ghana. Water pumps that supply towns and villages often break down making water supply erratic or in some instances, water is rationed. In the case of sanitation, public toilets which are government-owned are not properly maintained leading to health hazards. It is important that the State, through its agencies such as the MSWR, the GWC, and the MMDAs, regularly maintain water supply and sanitation equipment to realise their efficiency. In instances where they are obsolete, they should be replaced by new ones for satisfactory service delivery. Ghana continues to face significant challenges in delivering adequate and high-quality sanitation services to urban and rural communities throughout the country. To meet SDG 6 by 2030, stakeholders, such as the GWC, MSWR. WRC, EPA, and the Central Government must commit adequate financial resources to the sector to achieve results.[737]

Another heddle is population growth, which strains water and sanitation services, especially in the urban areas of the country. As noted by Nkeka Tseole in their study, rapid population growth puts pressure on the delivery, and water and sanitation services which results in poor service provision and inadequate service delivery.[738] Inadequate knowledge on healthy water, sanitation and hygiene practices make people reluctant to change their behaviour and learn how to use modern sanitation facilities such as flush toilets. Nkeka's research established that people refuse to use modern toilets facilities because they are used to open defecation and pit latrines which may lead to communicable diseases like cholera.[739]

In conclusion, Ghana's water and sanitation situation is not the best at the moment. However, with effective enforcement of legislation and efficient implementation policies put in place, such as the One Toilet, One Household policy, and Safe Water for All by 2025 coupled with a commitment from the government and its institutions, the nation could achieve its target SDGs of safe drinking water for all by 2025 as well as open

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737 Simon Ofori Ametepey and Ohers 'Assessing the Progress of Clean Water and Sanitation (SDG 6) Implementation in Ghana' International Conference on Climate Change and Environmental Sustainability (18 September 2024) 153-157.

738 Nkeka P. Tseole and Others, 'Barriers and facilitators to Water, Sanitation and Hygiene (WaSH) practices in Southern Africa: Scopingreview' (2022) PLoS One 17(8) e0271726 < doi: 1371/journal.pone 0271726.

739 Ibid

defecation free by 2030. Other partners engaged in the provision and maintenance of water and sanitation facilities, such as the Zoomlion Company Ltd, and the CWSA, have so far lived to their task. It would be of greater benefit to the people of Ghana, however, if they extended their activities and services to many more towns and villages.

7.2 Protection of Water and Sanitation Rights: Prospects

There have been some notable major reforms in the water and sanitation sectors of the country. These can solve the nation's challenges in the two sectors. The reforms began in 1965 when the Ghana Water and Sewerage Corporation (GWSC) was set up to provide water services to Ghanaians and to manage sewerage systems in the country. This dual role of the company was later assigned to two separate institutions in 1999 when the Ghana Water Company was formed and replaced with the Ghana Water and Sewerage Corporation.[740] The Ghana Water Company has since been supplying water to the general public of the urban communities in Ghana. Managing sanitation services for Ghanaians, especially in small towns and villages was assigned to the MMDAs.[741] The WRC[742] and the PURC was established between 1996 and 1997 to regulate water services in the country. To augment the provision of water to Ghanaians, the CWSA was established under the Ministry of Sanitation and Water Services to manage water services in the rural and peri-urban areas of the country.[743] The above reforms, especially in the water sector of the country enhanced the provision of water to Ghanaians at appreciable levels to many towns and rural communities.[744]

Secondly, Ghana has set a target of making safe drinking water accessible to all the people of Ghana by 2025 under the Sustainable Development Goals.[745] It has also set a

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740 See GLASS 'Tracking Initiative: Results from Ghana UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water' (2016) Vol. 81 Accra, Ghana.

741 ibid

742 See WRCA 1996 (Act 522)

743 See GLASS (2016) (n 703)

744 Access to water has improved to 92.7% as of 2022. In the sanitation sector, on the other hand, it has been able to attain only 18.5% coverage nationwide as of 2022. See also Martin Kofi Kanyagui and P. K. Viswanathan 'Water and Sanitation Services in India and Ghana: An assessment of implications for rural health and related SDGs". Water Policy' (2022) Vol. 24 No. 6 1073 <doi:10.2166/wp. 2022.079> accessed 25 April 2024.

745 See GLASS (2016) (n 703).

target to end open defecation in Ghana by 2030.[746] These policy goals in line with the Sustainable Development Goals have the potency to meet the nation's water and sanitation needs. It is however important that these efforts are backed by robust legislation to achieve their objectives. They could be incorporated into domestic legislation such as the WRCA or the EPAA so that legal effects could be given to their implementation and enforcement. Mere policies may not make it feasible to achieve the desired results in providing water for all by 2025, and ending open defecation by 2030 in Ghana. According to the 2019 Voluntary National Report (VNR), Ghana has begun using a human rights-based approach in the monitory and implementation of SDG 6 to ensure the provision of safe water and sanitation for all by 2030.[747] The rights-based approach treats the provision of water and sanitation to people as human rights issues. This approach is expected the change the paradigm shifts in the provision of safe water for the people of Ghana.

Simon Ofori Ametepey and Others examined critically the progress of SDG 6 implementation in Ghana and noted that the nation has made some progress towards the realization of SDG 6.[748] The research however discovered that only one of the eight SDG Targets, target 6, which sought to ensure universal and equitable access to safe and affordable water for all achieved 92.2% in 2023.[749] The government needed to put more commitment in terms of making funds available and providing the needed human resources for efficient delivery in the sector,

Traditional authorities are also playing crucial roles in the implementation of SDG Goal 6 in their various localities. For instance, Assin Kuchea traditional area, in the Central Region of Ghana, initiated a sanitation project where large waste bins are placed at

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746 ibid

747 Antionette Akoto-Banfo 'An Examination of the Implementation of SDG Goal 6: The Case for Ghana.' (MA thesis, University of Ghana 2020) 110-112.

748 Simon Ofori Ametepey and Ohers 'Assessing the Progress of Clean Water and Sanitation (SDG 6) Implementation in Ghana' International Conference on Climate Change and Environmental Sustainability (18 September 2024) 153-157.

749 Ibid

vantage points for waste collection and disposal. Those who flout sanitation laws are sanctioned by the imposition of fines.[750]

In addition, the government must mandate all MMDAs to ensure that newly constructed homes include toilets, hand washing stations, showers, and similar sanitation facilities. Existing homes without such facilities must be encouraged to provide them. Those who default must be sanctioned. The government must also create modern public toilet facilities and encourage private sector investment to eliminate open defecation by 2030.[751]

Thirdly, the MSWR and its partners, such as the WRC undertook a study on the appropriate types of services and management model that would be suitable and efficient in providing services to urban poor and peri-urban areas in Ghana. For instance, the Sanitation and Hygiene sub-sector in Ghana has developed a comprehensive guideline on how to target the poor and vulnerable for basic sanitation and hygiene services.[752] Clear criteria have been laid out on how to identify the poor and vulnerable for sanitation services. These include earning power, disabilities, social support systems, number of dependents, and being a widow/widower. The vulnerable poor, when identified, are expected to be placed on the life-line water consumption which enables them to have access to water at no cost. Though this policy is laudable, it is not largely implemented owing to the inability of the MSWR to isolate qualified persons from those in the rich and middle-income brackets who live in the same house using the same meter. This problem could be resolved by giving the poor who have been placed on the lifeline separate water meters. This would enable them to enjoy the privilege accorded them under the policy and assert their rights to water.

Two main projects targeting the poor and vulnerable communities in rural and urban areas respectively have also been rolled out in Ghana. They are the 150 million USD World

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750 Ibid

751 Simon Ofori-Amatepey, 'Access to basic sanitation services in Ghana: Are we making progress as a country?' (Accra: *CITY NEWS ROOM*) 17 March, 2023. <https//citinewsroom.com/2023/03/access-to-basic-sanitation-services-in-Ghana-are-we-making-progress-as-a-country-article/ accessed 30/92024.

752 See Ministry of Sanitation and Water Resources, Guidelines for targeting the Poor and Vulnerable for basic sanitation services in Ghana, 2018.

Bank grant, that supported the Greater Accra Metropolitan Area Sanitation, and a Water Project targeting the Low-Income Urban Communities. The second one is the Government of Ghana-UNICEF Rural Sanitation Strategy and Model Programme which focuses on rural communities in the country.

These projects and progammes are aimed at ensuring that the poor and the vulnerable, especially women and children, have equitable access to safe water and improved sanitation, to meet international human rights standards.[753] The beneficiary communities of these interventions are unfortunately in the minority. Thus, their impact is not felt generally within the country. The State, through the MSWR, should commit more funds to provide water and sanitation to the poor and the vulnerable in fulfilment of their human rights.

Furthermore, Ghana has developed a national framework for management of drinking water quality thereby adopting the Water Safety Planning Tool as a national standard. Its purpose is to guarantee that everyone has access to safe water. The tool is to be used by all drinking water producers in Ghana. The tool requires that all water producers obtain the requisite permit from MMDAs as well as certification from the Ghana Standard Authority, which is mandated to certify all products of human and animal consumption in Ghana. This is of great benefit to both water producers and consumers. For producers, it affords their products credibility and enhances patronage. On the part of consumers, it assures them of good health and vitality.

The MSWR, in its quest to ensure the provision of safe water to the vulnerable during situations, such as droughts, floods and disease outbreaks, has put in place an Emergency Preparedness and Response Plan (EPRP). The plan has so far cushioned Ghanaians during a number of emergencies notably during the Covid-19 pandemic when water was supplied free of charge to the people of Ghana.[754]

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753 See Ministry of Sanitation and Water Resources: Contributions to WASH for the preparation of the 45th Session of the Human Rights Council in 2020.

754 See Ministry of Sanitation and Water Resources: Contributions to WASH for the preparation of the 45th Session of the Human Rights Council in 2020.

Ghana is currently implementing a life-line water policy for the poor. Under the policy, the government subsidizes water consumed by the poor placed on the lifeline. The policy, however, has not been feasible in many instances where the poor live with the middle-income earners and the rich. Their water consumption exceeds the minimum threshold and hence makes it impossible for the poor to enjoy the benefit. It is recommended that every household acquires its meter even though this also comes with a cost and the issues of affordability[755] The State could equally identify the life-line consumers, supply them with free meters, or offer them at subsidized rates so that they may be able to supply them with water free of charge as the policy requires.

There has been private sector involvement in water and sanitation service delivery. Key among them in Ghana are World Vision Ghana, the Danish International Development Agency (DANIDA), and Zoomlion Company Limited, which have assisted in diverse ways in providing water and sanitation services to many rural and urban communities. These efforts and arrangements have yielded little results owing to a lack of commitment on the part of the government and its agencies to monitor and evaluate these projects for future expansion.[756] The MSWR, the CWSA, and the WRC must collaborate with MMDAs and monitor, evaluate and chat a new path for efficient water and sanitation service delivery in the country. The State must increase its funding to these agencies to enable them to discharge their obligations concerning the provision of water and sanitation to the people of Ghana.

In line with the decentralization policy of Ghana, under the 1992 Constitution, which calls for the dissemination of State governance and powers to the local level, the MMDAs have been mandated to provide sanitation facilities, such as refuse or garbage containers, and services such as refuse collection and disposal, to the people of Ghana. This has so far helped to improve household sanitation in many urban and rural areas within the country. The assemblies have equally been mandated to enforce sanitation laws and make their bylaws in that regard.[757] The sanitation bylaws of the MMDAs, *inter alia*, assign the

755 ibid
756 ibid
757 LGA 2016 section 104 (1) (c) (Act 936).

responsibility of managing solid and liquid waste to the various Assemblies.[758] The Assemblies may however license private institutions to carry out this responsibility on their behalf by contract. Even in such instances, the Assemblies play a supervisory role in that regard. The bylaws also assign the construction and operation of public toilets to the MMDAs. They may outsource this duty to private operators on a contractual basis. If the private operators fail in the discharge of their duties, the Assemblies reserve the right to withdraw their license and take over the operation of the facility concerned. The bylaws also provide that where public drains are not available, it is the responsibility of greywater producers to construct a linkage soil pipe or soak away to drain the wastewater. Owners of premises or family heads, under the bylaws, are expected to provide sanitary facilities or places of convenience to those who reside within their premises. This provision is aimed at eradicating or preventing open defecation. The bylaws also make it mandatory for all households to provide or procure garbage containers for waste collection and subsequent disposal.[759] Failure by individuals of households to comply with any of these bylaws constitutes an offence punishable by a fine or imprisonment by a competent court of law.[760]

For instance, in the case of the *Republic v Tawiah*[761] the Nkawkaw Environmental Health Unit, while on their routine checks within the Municipality, found the accused person wrapped human excreta in six polythene bags and dumped them in a communal refuse container. She was arrested and charged with abatement of nuisance contrary to sections 3(2) and (6) of the Nkawkaw Municipal Assembly Byelaws on sanitation. The trial court found her guilty of the offence, convicted her and sentenced her to a fine of Ghc.2,000.00 or default to serve a prison term of one month. In pronouncing the judgment, the court

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758 Liquid waste includes human excreta in the form of night soil and effluent while solid waste means any solid material that had been rejected by the owner which may create nuisance or pose danger to health and the environment.

759 See Accra Metropolitan Assembly (Sanitation) Bye-laws 2017; Nkwanta South Municipal Assembly (Sanitation) Bylaws 2021; Shai-Osudoku District Assembly (Sanitation) Bye-laws 2020; Nkawkaw Municipal Assembly (sanitation) Bye-laws 2017; Kpando Municipal Assembly (Sanitation) Bye -laws 2017; Bekwai Municipal Assembly (Sanitation) Bye-laws 2019 and Adentan Municipal Sanitation Bye-laws 2018.

760 See *Republic v Abubakar Yahaya* District Court, Hohoe (Court Case No. B15/11/2023 (6 April 2023); Republic *v Peter Asare* Magistrate Court, Nkawkaw Ghana (Court Case No. B.15/22/2023 (28 February 2023).

761 Magistrate Court, Nkawkaw Ghana (Court Case No. B/55/68/22 (25 July 2023) unreported.

noted that the practice of dumping human excreta in garbage containers or leaving them in the open could lead to communicable diseases such as typhoid and cholera which would endanger good health and human dignity. The sentence imposed by the trial court on the convict was punitive enough and could serve as a deterrent to potential offenders.

Again in 2018, the government launched the "One Toilet, One Household" Policy. It was aimed at providing one toilet facility for each household to do away with open defecation. In 2021, the Sanitation Awareness Campaign was launched. The year was declared the 'Year of Sanitation', and citizens were encouraged to keep their environments clean of filth.[762] This policy is still being implemented especially in the urban areas but at a slow pace. The One Toilet, One Household policy could be accelerated when the State honours its part of the deal by providing the proposed subsidies to the affected households. Secondly, the declaration of the year 2021 the Year of Sanitation was good, but it could achieve the desired result if a week within each other year is declared 'Water and Sanitation Week'. The week-long activities may comprise radio and television education programmes, debates, seminars, and a day set aside for cleaning of all towns and cities within the country. This would provide the needed impetus to the people of Ghana to know their right to water and sanitation and thus enforce them against the State and its agencies.

Some Non-Governmental Organizations (NGOs) in Ghana have also put in place mechanisms to educate the public, especially, the rural communities against the use of unsafe water and its attendant problems of communicable diseases, such as cholera. This is in line with their quest to help the nation achieve SDG 6 on clean water and improved sanitation for all by 2030.[763] For instance, the Centre for Indigenous Knowledge and Organizational Development (CIKOD), an NGO in Ghana, has developed methodologies for sustainable use of water, sanitation and hygiene services in the Lawra Municipality of the North-Western Region of Ghana. CIKOD's interventions, *inter alia*,

762 ibid

763 Francis Issahaku Malongza Bukari, Raymond Aabayir and Adams Sulemana Achanso 'The Role of Non-Governmental Sector in Community Water, Sanitation and Hygiene Technologies and Services in North-Western Ghana (2023) Ghana Journal of Geography 15 (2) 1, 3-4.

involved the mobilization of local resources for water, sanitation, and hygiene facilities, including water washing facilities, improved pit latrines, and water closets.[764] These interventions have improved the lot of schoolchildren and women in the locality.

The above interventions by the government of Ghana and other stakeholders have brought some improvements to the water and sanitation sectors of the country. This is line with the international human right requirement that States must put in place comprehensive plans and programmes that would enable them provide safe water and improved sanitation progressively to all citizens in their jurisdiction. One could say that Ghana is on course in that regard. However, much could be achieved by these policy interventions by putting in place clear policy goals and targets. For instance, by putting timelines against the provision of water and sanitation to all public educational institutions by the end of a particular year and accompanying it with a realistic budget. Implementing bodies of such projects must demonstrate a commitment to realize their completion on schedule. The government of Ghana must exhibit much commitment in these directions to offer holistic protection to water and sanitation rights and services to the people of Ghana as required under international human rights law. It can achieve this by resourcing and retooling the relevant institutions, such as the MSWR, the WRC, the GWC, and the MMDAs, which have been tasked to provide safe water and improved sanitation to the people of Ghana.

Conclusion

Trekking with empty gallons from one place to the other in search of potable water is a common sight to behold in Ghana, an indication that the nation has a potable water deficit. Open defecation is also prevalent in almost all parts of the country, and evidence of sanitation problems in the country. Several obstacles account for this state of affairs in the country. Notable among them are the challenges associated with the enforcement of the nation's water and sanitation laws, inadequate budgetary allocation to the water and sanitation sectors of the economy, high water and sanitation provision charges, inefficient implementation of water and sanitation laws by State agencies tasked to do so, corruption

764 Ibid

and lack of commitment of officers tasked to implement water and sanitation policies and legislation.

Enforcement of water and sanitation laws would be effective if the relevant bodies, such as WRC, the MMDAs, and the MSWR monitor the subordinate officers who are usually at the forefront of the enforcement of such laws. Knowing that they are being supervised or monitored in the discharge of their duties, they are likely to enforce the sanitation and water laws to the letter.

The issue of inadequate allocation of an annual budget to the water and sanitation sectors could be resolved by the State committing more resources to the sector. High water and sanitation tariffs hinder people from accessing such facilities. It is expensive to be connected to the GWC water supply system in the country, and many people are unable to afford it. Household sanitation infrastructure is also high. The State must put in place measures by way of water subsidies to help the vulnerable poor. The lifeline water supply system for the poor is a step in the right direction, but it should be extended to all communities in the country.

The issues of physical accessibility and affordability of water supply and sanitation services is another hurdle. GWC is one of the major stakeholders in the water industry. However, its presence is hardly felt in many parts of Ghana. Its services in terms of water supply are almost limited to the urban areas within the country. Besides, it is unable to meet the growing demands of the populace, and the cost of supply is also high. In order to surmount this challenge, the State would have to budget and look for funds for the expansion of GWC to enable it to extend its services to as many parts of Ghana as possible. The current water supply machinery, most of which is either too old or supply water below the required capacity must be replaced or properly maintained to supply water to the people of Ghana regularly.

The issues of corruption and lack of commitment on the part of water and sanitation service providers could be addressed through strict monitoring and supervisory mechanisms, such as reports and data collation of duties performed by officials placed at

the helm of affairs. This is likely to reveal the areas of underperformance and non-performance and those officials and their agents. The MSWR and the WRC would then be able to reassign roles and responsibilities for efficient performance in the water and sanitation sectors.

Though Ghana's water and sanitation situation is a great challenge, there are some prospects. The establishment of the MSWR in 2016 is a step in the right direction. The Ministry so far has been at the forefront in the fight for the provision of safe water and improved sanitation for the people of Ghana. Its efforts will however yield the desired results if the State commits more funds to the sector and also ensure that the funds are used appropriately. The policy of subsidizing the construction of modern toilets for each household needs to be sustained by releasing funds for its implementation across the country instead of limiting it to urban areas such as Accra, Tema and Kumasi.

Secondly, Ghana has set a target of making safe drinking water accessible to all the people of Ghana by 2025 under the Sustainable Development Goals.[765] It has also set a target to end open defecation in Ghana by 2030. These policy goals in line with the Sustainable Development Goals have the potency to meet the nation's water and sanitation needs. It is however important that these efforts are backed by legislation to achieve their objectives. They could be incorporated into domestic legislation such as the WRCA or the EPAA so that legal effects could be given to their implementation and enforcement.

Ghana has made significant progress in the delivery of safe water to the people of Ghana. However, many more resources must be committed to the sector to achieve SDG 6 aimed at providing water and sanitation for all by 2030. Private sector participation in this direction would also cushion the government's efforts to achieve desired results.

In addition, the government must mandate all MMDAs to ensure that newly constructed homes include toilets, hand washing stations, showers, and similar sanitation facilities. Existing homes without such facilities must be encouraged to provide them. Those who

765 See GLASS (2016) (n 703).

default must be sanctioned. The government must also create modern public toilet facilities and encourage private sector investment to eliminate open defecation by 2030.

Two main projects targeting the poor and vulnerable communities in rural and urban areas respectively have also been rolled out in Ghana. They are, the 150 million USD World Bank grant, which supported the Greater Accra Metropolitan Area Sanitation and Water Project targeting the Low-Income Urban Communities and the Government of Ghana-UNICEF Rural Sanitation Strategy and Model Programme which focused on rural communities in the country. Furthermore, Ghana has developed a national framework for management of drinking water quality thereby adopting the Water Safety Planning Tool as a national standard. Its purpose is to guarantee that everyone has access to safe water. The tool is to be used by all drinking water producers in Ghana. The tool requires that all water producers obtain the requisite permit from MMDAs and certification from the Ghana Standards Authority, which is mandated to certify all products of human and animal consumption in Ghana. This is of great benefit to both water producers and consumers.

In line with the decentralization policy of Ghana, under the 1992 Constitution of Ghana, which calls for the dissemination of State governance and powers to the local level, the MMDAs have been mandated to provide sanitation facilities, such as refuse or garbage containers, and services such as refuse collection and disposal, to the people of Ghana. This has so far helped to improve household sanitation in many urban and rural areas within the country.

Some Non-Governmental Organizations (NGOs) in Ghana have also put in place mechanisms to educate the public, especially, the rural communities against the use of unsafe water and its attendant problems of communicable diseases, such as cholera. This is in line with their quest to help the nation achieve SDG 6 on clean water and improved sanitation for all by 2030.

The above interventions by the government of Ghana and other stakeholders have brought some improvements to the water and sanitation sectors of the country. This is

line with the international human right requirement that States must put in place comprehensive plans and programmes that would enable them provide safe water and improved sanitation progressively to all citizens in their jurisdiction. One could say that Ghana is on course in that regard. However, much could be achieved by these policy interventions by putting in place of clear policy goals and targets. For instance, by putting timelines against the provision of water and sanitation to all public educational institutions by the end of a particular year and accompanying it with a realistic budget. Implementing bodies of such projects must demonstrate commitment to realize their completion on schedule. The government of Ghana must exhibit much commitment in these directions to offer holistic protection of water and sanitation rights and services to the people of Ghana as required under international human rights law.

CHAPTER EIGHT

8.0 COMPARATIVE ANALYSIS OF THE UNITED KINGDOM, SOUTH AFRICA AND GHANA WATER AND SANITATION LAWS

Introduction

Water and sanitation are global issues of great concern to every nation. States worldwide attach some importance to the provision of water and sanitation for good health and dignity of their citizens and in line with SDG Goal 6 which calls on all States to provide safe water and improved sanitation for everyone by 2030. To achieve this objective, nation-states are to collaborate and adopt best practices that have worked in others to improve their countries' water and sanitation situation. This chapter analysis the United Kingdom (UK), and South African water and sanitation situations and compares them to that of Ghana to draw lessons that would improve the nation's water and sanitation situation. South Africa was selected for the study because it has one of the robust water and sanitation system and legislation in Africa. The research believes that it would offer some useful insights for Ghana to improve its water and sanitation sectors. Similarly, the UK also has a robust water and sanitation set up and legislation. Being a common law country like Ghana, and Ghana being its former colony, Ghana could draw some useful lessons from its system and legislation to improve the water and sanitation system herein.

8.1 UK Water and Sanitation Legislation and Administration

Legislation on water and sanitation in the UK includes the Water Act of 2014 Chapter 21, Environmental Act of 2021 Chapter 30, Water Resources Act of 1991 Chapter 57, and the Water Industry Act of 1991 Chapter 56.

Water Act of 2014: The Act makes general provisions for the UK water industry, procedures, and qualifications for the grant of licenses to abstract water. it also provides compensation for modification of licences to abstract water. In addition, it provides for the main river maps of the UK, records of waterworks, the regulation of the water

environment, the provision of flood insurance for household premises, internal drainage boards, Regional Flood and Coastal Committees (RFCC), and connected purposes.[766]

Chapter 1 of the Act focuses on the expansion of the water supply licensing (WSL) regime, the introduction of sewerage licences, and the creation of a cross-border retail market between England and Wales and Scotland.[767] It amends the Water Industry Act (WIA) of 1991 by expanding and revising the current WSL regime and adding a sewerage licensing regime. It also increases the choice in the retail market by enabling earlier repeal of the threshold which sets the water usage limit for non-household customers. This allows all businesses, charities, and public sector customers to choose their water and sewerage suppliers for the first time. The provision also enables multi-site operators to tender for one supplier across Great Britain.[768] To facilitate a cross-border retail market between England, Wales, and Scotland, the Act amends the WIA and its equivalent Scots Law. This allows the Water Services Regulatory Authority (WSRA) or (Ofwat)[769] and the Water Industry Commission for Scotland (WICS) to accept a single application for water and sewerage licences in each jurisdiction.[770]

Chapter 2 deals with matters concerning water and sewerage undertakers.[771] It allows Ofwat, to make orders for a supplier to make a bulk water supply to a qualifying person, under specific terms and conditions. Ofwat makes an order if it is satisfied that the bulk supply is necessary or expedient for securing the efficient use of water resources and that the parties are unable to reach an agreement.[772] Before making an order, Ofwat must consult the appropriate environmental agency, on whether the proposed supply would secure an efficient use of water resources, in light of its effect on the environment.

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766 See the Preamble Water Act 2014 Chapter 21.

767 ibid Chapter 1 ss 1-7

768 ibid

769 Ofwat, also known as Water Services Regulatory Authority is a non-governmental organization which responsible for water supply and sewerage services in England and Wales.

770 Water Act 2014 (n 721.

771 ibid section 8-21.

772 Ibid section 8.

It is also open to Ofwat to act under section 18 to enforce its code about bulk supply agreements.[773]

Chapter 3[774] focuses on the regulation of the water industry in general, regulation of relevant undertakers of water and sewerage, application and grant of water supply and sewerage licenses, and interim duties for water supply and sewerage services. It also provides for market exit by a licensee, adjudication functions, and the charging powers of the Drinking Water Inspectorate (DWI). In the case of *Regina v Southern Water Services Ltd,*[775] the sewerage pumping station at Margate was faulty resulting in the discharge of untreated waste into the sea off the coast of Kent. This was in breach of their duty to ensure the safety of the public in the supply of water and sewerage services. The court found the defendant guilty of breaching their duty to protect the public, leading to potential harm to the public and the economy, and imposed a fine of 200,000 pounds on them. The case demonstrated the importance that the UK attaches to the provision of water and sanitation to the extent of holding service providers accountable for failure to discharge their responsibilities.

Sections 22 to 24 of the Act assign general duties of granting water and sewerage licenses, inspection or supervision, monitoring, and evaluation to the Secretary of State, the Welsh Ministers, and Ofwat. There is a new primary duty to secure the long-term resilience of water supply and sewerage systems with particular reference to managing the impacts of environmental pressures, population growth, and changes in consumer behaviour.[776] There is also a new duty to ensure that undertakers do not show undue preference or discrimination in their dealings with other undertakers and licensees. In addition, the Act mandates the UK Government to provide strategic priorities and objectives for Ofwat to follow when carrying out its statutory function. To support these

773 Water Act 2014 section 40B(4) to (6).
774 ibid section 22-43.
775 [2014[Court of Appeal (Criminal Division).
776 Water Act 2014 secton 25.

reforms, the Act provides Ofwat with powers to regulate the water and sewerage market as competition develops.[777]

The chapter also reduces the frequency with which undertakers are to produce drought plans to a maximum five-year cycle. This will help reduce the administrative burden on water undertakers to draw drought plan cycles frequently. However, if necessary, the Secretary of State or the Welsh Ministers may compel water undertakers to prepare a drought plan more frequently.[778]

The Act amends the WIA and allows the Secretary of State to make regulations on appeals to the CMA in instances where Ofwat revised a designated code or not to make a revision following consultation about a proposed revision. There is also the power for the Secretary of State to specify alternative parties to perform some of Ofwat's adjudication responsibilities. This is intended to enable disputes to be resolved in a timely manner.[779]

Chapter 4 provides the Secretary of State with powers to put in place regulations that would permit undertakers, with the consent of the Secretary of State, to stop providing retail services to current and future non-household customers in their appointment areas. These services will then be provided by one or more retail licensees.[780]

Chapter 5 contains two sections that create powers to modify undertakers' terms of appointment and licensees' licences. The first enables provision to be made about consumer redress schemes. The second allows Ofwat, for a limited time, to make changes to undertakers' conditions of appointments and licensed water suppliers' licence conditions to implement the Act's reforms.[781]

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777 Water Act 2014 section 26-28.
778 ibid section 28-29.
779 ibid section.37-39.
780 Water Act 2014 section 42-53.
781 Ibid section 54-56.

Part 2 of the Act[782] focuses on water resources in general. It provides for reporting on the progress of water abstraction reform in England, withdrawal of compensation for undertakers, main river maps in England and Wales, and Environment Agency maps of waterworks. The Act supports the Government's commitment to reform the water abstraction management system in England, by requiring the Secretary of State to report to Parliament on progress made annually. It also supports the Government's priority of restoring sustainable abstraction. It removes the ability of undertakers to claim compensation for losses resulting from modification and revocations of their abstraction licences. Undertakers will instead consider sustainability reductions as part of their mainstream business planning process and recover the costs through Ofwat's Price Review process.[783]

The Act amends the Water Resources Act 1991 (WRA) and transfers responsibility for maintaining the main river maps for England and Wales to the Natural Resources Body for Wales in Wales. There are also provisions concerning amendments to these maps, consultations on new maps, and entitlements to free copies.[784]

Part 3 of the Act[785] focuses on the environment. It contains powers that enable a single set of regulations covering pollution, permit requirements regulations for abstraction licences, flood defence consents, and fish pass approvals. This single set of regulations will enable operators to apply for one rather than multiple permits.

Part 4 contains new arrangements designed to deal with the affordability and availability of home insurance in areas of high flood risk. The framework includes powers to establish a levy-funded reinsurance pool for high-risk households and reserved powers to regulate the insurance industry by requiring insurers to insure higher flood-risk properties.

Part 5 provides measures to reduce some of the bureaucracy to the governance of Internal Drainage Boards (IDBs) by simplifying the process for making structural changes

782 ibid section 57-60.
783 ibid section 58.
784 Ibid ss. 58-60
785 See s. 61-63 of WA of 2014 and Schedule 8

to Baords in England and in Wales.[786] They were also to enable the Secretary of State to make regulations establishing a procedure for IDBs wholly in England to follow when making bylaws. Restrictions on the way public notices for IDBs in England are published were removed.

Part 6 confers powers on the Minister of State to make consequential amendments and transitional provisions, and sections relating to the extent of the Act, commencement of provisions of the Act, and the short title.[787]

Water Act of 2014 in sum, provides a comprehensive regulatory framework for water and sanitation in the UK. It has also established the necessary structures and procedures concerning water services delivery in the country. This has enabled it to render an effective water and sanitation services delivery in the country.

Environment Act of 2021:[788] The Act protects the natural environment for the well-being of people and the sustenance of natural resources, including water and biodiversity.[789] It also provides for waste management, waste disposal, and related matters.[790]

Part 5 of the Act governs water resources management in general. The Minister in charge of water resources is directly responsible for regulating and managing water resources.[791] The Minister may by regulations make provisions about the procedure for preparing and publishing a water resources management plan, a drought plan, and a joint proposal, including any revised plans or proposals. The regulations may provide for the sharing of information and, in particular, may require a water supply licensee to share such information with a water undertaker as may be reasonably requested. The regulations may make provisions ensuring that persons likely to be affected by the plan or proposal

786 Ibid WA 2014 s. 85-89 and Schedules 8 and 9

787 See WA 2014 s. 90-95 and Schedules 11 and 12

788 Environmental Act 2021 (Chapter 30).

789 ibid See the Preamble.

790 (n 744) section 1 (d).

791 ibid section 78 (7) (8). In this section "the Minister" means— (a) the Secretary of State, in relation to water undertakers whose areas are wholly or mainly in England, and (b) the Welsh Ministers, in relation to water undertakers whose areas are wholly or mainly in Wales.

have a reasonable opportunity to make representations to the Minister.[792] To ensure the provision of high-quality water for consumption and other domestic uses, water undertakers are expected to monitor the overflow of water downstream and upstream to ensure that water courses are not contaminated.[793] The Minister and the Ofwat are responsible for the enforcement of this regulation.[794]

In the case of *Environment Agency v Southern Water Services Limited,*[795] the defendant company was licensed to supply water to its customers to treat sewage and recycle fresh clean water into the environment. From January 2010 to December 2015, it allegedly discharged a total of 6,971 untreated sewage into controlled waters. The sites were each located along the North Kent coast and the Solent. Almost the entire coastline and the adjacent waters were within sites of special scientific interest of one form or another. The defendant pleaded guilty to 51 counts of discharging untreated sewage into controlled coastal waters and was sentenced to a fine of 90,000,000 pounds.

The case reiterates the importance of the duty imposed by law on water suppliers to ensure the provision of safe water and sanitation to consumers. A breach of this duty amounts to an offense, which is punishable by law and is evident in the *Environmental Agency case*. Ghana may draw a lesson from the decision in the case and strengthen her enforcement of water and sanitation laws for improvement in both sectors.

The Act also provides that each sewerage undertaker should draw up a sewerage management plan to be submitted to the Minister for approval. A drainage and sewerage management plan is a plan of how the sewerage undertaker would manage and develop its drainage and sewerage systems to be able, to meet its obligations under the Act.[796] A drainage and sewerage management plan must address in particular the capacity of the undertaker's drainage and sewerage systems, assessment of the current and future demands on the undertaker's drainage and sewerage systems, the resilience of the

792 (n 744 section 39F (5).
793 ibid section 82, 89, 90, 91.
794 ibid
795 Judiciary of England and Wales Sentencing Remarks of Mr Justice Johnson 9 July 2021.
796 Environment Act, 2021 (Chapter 30) sections 79 (1) (2) and (3).

undertaker's drainage and sewerage systems, and the likely sequence and timing for implementing those measures. The Minister reserves the right to amend the drainage and sewerage plan and give further directions and instruction towards its finality.[797]

Water Resources Act:[798] the Act regulates water resources in the UK and established the National Rivers Authority (NRA) as the body responsible for water resources in England, and Wales. The NRA has two main committees, the Advisory Committee and the Flood Defence Committee that assist in the discharge of its responsibilities.[799] The general management duties of the NRA in collaboration with the Secretary of State are to conserve, redistribute, or otherwise augment and secure water resources in England and Wales.[800] Section 24 of the Act prohibits the abstraction of water from any water source without the appropriate license. A breach of the provision constitutes an offence that attracts a sentence of a fine on conviction by a court of law.[801] The NRA is responsible for the enforcement of provisions under section 24 of the Act. They do so by serving enforcement notices on offenders to remedy the effect of the breach within a specified period in the notice.[802]

Water quality is determined by prescribed criteria under the Act. It includes general requirements concerning the purposes for which the waters to which the classification is applied are to be suitable and specific requirements as to the substances that are to be present in or absent from the water. Others include the concentrations of substances that are or are not required to be present in the water and the specific requirements about other characteristics of those waters.[803] The criteria are aimed at providing quality water for consumption and other domestic uses.

Where the Secretary of State believes that a water resource may be polluted by human activities, such as farming and the use of chemicals, it may declare the area a water

797 ibid section 79 (5-10)
798 Water Resources Act 1991 (Chapter 57).
799 ibid section 1(1).
800 ibid section 19.
801 Water Resources Act 1991 (Chapter 57) section 24 (4), (5).
802 ibid section 25A.
803 ibid section 82.

protection zone by regulation. The regulations would prohibit or restrict the carrying on of those activities in the zone or impose requirements on persons who carry on those activities in the zone to take such steps as may be specified or described in the order.[804] Failure to heed the prohibitory order may attract a penalty of imprisonment or a fine or both.[805]

The Water Industry Act 1991[806] was promulgated to consolidate enactments relating to the supply of water and the provision of sewerage services, with amendments to give effect to recommendations of the Law Commission. It established the Water Services Regulatory Authority (WSRA or Ofwat). Ofwat is responsible for carrying out the functions conferred on or transferred to it by the Act, specifically, to supervise water services delivery.[807] The WSRA acts on behalf of the Crown.[808]

The Secretary of State may periodically publish a statement setting out strategic priorities and objectives for the WSRA in carrying out relevant functions relating wholly or mainly to England. Before publishing the statement, the Secretary of State must consult the WSRA, the Consumer Council for Water, (CCW) relevant undertakers, the Environment Agency, the Welsh Ministers, the NRBW, and anyone else the Secretary of State thinks appropriate.[809]

Water and sewerage undertakers are appointed by the Secretary of State, to carry out water supply and sewerage services in the UK. The law requires that such undertakers must be limited liability companies which must not be water or sewerage licensees.[810] They are assigned particular areas of operation and are governed by provisions of the Water Industry Act 1991 and other subordinate legislation. They are also expected to

804 ibid 57 section 93.
805 ibid
806 Water Industry Act 1991 (Chapter 56).
807 Water Industry Act 1991 (Chapter 56) section 1.
808 ibid
809 ibid section 2.
810 ibid section 6.

comply with the conditions of their appointment to meet their water supply and sewage service delivery to the people within their areas of jurisdiction.[811]

Undertakers of both water and sewerage are expected under the law to obtain licenses for their operations and must discharge their responsibilities by law.[812] Failure to comply with law the undertaker is served with a provisional enforcement order and given three months to remedy the situation. When this period expires, a final enforcement order is then served on the undertaker specifying penalties imposed on the company or the person involved. The amount of money imposed is determined by the WSRA.[813] In case the undertaker is unable to pay the penalty imposed within the time limits prescribed therein, a legal action may be instituted against the defaulting undertaker.[814] If the person on whom a penalty is imposed is aggrieved by the imposition of the penalty, the amount of the penalty, or the date by which the penalty is required to be paid, an application may be made to the courts for redress.[815]

In the case of *Wild Justice v The Water Services Regulation Authority,*[816] the claimant was a not-for-profit company set up to advocate on behalf of wildlife to further nature conservation in the UK, to encourage public participation in nature conservation issues, and to ensure that UK laws, policies and practices protect wildlife. They accused the defendant of failing to police the specific requirements under regulation 4 of the Water Industry Act 1991. The said regulation mandates Ofwat to monitor the activities of water undertakers to preserve flora and fauna during their water supply services. They, however, failed to adduce evidence in support of their claim. The court found that Ofwat has collected information and has taken enforcement action. However well or badly it had carried them out, it was not arguable that it had simply failed to carry them out. The court consequently dismissed the application for Judicial Review.

811 ibid section 6-12.
812 ibid section 13-17.
813 ibid section 18, 22.
814 Water Industry Act 1991 (Chapter 56) section 22.
815 ibid 22B.
816 [2022] EWHC 2608 (Admin) Case No: CO/1978/2022.

The case could be of great importance the non-profit organizations and human rights advocates in Ghana. They ought to hold accountable water and sanitation service providers in instances of their failure to deliver according to their mandate. This would improve the water and sanitation service delivery in the country.

The law also offers ample protection to consumers by establishing the CCW responsible for monitoring the activities of undertakers in the discharge of their duties. In considering the interests of consumers, the CCW is to have regard for the interests of individuals who are disabled or chronically sick; those of pensionable age, individuals with low incomes, and individuals residing in rural areas.[817]

Section 29 of the Act makes provision for consumer complaints. Consumers who may be dissatisfied with the services or activities or inaction of undertakers may lodge complaints with the CCW. The CCW may investigate the complaint to determine if a *prima facie* case was established. Where it appears to the CCW that the complaint relates to a matter which constitutes or might constitute an offence, it refers the matter to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales the matter is referred to the Secretary of State.[818]

A water undertaker owes a duty to consumers to provide sufficient water for domestic purposes. They are also expected to maintain the connection between the undertaker's water main and the service pipe by which water is supplied to those premises.[819] A legal action may be instituted by a consumer in cases where a water undertaker breaches this duty without reasonable justification such as lack of materials at the particular time in issue.[820]

A water undertaker may disconnect a service pipe to any premises, that is connected with any water main of that undertaker. An undertaker may also cut off or reduce a supply of water to any premises in case it wants to carry out any necessary work.[821] Water supply

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817 (n 770) section 27C.
818 Water Industry Act 1991 (Chapter 56) section 29 (1-10).
819 ibid section 52 (1).
820 ibid
821 Ibid section 60 (1).

may also be cut off if a consumer fails to pay water supply or service charges imposed on the said customer by the undertaker within seven days of notice to the consumer.[822] Within seven days, the consumer reserves the right to appeal against the charges in which the undertaker would have to suspend the disconnection until the matter is resolved.[823]

Every sewerage undertaker must provide, improve, and extend such a system of public sewers whether inside its area or elsewhere, and to cleanse and maintain those sewers and any lateral drains that belong to or vest in the undertaker. They equally have to make provision for the emptying of those sewers from time to time through sewage disposal works or otherwise, with the contents of those sewers.[824] The duty of a sewerage undertaker is enforceable under section 18 above by the Secretary of State or with the consent of or following general authorisation given by the Secretary of State, by the Director.[825]

8.2 South African Water and Sanitation Legislation and Administration

Water and sanitation jurisprudence of South Africa includes the Republican Constitution of South Africa 1996,[826] Water Services Act[827] National Water Act[828] and case law. Each of these is discussed below.

Constitution of South Africa: Article 27(1),(b) of the Constitution provides that everyone has the right of access to sufficient water and that the State must take reasonable steps to realise this goal progressively.[829] What constitutes sufficient water within the meaning of section 27 of the Constitution was determined in the case of *Lindiwe Mazibuko and the Others* v *City of Johannesburg and Others,*[830] the Supreme Court of Appeal decided that

822 ibid s. 61.
823 ibid s. 61 (2).
824 Water Industry Act 1991 (Chapter 56) section 94 (1).
825 ibid section 94 (3).
826 As adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly.
827 Act 108 of 1997 (Notice 1662, G. 18522).
828 National Water Act 1998 (Act 36).
829 Constitution of South Africa, Article 27(2).
830 Case CCT 39/09 [2009] ZACC 28.

42 liters of water daily, would constitute a sufficient quantity for residents, as provided for under section 27 of the Constitution. The applicants subsequently sought leave to appeal to the Constitutional Court in part against the order made by the Supreme Court of Appeal. The Constitutional Court held that the obligation placed on the government by section 27 is an obligation to take reasonable legislative and other measures to seek the progressive realisation of the right. About the Free Basic Water policy, therefore, the question is whether it is a reasonable policy. The Court noted that it was implicit in the concept of progressive realisation that it would take time before everyone had access to sufficient water. The Court concluded, in contrast to the decision of the High Court and the Supreme Court of Appeal, that it was not appropriate for a court to give a quantified content to what constitutes "sufficient water" because such matters are best addressed by the government. The national government has adopted regulations that stipulated that a basic water supply constitutes 25 liters per person daily: or 6 kiloliters per household monthly.

The decision in the Mazibuko case could be used by the government of Ghana to address its water shortage situation, especially in the cities, peri-urban and urban areas where water is rationed for consumers. Determining the quantity of water sufficient for a household daily could help the GWC and the CWSA, the major water service providers, supply sufficient quantities of water for the well-being and dignity of the people of Ghana.

It has been held by the courts that the duty imposed on the State under section 27(2) to ensure the provision of sufficient water for all is to be fulfilled progressively. The State must put in place the necessary legislation to realise this goal. Availability of funds may also determine the pace at which the objective of providing sufficient water for all may be realized. In the case of *Mandla Bushula* v *Ukhahlamba District Municipality,*[831] the Court decided that sections 27(1) and (2) of the Constitution must be read together for the determination of the positive rights accruing to everyone, and that states have the corresponding obligation to respect, protect, promote, and fulfil such rights. It explained that the socio-economic rights provided for under the Constitution should not be construed as entitling everyone to demand that the minimum core be provided to them. It

831 [2012] High Court (Eastern Cape Division) 2200/09, [2012] ZAECGHC 1.

held that it is impossible to give everyone access even to a core service immediately. All that is possible, and all that can be expected of the state, is that it acts reasonably to provide access to the socio-economic rights identified in sections 26 and 27 on a progressive basis. The Court declared that the installation of the water pipes on a drought relief budget was a prudent legislative measure taken by the municipality, taking into consideration its available resources to achieve the progressive realization of the right to have access to sufficient water.

Water Services Act[832]

The Act provides for the rights of access to basic water supply and basic sanitation, the setting of national standards and norms, standards for tariffs, and water services development plans. It also provides a regulatory framework for water services institutions, water services intermediaries, and the establishment of water boards, water services committees, and their powers and duties. In addition, it provides for monitoring of water services and intervention by the Minister or by the relevant Province and financial assistance to water services institutions.[833]

It defined basic water supply as the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene.[834] It defined basic sanitation as the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal, or purification of human excreta, domestic wastewater and sewage from households, including informal households. It is further provided that everyone has the right to basic water and sanitation and that water supply and sanitation service institutions and authorities must ensure the availability of water and sanitation for all.[835]

832 Act 108 1997 (Notice 1662, G. 18522).
833 ibid section 2.
834 ibid section 1.
835 ibid section 3.

Water and sanitation service providers are expected to provide ample information to the general public about their services. The information includes the determination and structure of tariffs, the conditions for payment, the circumstances under which water services may be limited or discontinued, procedures for limiting or discontinuing water services; and measures to promote water conservation and demand management.[836]

Chapter 3 of the Act established Water Service Authorities (WSA) who are to ensure that consumers under their jurisdiction have efficient, affordable, economical, and sustainable access to water services.[837] In the case of *City of Cape Town v Strümpher,*[838] the plaintiff operated a caravan park for 37 years, which was rented for permanent residential purposes on his property. On 16 May 2007, the City of Cape Town informed him that the water supply to his property would be disconnected within two days if he failed to pay his outstanding debt of ZAR 182,000. He contested the amount claimed by the City. He argued that the recorded water consumption at his property was much higher than his actual water use. The anomaly was subsequently detected in the water meter, which was replaced together with the main connection by the City authorities. A leakage was also identified and reported to the city. The property owner was eventually instructed to replace several pipes, which resulted in a reduction of the high-water consumption by the defendant. Without having replied to the letter of 28 May 2007, the City disconnected the water supply on 17 August 2007. In its ruling, the Court declared that a contract must be concluded between a consumer and a water service provider. However, this should not relegate the consumer's right to water to a mere personal right flowing from that contractual relationship. In the instant case, the contract did not relieve the City of its constitutional and statutory obligation to supply water to users, such as the respondent. It further decided that under section 27(1)(b) of the Constitution of South Africa and section 3(1) of the Water Services Act of South Africa, the water right is a basic right and that everyone has a constitutional right to have access to sufficient water.

836 Act 108 1997 (Notice 1662, G. 18522) section 4.

837 ibid section 11

838 [2012] Supreme Court Appeal 104/2011, [2012] ZASCA 54.

An application of the decision could help in curbing the practice of disconnecting water to premises, and homes without sufficient notice in Ghana. Persons who may be affected by the practice may seek redress in courts of law as in the instant case. It would also help service providers to give sufficient notice to those who default in payment of their water bills to enable them to remedy the situation because water is a basic human right.

In emergencies a water services authority must take reasonable steps to provide basic water supply and basic sanitation services to any person within its area of jurisdiction and may do so at the cost of that authority.[839] All water service providers are required to obtain approval from the Water Service Authorities, (WSA) before embarking on the supply of water to consumers. The approval is dependent on evidence of the applicant's capabilities, in terms of funding and infrastructure, to supply sufficient water to consumers.[840]

The Act also established Water Boards whose responsibilities include entering written contracts when performing their primary and other activities and considering requests by water services institutions for the provision of water services within its service area. They may only refuse such requests if, for sound technical and financial reasons, it would not be viable to provide those water services. They must provide other services to water services institutions, consumers, and users such as obtaining permits, authorisation or licence from the relevant authority for abstracting water or discharging effluent. If the Water Board fails to provide water to consumers within its geographic area, it may request the Minister to constitute a Water Committee to do so.[841]

The Minister of Water Affairs and Forestry (the Minister) and the Provinces are mandated under the Act to supervise and monitor activities of all water and sanitation services providers to ensure compliance with all applicable national standards, norms, tariffs, applicable development plans and policy statements prescribed under the Act.[842]

839 ibid section 11(5).
840 Ibid section 22, 23.
841 ibid section 51 (3),(4).
842 Act 108 of 1997 (Notice 1662, G. 18522) section. 62.

Consequently, all water services institutions are required to submit to the Minister, information about their activities to enable him to assess their performance.[843]

The law has given authority to the Minister, in consultation with the relevant Province, to grant loans and give subsidies to a water services institution from funds appropriated by Parliament or contributed by individuals or non-governmental organisations or contributed by other governments and governmental institutions. In making a grant or loan or giving a subsidy, he must consider the requirements of equity and transparency, the purpose of the grant, loan, or subsidy, and the main objects of the Act and the applicant's financial position.[844]

Finally, the Act makes it an offence to use water unlawfully and intentionally or negligently, interfere with any water services' work, fail or refuse to give information, or give false or misleading information when required to do so as prescribed in the Act.[845] Offenders may be prosecuted and if found guilty, sentenced to a fine or imprisonment or both.

The National Water Act[846]

The Act generally provides for equitable distribution of water in a sustainable manner to all peoples in South Africa. Chapter 1 sets out the fundamental principles of sustainability and equity as central guiding principles in the protection, use, development, conservation, management, and control of water resources in South Africa. These guiding principles recognise the basic human needs of present and future generations. They include the need to protect water resources, to share water resources with other countries, the need to promote social and economic development through the use of water, and the need to establish suitable institutions to achieve the purpose of the Act.[847]

Chapter 2 mandates the Minister of Water Affairs and Forestry (the Minister) to establish a national water strategy after consultations with various stakeholders, including water

843 ibid
844 Ibid section 64.
845 ibid section 82.
846 National Water Act 1998 (Act 36).
847 See the Preamble to the National Water Act, 1998 (Act 35).

services institutions, service providers, and the general public.[848] The national water resource strategy provides the framework for the protection, use, development, conservation, management, and control of water resources in the country. It also provides the framework to manage water at regional or catchment levels and in water management areas. The national water resource strategy has to be formally reviewed periodically.[849]

Chapter 3 generally sets out plans and strategies that must be put in place by the Minister to offer comprehensive protection for water resources in South Africa. To carry out this objective effectively, the Minister is expected to classify all water resources and establish guidelines and procedures for determining different classes of water resources in the country.[850] The guidelines must also address issues of upstream activities, the quality of water and determination of reserves, instream flow, water level, the presence and concentration of particular substances in the water, the characteristics and quality of the water resource, and the instream and riparian habitat. Others include the characteristics and distribution of aquatic bio-data the regulation or prohibition of instream or activities which may affect the quantity of water in or quality of water resource.[851]

Chapter 4 deals with the use of water in general. It provides that the National Government has overall responsibility and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest. A person can only be entitled to water use if the use is permissible under the Act. An application for a water use license must specify the water use or uses for which it is issued, the property or area in respect of which it is issued, the person to whom it is issued, the conditions subject to which it is issued, and the licence period, which may not exceed forty years.

Section 41 of Act 36 provides for individuals or groups of people to object to the grant of water license if they have evidence that the proposed grant may have adverse effects on available water resources or the environment. In the case of *Werda Handel (PTY) Ltd*

848 National Water Act, (Act 35) 1998 section 5.
849 ibid section 6-11.
850 ibid section 12.
851 ibid section 13.

and Another v Director General: Department of Water and Sanitation and Another,[852] the appellants submitted an objection to the grant of a water use license to Tshedza Mining Resources (PTY), to the 1st Respondent Department under section 41 of the National Water Act of 1998. The 1st Respondent disregarded the application and granted the license to Tshedza Mining Resources (PTY) Ltd (2nd Respondent herein). The appellants therefore appealed against the decision to the Water Tribunal under section 148 of the National Water Act of 1998. The Respondents argued on a preliminary point of law that the Appellants, having filed their objection on 27th February 2015, while the tribunal slated 30th February for consideration and grant of the license to Tshedza (PTY) Ltd, contravened section 148(1)(f) of Act 36 and that they were out of time. The court ruled that the objection filed by the appellants was valid and that the respondents failed to attend to the issues raised in the document. The case reiterated the importance attached by the State to the water licensing regime to ensure the provision of safe water to the people of South Africa and to protect all water resources for posterity. Ghanaians could take advantage of the judgment in the *Werda Handel (PTY) Ltd* case and hold accountable by legal actions the WRC in issuing out water concessions without prior notice and in consultation with the locals as required under section 16 of the WRCA.

The review periods during which the licence may be considered must be at intervals of not more than five years.[853] The contravention of provisions of an issued license may attract remedial action from the Minister, including suspension or withdrawal of the licence.[854] In the case of *the Trustees for the Time Being of the Corneels Greyling Trust and Another* v *The Minister of Water and Sanitation and Another*[855] the applicants applied for suspension of the WUL of the 3rd Respondent (Kangra Coal (PTY) Ltd. They contended that its mining activities pose a risk to the quantity and quality of the water they rely on for farming. The court found that the mining activities of the 3rd Respondent were damaging to water resources and the environment in general. It therefore suspended its license under section 12 of the National Water Act of 1998.

852 Water Tribunal, Pretoria 2017 Case No. WT 25/0/015.
853 National Water Act, Act 35 of 1998 section 21-29.
854 ibid section 41-55
855 [2023] High Court of South Africa, Gauteng Division Johannesburg. Case No: 2023/069111.

Chapter 5 deals with the measures to finance the provision of water resource management services and financial and economic measures to support the implementation of strategies aimed at water resource protection, conservation of water, and the beneficial use of water. Water use charges must be used to fund the direct and related costs of water resource management, development, and use. It may also be used to achieve an equitable and efficient water supply.[856] In addition, they may also be used to ensure compliance with prescribed standards and water management practices according to the user-pays and polluter-pays principles. Non-payment of water use charges will attract penalties, including the possible restriction or suspension of water supply from a waterwork or of an authorisation to use water.[857]

To manage water sources effectively, the Act has made provisions for the establishment of Catchment Management Agencies to delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy established in terms of Chapter 2 of the Act. Where the necessary capacity does not exist to establish a catchment management agency, an advisory committee is appointed under Chapter 9 to develop the necessary capacity as a first step towards establishing an agency.[858]

The Act also provides for the establishment of government water works which may preserve and supply water to the public if the need arises.[859] Before constructing a waterwork, the Minister must conduct an environmental impact assessment on the proposed waterwork where the Minister considers it appropriate.[860] Provision is also made for the establishment of monitoring and assessment information systems by the Minister to facilitate the continued and coordinated monitoring of various aspects of water resources by collecting relevant information and data, through established procedures

856 National Water Act, Act 35 of 1998 section 56-60.
857 ibid
858 National Water Act, (n 812) sections 77-90, 99-101.
859 ibid sections 109.
860 ibid sections 110.

and mechanisms, from a variety of sources including organs of state, water management institutions and water users.[861]

Chapter 15 establishes the Water Tribunal to hear appeals against certain decisions made by a responsible authority, catchment management agency, or water management institutions. The Tribunal is an independent body, whose members are appointed by an independent selection process, that conducts hearings throughout the Republic. In the case of *Thungela Operation (PTY) Ltd* v *Chief Director, Water Use License Management: Department of Water and Sanitation,*[862] the appellants applied for water use license under (WUL) section 40 of the National Water Act, but the grant was refused by the respondents. They consequently appealed to the Water Tribunal to reverse the decision of the respondents. It was held that even though the appellants identified the potential impacts of the proposed coal mining project towards which they applied for the WUL, they did not sufficiently consider the impacts of the proposed mining project activities on the Aston Lake catchment area. In addition, they did not demonstrate the strategic importance of the proposed water use. The appeal was accordingly dismissed.

A person may appeal to a High Court against a decision of the Tribunal on a question of Law. This Chapter also provides for disputes to be resolved by mediation if so, directed by the Minister.[863] Ghana could adopt the South African Water Tribunal System to facilitate the adjudication of water-related cases. This would help a great deal in minimizing human rights abuses in respect of water and sanitation.

8.3 Legislation on Water and Sanitation in Ghana

The 1992 Constitution of Ghana[864]

Chapter Five of the Constitution provides for fundamental human rights and freedoms, such as the right to life, personal liberty, human dignity, protection from slavery and forced

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861 ibid section 147-155.

862 Water Tribunal of South Africa, Pretoria 2023 Appeal No: WT/04/22/GP.

863 ibid section 146-150.

864 Came into force on 8th May 1992 and Gazetted on 15th May 1992. It was amended in 1996 by The Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527).

labour, equality and freedom from discrimination, and protection of privacy of home and other people's property. It also provides for a fair trial, protection from deprivation of property, property rights of spouses, economic rights, educational rights, women's rights, cultural rights, children's rights, rights of disabled and rights of the sick.[865] Surprisingly, however, water and sanitation have not been included in the plethora of rights provided for under the Constitution. It could therefore be said that Ghana as a nation has not yet given safe drinking water and sanitation their rightful places as human rights as declared by the United Nations Human Rights Council.[866]

The Environmental Protection Agency Act[867]

The EPAA established the EPA and has given it the mandate to protect the environment in general. The Act[868] has given wide functions and powers to the Agency to safeguard or protect the environment for the well-being and health of the people of Ghana. For efficient implementation of the Act, the Environmental Impact Assessment Regulations[869] were promulgated. Regulation 3, Schedule 2 lists several undertakings concerning water and sanitation which require environmental impact assessment before the commencement of the construction of those facilities. The facilities include waste treatment and disposal plants, construction of an incineration plant, construction of wastewater and treatment plant, construction of secure landfill facility, construction of municipal solid waste and landfill facility, night soil treatment, and water supply facilities. In addition, water tapped for domestic use and water located within controlled or protected areas declared by the Agency is considered sensitive environmental areas. The law requires special attention be paid by the EPA in granting licenses or permits to tap the water resource concerned.[870] In the case of *C.F.C Construction Company v Accra City Council*,[871] The court held *inter alia,* that where a statute has authorized the performance

865 Constitution 1992 Articles 12-30.

866 See UN General Assembly (UNGA). *Human Right to Water and Sanitation*. Geneva; UNGA 2010. UN Document A/RES./64/292.

867 EPAA 1994 Act 490.

868 ibid

869 1999 (L.I. 1652).

870 1999 (L.I. 1652) Regulation 30 (2) Schedule 5.

871 [1964] GLR 496.

of a particular act or the use of land in a particular way, which act or use will cause nuisance inevitably, all reasonable precautions must be taken to prevent the nuisance from occurring. It further held that the person relying on statutory authority to commit a nuisance must prove that such authority is express or implied. In the instant case, the statute relied on by the Council expressly authorized the elimination of mosquitoes and the collection and burning of refuse; but not the filling up of quarries with refuse. Accordingly, the court held that the defendant Council acted unreasonably in choosing to dump refuse only a few yards from the plaintiffs' residential area without taking steps to remedy the bad situation.

Water Resources Commission Act[872]

The WRC was established under the WRCA, to regulate and manage utilization of the water resources in Ghana and to provide for other related matters.[873] The functions of the WRC include the regulation and management of the utilisation of water resources and the coordination of them. The WRC is required to propose comprehensive plans for the utilisation, conservation, development and improvement of water resources in the country. The WRC is also required to initiate, control and coordinate activities connected with the development and utilisation of water resources in Ghana. It is also expected to grant water rights and collect, collate, store, and disseminate data or information on water resources in Ghana.

The Commission is further required to ensure that water user agencies undertake scientific investigations, experiments, or research into water resources in Ghana; monitor and evaluate programmes for the operation and maintenance of water resources. The WRC has not been able to carry out this responsibility efficiently due to weak financial support from the government. Consequently, the water sector has not seen much improvement in water service delivery to the people of Ghana.[874]

872 1996 (Act 522).

873 See the Preamble to WRCA Act 552.

874 See Ghana WASH Sector Development Programme (GWASHSDP) 2021-2030, 97.

The *Local Governance Act*[875] imposes a responsibility on all the people of Ghana to ensure that streets and public and private surroundings are cleared of filth and garbage and that water bodies are kept clean and devoid of contamination and pollution. The Act thus seeks to protect improved sanitation and safe drinking water to promote the same. Hence, it constitutes an offence under the Act to engage in acts or omissions which create sanitation and water problems. Regrettably, provisions that border on water and sanitation are only aimed at promoting and protecting sanitation and water services that are not available or physically accessible or inadequate in many areas of the country Ghana.

In the case of the *Republic v Peter Asare*[876] officials from the Nkawkaw Municipal Environmental Health Unit (NMEHU) discovered a collection of wastewaters flowing from the premises of the respondent onto the open. On entering the premises, they realized that the wastewater was from a bathhouse for which no sewer was constructed to channel it to the appropriate direction. The respondent was therefore arrested and charged with creating nuisance to wit, contrary to section 2 of the Nkawkaw Municipal Assembly Bylaw of 2018, on sanitation which prohibits the creation of nuisance in the form of throwing refuse or leaving wastewater unattended in an open space. He was found guilty of the offence and sentenced to a fine of Ghc. 500.00 or in default serve a term of two months in prison. Additionally, he was ordered by the court to construct a soak-away pit to contain the wastewater within two months under the supervision of the NMEHU of the Assembly.

The *Criminal and Other Offences Act*[877] like all criminal offences, prescribes sanctions for identifiable offences about sanitation provided for under the Act. The Act, which dates back to 1960 was aimed at ensuring a clean and healthy environment for human habitation and thus offers protection for sanitation. It prohibits acts and omissions that may result in the creation of filth and garbage in human settlements within the country and has therefore addressed the issue of a clean and safe environment. One could, therefore, conclude that this piece of legislation offers partial protection for the human

875 LGA 2016 (Act 936) sections 13 (2) (a) and (b), 96, 104 (1) (c), and 181.
876 Magistrate Court, Nkawkaw Ghana (Court Case No. B.15/22/2023.
877 COA 1960 (Act 29) (as Amended)

rights to safe water and sanitation for the people of Ghana and has not met international law requirements for protecting the twin rights.

The Public Health Act[878] prohibits the sale of food close to filth, toilets, open drains, and any other area considered unclean for that purpose. The rationale behind this provision is to ensure proper sanitation for good health and human dignity for food vendors, sellers, and the general public. Like the previous legislation, the provision on sanitation has covered one of the requirements of the normative content on the right to sanitation, namely, sanitation facilities and services must be safe and clean.[879] It is, therefore, not capable of offering holistic protection for the human rights to water and sanitation to the people of Ghana. The legislation could be expanded to address the issues of the use of clean water for food preparation, water for hand washing, cleaning of cooking utensils, and the general hygiene of the environment for food preparation and sale.

In the case of the *Republic v Abubakar Yahaya*[880] the respondent, the landlord of a residential house, and the owner of a public septic tank latrine and a public bathhouse, all at Hohoe and about 10 meters from the residential house. In March 2022, a team of Environmental Health and Sanitation officers within the Hohoe Municipality detected spillage of effluent into the environment and indiscriminate dumping of household refuse into the growth of weeds behind the respondent's public toilet. After several warnings to the respondent to abate the nuisance and the failure of the respondent to comply with the directive, he was charged with the offence of allowing spillage of effluent from the septic tank into the environment contrary to section 13(10) (i) of the Hohoe Municipal Assembly bylaws, and indiscriminate dumping of refuse behind public latrine contrary to section 56(a) of Public Health Act, 2012 (Act 851). The trial court pronounced him guilty on both counts and sentenced him to a fine of 100 penalty units on the first count or in default a term of 6 months in prison and 150 penalty units on the second count or I year in prison.

878 PHA 2012 (Act 851) section 52.

879 UN CESCR 'General Comment 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 (UN CESCR 'General Comment 15').

880 District Court, Hohoe (Court Case No. B15/11/2023.

The Community Water and Sanitation Agency Act[881] established the Community Water and Sanitation Agency to facilitate the provision of safe water and related sanitation services to rural communities in the country. The functions of the Agency were *inter alia,* to support the District Assemblies to promote the sustainability of water supply and sanitation services in small towns and villages. It was also to enable the Assemblies to involve the rural communities to involve women especially, in the design, planning, construction and community management of water and sanitation projects as required by international law. The legislation thus fulfills the human rights requirement on States to respect, protect and fulfill the rights to water and sanitation.

8.4 Comparative Analysis of Water and Sanitation Legislation of UK, South Africa and Ghana

The three nations under review have relevant legislation capable of addressing their water, sanitation, and hygiene issues.

South Africa has provided for water under its Constitution of 1996 as a fundamental human right. It called on the State to establish financial and strategic measures, such as planning to provide water for all progressively.[882] Ghana on the other hand has no direct provision on water or sanitation under the 1992 Constitution. Article 36(9) mandates the State to take appropriate measures to protect and safeguard the national environment for posterity. This provision, though has no direct reference to water and sanitation, could imply that the human environment is not complete without safe water and improved sanitation.[883] The UK has no written constitution and hence has no provision on water and sanitation.

The UK has entire legislation, namely the Water Act of 2014, governing water supply, administration, monitoring, and evaluation. It vests all water bodies in the Crown to be administered by the Secretary of State. It is made up of 6 Parts, 12 Schedules, and 243 pages, signifying the detailed and comprehensive nature of the legislation. It focuses on

881 CWSAA 1998 (Act 564).

882 The Constitution of South Africa, 1996 Article 27.

883 Additional Protocol to the Inter-American Convention on Human Rights (APICHR), Articles 11 and 12.

the regulation of the water industry in general, regulation of relevant undertakers of water and sewerage, application and grant of water supply and sewerage licenses, and interim duties for water supply and sewerage services. It established a robust monitoring system by which water and sanitation undertakers are obliged to provide information on their activities and submit annual reports to the Secretary of State through Ofwat.

The National Water Act of South Africa[884], like the Water Act of the UK, vests all water resources in the State and is to be administered by the Minister of Water Affairs and Forestry (the Minister) in the case of South Africa and the Secretary of State in respect of the UK. Similarly, the WRCA of Ghana also vests all water resources in the State to be managed by the WRC for and on behalf of the State.[885]

The 12 - chaptered and 61-page National Water Act of South Africa sets out in considerable detail regulations on water service providers, water service authorities, and their responsibility of ensuring that all consumers and potential consumers have access to sufficient water. The Act mandates them to draw plans for water services development and submit them to the government for adoption and implementation. It also sets out a robust licensing regime whereby water services are required to obtain appropriate licenses for water provision. There are also provisions for monitoring, and evaluation of activities of water services providers to attain sustainable supply of water to the people of South Africa.

Like the UK and South Africa, the WRCA of 1996 of Ghana governs water resources in the country. It vests all water resources in the country in the State to be managed by the WRC on its behalf. The WRC is also required to propose comprehensive plans for the utilization, conservation, development, and improvement of water resources in the country. In addition, the WRC is to initiate, control, and coordinate activities connected with the development and utilization of water resources in Ghana. It is also expected to

884 1998 Act 36.

885 WRCA 1996 Act 522 section 2.

grant water rights, and collect, collate, store, and disseminate data or information, and see to the enforcement of laws thereto in the country.

Unlike the UK and South Africa with extensive details of provisions in their respective legislation, Ghana's legislation has only 12 pages. The UK Water Resources Act has 341 pages while the National Water Act of South Africa contains 101 pages. One could conclude therefore that the WRCA has not provided details on water supply, management, or administration in general. This could be one of the reasons Ghana has challenges with water supply and administration. In the case of the UK, water administration is carried out by several bodies, such as the Secretary of State, the WSRA, Drainage Boards, the Welsh Minister (Wales), the DWI, the NRBW, and the CCW. In Ghana, the WRC is the sole body mandated under the WRCA to administer water resources. Similarly, under the Water Services Act of South Africa, several bodies are responsible for water management and administration including, the Minister for Water Services and Forestry, the Water Services Authorities, Water Boards, and Water Services Committees. These chains of management command are likely to enhance the monitoring, evaluation, and enforcement of water laws in the two jurisdictions.

It would be of great relief, if the Parliament of Ghana amends the existing WRCA to provide for a robust water management system, by creating many more bodies such as the Water Services Regulatory Authority, and Water Services Committees to enhance water service delivery in the country.

While Ghana and the UK have specific legislation on water resources, South Africa has incorporated water resource issues under Chapters 2 and 3 of the National Water Act of 1998. The chapters already referred to provide water resources management strategies for efficient management of water resources in the country. The national water resource strategy provides the framework for the protection, use, development, conservation, management, and control of water in the country as a whole. It also provides the framework within which water will be managed at the regional or catchment level, in defined water management areas. The UK Water Resources Act is elaborate covering a wide range of issues on water resources management. For effective management of

water resources, the Act established the National Rivers Authority, Advisory Committees, and Flood Defence Committees. It imposes restrictions on the abstraction of water and provides for a water abstraction license. It imposes limitations on water use during drought and classifies national waters in terms of quality. It also imposes charges on drainage and irrigation.[886] The WRCA of Ghana on the other hand addresses matters concerning licenses for water use, pollution of water bodies, declaration of controlled areas, and even so with very little or no details.

One can therefore conclude on this score as well that the WRCA of Ghana is not robust for the protection of water resources in the country. It is recommended that the Act is amended to introduce much more details into the provisions on licensing, pollution, and enforcement regulations. As in the case of the UK and South Africa, provisions concerning water resources management strategies at the national, regional, and local levels could be introduced into the Act. In addition, provisions on drainage and irrigation may be addressed in the amended Act to offer efficient protection for water resources in the country.

Thirdly, the UK has the Water Industry Act which generally addresses water supply and sewerage services. It governs, regulates, and controls water and sewerage undertakers and provides many details in each of these matters. It has developed comprehensive reporting, evaluation, and enforcement mechanisms to enable the State to provide safe water and sanitation for all within its jurisdiction. South Africa has no separate legislation on its water industry. It has taken care of it under Chapter 4 of the National Water Act which provides details on water use licenses and related matters such as water quality, safety, and tariffs. Ghana on the other hand has no legislation on its water industry to make room for its quality, availability, and accessibility. It is recommended that specific legislation on the water industry be made in Ghana to address water and sanitation issues holistically in the country.

The EPAA of Ghana provides for the protection and conservation of water and the provision of sanitation facilities. Regulation 3, Schedule 2 of the Environmental Impact

886 Water Resources Act 1991 section 137.

Assessment Regulations[887] lists several undertakings, concerning water and sanitation which require environmental impact assessment before the commencement of the construction of those facilities. The facilities include waste treatment and disposal plants, the construction of an incineration plant, the construction of a wastewater treatment plant, and the construction of a secure landfill facility. Others are the construction of municipal solid waste and landfill facilities, night soil treatment, and water supply facilities. In addition, water tapped for domestic use and those located within controlled and or protected areas declared by the Agency are considered sensitive environmental areas and the law requires special attention be paid by the EPA in granting licenses or permits to tap the water resource concerned.[888] The Environment Act of the UK[889] protects the natural environment for the well-being of people and the sustenance of natural resources, including water and biodiversity.[890] It also provides for waste management, waste disposal, and related matters.[891] Part 5 of the Act governs water resources management in general. The Minister[892] in charge of water resources is directly responsible for regulating and the management of water resources. The Minister may by regulations make provisions about the procedure for preparing and publishing a water resources management plan, a drought plan, and a joint proposal, including any revised plans or proposals.

The National Environmental Management Act[893] on the other hand, does not have direct provision for water and sanitation. It provides generally on issues about the protection of the natural environment. To this end, Ghana's law on water and sanitation is in the right direction. However, the EPA must be financially resourced to discharge her responsibilities concerning water and sanitation to the people of Ghana.

887 1999 (L.I. 1652).

888 1999 (L.I. 1652) Regulation 30(2) Schedule 5.

889 Environment Act, 2021 (Chapter 30).

890 ibid See the Preamble.

891 Environmental Act 2021 section 1 (d).

892 ibid s. 78 (7) (8). In this section "the Minister" means— (a) the Secretary of State, in relation to water undertakers whose areas are wholly or mainly in England, and (b) the Welsh Ministers, in relation to water undertakers whose areas are wholly or mainly in Wales.

893 Act 107 of 1998.

Ghana has other legislation that provides for water and sanitation. The CWSAA[894] established the Community Water and Sanitation Agency to facilitate the provision of safe water and related sanitation services to rural communities in the country. The functions of the Agency were *inter alia,* to support the District Assemblies to promote the sustainability of water supply and sanitation services in small towns and villages. The Public Health Act[895] prohibits the sale of food close to filth, toilets, open drains, and any other area considered unclean for that purpose. The rationale behind this provision is to ensure proper sanitation for good health and human dignity for food vendors, sellers, and the general public. The Criminal and Other Offences Act[896] like all criminal offenses, prescribes sanctions for identifiable offences concerning sanitation provided for under the Act. The Act, which dates back to 1960, was aimed at ensuring a clean and healthy environment for human habitation and thus offers protection for sanitation. The Local Governance Act[897] imposes a responsibility on all the people of Ghana to ensure that streets and public and private surroundings are cleared of filth and garbage and that water bodies are kept clean and devoid of contamination and pollution. The Act thus seeks to protect improved sanitation and safe drinking water as well as promote the same. Hence, it constitutes an offence under the Act to engage in acts or omissions which create sanitation and water problems.

While a few sections of these laws provide for the protection and promotion of the rights to water and sanitation it would be of great help if they are consolidated in a single legislation like the South Africa National Water Act of 1998 or the UK Water Act of 2014. This would make room for much more details provisions for the promotion and protection of the human right to water and sanitation for the well-being and dignity of the people of Ghana.

894 CWSAA 1998 (Act 564).
895 PHA2012 (Act 851) section 52.
896 COA 1960 (Act 29) (as Amended).
897 LGA 2016 (Act 936) S. 13 (2) (a) and (b), 96, 104 (1) (c), and 181.

Conclusion

The three national laws on water and sanitation under review have provisions that are capable of offering protection for water and sanitation within their various jurisdictions. The UK has four major laws on water and sanitation, namely, the Water Act of 2014, the Water Industry Act of 1991, the Water Resources Act of 1991, and the Environment Act of 2021. Each of these laws has detailed provisions on water and sanitation in general. The Water Act of 2014 makes general provisions about the water industry, the procedure and qualification for grant of licenses to abstract water, and the modification of water abstraction licences. It also provides for the main river maps of the UK, records of waterworks, regulations of the water environment, the provision of flood insurance for household premises, Internal Drainage Boards, Regional Flood and Coastal Committees (RFCC), and for connected purposes. The Environment Act of 2021 protects the natural environment for the well-being of people and the sustenance of natural resources, including water and biodiversity. It also provides waste management, waste disposal, and related matters. The Water Resources Act of 1991 regulates water resources in the UK and established the National Rivers Authority (NRA) as the body responsible for water resources in England, and Wales. The NRA has two main committees, the Advisory Committee and the Flood Defence Committee, that assist in the discharge of its responsibilities. The Water Industry Act of 1991 regulates service provision concerning water and sanitation in general. It established the Water Services Regulatory Authority (WSRA or Ofwat). Ofwat is responsible for carrying out the functions conferred on or transferred to it by the Act, specifically, to supervise water services delivery. The WSRA acts on behalf of the Crown. Water and sewerage undertakers are appointed by the Secretary of State, to carry out water supply and sewerage services in the UK. The law requires that such undertakers must be limited liability companies which must not be water or sewerage licensees.[898] They are assigned particular areas of operation and are governed by provisions of the Water Industry Act 1991 and other subordinate legislation. Undertakers of both water and sewerage are expected under the law to obtain licenses

[898] ibid section 6.

for their operations and must discharge their responsibilities by law.[899] Failure to comply with law, the undertaker is served with a provisional enforcement order and given three months to remedy the situation.

The Republic of South Africa has three laws that govern water and sanitation. Comparatively, however, they are not as detailed as those of the UK. The Constitution of South Africa provides under Article 27(1), (b) that everyone has the right of access to sufficient water and that the State must take reasonable steps to realize this goal progressively. The Water Services Act provides for the rights of access to basic water supply and basic sanitation, the setting of national standards and norms, standards for tariffs, and water services development plans. It also provides a regulatory framework for water services institutions, water services intermediaries, and the establishment of water boards, water services committees, and their powers and duties. The Act generally provides for equitable distribution of water sustainably to all peoples in South Africa. It sets out the fundamental principles of sustainability and equity as central guiding principles in the protection, use, development, conservation, management, and control of water resources in South Africa. In addition, it provides for monitoring of water services and intervention by the Minister or by the relevant Province and financial assistance to water services institutions.[900]

The National Water Act of 1998 also addresses a wide range of issues on the protection of water resources, provision of water to citizens, licensing of water service providers, monitoring, law enforcement, and evaluation. The Act mandates the Minister of Water Affairs and Forestry (the Minister) to establish a national water strategy after consultations with various stakeholders, including water services institutions, service providers, and the general public. The national water resource strategy provides the framework for the protection, use, development, conservation, management, and control of water resources in the country. It also provides the framework to manage water at regional or catchment levels and in water management areas. To manage water sources effectively, the Act has made provisions for the establishment of Catchment Management Agencies to delegate

899 ibid section 13-17.

900 ibid section 2.

water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy established in terms of Chapter 2 of the Act. Where the necessary capacity does not exist to establish a Catchment Management Agency, an Advisory Committee is appointed under Chapter 9 to develop the necessary capacity as a first step towards establishing an agency.

Ghana has two laws that address water and sanitation solely – the WRCA of 1996 and the CWSAA of 1998, Act 564. Even under the provisions of these Acts, emphasis is placed on the duties and responsibilities of the agencies for which the laws were made. While the WRCA has 12 pages, the CWSAA has only 9 pages. The WRCA mandates the WRC to protect water resources in the country for sustainable use. It is also responsible for granting licences to those desirous of using water resources in the country. The CWSAA on the other hand provides for the provision of water and sanitation services to rural communities within the country. One may conclude therefore that both are woefully inadequate to address efficiently the water and sanitation needs of the country. Other legislation on water and sanitation is provided for in a section or two under the various Acts of Parliament such as the Criminal and Other Offences Act of 1960, the EPAA of 1994, the PHA of 2012, and the LGA of 2016. These provisions are not comprehensive and detailed enough to offer effective protection for the human rights to water and sanitation in the country as they stand at the moment.

Comparatively, the three nations under review have relevant legislation capable of addressing their water, sanitation, and hygiene issues. South Africa has provided for water under its Constitution of 1996 as a fundamental human right. It called on the State to establish financial and strategic measures, such as planning to provide water for all progressively. Ghana on the other hand has no direct provision on water or sanitation under the 1992 Constitution. Article 36(9) mandates the State to take appropriate measures to protect and safeguard the national environment for posterity. This provision, though has no direct reference to water and sanitation, could imply that the human environment is not complete without safe water and improved sanitation.

The UK has entire legislation, namely the Water Act of 2014, governing water supply, administration, monitoring, and evaluation. It vests all water bodies in the Crown to be administered by the Secretary of State. Like the UK and South Africa, the WRCA of 1996 of Ghana governs water resources in the country. It vests all water resources in the country in the State to be managed by the WRC on its behalf. The WRC is also required to propose comprehensive plans for the utilization, conservation, development, and improvement of water resources in the country. In addition, the WRC is to initiate, control, and coordinate activities connected with the development and utilization of water resources in Ghana. It is also expected to grant water rights, and collect, collate, store, and disseminate data or information, and see to the enforcement of laws thereto in the country.

Unlike the UK and South Africa with extensive details of the provisions, Ghana's legislation has only 12 pages. The UK Water Resources Act has 341 pages while the National Water Act of South Africa contains 101 pages. One could conclude therefore that the WRCA has not provided enough details on water supply, management, or administration in general. This could be one of the reasons Ghana has challenges with water supply and administration. In the case of the UK, water administration is carried out by several bodies, such as the Secretary of State, the WSRA, Drainage Boards, the Welsh Minister (Wales), the DWI, the NRBW, CCW, in Ghana, the WRC is the sole body mandated under the WRCA to administer water resources. Similarly, under the Water Services Act of South Africa, several bodies are responsible for water management and administration including, the Minister for Water Services and Forestry, the Water Services Authorities, Water Boards, and Water Services Committees. These chains of management command are likely to enhance the monitoring, evaluation, and enforcement of water laws in the two jurisdictions.

The UK Water Resources Act is elaborate covering a wide range of issues on water resources management. For effective management of water resources, the Act established the National Rivers Authority, Advisory Committees, and Flood Defence Committees. It imposes restrictions on the abstraction of water and provides for a water abstraction license. South Africa also has elaborate provisions on water resources

administration under Chapters 3 and 4 of the National Water Act. The WRCA of Ghana on the other hand addresses matters concerning licenses for water use, pollution of water bodies, declaration of controlled areas, and even with very little or no details.

One can therefore conclude on this score as well that the WRCA of Ghana is not robust enough for the protection of water resources in the country. It is recommended that the Act is amended to introduce much more detail into the provisions on licensing, pollution, and enforcement regulations. As in the case of the UK and South Africa, provisions concerning water resources management strategies at the national, regional, and local levels could be introduced to the Act. In addition, provisions on drainage and irrigation may be addressed in the amended Act to offer efficient protection for water resources in the country.

The research recommends legislative reforms in the water and sanitation sectors of Ghana to address the inadequacies in the sectors. The reforms should consolidate the piecemeal provisions on water and sanitation under the various Acts of Parliament in one or two legislation. They could be titled; the National Water and 'Sanitation Act.' There could be an additional legislation titled; 'Water Resources Act' which would address solely issues of protection and preservation of water resources in the country. With these legislative reforms in place, it is believed that Ghana's water and sanitation situation would improve considerably.

CHAPTER 9

9.0 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

9.1 Summary and Conclusions

Chapter 1 gives a general introduction to the research. It identifies that Sanitation and water are recognized human rights globally that are essential for the growth, development, and survival of humans, animals, and plants. To fulfill the rights to improved sanitation and safe water as required by international human rights law, a duty has been imposed on States to provide safe, affordable, accessible, and acceptable water and improved sanitation to their citizens in a progressive manner. Ghana has several laws, such as the WRCA, 1996 (Act 522), The EPAA, 1994 (Act 490), the PHA, 2012 (Act 851, the COA, 1960 (Act 29 and the LGA, 2016 (Act 936) and the CWSAA of 1998 capable of safeguarding and protecting the rights to water and sanitation for the citizenry. However, provision and access, to safe water and improved sanitation is a great challenge in Ghana. Many factors have been identified by research as responsible for this state of affairs. They include lack of enforcement of sanitation laws; population growth; inadequate financing of sanitation policies, progammes and strategies; rural-urban migration which exerts pressure on the already inadequate facilities; poor sanitation infrastructure; lack of appropriate sanitation technology, and lack of robust legislation among others. Several attempts have been made by researchers and scholars to find a solution to the sanitation and water problems of Ghana, including calling on the government to implement the existing sanitation policies, to provide adequate budgetary allocation to the water and sanitation sector, and to enforce sanitation laws of the country. These initial efforts yielded little or no results in certain instances as sanitation and water situation in the country continue to deteriorate annually. This research therefore attempted to critically examine the sanitation and water laws of Ghana and to determine their effectiveness or otherwise in tackling the sanitation and water problems of the country.

Chapter Two examines the origin and development of the human rights to water and sanitation globally. Several international instruments, including the ICESR and its general

comment No. 15, the ICCPR, CEDAW, CRC, ECHR, and the ACHPR have all emphasized the importance of clean and safe water and improved sanitation as essential for growth, development, good health, and human dignity. Even though these conventions did not specifically pronounce water and sanitation as distinct human rights, they set the pace for the recognition of the same in 2010 under UNGA Resolution 64/292. UNGA Resolution 64/292 stresses that State parties must fulfill, respect, and protect the human rights to water and sanitation at all material times and purposes. The UN General Assembly declared the period from 2005 to 2015 the International Decade for Action.[901] The primary goal of the International Decade for Action "Water for Life" was, *inter alia*, to promote efforts to fulfill international commitments to ensure the provision of safe water for at least half of the world's population by 2015. The Resolution called on all nations to focus on water-related issues at all levels and on the implementation of water-related projects and programmes for the attainment of the objectives of the Decade. This was followed in 2015 by the Sustainable Development Goals (SDGs). Goal 6 of the SDGs has tasked all nations on the globe to provide clean water and improved sanitation for all by 2030. As a member of the UN, Ghana has embraced the SDGs in general and in particular, in reference to this study Goal 6 on water and sanitation. In line with the objective of the UN to ensure that safe and affordable water and improved sanitation are available and accessible to all by 2030, Ghana has set targets of providing water to all in Ghana by 2025 and sanitation for all by 2030. However, looking at the water and sanitation situation of the country currently, achieving the set targets would be a difficult task. There is an urgent need for reforms, legislative, financial and administrative, to turn around the nation's water and sanitation situation.

Chapter Three explores the water and sanitation situation in Ghana. International human rights law has emphasized the involvement of States in the provision of water and sanitation for all. It is the responsibility of the States to fulfill, protect, and respect human rights to safer water and improved sanitation. The water and sanitation situation in Ghana is in a deplorable state. Availability, accessibility, affordability, acceptability, and cleanliness or safety of water and sanitation are challenges in the country. Many towns

[901] See General Assembly Res. 58/217 (Dec. 23, 2003 'Water for Life.'

and cities in Ghana have no potable water and proper sanitation. The GWCL is a state institution responsible for the supply of water to urban areas of the country which is unable to meet the demands of the populace. Even where its supply facilities are available, the water supply is erratic and inaccessible to many, especially the poor. In places where water is available and accessible, affordability becomes an issue, owing to high water tariffs which do not consider the poor and the vulnerable who cannot settle the bills. Consequently, they resort to use water from wells, streams, sachet water, and tanker services which may not be safe for consumption and thereby lead to diseases such as cholera and typhoid.

Ghana's sanitation situation is worse than that of water. There are many households, schools, workplaces, hospitals, markets and many more public places without sanitation facilities. Even where they exist, many of them lack maintenance and are therefore in a deplorable state. This demotivates people to use them and resort to open defecation instead. Several factors account for Ghana's worrying water and sanitation situation. Notable among them is improper management of both liquid and solid waste in the country, especially in the big towns and cities. Wastes are not collected on schedule and are sometimes not disposed of in the right place and in the proper manner. This leads to the outbreak of communicable diseases. Provision of water and sanitation are capital-intensive projects, yet funds allocated to these sectors are not adequate at times. The issue of enforcement of water and sanitation laws of Ghana is another challenge, however. The laws are not strictly enforced by the various institutions such as the MMDAs, the Ghana Police Service, the EPA, the WRC and the Minerals Commission as required of them. This may be due to corruption and lack of commitment on the part of the institutions concerned. The reality of rural-urban migration is another setback. The cities become choked due to rural-urban migration making demand of water and sanitation very high. The GWC, which is the sole government agency for the supply of water to the urban population in particular is overwhelmed by the situation making it very difficult for the urban folks to have access to potable water.

In order to surmount the challenges associated with the delivery of safe water and sanitation to the people of Ghana, the State needs to commit more of its resources to the

provision of water and sanitation to the people of Ghana progressively, as required under international law. It must treat water and sanitation as human rights requisite for good health and human dignity by strengthening their legislation. Institutions that have been mandated to provide water and sanitation and manage same such as the GWCL, MSWR, CWSA, WRC and the MMDAs must be well resourced both financially and human resource wise so as to fulfil the rights to water and sanitation to the people of Ghana.

Chapter Four examines the impacts of poor water and sanitation on the fundamental rights of health, life, food and dignity of Ghanaians in general. Water and sanitation are fundamental human rights because they are essential for human development, growth and dignity. They are equally important for the full realization of other rights, including, the right to housing, health, food, education, work and life. Ghana's water and sanitation situation is not in good shape and has affected the full realization of fundamental human rights of health, dignity, housing, education, food and life.

The negative impact on health is evident in the annual cholera outbreaks, most especially in the urban and densely populated areas within the country. Other health challenges that are the consequences of the use of unsafe water and poor sanitation include typhoid, diarrhea, and skin infections. Some of these health challenges sometimes result in fatalities. The right to human dignity of Ghanaians is affected by the use of unsafe water and poor sanitation because it deprives them of their worth as human beings. Animals and humans sharing the same water source degrades the worth of people and their dignity. The right to housing is fulfilled when it has basic sanitation facilities and safe water for consumption. This right is affected in Ghana where most households do not have basic toilet facilities and safe water for domestic use. Many educational and other institutions of work in Ghana lack basic sanitation and water for personal hygiene. Even where they are available, they are inaccessible at times due to lack of maintenance. The situation compels those affected to resort to open defecation when there is no public sanitation facility close by. Lack of basic sanitation and safe water affects the right to food. Food safety requires that food is prepared in a hygienic environment and that safe water is used in preparing food. Consumption of unsafe food leads to health complications and may in extreme situations lead to fatality.

In sum, Ghana's water and sanitation situation constitutes a violation of fundamental human rights to health, life, food, education, work, housing and human dignity.[902] The situation is alarming as it appears the measures so far put in place by the governments of Ghana, such as the sanitation policies and legislation, have not been able to address the challenges satisfactorily.[903] It also appears that the governments of Ghana have not tackled the issue of water and sanitation from a human rights perspective.[904] As it stands, for Ghana to meet the requirements of Sustainable Development Goal Six, by ensuring sustainable water and sanitation for all by 2030, many more interventions must be brought on board to transform the current state of affairs into a proper one.

Chapter Five discusses the effectiveness or otherwise of the water and sanitation legislation of Ghana to offer adequate protection for the dignity and well-being of the citizens. A law is said to be effective when it addresses or can fulfil or is capable of serving the purpose for which it was made. An effective law on water and sanitation must reflect and address the human rights principles of non-discrimination, access to information, participation, accountability and sustainability. Effective legislation for the protection of the rights to water and sanitation must equally reflect the normative content of the human rights to water and sanitation. Water and sanitation must be available in quantities sufficient for daily use. It must also be accessible physically, such that a consumer may not take 30 minutes to get to the water supply point. People who need water must be able to pay for it. Water bills must not be too high to prevent people from accessing it. The water and sanitation facilities and the water itself must be acceptable to consumers and must be safe for consumption.

A critical analysis of the water and sanitation legislation of Ghana reveals that its water and sanitation laws, though they have inadequacies, generally reflect and address international legal requirements of an effective law for the protection of water and sanitation rights. The laws do not adequately provide for the supply of safe water and

902 Sylvester Agbezuge (2019) 'The State of Ghana's Environmental Sanitation: A Violation of Human Right?' A (MA Dissertation School of Law, University of Ghana, Legon 2019).

903 ibid

904 ibid

improved sanitation for Ghanaian. The MSWR must put in place an efficient monitoring mechanism to ensure that the State agencies tasked to supply water to the public such as the GWC and the CWSA, deliver on their mandate. The MLGRD must also ensure that the MMDAs live up to expectations in terms of providing improved sanitation facilities to both urban and rural dwellers, schools and hospitals. The needed funds must be sought by budgetary allocations or donor agencies to provide safe water and improved sanitation to all Ghanaians in fulfilment of their human rights. There must be legislative reforms to address the problem.

Chapter Six examines the enforcement of water and sanitation laws in Ghana. Laws are made generally for the public good and development. Laws made for a particular purpose must be implemented by the body mandated to do so, and citizens must equally obey them. Law enforcement connotes a system by which society ensures compliance with laws. In fulfilment of the human rights to water and sanitation, States are the duty bearers who are responsible for the provision of safe water and improved sanitation to the citizenry. In fulfilment of this objective, States make laws to regulate the supply of safe water and improved sanitation in their respective countries. Several legislation govern water supply and sanitation service delivery in Ghana, they include; the EPAA 1994 (Act 490), the WRCA, 1996 (Act 522), the Local Governance Act, 2016 (Act 936), the Criminal Offences Act, 1960 (Act 29), the Public Health Act, 2012 (Act 851) and the Water Use Regulations, L.I.1692 of 2001. Enforcement of water and sanitation-related legislation is expected to improve service delivery in the country. However, despite the existence of this legislation, Ghana grapples with the supply of safe water in adequate quantities and the provision of improved and safe sanitation to the people of Ghana.

Enforcement of sanitation legislation generally goes in two directions. The duty bearer, the State, for that matter, should be held accountable for their actions and inactions in terms of water and sanitation services delivery. Human rights law entails the concept of people as rights holders and governments as primary duty bearers of not only the rights to water and sanitation but of all human rights. Thus, in the event that they fail in the discharge of this duty, the right holders, the citizens, are entitled to demand from them accountability, usually by legal action in the courts of law. Another leg of enforcement of

water and sanitation laws concerns rights holders to water and sanitation. Article 41(k) of the 1992 Constitution of Ghana calls on all citizens of Ghana to safeguard the environment, including water and sanitation for the present and future generations. It is, therefore, the responsibility of the government to ensure that this constitutional provision is adhered to by the people of Ghana. Thus, the State has assigned the responsibility of enforcement of water legislation to the WRC and the EPA, and enforcement of sanitation-related legislation to the EHOs of the MMDAs and the Ghana Police Survive in general.

In sum, Ghanaians, as rights holders to safe water and sanitation could hold the State accountable for the current poor state of the delivery of the human rights to safe water and improved sanitation in Ghana. They could do so by instituting legal action against the State and its agencies, such as the WRC, EPA, MMDAs, and the MSWR. This would compel them to protect, respect, and fulfill the rights to safe water and sanitation as required under international human rights law. They may also do so by ADR where civil society organizations, faith-based organizations, communities, and other stakeholders in the water and sanitation sectors would engage the government on issues pertaining to improvement in water and sanitation services delivery. It is believed that with the proper mechanisms of funding and implementation of the various legal regimes, Ghana's water and sanitation situation would be realised progressively.

Chapter Seven looks at prospects and existing challenges within the water and sanitation sectors. Trekking with empty gallons from one place to the in search of potable water is a common sight to behold in Ghana, an indication that the nation has a potable water deficit. Open defecation is also prevalent in almost all parts of the country, and evidence of sanitation problems in the country. Several factors account for this state of affairs in the country. notable among them are the challenges associated with the enforcement of the nation's water and sanitation laws, inadequate budgetary allocation to the water and sanitation sectors of the economy, high water and sanitation provision charges, inefficient implementation of water and sanitation laws by State agencies tasked to do so, corruption and lack of commitment of officers tasked to implement water and sanitation policies and legislation.

The issue of inadequate allocation of an annual budget to the water and sanitation sectors could be resolved by the State committing more resources to the sector. High water and sanitation tariffs hinder people from accessing such facilities. It costs so much money to be connected to the GWC water supply systems in the country and many people are unable to afford it. Household sanitation infrastructure is also high. The State must put in place measures by way of water subsidies to help the vulnerable poor. The lifeline water supply system for the poor is a step in the right direction but should be extended to all communities in the country.

The issues of physical accessibility and affordability of water supply and sanitation services is another hurdle. GWC is one of the major stakeholders in the water industry. However, its presence is hardly felt in many parts of Ghana. Its services in terms of water supply are almost limited to the urban areas within the country. To surmount this challenge, the State would have to budget and look for funds to expand the GWC to enable it to extend its services to as many parts of Ghana as possible. The current water supply machinery, most of which is either too old or performs below the required capacity, must be replaced or properly maintained to supply water to the people of Ghana.

Though Ghana's water and sanitation situation is a great challenge, many State interventions have been put in place to address them. The establishment of the MSWR in 2016 is a step in the right direction. The Ministry so far has been at the forefront in the fight for the provision of safe water and improved sanitation for the people of Ghana. Its efforts will, however, yield the desired if the State commits more funds to the sector and also ensure that the funds are used appropriately. The policy of subsidizing the construction of a modern toilet for each household needs to be sustained by releasing funds for its implementation across the country instead of limiting it to urban areas such as Accra, Tema and Kumasi.

The above interventions by the government of Ghana, and other stakeholders have brought some improvements to the water and sanitation sectors of the country. Much could be achieved by these policy interventions, by putting in place clear policy goals and targets. For instance, by putting timelines against the provision of water and sanitation to

all public educational institutions by the end of a particular year and accompanying it with a realistic budget. The government of Ghana must exhibit much commitment in these directions to offer holistic protection of the rights to water and sanitation services to the people of Ghana as required under international human rights law.

Chapter Eight is a comparative study of the water and sanitation laws of the UK, South Africa, and Ghana to draw lessons concerning the improvement of the nation's water and sanitation services delivery. The three national laws on water and sanitation under review have provisions that are capable of offering protection for water and sanitation within their various jurisdictions. The UK has four major laws on water and sanitation, namely, the Water Act of 2014, which provides for water services delivery, administration, licencing, monitoring and evaluation. Water Industry Act of 1991 provides for industry players and regulates the sector. The Water Resources Act of 1991 provides for the protection and preservation of water resources vested in the State. The Environment Act of 2021 protects the environment for the well-being and good health of all. Each of these laws has detailed provisions on water and sanitation in general.

The Republic of South Africa has three major laws that govern water and sanitation. Comparatively, however, they are not as detailed as those of the UK. The Constitution of South Africa provides under Article 27(1), (b) that, everyone has the right to access sufficient water and that the State must take reasonable steps to realise this goal progressively. The Water Services Act provides for the rights of access to basic water supply and basic sanitation, the setting of national standards and norms, standards for tariffs, and water services development plans. The National Water Act of 1998 also addresses a wide range of issues on the protection of water resources, provision of water to citizens, licensing of water services providers, monitoring, law enforcement and evaluation.

Ghana has two major laws that solely address water and sanitation – the WRCA of 1996 and the CWSAA of 1998 Act 564. Even under the provisions of these Acts, emphasis is placed on the duties and responsibilities of the agencies for which the laws were made. While the WRCA has 12 pages, the CWSAA has only 9 pages. One may conclude that

both are woefully inadequate in detail to address the water and sanitation needs of the country. Other legislation on water and sanitation is provided for in a section or two, or under the Criminal and Other Offences Act of 1960. The EPAA of 1994, the PHA of 2012, and the LGA of 2016. These provisions are not comprehensive and detailed enough to afford effective protection for the human rights to water and sanitation in the country.

In sum, the legislation governing the rights to water and sanitation in Ghana is inadequate, deficient and cannot protect the rights to health and human dignity in the country. The deficiencies in the water and sanitation laws of Ghana are evident in their lack of detail in content and scope. For instance, the WRCA of Ghana contains 12 pages, whilst the UK WRA has 341 pages, and the National Water Act of South Africa has 101 pages. The WIA of the UK has 651 pages, and the Water Act has 243 pages. The Water Services Act of South Africa has 61 pages; Ghana, on the other hand, has no specific legislation for its water industry. Secondly, Ghana's legislation on water and sanitation is scattered in several statutes, such as the COA, PHA, LGA, and EPAA. The scattered provisions in the statutes could be consolidated into one or two other statutes to make them robust enough to protect the rights to water and sanitation. The research believes that legislative reforms in both sectors would bring adequate improvement to the water and sanitation sectors of the country. The reforms should include the promulgation of a National Water and Sanitation Act, to consolidate the existing pieces of legislation on the subject matter. A Water Resources Act could also be promulgated to provide a robust legal framework to protect water resources in the country.

9.2 Recommendations

The research has established that Ghana's laws on water and sanitation are inadequate and therefore ineffective for the protection and progressive realization of the twin-rights. It therefore makes the following recommendations that can achieve the desired results for the people of Ghana.

The existing laws on water and sanitation, though not bad, are inadequate in content and quality, compared to similar laws of other jurisdictions such as South Africa and the UK which have robust laws on those subjects. Their rich laws in terms of content and quality

have resulted in efficient systems for the provision of water and sanitation in their respective countries. The research therefore recommends legislative reforms in the water and sanitation sectors of the country to address the inadequacies in those sectors. The reforms should consolidate the piece-meal provisions on water and sanitation under the various Acts, namely the LGA of 2016, the PHA of 2012, the COA of 1960, and the CWSAA of 1998 into one legislation which could be titled the 'National Water and Sanitation Act'. The content of the proposed legislation should address in considerable details as in the case of South Africa and the UK, water and sanitation services administration, supply or provision, licensing, quality and accessibility, monitoring and evaluation mechanisms for enforcement. The proposed legislation should assign statutory duties to the MSWR as the highest authority in water and sanitation administration in the country. Perhaps, these reforms to a large extent would improve service delivery within the water and sanitation sectors of the country.

In addition, the current WRCA of 1996 is limited in scope and content. It addresses in considerable detail the composition, functions, powers, and other administrative matters of the Governing Board of the Commission. Unfortunately, it has left in scanty details issues of plans and strategies for the protection and conservation of water resources in the country. It is therefore recommended that a reformed legislation, perhaps titled 'Water Resources Act', as in the case of the UK, should be considered which would address solely issues of protection and preservation of water resources in the country. The proposed law should address plans strategies and programmes that would effectively protect water resources in the country.

A strong legal regime for the protection of human rights to water and sanitation meets the standards set out under international law.[905] International law requires that laws or regulations for the holistic protection of the human rights to water and sanitation must address the principles of human rights as well as the normative content of the human

[905] See Caterina Albuquerque, *Assessing Human Rights to Water and Sanitation: Achieving the Goals.* A Handbook by the UN Special Rapporteur, 2014.

rights to water and sanitation.[906] This research has established that Ghana's legal regime for the protection of water and sanitation is inadequate. The existing laws on the subject have addressed partially the principles and normative content of the human rights to water and sanitation. In some other countries such as South Africa and Kenya and the UK, legislation on water and sanitation addresses adequately international requirements on the human rights principles and the normative content of water and sanitation.[907] It is therefore recommended that the laws on water and sanitation are strengthened by way of amendments so that the international legal requirements of normative contents of human rights for the protection of water and sanitation are adequately incorporated into the domestic laws of the land. The legal regime could offer effective protection for the human rights to water and sanitation to the people of Ghana.

The provision of safe drinking water and improved sanitation are the responsibilities of governments first and foremost.[908] Hence, it is the responsibility of the government of Ghana to ensure that clean water and improved sanitation are available in sustainable quantities to the people of Ghana. Ghana has many institutions mandated to protect and promote improved sanitation and clean and safe drinking water. They include the EPA, the MSWR, the MMDA, the WRC, and the Ghana Police Service. Unfortunately, these institutions are either ill-resourced, in terms of both qualified personnel and finance, or lack the motivation needed to discharge their duties efficiently. It is therefore recommended that the government increases its budgetary allocation to these relevant institutions, to discharge their administrative and law enforcement responsibilities efficiently.

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906 Helen Boussard and others, *The Human Rights to Water and Sanitation in Courts Worldwide: A Selection of National, Regional and International Case Law* (2014). Geneva: Water Lex <www.waterlex.org> 20.

907 See E.g. Constitution of the Republic of South Africa ss 1(a), 7(2), 10, 12, 14, 26 and 277; Article 21(3) of the Constitution of Kenya. *Ibrahim Sangor Osman* v *Minister of State for Provincial Administration & Internal Security eKLR* High Court of Kenya at Embu, Constitutional Petition No. 2 of 2011 16 November 2011.

908 See for example Art. 2 (2) International Covenant on Economic, Social and Cultural Rights and Art. 2 (1) International Covenant on Civil and Political Rights: International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

In Ghana, the police service is mandated to prevent crimes, apprehend offenders, prosecute them, and maintain public peace and order.[909] Violation of most of the provisions on water and sanitation in the various legislation has been criminalized.[910] These provisions are however hardly enforced by the police. Law enforcement must be improved for the desired results to be achieved. It is recommended that enforcement of laws on water and sanitation under the jurisdiction of the police service should be strengthened by effective training so that Ghanaians can enjoy the right to clean water and sanitation. Aside from the police, the MMDAs have also been tasked to enforce sanitation bylaws of the various assemblies.[911] Under the auspices of their sanitation task forces, sanitary inspectors are expected to ensure that sanitation-related offences are prosecuted and those found guilty are sanctioned accordingly. These officials must be well-remunerated and well-motivated to discharge their responsibilities. The EPA and the WRC have similar enforcement powers. It is recommended that the Chief Executives of the various Assemblies and the Boards of the various agencies assume their supervisory roles in collaboration with the MSWR so that Ghanaians can enjoy their rights to sanitation and water services.

It has been discovered that Ghana's annual budgetary allocation to the water and sanitation sectors has often not been encouraging.[912] It is recommended that the government increases its budgetary allocation annually, so that State institutions, such as GWC, mandated to provide water and sanitation services to the people of Ghana can discharge their obligations efficiently. Ghana's budget for water and sanitation must take into account, the full cost of progressively realising human rights to water and sanitation for all. In addition, disconnections of water supply to individuals due to non-payment of water bills are common in Ghana. It is admitted that the government cannot solely fund water supply services. However, where a user is unable to pay his bills because of

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909 See the Training Manual for Police Prosecutors in Ghana. LADA Institute, 133.

910 See section 296 of the Criminal Offences Act, 1960 (Act 29) sections 296 and 300; EPAA, 1994 (Act 490) s.13(1); Water Use Regulations, 2001 L.I. 1692. Regulation 4.

911 LGA 2016 sections 13 (2) (a) and (b), 96, 104 (1) (c), and 181.

912 According to the Ministry of Sanitation and Water Resources Medium Term Expenditure Framework, the 2021 approved budget for the Ministry stood at 560,933.110.00 Ghana Cedis. However, only 58.58% of the total was released to the Ministry as of October 2021.

poverty, the appropriate legal framework must be put in place so that they can pay in installments. The government could equally put in place measures to absorb such bills so that they would have access to the commodity.

Institutions of learning in Ghana, such as basic, secondary cycle, and universities and health facilities, must not be deprived of water services due to their inability to pay their bills. Instead, their arrears should be spread over time so that they can have access to the commodity. The rights to education and health are inseparable human rights. Hence, it is the responsibility of the State to provide safe water in fulfillment of people's rights to the same. Associated with water is improved sanitation. Several institutions of health and education in the country lack WASH facilities. In instances where they exist, they are in dilapidated conditions, perhaps due to a lack of constant maintenance. It is recommended that the MMDAs, under whose jurisdiction these institutions fall, draw up a routine maintenance checklist for all schools and health facilities so that the facilities concerned are maintained.

To ensure the provision of quality and safe water for the people of Ghana, it is recommended that water research institutions be established to train personnel to monitor and supervise water service providers to supply safe water to the people of Ghana. Like South Africa and the UK, surface water could be classified in terms of quality so that suppliers, regulators, and consumers would know the quality of water they are providing or are being provided. The classifications may also help in the determination of the tariffs to be paid by consumers and taxes to be paid by suppliers. It would also enhance supervision and monitoring of their activities.

In Ghana, rates of new connections of water to housing facilities and homes are very high and unstable. Many people, especially the poor, cannot afford the bills. As a result, most of them resort to the use of water from wells, harvested rainwater and streams, most of which are not safe for human consumption or for domestic uses. The same applies to the provision of sanitation facilities such as water closet toilets, hand washing basins, and septic tanks in homes. People who cannot afford these high charges resort to open defecation or the use of unimproved sanitation facilities available to them. It is

recommended that the Utilities Regulation Commission of Ghana comes out with a fixed rate for such a new connection to enable potential consumers to prepare towards it and to prevent service providers from charging unapproved fees. It is also likely to minimize open defecation and eventually eliminate it in the country.

One other factor that may have contributed to the current water and sanitation situation in Ghana is the negative attitude of Ghanaians towards these essential goods.[913] Many Ghanaians do not care much about environmental sanitation. People live, sell and even eat around solid and liquid waste. Open defecation is prevalent both in the urban and rural communities. Illegal miners and sand winners have polluted most of the river bodies disrupting the supply of potable water to many communities.[914] There is a need for a paradigm shift in this regard. It is recommended that an intensive educational campaign is carried out to educate and conscientize the general public regularly on the human rights to water and sanitation. This is most likely to improve the current water and sanitation situation in the country.

The National Commission on Civic Education (NCCE) was established under the 1992 Constitution. Its functions, *inter alia*, are to educate the citizens of Ghana on their national and civic responsibilities. The 1992 Constitution imposes a duty on the citizenry to protect and safeguard the environment.[915] Suffice it to say that even though the Constitution has not made any specific pronouncement on water and sanitation, it could be argued that water and sanitation are essential components of the environment. It therefore behooves the National Commission on Civic Education to educate Ghanaians on the essence of the human rights to water and sanitation. Studies have revealed that sanitation and hygiene practices are heavily influenced by people's knowledge of them. The more educated and knowledgeable people are on sanitation and hygiene practices and the negative effects on people who lack them, the more likely they are to uphold them.[916] It is therefore

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913 See E. Appiah-Effah and others, 2015 'Perception of peri-urban farmers on fecal sludge compost and its utilization: a case study of three peri-urban communities in Ashanti Region of Ghana' Compost Science and Utilization 23 (4), <https//dioi.org/10.1080/1065657X2015.1046616>.

914 TV 3 News, Saturday 10/06/2023.

915 1992 Constitution of Ghana ArtIcle 41(k).

916 G. Mohd and Malik 'Sanitation and Hygiene knowledge, attitude and practices in urban setting in

recommended that the government resource the NCCE institution financially as well as with resource personnel to enable them to discharge their responsibilities efficiently towards efficient water and sanitation services delivery.

One of the best means to inculcate values and virtues in the youth, most especially, is to include the values in their educational curriculum.[917] In order for the youth recognize water and sanitation as human rights, and champion their cause, they must be educated on the subject matter from the basic level of their education. It is recommended on this score that the Ghana Education Service (GES) include in the syllabi of both basic and second-cycle institutions the human rights to water and sanitation so that students uphold their tenets from childhood. The subject should not just be handled as an academic course, but one that is aimed at inculcating in the youth values of cleanliness and hygiene. Cleaning of school premises by pupils and students should be encouraged to enable them to replicate the same in their homes and communities.

In sum, globally, water and sanitation are recognized human rights essential for the realization of all other human rights. Consequently, a threefold duty has been imposed on States to respect, protect, and fulfill the human rights to water and sanitation. The duty to respect requires that States respect people's right to water and sanitation by ensuring that available water and sanitation are dignifying and promote the well-being of all. The duty to protect imposes an obligation on States to safeguard water and sanitation services and facilities available sustainably. The duty to fulfill requires States to make water and improved sanitation available, physically accessible, affordable, acceptable, clean, and safe for good health and human dignity.

Ghana has been grappling with the provision of safe water and improved sanitation for the people of Ghana for decades. Several studies have been conducted on the subject but to no avail. There are also some government interventions, such as the establishment

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Bangalore: A cross-sectional study' (2017) 7(4) Journal of Community Medicine and Health Education 540-545, 540. See also S.K. Aswathy, 'Knowledge and practice regarding environmental sanitation and hygiene among general population. A cross-sectional survey' 2015) 4(2) Global Journal for Research and Analysis 2277-8160, 2277.

917 ibid

of the MSWR in 2016, the institution of the ‘One Household One Toilet’ campaign, and the National Sanitation Day. Unfortunately, these interventions have not yielded the desired results. The research has identified a missing link that has made it difficult for Ghana to effectively tackle its water and sanitation problems. The legislation governing water and sanitation is inadequate and hence deficient for the wholistic protection of the same. They lack detail in content and scope compared to those of the UK and South Africa. For instance, the WRCA of Ghana contains 12 pages, while the UK WRA has 341 pages, and South Africa has 101 pages. Secondly, Ghana’s legislation on water is scattered in several statutes. This may have accounted for the current state of Ghana's sanitation and water problems.

It is therefore recommended that intensive legislative reforms on water and sanitation are carried out by the Law Reform Commission of Ghana so that they could address international human rights law requirements of making sanitation and water available in sustainable quantities, physically accessible, and affordable, especially for all. By so doing, Ghana could progressively attain the international standard of water and sanitation for all.

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