

Water is the ‘Blue Gold’: Upholding Access to Water as a Human Right in Ghana

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Abstract

Protecting access to water represents human dignity and remains the traditional right upon which other forms of human rights are realised. This article argues that privatisation of Ghana Water and Sewerage Corporation (GWSC), which was conceived by the IMF/WB, and facilitated by the WTO’s General Agreement on Trade in Services (GATS); disfigures the humanity of poor Ghanaians, who lack the financial resource to purchase water. Similarly, it contends, that guided by avarice and greed, some MNCs characterised water as ‘blue gold’ to be exploited for financial and economic gains; thereby undermining the communal status of water, as stipulated in the water policy of Ghana. The article further argues, that by eschewing corruption-related practices, the Ghanaian government as well as state institutions, especially the judiciary, should protect the people’s access to water-supply; by construing international human rights instruments and domestic constitution to the people’s access to water.

Keywords: Access, Water, human rights, GATS, Trade Liberalisation, Corruption, IMF/WB

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1. Introduction

The problem is ignored, but millions of people lack access to safe and potable drinking-water and over three million Ghanaians lack access to proper sanitation.¹ There is little doubt that adequate amounts of clean water for consumption and sanitation, constitute the basis for a dignified and healthy life. Similarly, the Third World Water Forum held in 2003² in Japan, failed to champion the cause for water to be considered as a human right.

Agenda 21, chapter 18 of the 1992 United Nations Conference on Environment and Development³ deal with freshwater resources, particularly the adoption of strategic measures to develop and manage uses of water bodies/resources. Several programmes had been initiated to promote freshwater, especially water resource assessment, potable drinking -water supply coupled with the impact of climate on water resources. The Sustainable Development Goals (SDGs), calls on the international community- rich or poor- to promote prosperity and human wellbeing with a focus on climate as well as water.⁴ At its core, goal six of the SDGs aims to promote access to clean water and sanitation as contribution to achieving human prosperity by 2030.

Further to the Sustainable Development Goals, the World Summit on Sustainable Development (WSSD)⁵ in 2002, identified the need to extend safe drinking -water to half of the world’s population lacking access to water. National governments were required to undertake programmes and draw on domestic resources to promote sustainable developments by empowering local communities. In addition, increase access to public and community services, especially water, health and education were to be given priority by domestic governments at the district and rural areas to promote the welfare of the peoples. Prior to the WSSD, the Water, Energy, Health, Agriculture and Biodiversity (WEHAB) Initiative,⁶ created by the then UN Secretary-General Kofi Annan, was meant to serve as a framework within which the SDGs and WSSD’s goals would be facilitated to advance the social and economic wellbeing of populations in developing states. The WSSD and currently the SDGs, offer an opportunity for public, private and related NGOs’ to collaborate with governments, to find a common remedy to improving the poverty of the peoples with a focus on access to water.

The consumption of water in Ghana has dramatically risen over the past years as the population expands to the thirty million mark. Among the reasons for the increase in water consumption are: growth in farming

¹ A Framework for Action on Water and Sanitation (WEHAB Working Group, August 2002), at 12, available at <http://www.un.org/esa/sustdev/sdissues/water/wehab_water_sanitation.pdf>

² About 24, 000 delegates from 182 States aimed to raise global water crisis. See Third World Water Forum Ministerial Declaration (Kyoto, 23 March 2003), available at <http://www.world.water-froum3.com/jp/mc/md_final.pdf>

³ Agenda 21, Chapter 18: Water is required in all aspects of human life. ... Thus, the multi-dimensional nature of water resources in respect of socio-economic development should be respected, including, the multi-utilization of water supply for and sanitation, agriculture, industry and related usages. See Agenda 21, 1992 Report of the UNCED, I (UN Doc. A/CONF.151/26/REV.1, Rio de Janeiro, 14 June 1992)

⁴ UN Sustainable Development Goals, (Agenda 2030), adopted by World Leaders at UN Summit, (2015), entered into force, 1 January 2016 available at <<http://www.un.org/sustainabledevelopment/development.agenda.pdf>>

⁵ World Summit on Sustainable Development, Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August – 4 September 2002 (UN Doc. A/CONF. 1992/20). According to this report, water resources were mentioned as playing active role in the eradication of poverty, diseases and the promotion of socio-economic prosperity of developing counties.

⁶ The WEHAB Initiative deals with five main themes of global concerns, initiated by the UN Secretary-General, Kofi Annan, to draw on the international community’s strength to expedite action on WSSD and to help alleviate the suffering of the poor people in developing countries.

activities, construction of new residential houses, building of public infrastructures to create jobs as well as support social and economic developments. Despite the increase consumption of freshwater and the growth of the population, the governments had failed to invest adequately to expand the facilities of water supply and sanitation services; and worst of all, privatised the Ghana Water and Sewerage Corporation (GWSC).¹ The policy of privatising GWSC has deprived millions of Ghanaians without access to safe drinking water, robbed majority of Ghanaians of their jobs; and, inimically created perennial water shortages restricting the people's access to sustained water supply. The question being examined in this article is whether characterisation of water as "blue gold" and privatisation of the GWSC threaten the human rights of those Ghanaians who are unable to purchase water. Is water a social good or a resource to be exploited for profit or economic gains?

This article discusses access to water as an essential resource which promotes the dignity and humanity of all peoples. The right to water is recognised as a human right protected under international human rights instruments, namely: The Economic, Social and Cultural Rights, Convention on the Right of the Child, Non-Navigational Convention as well as the Convention on Elimination of Discrimination against Women among others. It stipulates the obligations which state institutions (public and private) and multinational organisations, owe to ensure that this right is not infringed upon by economic, social or political expediencies. In that respect, this article draws on the General Comment No.15, to highlight the obligations and responsibilities of the Ghanaian government, to protect the right to water, especially for women and children, who bear the severest burden of collecting water for domestic and sanitation uses. This article also examines the fact that privatisation of the GWSC not only reflects the imposition of neoliberal economic policies of the IMF / WB upon the government and people of Ghana; but, also demonstrates that the WTO's liberalisation in service agenda violated the people's human rights by undercutting access to water, in the country.

This article begins by examining the express rights to water as a human right (section 2). It draws on the ECOSOC Comment to explore the right to water (section 3); and states' obligation to promote access to water (section 3.1). It discusses the violation of the right to water (section 4), implied rights to water (section 4.1) and regional instruments on access to water (section 4.2). It considers Ghana's water policy (section 5), and judicial intervention to promote the human rights to water (section 6). It examines the impact of judicial intervention and how it promotes access to water (section 7); and explores the concept whether water is a 'blue gold' to be exploited for economic gains or a public/social good to serve the health and sanitation needs of humanity (section 8). It discusses the GATS Agreement and the commodification of water in Ghana (section 9); including, the influential role played by the MNCs in privatisation of the GWSC in Ghana (section 10). It explores the IMF and World Bank's roles and participation in the privatisation of the GWSC (section 11). Lastly, the article concludes that water undergirds the realisation of other forms of human rights; thus, the government of Ghana, especially the judiciary, should protect access to water under international human rights laws and domestic constitution.

2. Access to Water as human right: Express Right

Among the several international instruments which recognise access to water as a human right, the following constitute prominent examples: The 1999 London Protocol on Water and Health imposes a positive duty on states to protect access to clean water.² In addition, Article 14, paragraph 2, of the Convention on Elimination of All forms of Discrimination against Women, requires that States Parties shall accord to women the right to 'enjoy adequate living conditions, especially in relation to water supply.'³ Article 24, paragraph 2, of the Convention on the Rights of the Child enjoins States Parties to eliminate diseases and malnutrition 'through the provision of adequate nutritious foods and clean drinking-water.'⁴ Article 10 of the United Nations Convention on the Law of the Non-Navigational Uses of the International Watercourses emphasises human needs, particularly food. In times of conflict with water uses among States, particular attention shall be paid 'to the requirements of vital human needs.'⁵ Shedding light on the significance of the UN Non-Navigational Convention, the accompanied statement of understanding, explained, that in course of conflicts/wars, states are obliged to ensure that adequate and sufficient water is provided for human sustenance, especially drinking-water

¹ Ofori. FNK, 'The impact of trade liberalisation on access to Water and Medicines in Ghana' (2017) (PhD Thesis), University of the West of England, 127

² ECOSOC, Econ. Comm'n for EUR., *Draft Protocol on Water and Health to the 1992 Convention on the Protection and Uses of Transboundary Watercourses and International Lakes*, U.N. Doc. MP.WAT/AC.1/1999/1 (MAR. 24,1999) (prepared for submission to the Third Ministerial Conference on Environment and Health, June 16-18.

³ United Nations Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 December 1979) <<http://www.un.org/womenwatch/daw/cedaw/>>.

⁴ United Nations Convention on the Rights of the Child, entered into force (New York, 20 November 1989) available at <<http://www.unhchr.ch/html/menu3/b/k2crc.htm> >

⁵ Convention on the Law of the Non-Navigational Uses of International Watercourses (New York, 21 May 1997) available at <<http://www.un.org/law/ilc/texts/nonnav.htm> >

and also the production of food.¹ Articles 11 and 12 of the International Covenant for Economic, Social and Cultural Rights protect the right to life.² Affirming the crucial role of water in the survival of humanity, the Committee of Economic, Social and Cultural Rights contend that the right to water is implied in the provisions of Article 11, since no human existence or activity is possible without the provision of water.³ The Committee also recognised the right to water as a human right under Article 11 (1)⁴, arguing that safe drinking- water creates the platform to securing adequate standard of living essential for human survival.

3. ECOSOC Comment on the Right to Water

There are about 146 states that have ratified the International Covenant on Economic, Social and Cultural Rights, as at the time of writing this article. The United Nations Economic and Social Council (ECOSOC)'s declaration, is often in the form of General Comment, which offer interpretations of treaties and other international agreements. Interpreting General Comment No. 15⁵, in the lights of Articles 11 and 12, the Committee stated 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.'⁶ Therefore, governments have an obligation, in respect of the right to water, to provide sufficient, affordable, accessible and safe water, including safe sanitation to their peoples. Furthermore, the Committee explained that 'Water should be treated as a social and cultural good without discriminating against the poor and vulnerable in society.'⁷

3.1 Obligations of Ghana Government

The original view of human rights is that they create binding obligations on governments, especially states (including Ghana), which are parties to the relevant treaties, and in some cases, individuals too.⁸ With respect to human rights to water, States have an obligation to protect economic, social and cultural rights under the ICESCR.⁹ However, a commentator explains that 'Member states are not obliged to secure immediate access to water for all their populations, but they should progressively seek to improve access.'¹⁰ Ghana signed and ratified the ICESCR in September 2000.¹¹ By ratification of the ICESCR, Ghana is obliged to protect and promote access to water for her people in accordance with international human rights principles and domestic constitution.¹² The issue with progressive allocation of water often complicates the debate on access to water, and teases the question 'how to secure access to water as a human right in light of the General Comment No. 15 and the above human rights instruments. The response to that question resides in the obligations outlined in the General Comment No. 15, in the section below.

The General Comment No. 15 entails duties, the fulfilment of which culminate in the realisation of human right to water. First, states have an obligation to ensure minimum supply of water for personal and domestic uses by implementing programmes that prevent discrimination in water distribution among the poor and marginalised in society.¹³ In this respect, the government of Ghana is obliged ensure that Ghanaians, especially women, children and the poor majority residing in rural communities and hinterlands, have safe and sustainable access to water, to promote their health and sanitation needs. This obligation can be realised by building water reservoirs to collect and store rain-water; as well as, hand-dug wells to provide constant supply of water to meet the people's sanitation needs.¹⁴

Second, states have three human rights obligations under General Comment No. 15 to fulfil: (a) the negative obligation to respect the right (not to violate the right), (b) the positive duty to protect the right (to

¹ Statement of Understanding Pertaining to Certain Articles of the Convention, *Report of the Sixth Committee convening as the Working Group of the Whole, Convention on the Law of the Non-Navigational Uses of International Watercourses* (UN Doc. A/51/869, New York, 11 April 1997) para. 8, available at < <http://www.un.org/law/cod/watere.htm> >

² International Covenant on Economic, Social and Cultural Rights (UNGA Resolution 2200A(XXI), New York, 16 December 1966) available at < http://www.unhchr/html/menu3/b/a_ceschr.htm >

³ United Nations Committee on Economic, Social and Cultural Rights, General Comment No 15, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Water (Article 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) (Doc.E/C.12/2002/11, Twenty-Ninth Session, 26 November 2002, at para.3, available at <<http://www.unhchr.ch/html/menu2/6/gc15.doc> >

⁴ United Nations Committee on Economic, Social and Cultural Rights, General Comment No 6, Economic, Social and Cultural Rights of Older persons (UN Doc. E/C. 12/1995/16/REV.1, Thirteenth Session

⁵ UN General Comment No15, see note 13

⁶ UN General Comment No.15, *ibid*

⁷ *Ibid.*, para. 11

⁸ Steven R. Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility' (2001) 111 *Yale Law Journal* 443-449

⁹ Steven R. Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility, *ibid*

¹⁰ Jona Razzaque, 'Trading Water: The Human Factor' (2004) 13(1) *RECIL*, 16

¹¹ UN Treaty Body Database, available at <https://tbinternet.ohchr.org/_15/TreatyBodyExternal/Treaty.aspx?CountryID=67Lang=EN >

¹² The Constitution of Ghana (1992) available at <https://www.constitutionproject.org.constitution_ghana_1996.pdf>

¹³ General Comment No 15, *supra* note 13, para. 9, 17.

¹⁴ Marian Asantewah Nkansah, Nathaniel Owusu Boadu and Mercy Badu 'Assessment of the Quality of the Water from hand-dug wells in Ghana' (2010) 4 *Environ Health Insights*, 7-14

prevent third-party violations) and (c) the duty to fulfil the right (to ensure the individual's ability to enjoy it).¹ These obligations are manifestly breached in the privatisation of Ghana Water and Sewerage Corporation, which compelled the government to withdraw subsidies; so as, to subject the poor majority to paying high prices for water supply under the newly constituted water company.² Governments' responsibility to prevent third parties from interfering with enjoyment of the right to water, extends to individuals, corporations and other entities, including agents acting under their authority.³ With the participation and collaboration of some government officials, private businesses and largely foreign MNCs, who implemented the privatisation of the Ghana Water and Sewerage Corporation, the right to enjoy safe drinking-water was compromised and violated.

States parties need to observe that third parties operating or controlling water resources- water tankers, vendors as well as owners of wells- do not threaten or compromise the sufficiency, safety, affordability or accessibility of water.⁴ Similarly, Dennis and Stewart contended that lack of inadequate resources undermine the effort of governments to provide effective supply and access to clean and safe -drinking water.⁵ As will be discussed later in this article, the privatisation of Ghana Water and Sewerage Corporation, suggested that the government has compromised her obligation under international law and domestic constitution to protect access to water. Thus, consequently breaching the human rights of the poor majority lacking financial resources to purchase water.

4. Violations of the Right to Water

In order to remain compliant with general and specific international obligations, States need to demonstrate that they had adopted practical and viable measures to promote access to clean and safe drinking-water for the consumption and sanitation needs of their populations. Under international law, failure to act in good faith constitutes breach of a right/duty. Thus, Article 26 of the Vienna Convention on the Law of Treaties stipulates that 'every treaty in force is binding on parties to the treaties and must be performed in good faith.'⁶ Similarly, Article 27 of the Vienna Convention states that, a 'party may not invoke the provisions of its internal law as justification for its failure to perform a treaty obligation.'⁷ Against this backdrop and in light of the General Comment No. 15, argument by some states that they have limited resources to promote access to water in untenable. Some violations of States' failure to respect access to water, as shown in the Social Committees' work include high prices of water distribution, pollution of water bodies, disconnection of water supply for non-payment of water bills, failure to enact law to protect activities of third parties to supply water to communities, and failure to implement national policies to ensure the realisation of the right to water. However, in Ghana, the violations span the reigns of past and present governments' failure to invoke the Environmental Protection Act⁸, to stem the pollution of water bodies; and also, to regulate the activities of illegal miners and related activities, which culminated in the pollution of water catchment sources. The worst pollutions of rivers- Oti and Pra- which serve as chief sources of drinking-water for the communities in western and eastern regions of Ghana; violates the people's human dignity as well as access to safe drinking-water.⁹

States have a duty, in respect of the General Comment No. 15, to ensure pragmatically, that the right to clean and safe drinking-water is achieved. This also means granting individuals and groups, the participatory right, to contribute in decision-making processes that affect the right to water, with a view to influencing policies, strategies and programmes geared toward water contracts and its distribution.¹⁰ This demands, that human rights advocates and community leaders (including Ghanaian women), are recognised as participants in projects, contracts or agreements affecting water supply.¹¹ The recognition of civil society and human rights campaigners' contribution to protect access to water had been affirmed by both the United Nations General Assembly¹² and the

¹ Maria McFarland Sanchez –Moeno & Tracy Higgins, 'No Recourse: Transnational Corporations and the Protection of Economic, Social and Cultural Rights in Bolivia, (2007) 27 *Fordham International Law Journal*, 1674-75

² Leonard Shang-Quartey 'Post Privatisation Challenges of Public Water in Ghana' (2014) *Transnational Institute (TNI)* 4

³ Mohammed Aminu Sualihu, M. Arifur Rahman and Zakiya Tofik Abu, 'The Payment Behaviour of Water Utility Customers in the Greater Accra Region of Ghana: An Empirical Analysis, (London: Sage Open, 2011) 1-12

⁴ Jona Raazaq, 'Trading Water: The Human Factor', supra, see note 19, 17

⁵ Michael J. Dennis & David P. Stewart, 'Justiciability of Economic, Social and Cultural Rights: Should There Be an International Mechanism to Adjudicate the Right to Food, Water and Health?' (2004) 98 *American Journal of International Law*, 462, 491-500

⁶ Vienna Convention on the Law of Treaties (Vienna, 22 May 1969), printed in 1155 UNTS (1969), 331, entered into force 29 January 1980, available at < <http://www.un.org/law/ilc/texts/treaties.html> >

⁷ Vienna Convention, *ibid*.

⁸ Ghana: Environmental Protection Act 1994, (Act 490). This Act empowers the Agency to regulate all activities and operations regarding the country's environment with particular focus on water bodies, resources, minerals and natural reserves. The Agency has the powers to arrest, fine and prosecute any individual or corporation engaged in any operation damaging to the afore-mentioned resources.

⁹ Albert Ebo Duncan, Nanne de Vries, Kwabena Biritwum Nyarko, 'Assessment of heavy metal pollution in the main Pra River and its tributaries in the Pra Basin of Ghana (2018)10, *Environmental Nanotechnology, Monitoring and Management*, 264-271

¹⁰ Jona Raazaq, 'Public Participation in Water Governance' in J.W. Dellapenna and J. Gupta (eds) *The Evolution of the law and politics of water*; (2009) Springer Science + Business Media B.V. 353-371

¹¹ General Comment No 15, supra note 13, para 59

¹² GA Res 64/292, The Human Rights to Water and Sanitation, 28 July 2010, A/Res/64/292

Human Rights Council¹, respectively. This obligation also requires, that leaders of district assemblies and rural communities of the Ghanaian society, are invited to participate in government's policies; in order, to invest in water projects that satisfy the health and sanitation needs of the people.² However, the right to water has been flouted by successive governments under the guise and auspices of WB/IMF agenda.

4.1 Implied Right

The human right to safe drinking-water has been implied in a number of international documents, spanning treaties, declarations and standards.³ These instruments entail the right to life, to the attainment of a standard adequate for health and well-being, to protection from disease to adequate food. Securing access to clean water and proper sanitation is fundamental to the realisation of these rights. In this sense, the question may be posed whether the right to water is a derived right, which is, a human right that can be inferred in respect of the above provisions. Undoubtedly, it is believed that the right to food and accompanied right to health as well as development can be achieved without access to safe clean water.

Recently, there are some environmental treaties dealing with water resources. Among them are: the 1992 International Convention to Combat Desertification, Article 2 of this Treaty states that long-term integrated water strategies are needed in affected areas.⁴ Primarily, this Convention seeks to promote productivity of land, rehabilitation, conservation and sustainable management of water resources, with a view to improve human livelihood at the community level. Articles 13 and 14 of the same Convention share with integrated strategy and exchange of technology to solve problems of desertification and water resource management. In addition, the Eighth Conference of the Parties to the Convention on wetlands,⁵ adopted resolution on uses of groundwater compatible with the conservation of Wetlands.⁶ As a constituent for human existence and development, these general rules/principles regarded water cycle and the existing link between ground and surface water management. They acknowledged the crucial duty to eliminate the loss and degradation of aquatic ecosystems through strategies of sustainable development and conservation of biodiversity. Furthermore, they encouraged the promotion of schemes, supported by both private and public actors, which engage civil society participation in the management of groundwater, as a collaborative programme.

Thus, the government of Ghana has an obligation to build local infrastructures, in line with the above Convention, to manage water resources especially in the dry regions of the country, to promote the people's health and sanitation needs.⁷

4.2 Regional instruments

The extra Protocol to the American Convention of Human Rights in the spheres of Economic, Social and Cultural Rights, states in Article 11 that 'everyone shall have the right to live in a healthy environment and to have access to basic public services.'⁸ Similarly, Article 2 of the European Convention on Human Rights also obliges States to take positive, proactive steps to support the right to life.⁹ Regional documents, namely: the United Nations Economic Commission for Europe (UNECE) Convention on Environmental Impact Assessment in Transboundary Context¹⁰, Convention on the Protection of and Use of Transboundary Watercourses and International Lakes and its 1999 Protocol on Water and Health,¹¹ and the African Charter on Human and Peoples' Freedoms, which broadly state that 'all peoples shall have the right to a general satisfactory environment favourable to their development.'¹² The African Charter on the Rights and Welfare of the Child,

¹ HRC Res15/9, Human Right and Access to Safe drinking Water and Sanitation, 30 September 2010, A/HRC/RES/15/9

² Kate A. Berry and Eric Mollard (eds) Social Participation in Water Governance and Management, (UK, *Earthscan*, 2018) xv

³ Universal Declaration of Human Rights (UNGA Resolution 217A (III), New York, 10 December 1948), Article 25; International Covenant on Economic, Social and Cultural Rights, n.12 above Articles 11 and 12; Declaration on the Right to Development (UNGA Resolution 41/128, New York, 4 December 1986), Article 8. The Status of Water rights under international law, examined by J. Scanlon, A. Cassar and N. Nemes, *Water as human Right*, presented at the Seventh Conference on Environmental Law (Sao Paulo, Brazil, June, 2003), 3-8

⁴ United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 17 June 1994) entered into force in 1996, available at < <http://www.unccd.int/convention/menu/php> >

⁵ COP-8 was held in November 2002 in Valencia, Spain, available at http://www.ramsar.org/key_res_viii_index_e.htm >

⁶ Resolution VIII.40, Guidelines for Rendering the Use of Groundwater Compatible with the Conservation of Wetlands (26 November 2002).

⁷ Tendayi Mutumukuru-Maravanyika, Davd J. Mills, Cephas Asare, Godfred Ameyaw Asiedu, 'Enhancing Women's participation in decision-making in artisanal fisheries in the Anlo Beach Fishing Community, Ghana' (2017) 10, *Water Resources and Rural Development*, 58-75

⁸ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, Cultural Rights (San Salvador, 17 November 1988) available at < <http://www.oas.org/juridico/english/Treaties/a-52.html> >

⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) available at < <http://www.hri.org/docs/ECHR50.html.Art2> >

¹⁰ Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991) available at < <http://www.unece.org/env/eida/> >

¹¹ UNECE Convention on the Protection and Use of Transboundary Watercourses, (Helsinki, 17 March 1992), entered into force 6 October 1996; and UNECE Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (London, 17 June 1999), not yet entered into force

¹² Article 24 of the African (Banjul) Charter on Human and Peoples' Freedoms (Banjul, 27 June 1981), OAU Doc. CAB/LEG67/3 rev. 5, 21

also stipulates that ‘every child shall have the right to enjoy the best attainable state of physical, mental, and spiritual health’¹ and states parties are required to take actions ‘to ensure the provision of adequate nutrition and safe drinking water.’² These regional instruments and declarations, lend credence to the fact that, the right to water, though indirectly affirmed in the afore-stated treaties, authorise access to water as a human right. In accordance with international treaties, States parties have a duty to respect and promote access to water in their respective jurisdictions. In respect of the above, Ghana Water Policy is examined to assess whether past and present governments’ strategies regarding privatisation of GWSC and the newly constituted water companies, conform to the international and regional obligations protecting access to safe drinking-water.

5. Ghana Water Policy

The Ghana Water Policy (Policy), was prepared by the Ministry of Water Resources, Works and Housing (MWRWH), in consultation with the government, under the supervision of the then Sector Minister, Hackman Owusu-Agyemang in 2007 respectively.³ The Policy recognises water as an indispensable resource for the survival of humanity, including all living organisms; by stating that ‘water is crucial to the survival of man and all living things. Water is a cross-cutting element of the Growth and Poverty Reduction Strategy (GPRSII) of the Republic of Ghana, and it is linked to all the eight principles of the Millennium Development Goals (MDGs).’⁴ Although the MDGs agenda had elapsed, the UNGA and HRC together with the international community, have renewed the commitment to promote water as a human right under a new initiative called Agenda 2030.⁵ Principle 6 of the Agenda 2030, focuses on clean Water and Sanitation,⁶ and requires of states parties to ‘provide access to water and sanitation for the realisation of other human rights, including the right to adequate housing, the right to health and the right to life.’⁷ In respect of human dignity, the policy resonates with Articles 11 and 12 of the ICESCR, the Agenda 2030 and General Comment No. 15, supporting the premise; that water constitutes a prerequisite for the attainment of human rights without which no other human activity-economic, social or political- is achievable.

More importantly, the Policy links firmly with the principle of ‘sovereignty over natural resources’⁸ of which governments have a custodial duty to protect, in order that, the dignity of their peoples is assured. Alluding to the post-war era of 1950, Schrijver explained that the principle of ‘sovereignty over natural resources’, emerged as an agenda in developing states’ and supported by the international community; as part of international economic law, with a view to grant them autonomy to exploit and manage their natural resources for socio-economic purposes.⁹ This principle also protected developing states, most of whom had gained political independence from their colonial masters at the time, ‘against infringement of their economic sovereignty as a result of property rights or contractual rights claimed by other states or foreign companies.’¹⁰ In that sense, the principle relates with Article 257 (6) of the 1992 Constitution of Ghana, which bequeaths all minerals and water resources in the country, to be held by the president as a custodian on behalf the people.¹¹ The provision supports the argument, that water is a communal resource, which successive Ghanaian governments have an obligation to protect whilst in office; and to ensure, that the people’s health, sanitation and dignity are promoted, without violating such right under any commercial activities or as political convenience.

The United Nations General Assembly (UNGA), in its determination to promote the dignity and socioeconomic prosperity of developing states, adopted resolution 1803, stipulating that:

“That States and International Organizations shall strictly and conscientiously respect the sovereignty of peoples of nations over their natural wealth and resources in accordance with the

I.L.M.58 (1982), entered into force October 12 October 1986)

¹ Article 14(1) of the African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force 29 November 1999

² Article 14(2) (C) *ibid*

³ Ghana Water Resources Commission & Ministry of Water Resources, Works & Housing (WRC & MWRWH), ‘Ghana Water Policy’, *Water Resources Commission/Ministry of Water & Housing* (Accra-Ghana, 2007)

⁴ *Ibid*.

⁵ UN Synthesis Report on Water and Sanitation: Sustainable Development Goal 6 < available at < <http://www.un.org/sustainabledevelopment/development.agenda> > The Agenda 2030 was adopted at UN Summit on Sustainable Development, signed in September 2015 and entered into force 1st September 2016.

⁶ UN Sustainable Development Agenda 2030, Principle 6, *ibid*: All States have an obligation to move as quickly as possible to toward full realisation, using the maximum available resources, and to take active measures to reduce and eliminate existing inequalities and discrimination.

⁷ *ibid*

⁸ The term natural resources extend to embrace land, soil, forests, wetlands, water, natural harbours, rivers, lakes, wetlands, seas, beaches, oceans, flora, wildlife, rainfall, etc

⁹ Nico T. Schrijver, *Sovereignty over natural resources: Balancing rights and duties*, (Cambridge University Press, 1997) 15

¹⁰ Nico T. Schrijver, *Sovereignty over natural resourced: Balancing rights and duties*, *ibid*, 3

¹¹ The Republic of Ghana, 1992 Constitution: Article 256 (6) reads: “Every mineral in its natural states in, under or upon any land in Ghana, rivers, streams, water courses throughout ... is the property of the Republic of Ghana and shall be rested in the president on behalf of, and in trust for the people of Ghana

Charter of the United Nations and the principles contained in the resolutions.”¹

Beyond political and economic liberations, the above resolution seeks not only to protect the natural resources of developing countries, but also fundamentally place premium on water as a critical resource to advance the health and sanitation needs of the peoples. The policy’s characterisation of water as a communal resource entrusts moral and ethical responsibilities to the governments and respective agencies, to protect and distribute it fairly and equitably among the citizens.

Similarly, some commentators² further argue the fact that water is a cog in promoting the attainment of human rights. It draws on ethical values that transcend personal and political interests, therefore, ‘government agencies should seek a common ground in identifying water ethics that will lay a foundation for cooperation and sound management of fresh water resources to promote the wellbeing of stakeholders.’³ The relationship between human rights and ethics in the protection of marginalised peoples’ access to water is critical today as years past. Addressing the severity of discrimination women and children suffer in the quest to obtain access to water, Goldblatt made the point that substantive approach is needed to ‘combine social and economic rights to address pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalisation of structural inequalities that may be at the root cause of the violence that women experience.’⁴ Most women and children suffer similar fate in Ghana. For example, the duty to fetch water, fire wood and related house chores, remain solely the speciality of women. The added burden is that water resources are limited in town centres and villages, and where they are available, they are expensive or remotely located over long distances beyond people’s reach. However, despite the policy’s purported objective to promote affordable water for the people’s human and sanitation purposes; the government of Ghana capitulated to pressures from the WB/IMF and MNCs, and went ahead with the privatisation of the country’s only GWSC.

6. Judicial interventions

Jurisprudence exists in the International, regional and national jurisdictions dealing with the right to water. For instance, in the *Gabcikovo-Nagymaros Case*, Judge Weeramantry of the International Court of Justice, in a separate opinion stated at paragraph 91(b) that:

The protection of the environment is ... a vital part of the contemporary human rights doctrine, for it is sine qua non for numerous human rights such as the right to health and the right to life itself... Damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.⁵

The reference to life and health, in the above judgment, has a relationship with water, because it constitutes indirectly an essential resource without which no human existence is possible. Thus, safeguarding the environment is an implied duty to promote the right to water.

On the regional plane, the American Commission on Human Rights, explained in its report regarding Ecuador⁶ that the people were exposed to fumes and toxics emitting from oil exploration, which polluted and endangered the people’s right to life.⁷ The connection between the right to life and water is instructive in this regard. Equally, the right to safe drinking-water, determined by the European Court of Human Right, in the case of *Zander v Sweden*,⁸ examined prospective pollution of a drinking-water well and decided a violation of Article 6(1) of the European Convention on Human Rights. Importantly, most polluted activities or actions have destructive link to water resources which undercut access to water; thus, the need to safeguard the environment is a judicial strategy to protect access to water.

Some examples also exist in national jurisdictions protecting the right to water as human right. In South Africa, the right to water is integral to the fundamental rights guaranteed under its Constitution. For example, in *Lindiwe Mazibuko and Others v City of Johannesburg*,⁹ the Supreme Court, held in respect of Article 27 (7) of

¹ United Nations General Assembly Resolution, Permanent Sovereignty over Natural Resources, Res. 1803 (xvii) adopted, New York, 14th December, 1962.

² Emanuelle Fantini ‘An Introduction to the human rights to water: Law, politics and beyond’ (2019) *Wiley*, 1-8; Cristy Clark ‘Of what use is a deradicalized human rights to water?’ (2017) (7) *Human Rights Law Review*, 231-260; Dina Lupin Townsend ‘Covid-19 Symposium: Covid-19 and the human rights to water and sanitation’ (2020) *OpinionJuris in Association with the International Commission of Jurists*

³ G.M. Ogendi & I.M. Ong’oa ‘Water Policy, Accessibility and Water Ethics in Kenya’ (2009) 7(1) *Santa Clara Journal of International Law* 182

⁴ B. Goldblatt ‘Social and economic rights to challenge violence against women –examining and extending strategies’ (2019) *South African Journal on Human Rights*, 5

⁵ *Hungary v Slovakia (Gabcikovo-Nagymaros case)* (1997) *ICJ Rep.* 6, separate opinion of Justice Weeramantry, 25 September, 1997

⁶ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Ecuador* (OSA/Ser.L/VII/96, Dec. 10 Rev. 1, 1997)

⁷ Dina Shelton, ‘Human Rights and the Environment: Jurisprudence of Human Rights Bodies’ (2002) 32:3-4 *Environmental Policy and Law*, 158, 161

⁸ ECHR *Zander v Sweden* (1993) Series A, No 279B

⁹ *Lindiwe Mazibuko & Others v City of Johannesburg & Others, Case CCT 39/09/ [2009] ZACC 28*: Five residents of Phiri in Soweto brought a case against the City of Johannesburg and Minister for Water Affairs and Forestry, for disconnecting their water supplies for failure to pay their water bills, see paragraph 28

the South African Constitution (1996), proclaiming at paragraph 28 of its decision, that: ‘42 litres of water per day should be distributed freely to each person, and directed the City of Johannesburg; to reform its policy in line with the Constitution, so that poor South Africans could be supplied with water regularly.’¹ The decision of the South African Supreme Court, affirms that access to water is a human right which ought to be promoted by the government and private institutions engaged in water services. Although several conflicts ensued between the authorities of Johannesburg and its people regarding water supply, the judgment in *Mazibuko* has established an abiding precedent, protecting the poor South Africans against economic exploitation by the city authorities.

With respect to India, Judicial protection of water as a human right has been recognised. In *Charan Lal Sahu*², the court related the right to water in the purview of environmental pollution, stating that quality of human life is supported by a pollution-free environment and regular access to clean water. However, the Supreme Court failed to impose any obligation on the government and respective authorities with respect to promoting access to water as human right. In *Subash Kumar*, the Bihar High Court held, that: “Article 21 states that the right to life encompasses the ability to enjoy pollution-free water supply as a prerequisite to human survival and development.”³ This decision sanctions water as an essential resource that underlies the principle of upholding water as a human right.

The *Ogoni Case*, which involved the pollution of land and water resources and violation of the people’s right to a healthy standard of living, set a profound precedent on the continent of Africa and in Nigeria; because, access to a clean environment and safe-drinking water are all together protected. In the *Ogoni Case*⁴, the African Commission in its deliberation held at paragraph 52 that:

“The right to a general satisfactory environment as guaranteed under Article 24 of the African Charter to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”⁵

The promotion of sustainable natural resources, as determined by the African Commission, has two-pronged ramifications. First, it creates a landmark precedent urging the supreme/high courts across the continent of Africa, to construe their constitutions in light of the African Charter to protect the environment of which water is a constituent; and, second it positions the African Commission as an independent and authoritative body imbued with the power, to enforce states’ compliance with provisions of the African Charter, in recognition of the peoples’ human rights. As with all regional human rights judgments, the *Ogoni* case has created an enduring judicial precedent on the continent of Africa, with a view to safeguard the environment including access to water.

7. The Ramification of judicial intervention

As shown in the judicial interventions above, it is worth stating here, that the impact of judicial decisions regarding access to water, sanitation and the environment, represent an effort to protect human dignity. For example, supreme/high courts in the region could resort to interpreting their constitutional provisions, in the light of the African Charter including other international human rights instruments, to grant access to safe water. In that respect, ordinary citizens especially those in poorer communities, who had little or no financial resources, could be protected and granted access to water-supply in pursuance of their domestic, hygienic and general livelihood. Similarly, the 2007 OHCHR report affirmed that access to water is justiciable under human rights regimes; therefore, the ordinary person’s rights could be promoted against corporate and state authorities’ failure or lukewarm. The 2007 OHCHR report further sets out that: ‘It is now time to consider access to safe drinking - water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of water for personal and domestic purposes.’⁶ Thus, the *Mazibuko case*⁷ has established a judicial precedent protecting access to water, in respect of the 1996 South African Constitution; obliging the City of Johannesburg and its Water Company, to supply the people with water without disconnecting their supplies, even in the face of non-payment of water bills. The principle that water is justiciable coupled with the decision in *Mazibuko*, have monumental ramifications not only for South Africans, but also for the entire continent of Africa.

¹ *Lindiwe Mazibuko & Others v City of Johannesburg*, *ibid*

² *Charan Lal Sahu v Union of India*, AIR (1990) SC 1480. This case concerned the Bhopal Gas Disaster. This enabled the Government to pass the 1985 Act, which allowed the people to make claims for compensation in respect of injuries suffered by victims of the Gas explosion, see paragraph 16

³ *Subash Kumar v State of Bihar (1991) ISCC 598*, see paragraph 5

⁴ *The Ogoni case- The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria*: This case concerned the widespread contamination of soil, water, air and the destruction of homes, the burning of crops -under which Ogoni Communities had been suffering in violation of their rights to health, a healthy environment, housing and food.

⁵ *The Ogoni Case*, *ibid*

⁶ OHCHR, Report of the United Nations High Commission for Human Rights on the Scope and Content of the Relevant Human Rights Obligations Related to Equitable Access to Safe Drinking Water and Sanitation under International Human Rights Instruments, A/HRC/63, 17 August 2007, at para 66.

⁷ *Mazibuko*, *supra*, see note 53, *ibid*.

This is significant because it would embolden the ordinary people to plead human rights to water by drawing on the merits of this jurisprudence. Moreover, the decisions in *Gabacikovo- Nagymaros*,¹ *Ogoni*² and *Mazibuko*³ had also sanctioned, that access to water is a human right for which states authorities, water companies and private businesses, are required to respect, promote and protect without reference to economic arguments. In addition, these judgments have implications for Ghana particularly the Judiciary and the water companies, operating in the country. At the time of writing this article, not a single case has yet been decided by the supreme/high courts of Ghana upholding access to water as a human right. However, the above jurisprudence creates a precedent upon which poor Ghanaians could rely to plead the right to water, in consonance with constitutional provisions, and also guide the courts to interpret international human rights law to grant and protect access to water.

8. Water: A 'Blue Gold' or Public Good

The view that water is a public good, meant to serve the health, sanitation and dignity of all peoples, in accordance with human rights principles, has shifted ground. This is because some multinational corporations (MNCs), World Bank (WB) and the International Monetary Fund (IMF), acted in concert with few politicians in developing states (including Ghana), to lobby for water to be branded as a 'blue gold' worth exploitation for its economic profits. In that sense, the MNCs and their allied financial institutions, creatively advocated for water supply systems including sanitation services, to be commodified in developing countries.⁴ Treating water as 'blue gold' prioritises economic expediency over human dignity and health needs; thus, Fitzmaurice argued has that: 'the World Bank granted a US\$100 million loan to Ghana, which was conditioned on the performance of several actions, inter alia, the increase of electricity and water tariffs by 96%, to cover operating costs.'⁵ Granting loan to Ghana with a condition to increase water tariffs by 96%, is an economic strategy designed to exploit the poor Ghanaians, who live on less than one dollar per day.⁶ Furthermore, the policy of branding water as 'blue gold' for profit, which was initiated by the WB/IMF including the MNCs; exerted excessive pressure on developing states to comply with the policy to their disadvantage, economically and socially.⁷ Lastly, economic profit, the slave of increasing greed among the WB/IMF as well as the MNCs, and condoned by the World Trade Organization (WTO), under its GATS agreement, played a key role in disregarding the people's health and sanitation needs.

9. GATS and Commodification of Water in Ghana

The General Agreement on Trade in Services (GATS) relates to all services, spanning banking, transport, telecommunication, health, education and prisons.⁸ GATS seek to advance international trade in services and to eliminate barriers to such trade. Article II (1) stipulates that most favoured nation (MFN) status is extended to all World Trade Organization (WTO) members.⁹ Governments are prohibited from extending better/favourable treatment to local service companies than to foreign corporations in the service areas. The MFN and national treatment provisions of the GATS, indirectly undercut the capacity and existence of local service companies in developing states, by creating opportunities for Foreign Service companies to enter those markets to trade in water resources as commodities for financial gains.¹⁰ A commentator pointed to the unequal relationship that subsists between local service companies in developing countries with their foreign MNCs counterparts, and writes: 'Under GATS, it would be difficult for a developing country to resist that move and market access commitments could impose restraints on local and national authorities' ability to effectively regulate water extractions to protect access to water for the majority'.¹¹

Similarly, the above statement indicates that GATS paved the way for most national corporations, including the Ghana Water & Sewerage Corporation (GWSC) to be privatised; on WB/IMF conditionality, thereby

¹ *Hungary v Slovakia*, supra, see note 48 ibid

² *Ogoni*, supra, see note 56

³ *Mazibuko*, ibid

⁴ World Bank, Towards a Water -Source Kenya: Water Resources Sector Memorandum (2004) available at <<http://www.gwpforum.org/gwp/librarysecurewaterkenya.pdf>>

⁵ Malgosia Fitzmaurice, 'The Human Right to Water' (2007) 18 *Fordham Environmental Law Review*, 537

⁶ Pdraig Camody *The New Scramble for Africa* (2nd edn), (Cambridge, Polity, 2016) 1

⁷ Maude Barlow, 'The World's Water: A Human Rights or a Corporate good? In whose water is it: the unquestionable quest thirst of water-hungry world' *National Geography Society* (USA, 2003) 35

⁸ GATS, the Final Act and Agreement Establishing the World Trade Organization, Uruguay Round (Marrakesh, 15 April 1994) available at <http://www.wto.org/english/docs_e/legal_e/26-gats.pdf>

GATS comprise three pillars: The first is framework agreement entails obligations, which apply to all member countries. The second relates national schedules of commitments relating specific further national commitments, which will be the subject of a continuing process of liberalization. The third contains annexes addressing the special situations of individual service sectors.

⁹ GATS, Article II (2)

¹⁰ Pierre Sauve, *The GATS and developing countries- At the Service of development* (SIDA, 2004)

¹¹ T. Concannon, *Stealing our Water: Implications of GATS for Global Water Resources, Friends of the Earth Briefing* (FOE, 2002) available at <http://www.foe.co.uk/resources/briefings/gats_stealing_water.pdf>

denying majority of Ghanaians access to safe drinking-water through price hikes. The WB/IMF and the WTO argued, that influencing developing countries to liberalise their water and sanitation sectors through privatisation; would motivate the MNCs to invest resources and technology to manage efficiently water resources; so as, to eliminate wastage in water uses occasioned by states funding.¹ This argument is surprisingly disingenuous because developed states have implemented lasting social welfare schemes and benefit policies, which guarantee that the unemployed and those on low incomes, live decently and humanely as possible.² Thus, pushing for commodification of water resources through IMF/WB conditionality, in order to increase water prices in Ghana; reflects a neoliberal economic strategy to pursue profits, whilst undercutting the people's right to access water. Furthermore, the commodification of water in developing states, especially in Ghana, runs contrary to the GATS mandate; which promised to provide technological capacity to help those countries build their infrastructures and water treatment facilities.³ Moreover, the strategic relationship among the WTO, IMF and WB, in devising economic policies to promote coherence in the global trade⁴, disadvantage Ghana and many other developing countries; because, it unduly forces them to sign up to IMF/WB macro- economic prescriptions to their detriment.

10. The Influence of MNCs in the Privatisation of Ghana Water and Sewerage Corporation

The water sector, waste treatment including sanitation service, is estimated to be worth over US\$200 billion each year globally. A study conducted by the Organization for Economic Cooperation and Development (OECD), has predicted that water utilities account for US\$73.2 billion, out of the total global environmental market value of US\$453 billion for goods and services.⁵ This presents the water sector as an attractive business opportunities for multinational corporations (MNCs) to take advantage of developing countries, especially Ghana, to privatise their water companies. Equally, large corporations wield vested interests within WTO decision- making systems and play active roles in influencing the drafting of policies like the water privatisation, which had been implemented across many developing states, through the mandate of GATS.⁶ This corporate strategy coupled with corrupt tactics were deployed by the MNCs to induce the privatisation of GWSC. Thus, Hall and Bayliss write:

“A contract given to Enron subsidiary, Azurix, for a BOOT water sector project was cancelled after the World Bank withheld financing of \$100m for the project. Ghana has also been called upon to pay \$800,000 for the costs of preparing the defunct project. The funds were withheld because the contract was awarded in less than transparent circumstances.”⁷

The determination by the MNCs to secure huge profits through corrupt contractual arrangements and manipulation of states economies, de-personalise majority of Ghanaians, who struggle to secure access to safe-drinking water. Instead of using their resources and technical capacity to knit together mutually beneficial socioeconomic projects in Ghana, the MNCs adopted complex influential strategies to pursue greed that undermines the people's health and sanitation needs. Those policies resonate with the IMF and WB's roles in the privatisation of GWSC, as examined below.

11. The IMF and World Bank's roles in the privatisation of Ghana Water and Sewerage Corporation

In contrast to the promises of IMF and WB policy prescriptions regarding social and economic interventions in Ghana, privatisation of GWSC poses dire challenges to the dignity of Ghanaians, particularly in the spheres of sanitation and access to water. In this vein, the IMF played an active role in the formulation of macro-economic policies in Ghana, directing that it increases consumer fees for water and sanitation services through the privatisation of the GWSC.⁸ This article contends, that commercialisation of water resources and sanitation services, under the IMF policy; failed to offer alternative measures to ensure that Ghanaians, who are socioeconomically deprived obtain access to safe drinking-water, in the country.⁹ The IMF's strategy of exerting pressure on the government of Ghana, to increase water fees in conjunction with other utility services; underscores the point, that the health and sanitation needs of Ghanaians are not considered a health priority nor a

¹ Jessica Budds and Gordon McGranahan, Are the Debates on Water Privatization missing the Point? Experiences from Africa, Asia and Latin America, *Environment & Urbanization* (2003) 16 (2) 18-113

² Peter Baldwin, *The Politics of Social Solidarity: Class bases of the European welfare state, 1875-1975* (Cambridge: Cambridge University Press, 1990)

³ Rorden Wilkinson, what is Wrong with the WTO: And How to Fix it (*Cambridge, Polity Press, 2014*) 40

⁴ Article III (5) of the Agreement establishing the WTO

⁵ OECD Joint Working Party on Trade and Environmental, *Future Liberalization in Environmental Goods and Services* (COM/TD/ENV (98) 37/ FINAL, OECD, 3 March 1999)

⁶ M. Khor, WTO Hijacked by Big Corporations, South- The Victims (*Third World Network, 1999*) < available at <<http://www.twinside.org.sg/title/victims-cn.htm>>

⁷ David Hall and Kate Bayliss, *Africa Water* (2002), Public Service International Research Unit (*PSIRU*) < available at < www.psiru.org>

⁸ Sara Grusky, Privatisation Tidal Wave IMF? World Bank Water Policies and the Price Paid by the Poor (*The Multinational Monitor, 2001*)13

⁹ George M. Ogendi, *supra*, see note 46

human right issue. In addition, the Halifax Coalition¹ has decried the IMF's policies of structural adjustment programme and allied policies; stating that: '... on the negative side, privatisation often leads to job losses, the social impact of which may need to be mitigated through retraining and job creation programs, and income support within well-defined social safety net'.² Unlike in developed economies, Ghana has no social nor economic safety nets granting benefits to the unemployed and less vulnerable in her society. Thus, those Ghanaians who lost their jobs through the IMF's privatisation of GWSC and structural adjustment programme, had no secured alternative measures of regaining sustainable livelihood, including access to water.

Similarly, the World Bank (WB), also played its part by deploring conditionality and pressure as strategies to influence Ghana's privatisation of her water treatment company. Gustafsson (as cited by Holland) argued that: 'the World Bank adapts itself to the global system of trade. This entails the removal of trade barriers and subsequently making countries even more vulnerable to foreign interest'.³ Another view is, that the privatisation of GWSC was funded through a World Bank loan with the conditionality of cost recovery. Under the WB's cost recovery strategy, Ghana was forced to increase water fees to 50%. Whilst under the private participation option, it ought to privatise or offer concession to foreign water corporations; to enter the sector so as to supply water services at an increased fees, in an attempt to redeem the costs of investment in the water project.⁴ Although the WB had funded some projects to improve other sectors of the Ghanaian economy, however, the pressure and conditionality policy used to privatise the GWSC, severely damage the health and sanitation needs of the people, perpetually.

Furthermore, the WB engaged privatisation as conditionality of renewing and increasing loans for Ghana. In that respect, Barlow and Clark commented that: 'In Ghana, where the IMF and the World Bank have insisted on water privatisation as a condition for renewal of loans, a broad range of civil society organizations have formed a National Coalition against the privatisation of water'.⁵ The strategy of coercing states especially a developing country, like Ghana, to privatise her water supply company; has created a two-tier system of citizenship. Whilst the rich have constant access to water supply, the poor struggle to obtain it. Also, in one of its policy documents, the WB declared that: 'water services – including sanitation – are essential to life and health, economic development and human dignity'.⁶ Yet, the WB and IMF supported by the WTO, crafted and implemented the privatisation of GWSC, which has consequently gendered perennial shortages of water supply, accompanied by water-borne diseases across many regions of Ghana.

Besides the WB's active involvement in the privatisation of GWSC, past and present Ghana governments are equally implicit in condoning the privatisation agenda. This is because some Ghanaian public officials, directly or indirectly, collaborated with representatives of the MNCs and took bribes; to pave the way for easy implementation of the privatisation scheme, against the will of many Ghanaians.⁷ It must be stated that the pervasiveness of corruption among the Ghanaian society linked with indifference in official circles, emboldened the MNCs and the IMF to flout the right to safe drinking- water.

Interestingly, the 2019 Corruption Index by Transparency International, ranked Ghana 80th out of 180 countries surveyed in that year.⁸ With corruption firmly ingrained in institutions and among public officials across the country, it is easy to influence government officials to receive bribes and to implement unfavourable policies against the people's socioeconomic wellbeing. Consequently, access to water as a human right has been weakened in Ghana; because the judiciary and police service are endemically corrupt.

Furthermore, Transparency International has declared that: '... Corruption exists in all branches of the Ghanaian government, and there is often a lack of accountability. The culprits often enjoy impunity. The judiciary and police are viewed as the most corrupt'.⁹ Contrary to the pro-human rights stance adopted by the judges, in the cases of *Hungary v Slovakia*¹⁰ and *Mazibuko*¹¹ above, the Ghanaian judiciary solicits bribes through corruptible activities; thus, reneging its constitutional role to protect access to water as a human right.¹² Moreover, a corrupt judiciary inspires despair among the citizenry as well as discourage them to pursue claims

¹ The Halifax Initiative Coalition is a labour movement based in Canada with the objective of fighting economic and social injustice around world

² Halifax Initiative Coalition 'Water Land and Labour: The Impacts of Forced Privatisation in vulnerable Communities' (2002) available at < www.halifaxinitiative.org/updir/Water_Land_Labour.pdf >

³ Ann-Christian Sjolander Holland, *The Water Business: Corporation versus People*, (London: Zed Books 2005) 23

⁴ Sara Grusky, supra see note 75

⁵ Maude Barlow and Tony Clarke Gold, *The Battle against Theft of the World's Water* (New York: New Press, 2005) 16

⁶ The World Bank: Approaches to Private Participation in Water Services- A Tool Kit (English), *The World Bank* (2006) available at < www.documents.worldbank.org >

⁷ Lindsay Whitfield, The Politics of Urban Water Reform in Ghana (2005) 33 (109) *Review of African Political Economy*, 425-448

⁸ Ghana Corruption Rank-1998-2019, available at < <http://tradingeconomics.com/ghana/corruption-rank> >

⁹ Transparency International: Corruption Perceptions Index 2019, available at < <https://knowledgehub.transparency.org/helpdesk/overview-of-corruption-and-anti-corruption-in-ghana-1> >

¹⁰ *Hungary v Slovakia* supra, see note 48

¹¹ *Mazibuko* supra, see note 53

¹² Adriana Cordis, judicial Checks on Corruption (2008) All Dissertations, *Clemson University*, 192

relating violations of their human rights. These corruptible acts reflect the view of a commentator who argued, that the Ghanaian judiciary is expected to symbolise hope for the vulnerable in society; whilst, construing provisions of the 1992 Constitution of Ghana, to protect the people's right to safe drinking-water.¹ The fact that the Ghanaian judiciary failed its constitutional and judicial responsibilities to promote access to water, but rather engaged in corruption-related activities; indicates, that it had undermined the people's human right to health and dignity.

12. Conclusion

This article examined access to water as a human right through the prisms of ICESCR, CEDAW, Non-Navigational Convention and General Comment No.15. It argues that the IMF/WB's sponsored privatisation of GWSC, is a link in the great chain of unfavourable macro-economic policies; which conspired with the WTO's trade liberalisation agenda, to undermine the dignity of Ghanaians regarding access to water. It further concludes as follows:

First, that Ghanaian governments (present and past), owe obligations under international human rights instruments and domestic constitution to ensure that the people, especially the poor, gain safe access to water in respect of their health and sanitation needs. Thus, on behalf of the ordinary people, the government is obliged to uphold and defend the right to water without citing social or economic arguments to undermine it.

Second, the indispensability of water features prominently in the struggle to promote human rights for poor communities in many developing countries. This requires of Ghana government, to initiate and implement safety-net schemes to protect access to water, in line with the people's human rights.

Lastly, the hardships associated with job losses especially with respect to the privatisation of GWSC, require the government to provide alternative forms of jobs, re-training schemes, coupled with social welfare benefits/packages, to support the affected people and their families. Similarly, there should be sustained effort by the Ghanaian government to stymie endemic corruption and related vices from public institutions- judiciary and police service. This would restore confidence among the people and encourage them to challenge the water corporation for access to water under human rights instruments.

¹ Felix Nana Kofi Ofori, The Marginalisation of the right to justice: The case of bribery scandal in Ghana's Judicial service, (2018) 75, *Journal of Law, Policy and Globalization* 2224-3259