

Conflict Resolution Mechanisms under Ethiopian Water Laws: An Assessment

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Abstract: *This article aims to assess the loopholes of water resource management laws of Ethiopia in resolving water-induced conflicts. Ethiopia has endeavored to enact water laws to oversee water-induced conflicts. However, the laws are not free from impediments. The assigned organ to such a purpose is not independent as the issue of conflict of interest arises on it, and the issues of court's jurisdiction are among the legislation's drawbacks. To achieve its objectives, the paper is organized into four parts. The first part is the introduction part that deals with the historical development of water laws in Ethiopia. The second part critically points out the causes and resolution mechanisms of the conflicts. The third part discusses the substantive and procedures of conflict resolution mechanisms of the water laws, and the fourth part scrutinizes the gaps of the statutes. The last part also attempted to conclude and develop satiate recommendations for the concerned bodies. To do so, the paper employed both primary and secondary data sources. The primary data has been gathered through field observations and visiting water resource management laws. While secondary data is through a critical review of related literature.*

Keywords: Water, Conflict, Conflict Resolution Mechanisms, Legislations, management, Assessment.

Introduction

Conflict is a social and historical phenomenon with different scope and magnitude, which begins when one party perceives that another party has negatively affected, or is about to affect, something that the first party cares about.¹ Conflicts over-controlling and conquering Water Resources (WRs) are common causes of conflict and reflect the widespread dependence on WRs for livelihoods.

In Ethiopia, to this date, domestic water-induced conflicts are little or have not been a big deal. However, there is a symptom for future occurrences. The leading causes for the conflicts are population surge, urbanization, industrial pollutions, agriculture, poverty, et al. Ethiopia's government is striving to find amicable solutions for emerging water-induced conflicts. Codifying appropriate Water Resource Management (WRM) laws are among the panaceas.

Currently, the main water governing laws are WRM proclamation No. 197/2000 (the proclamation) and regulation No. 115/2000 (the regulation). These laws have issued various Conflict Resolution Mechanisms (CRM) but are limited to negotiation, arbitration, and litigation. Besides, it seems that the laws intentionally leave other mechanisms, such as Mediation, a widely practiced mechanism in Ethiopia.²

Hence, this article primarily stands to assess and identify substantive and procedural gaps in the Ethiopian WRM laws focusing on water-induced CRM. To achieve this goal, it employed the desktop review analysis method. Finally, the article is also expected to provide significant recommendations for the amendment of the laws to the concerned bodies.

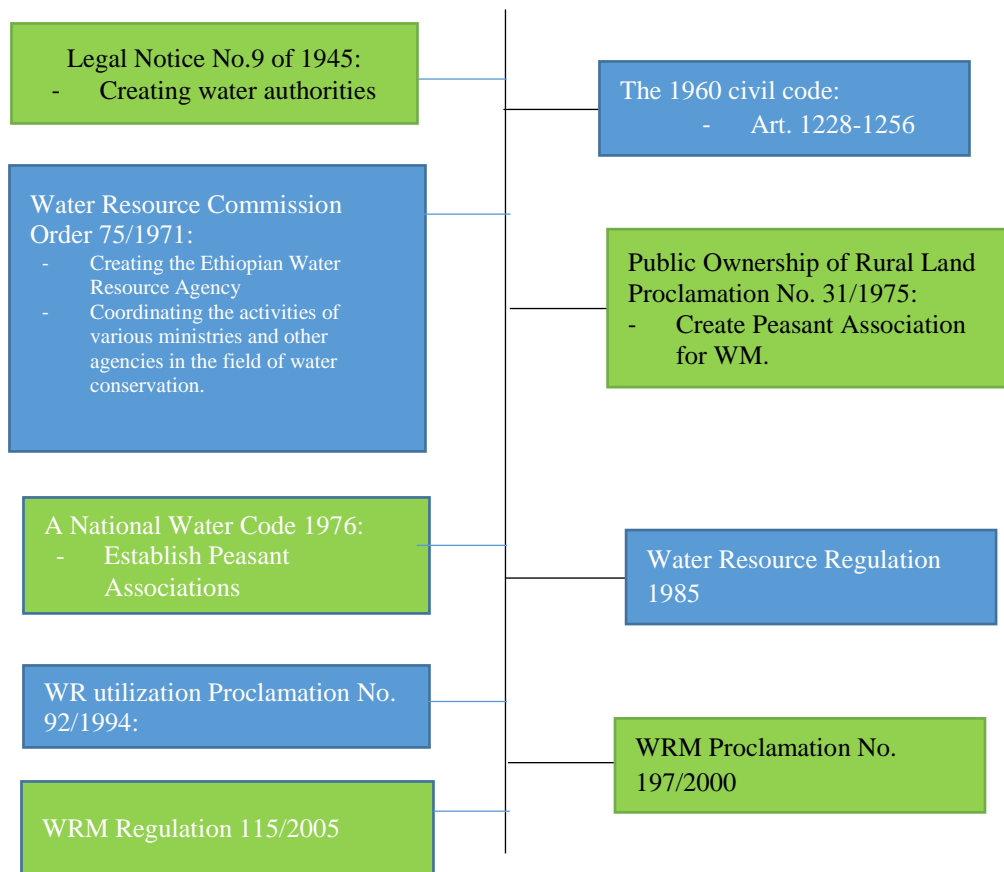
1. Historical Development of Ethiopia's Water laws

The Ethiopian WRM laws have passed through protracted development paths as the people have used water as political, economic, religious, and social instruments. For instance, Nile River has been served as a political tool for Ethiopian Christian leaders. When

¹ Yonas Berhe. 2012. An Assessment of Indigenous Conflict Resolution Mechanism of Mezard in Rural Alamata Woreda, Tigray National Regional State, Ethiopia. Munich, GRIN Verlag: 1. <https://www.grin.com/document/214145> (accessed on September 21, 2020).

² Abdu Kemal. 2014. Modernization and institutionalization of mediation to resolve commercial and investment disputes in Ethiopia. Addis Ababa University, college of Law and Governance Study.

Until about a decade ago, Ethiopia's WRs sector did not have any clearly articulated and comprehensive policy or legal documents to manage and develop the resources. Except for the powers and responsibilities given to the respective government bodies by law, most of the policy, legal and regulatory frameworks for managing WRs have been based on Ministerial directives and day-to-day practices of the relevant government agencies, and they haven't incorporated applicable provisions for resolving conflicts.⁴



As depicted in figure 1, during the reign of Emperor Haile Selassie, Ethiopia's Civil Code has promulgated to have effects on water management *per se*. However, it is silent about CRM, *quid pro quo*, more focused on the water ownership rights (Art. 1229 and ff), which has no more effects by now because of Art. 43 of the Federal Democratic Republic of Ethiopia (FDRE) constitution utterly banned private ownership of water and other natural resources.

⁵ Ibid.

powerful instrument for formal conflict resolutions. They had their judicial committee to oversee conflicts and had the power to impose decisions through fines and/or imprisonment.⁶

After the fall of Dergue, the transitional government prepared WRs Utilization Proclamation (Proclamation 92/1994) in 1994. However, the proclamation had never realized due to its weakness in addressing Water Conflict Resolution Mechanisms (WCRMs) and other drawbacks.⁷ Then after the end of the transitional government, the FDRE government issued the constitution, proclamation, and regulation for the administration and management of WRs. The FDRE Constitution, which went into effect in 1995, endeavored to address the Federal and State Governments' power on water administrations.

Art. 51 (5) & (11) stipulate that the Federal government has the power to enact laws for the utilization and conservation of WRs; and determine and administer water or rivers and lakes linking two or more states and WRs crossing the national territory. On the other hand, the constitution mandates regions to administer land and other natural resources based on Federal laws.⁸ Regional governments also have residual power.⁹ Thus, the country's WRs that remain confined within the respective regional states' boundaries, such as groundwater or lakes that do not 'link' regional States, would be under regional governments' administration.

Thus, the above constitutional provisions gave a clue to the utilization, management, CRMs, courts' jurisdiction, and other vital issues. For instance, if a conflict arises between two or more hydraulically linked states, the federal courts shall have a power to adjudicate the issues. However, if a conflict arises on water confined within a state, the state courts are empowered to see the case.

The Proclamation (Proclamation No.197/2000) issued in March 2000 is the current primary legal instrument governing the management, planning, utilization, protection, and CRMs of Ethiopia's WR. All these powers are given to the Ministry of Water Resources (MoWR), which can probably transfer its power to Regions or River Basin Authorities (RBOs) when it deems necessary.¹⁰

The proclamation provides fundamental principles of WCRMs.¹¹ The primary thrust of these fundamental principles is that WRM and administration should be based on WRM policy, the integrated basin master plan studies, and WRs laws.¹² Besides, the proclamation has unique features such as a permit system and WCRMs. Unlike the permit system, the proclamation states scanty words about conflict resolutions. It merely puts CRMs framework within an article (Article 9) out of its 33 Articles. The other crucial legal instrument is the Council of Ministers' regulation (Regulation No. 115/2005). It has provided WCRMs with a little detailed procedure. Yet, only two provisions (Article 35 and 36) out of the 39 provisions speak about CRMs.

Parallel with the formal legal instruments for resolving water-induced conflicts, Ethiopia has practiced traditional CRMs for thousands of years in different parts of the country (see table 1). Almost all ethnic groups in Ethiopia have their own traditional CRMs. Here are some of the well-known CRMs:

Table 1: Traditional Conflict Resolution Mechanisms in Ethiopia

No.	Mechanisms	Place of Practicing
1	Shimglna	Amhara Region
2	Madda	Afar Region
3	Gadaa	Oromia Region
4	The <i>guurti</i> (the council of elders)	Somalia Region

⁶ Mark Giordano and John Butterworth. 2007. Community-based Water Law and Water Resource Management Reform in Developing. In Barbara Van Koppen et al (edt), Cambrige, USA, pp 207– 280, 3.

⁷ Ibid.

⁸ FDRE's Constitution on Proclamation. 1995. *Negarit gazetta*, No. 1, year 1, 1995.

⁹ Ibid, Art.52/1.

¹⁰ Imiru Tamrat. 2008. *Policy and Legal Framework for Water Resources Management in Ethiopia*. 14.

¹¹ Ethiopian Water Resource Management Proclamation. 2000. *Negarit Gazetta*, No. 25, 6th year, Art. 6, 2000.

¹² Imiru Tamrat (supra note 8) 16.

2. Major Causes of Water-Induced Conflicts in Ethiopia

It is believed that understanding the relevant causes of conflict enables to design a proper CRMs. Though it is cumbersome to list all causes of water conflicts, below are some of the common causes of conflicts that induce individuals or groups to get involved in the conflicts in Ethiopia.

- a. **Water Scarcity:** In Ethiopia, drought and politics are two leading causes of water shortage.¹³ In the past twenty years, droughts have affected several areas, leading to ponds, wells, streams, and lakes drying up or becoming extremely shallow.¹⁴ Bad political practices and conflicts also hindered water accessibility, especially for the rural people. Water scarcity combined with low economic development, political governance shortfalls, drought, and weak CRMs leads to instability – threatening lives and livelihoods. Consequently, it exposed users to conflict.¹⁵
- b. **Lack of good governance.** Often shortage of water alone may not lead to tensions but also administration and management problems. Whether water is scarce or not, the highly complex and sensitive nature of its availability, use, and allocation requires robust, capable mechanisms and institutions to negotiate and balance the competing interests of users.¹⁶ Failing to do so would make the government to earn extra costs. In Ethiopia, lack of good governance is the leading cause of water-induced conflicts. Water is not administered by professionals and separately established institutions.
- c. **High poverty level and largely subsistence-based agriculture.** High poverty and highly subsistence-based agriculture are the most significant cause of water-induced conflicts in Ethiopia. An estimated 85% of the population is engaged in agricultural production, particularly in persistent and traditional farming, and living in rural areas disparately without access to water and other necessary facilities.¹⁷ This population is struggling to change their lives through irrigation, the main cause of water shortage. Unless preventive and precautionary measures shall be taken, the shortage would lead to conflicts among the poor farmers.
- d. **Water-theft.** Water theft, also called unauthorized consumption, is potentially illegal water use. In Ethiopia, it is common practice, and massive water thefts are recorded in water-scarce areas during dry season. After the theft, less punishment aggravates the situation. As various studies reveal, water theft has become the main cause of water-induced conflicts.
- e. **Failure to share data and information.** Reliable meteorological, hydrological, and socio-economic data are vital for long-term subsistence WRM across the country.¹⁸ Relevant data shall be shared among users properly. Sometimes failing to do so may hurt others (especially downstream river water users). For instance, floods spark from the upper stream may damage the lower users' products and property if the upper users fail to share the information with the lower users. Consequently, the failure may invite parties to a conflict. Besides this, disparities among water users' capacities to generate, interpret and legitimize data can mistrust and hinder cooperation. This is the major problem in Ethiopia because farmers aren't found at the same level of understanding to develop, analyze, and legitimize data despite the traditional skills they have.

3. Water-Induced CRMs under Ethiopia's Water Laws

According to Ethiopian WRM legislations, and based on the parties involved in the conflicts, water-induced conflicts are classified into three:

The first type of conflict is the conflict *between the permit holders*.¹⁹ Mostly, Their conflicts are related to rights or obligations arising out of the permits.²⁰ The adjudication process begins with filing a memorandum summarising the point of dispute and

¹³ Rebecca Shore. 2018. *Water in Crises-Ethiopia. The water project.* <https://thewaterproject.org/water-crisis/water-in-crisis-ethiopia> (accessed on January 23, 2020)

¹⁴ Ibid.

¹⁵ See: *Mediation and the dispute resolution mechanism:*

<file:///D:/ETH%20WATER/Mediation%20and%20dispute%20resolution%20mechanisms%20%20%20Water%20Cooperation%20%20Making%20it%20Happen!%20International%20Annual%20UNWater%20Zaragoza%20Conference%202012_2013.%20Preparing%20for%20the%202013%20International%20Ye_ar.htm> (accessed on August 18, 2018).

¹⁶ OECD, *Water and Violence Conflict:* https://www.eda.admin.ch/dam/deza/en/documents/themen/fragilekontexte/92767-water-violent-conflict_EN.pdf (accessed on August 25, 2018).

¹⁷ Ibid.

¹⁸ *Water and Violence Conflict:* https://www.eda.admin.ch/dam/deza/en/documents/themen/fragilekontexte/92767-water-violent-conflict_EN.pdf (accessed on August 25, 2018).

¹⁹ Permit holders are those who have fulfilled the requirements laid down under the Proclamation and the Regulation to construct, maintain, or alter the waterworks.

²⁰ Ethiopian Water Resources Management Council of Minister Regulation. 2005. *Negarit Gazetta*, No. 27, 11th year, 115, Art.7.

supporting evidence to the Supervisory Body (SB) by the complaining party.²¹ Upon receiving the memo, the SB shall send a copy of it to the respondent by fixing the trial's place, date, and time.²²

At the time and place set by the Supervisory Body, the respondent shall attend and state their defense and submit evidence in support thereof. The SB made subsequent orders if the defendant appeared on the date, time, and place fixed for the proceeding. However, if the adversary party is absent by his fault, the case will proceed and judgment will be delivered in his absence.²³ To this end, neither the proclamation nor the regulation has stated the procedure that the SB has to follow in case of the parties absence. This is one of the gaps in Ethiopian WRM laws. In such a time, we can consider the general law (the civil procedure code(CPC)) to fill the gaps.²⁴ Moreover, the regulation itself allows the implementation of the code in the case of gaps.²⁵

In the end, SB, based on the note of all evidence, shall pass decision and keep a copy of the record of the proceedings to the parties.²⁶ Then after the decision, an aggrieved party can appeal to the competent regular court within 60 days following the decision's receipt.²⁷ However, which court has jurisdiction to review the SB's decision is the blurred issue under the WRM laws.

The WRM laws leave the issue silently. In this regard, countries have different experiences. For instance, Egypt established a committee headed by the first instant court judge in all governorates to adjudicate conflicts. The committee resolution shall be appealable in front of the competent First Instance Courts.²⁸ In other issues, Ethiopia has provided similar panacea. For instance, Art. 81/3 of the civil servant proclamation No.1064/2017 states that any party who claims the decision of Administration Tribunal has an error of law may appeal to the Federal Supreme Court within 60 days upon receiving the decision of Administrative Tribunal.

The second type of conflict is between the *permit holder and third parties*. The causes of conflict, the body (SB) entrusted to entertain the case and; the procedures to be followed are the same as the first type of conflict.²⁹

The third type of conflict is a conflict between *the SB and the permit holders*. Unlike the above two types of conflict, the SB is a party to the conflicts. The CRMs allowed to the parties are Negotiation and Arbitration, where one comes after the exhaustion of the other.

As of the other types of conflicts, the cause for the controversy here is also mainly associated with permission.³⁰ The disputes are, primarily, to the extent of possible, resolved through negotiation, which is the best way of dispute resolution in an office with minimal resources.³¹ If the parties fail to go through negotiation within 60 days, the arbitration takes the place of conflict resolution.³²

The procedure of arbitration begins by nominating arbitrators. Accordingly, each party is allowed to assign two, four in total. Priority to choosing arbitrators is given to the plaintiff then the defendant will do the same.³³ In the end, by the agreements of both parties, a chair would be selected among arbitrators. The place of arbitration is in a town where the Head Quarter of the SB is located.³⁴ The parties have two significant obligations in the arbitration process: provide information and cooperate with the arbitrators.³⁵ Finally,

²¹ The memo shall also be substantial, it shall state the nature of the complaint and the relief sought (*See Ibid*, Art. 35/1/a).

²² *Ibid*, Art. 35/1/b.

²³ *Ibid*, Art. 35/1/c & d.

²⁴ According to the civil procedure code, absent has treated in three ways. The first is a situation where both parties absent on the date fixed for the first hearing of the suit. In such a case, the court shall strike out the suit (Art. 69 (2)). The second scenario is the case where the defendant appears, but the plaintiff fails to appear. This time the case will be dismissed (Art. 73). The third and last scenario is when the defendant fails to appear, but the plaintiff appears. In this case, the law provides different remedies. The first is the courts would examine the plaintiff over the proper service of summon(Art. 73 (1/a)). Upon examination, if the court finds that the summon has duly served to the defendant and if he absent, the suit shall be heard ex-parte. However, if the court proves that the summons has not duly served, the court directs the second summons' issuance (Art. 70 (d)). See also Art. 35 (1/c) of the code.

²⁵ *Ibid*, Art 35/e.

²⁶ *Ibid*, Art 35/1/d.

²⁷ The proclamation (n 11), Art. 9/2.

²⁸ Law 12 for the year 1984 for irrigation and drainage, Article 103.

²⁹ *Ibid* and the proclamation (n-16), Art. 9/1

³⁰ *Ibid*, Art. 9/3

³¹ The proclamation, (n 11).

³² *Ibid*, Art. 9/4.

³³ The regulaion, (n 21), Art.36/1/a.

³⁴ *Ibid*, Art. 36/2.

³⁵ *Ibid*, Art. 36/1/d

the arbitrator would pass a binding decision. The party against whose a decision is given shall have an obligation to abide thereby, and a party disfavored shall have the right to appeal to the court having jurisdiction.³⁶ The jurisdiction of the court still needs clarification as WRM laws are silent in this regard.

In sum, the following are the mechanisms for resolving water-induced conflicts under Ethiopian WRM laws:

Table 2: Conflict resolution mechanisms under Ethiopia's WRM laws

No.	Mechanism	For disputants
1	Negotiation	Between the supervisory body and permit holders
2	Arbitration	Between the supervisory body and permit holders
3	Administrative remedies	In between Permit holders, and permit holder/s and third party/ies
4	Litigation	For all disputes, but after the exhaustion of other remedies

4. Major Gaps of Ethiopia's WRM Laws in Resolving Water-Induced Conflicts

The first gap in Ethiopia's WRM laws is the lack of compiled water code. The previous regime, Dergue, has attempted to have a water code, but it was not acted due to the government change. Since then, Ethiopia has never been codified a separate and all-inclusive water code. Had it been compiled, it might balance the economic, environmental, ecosystem, social, and cultural demands, and establish norms and standards for the optimal regulation and sustainable WRM. It can also be easily accessible to the people.

Second, WRM laws Failed to establish an independent decision-making body. As discussed above, two out of the three types of conflicts are resolved by the SB. However, the SB could not be supposed to render free and fair decisions for the following reasons: (1) Due to broad powers conferred to it. The SB has the power of planning, management, utilization, protection, conflict resolution, and nine other specific responsibilities.³⁷ Due to such a broad responsibility, the SB is not expected to deliver proper and timely verdicts for the conflicts. Apart from shouldering such vast responsibility, since decision-making requires legal knowledge and skills, it is supposed that the SB cannot properly carry out its duties by the member of the SB, who is practically from different professional backgrounds.

(2) The SB lacks neutrality. The body is an evidence provider and decision-maker at a time. As stated above, the SB is responsible for resolving conflicts of the first two types of conflicts, mainly related to permission – given and taken over by the SB. Hence, it is unusual and impractical to do so for the sake of neutrality.

Third, even though the laws have tried to incorporate some Alternative Dispute Resolution (ADR) mechanisms, they still Failed to include some other important ADR instruments such as Mediation, a widely practiced mechanism across Ethiopia.

Fourth, the laws failed to specify the level of courts that could have appellate jurisdictions to review the SB's decision. The laws simply state that the aggrieved party can present their grievance to the court having jurisdiction within 60 days of receiving the decision.³⁸

Fifth, the laws failed to establish decision-making bodies at the regional and basin levels. Even though regions and basin authorities have the power to resolve conflicts in their purview, to this date, specified institutions for such purposes have not been established.

³⁶ Ibid, Art. 36/1/e.

³⁷ Ibid, Art. 8.

³⁸ The regulation, (n 21), Art. 36/1

5. Conclusion

The current FDRE's Constitution entrusts the Federal Government to lead and coordinate national efforts for the administration, development, management, and conflict resolution acts on WRs. Based upon this Constitutional provision, the Federal Government has proclaimed different laws at different times, albeit the statutes lack something important concerning water-induced conflicts.

The constitution also entrusted Regional governments to administer WRs confined within their purview based on the Federal laws. Hence, to prevent and resolve water-induced conflicts, Federal and regional governments have to work together coordinately. To strengthen the effort, Ethiopia has made WRM laws. However, the instruments couldn't come with exhaustive CRMs. Only Negotiation, Arbitration, Litigation, and Administrative Tribunals are catered as a mechanism to resolve conflicts, by leaving others, such as Mediation.

This paper has attempted to assess Ethiopia's WRM laws CRMs. As per the review, the laws have missed something essential for effective implementation. Hence, to straighten the drawbacks, the concerned body shall enact water codes and the national water act that expressly address, *inter alia*, water CRMs; establish separate water/environment courts and;³⁹ amend basins and other water-related laws to incorporate exhaust water CRMs to resolve conflicts happened in their respective jurisdictions.

In the end, the laws have to be amended to consider other means of water-induced CRMs, especially indigenous CRMs and other important ADR mechanisms.

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³⁹ It is wisely important to notice the experience of other countries, for instance, in South Africa, the National Water Act provides for the establishment of a Water Tribunal to hear appeals against certain decisions or directives given by responsible authorities or water management institutions, such as Catchment Management Agencies. See 'Guide to National Water Act for the Republic of South Africa' <<file:///D:/ETH%20WATER/Guide%20to%20South%20Africa%20water%20act%20NWAguide.pdf>> accessed on August 25, 2018.

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