
**COMPETING RIGHTS BETWEEN COMMERCIAL USERS AND ORDINARY USERS
IN ACCESSING NATURAL SPRING WATER:
A CASE STUDY OF MATUKENG, MASERU, LESOTHO**

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Abstract

Casting her mind back to an intriguing complaint of alleged sabotage which crossed her desk in the Ministry of Natural Resources, the legal officer who conducted this study journeyed to the peace-loving village community of Matukeng, about 20km from Maseru, the capital of Lesotho, in an attempt to understand more fully a conflict over access to the village's major natural spring. For more than 8 years, use of it had been shared between its original or primary users, the villagers, and commercial users, JAAT (Private) Limited, a government-licensed profit-making spring water bottling company. She conducted her research using several relevant methodologies (including the Grounded Theory and Human Rights based Approaches) guided overall by the unique Women's Law Approach which ideally focuses upon the impact of law, in its widest sense, on women as society's prime water users. Having collected her data using several complementary data collection methods (including desk research of relevant policy, law and literature, as well as conducting interviews and group discussions with her key respondents within the village, the bottling company and various relevant officials) she analyses and presents her findings within an ecofeminist theoretical framework. She apparently found that, in the absence of any official control over JAAT's licence, the company's excessive extraction from the spring (which had been exclusively sealed for its use) had reduced the once abundant water source which ran through the village to a slow-moving polluted trickle. Vivid photographs (a number of which helpfully trace the course of the spring's streams) coupled with corroborated poignant testimonies, especially from the increasingly desperate, frustrated and powerless village women who spend most of their day looking for clean water, effectively illustrate just some of the devastating consequences of the reckless breaches of the community's rights to water, health, education and sustainable development. Hit hardest by these breaches, these women and their daughters daily walk up to 3km from their homes in search of cleaner natural springs only to find them polluted by their own livestock herded by the village's young boys facing the same problem. Finally, in order to accommodate the competing interests of both water users in accordance with several persuasive and binding local, regional and international Human Rights Instruments, the writer makes several recommendations. These include: encouraging government to conduct gender and environmental impact tests in addition to hydrological ones before granting commercial licences; giving priority to domestic over commercial users in cases of water crises; empowering local communities, especially their women, in the face of economically powerful commercial water users. She ultimately focuses on educating all stakeholders on the crucial role played by village women in all water management and related community issues. She recommends placing them at the centre of all water related activities, including the negotiating, concluding and enforcing of so-called socially responsible contracts, apparently imposed by commercial users on poor, illiterate and trusting rural communities to steal their life-giving water resources by means of fraudulent misrepresentations and at any human and environmental cost.

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Declaration

I, **Litsabako H. Kali**, certify that this dissertation is my original work; it is an honest and true effort of my personal research. I certify that the work has not been presented anywhere else for any other thesis.

Signed.....

Date.....

Dedication

To the Almighty God for making it possible for me to have the opportunity of being admitted to the programme and for His protection over my life during the time of my study.

A special dedication to my parents for their moral support throughout the whole period of my study in this programme. To my father for his emotional support during the time of my study. To my mother, who always wanted me to further my studies; I thank you for your encouragement. A special dedication to my late brother who always wanted the best for me.

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May God bless you.

Acronyms and Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CRC	Convention on the Rights of the Child
ECOSOC	UN Committee for Economic, Social and Cultural Rights
EIA	Environmental Impact Assessment
MDGs	Millennium Development Goals
NGO	Non-governmental Organisation
SEWA	Self-Employed Women's Association
UN	United Nations
UNICEF	The United Nations Children's Fund
TRC	Transformation Resource Centre

List of National Statutes and Policies cited

South Africa

Constitution of South Africa

Lesotho

Constitution of Lesotho

Environment Act, 2008

Water Act, 2008

Lesotho Water and Sanitation Policy, 2007

National Public Health Policy, 2004

National Health and Social Welfare Research Policy (NHSWRP) Lesotho, 2007

List of Regional and International Human Rights Instruments cited

African Charter on Human and Peoples Rights, 1981

African Charter on the Rights and Welfare of the Child, 1990

Convention on the Elimination of all Forms of Discrimination against Women

Convention on the Rights of the Child, 1989

Declaration on the Right to Development

International Covenant on Civil and Political Rights, 1966

International Covenant on Economic, Social and Cultural Rights, 1966

Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa ('The Women's Protocol', 2003)

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CHAPTER 1

1.0 BACKGROUND TO THE RESEARCH

“While Self Employed Women’s Association (SEWA) women and poor people all over the world lack access to water, others are making a great deal of money out of it. The growing commercialization of water resources is a matter of great concern. In 2001 almost 90 billion litres of bottled water were sold around the world, mostly in non-recyclable plastic bottles.”

(Holland, A. C. S. 2005:256)

1.1 Introduction



Figure A: A photograph of a van loading bottled water from the natural spring used by commercial users at Matukeng for delivery to Pick and Pay supermarket in Maseru.

The above-mentioned quote aptly captures what is going on in the village of Matukeng, Lesotho that led to the inspiration for this study, where the source of the natural spring is used by the commercial users-JAAT Water Bottling (Pty) Ltd for water bottling purposes. The impression the community members-ordinary users have when they see the van carrying water passing through the village is that commercial users, JAAT, are making a lot of money out of a resource

which is located in their area and which should benefit them. The community members are so disturbed by this state of affairs that they even count the number of times the van comes to the village.

Since the study is about the competing rights between the commercial users and the ordinary users in accessing the natural spring water, it is first imperative to define 'water rights'.

According to the West's Encyclopaedia of American Law/2005/copyright, 'water rights' are:

'A group of rights designed to protect the use and enjoyment of water that travels in streams, rivers, lakes and ponds, gathers on the surface of the earth or collects underground.'

*'Water rights generally emerge from a person's ownership of the land bordering the banks of a water course or from a person's actual use of a watercourse. Water rights are generally conferred and regulated by judge-made common law, state and federal legislative bodies and other Government departments. Water rights can also be created by contract, as when person transfers his water rights to another.'*¹

In actual fact:

'a water right is authorization from the state to make use of the water-either surface water or ground water.'

*'What is the difference between a permit and a certificate? Water rights are issued in two stages which serve as the initial authorization for water users to develop the source and begin making use of water. The second stage is final certificate which is issued after the water use is fully developed and put into use.'*²

Therefore, the above quote would fit in the prevailing situation in Matukeng where the commercial user's perception was that they had the rights to the natural spring water because they were in possession of a water use permit. In the same manner, the ordinary users thought they had the rights to the natural spring water because they were making use of the watercourse.

¹ WWW.Encyclopedias.com/Water rights, facts, information, pictures/Encyclopedias.com. articles.

² water right: Definition from Answers.com

This research is about the civil unrest caused by competing rights between the commercial harnessers-JAAT Water Bottling (Pty) Ltd and the community members as ordinary users in accessing the natural spring water in the village of Matukeng. The investigation into the dispute became imperative so as to make an assessment and analysis of the root cause of the dispute and what the law on water resources management provides. The protection afforded to each of the categories of users in accessing the natural spring water as per the law was pertinent to understand with a view to establishing the role of law in addressing or contributing to the dispute. It was critical to identify the key players in the disputes in order to familiarize one's self with the rights and entitlements of each user as prescribed by the law.

The impact of commercialization on those who are affected (i.e., ordinary users or the environment itself) was crucial in attempts to identify possible solutions to the problems. The findings from the field during the research were to be looked at in order to reveal what is taking place in the village of Matukeng both prior to and after the commercialization of the natural spring. The source of the disputes was to be identified during the interactions with the key respondents in this study. Another issue of concern is what transpired during the commotion, who was affected by the disputes and how it impacted them.

1.2 Background to the Study

The dispute came to my attention as a Government employee and a legal officer within the Ministry of Natural Resources. The Department of Water Affairs within the Ministry of Natural Resources sought legal advice on the matter from the legal section of the same Ministry where I was attached; that is how I came to know about the dispute.

Sometime in 2008, the commercial users, JAAT, lodged a complaint of obstruction by the ordinary users in their operations with the Department of Water Affairs within the Ministry of Natural Resources, which is responsible for the issuance of the water use permits. In doing the course on access to resources in the context of my Masters degree, I reflected back on this case and became curious to know what could be the source of the disputes and what the law on natural springs provides.

As a follow up on the issue, I looked at Lesotho Water Act, 2008 and found out that there is a relevant section which deals with natural springs. When going through this section, the perception I had was that the ordinary users are not protected by the law and that it is only the commercial users who have protection under the law once they have been granted the water use permits but not the ordinary users. Therefore, I was curious to have an in-depth insight into the source of the disputes by interviewing both categories of users and finding out how the disputes were resolved.

What is of importance to note is that during the time of obstruction of the commercial users by the ordinary users as community members, the commercial users were in possession of the water use permit and their permit was still valid. Despite all that, they were obstructed by community members for a period of three (3) weeks from accessing the natural spring water. During that time, there was an order by the ordinary users that the commercial users should not sell water as a way of punishing them.

1.3 Demarcation of the Research Site

This study was carried out in the village of Matukeng, located in the district of Maseru. The district is the capital town of Lesotho. Matukeng is twenty (20) km from Maseru (as shown in Appendix '1'). The natural spring (a source of conflict and dispute with locals) at Matukeng is used by the commercial users- JAAT Water Bottling (Pty) Ltd for water bottling activity. The natural spring is located on the upslope of a hill which is steep, rocky and bushy about two (2) km from the village. The research site falls within a communal area surrounded by other sources of the natural springs. The village is predominately populated by people of one tribe (Basotho). Matukeng is made up of about one thousand five hundred (1,500) housing units, a primary school and a health centre. There are public taps installed by the Government in the village where the community source water from. However, during dry seasons when there is scarcity of water, the taps are closed for some days and the community members source the water from the wells.

The community has a culture which is deep-rooted in the belief that they have ownership of the natural resources which are located in their area including the natural springs. It is on that

account that, the community's supposition is that the spring which is used by the commercial users, JAAT for water bottling is their heritage which they have to preserve and conserve it.

The people who reside in the research area believe in unity and solidarity, and the community has a football pitch for the football team of that area to use during their leisure time. The research area is rural where there is a prevalence of customary norms. Hence, there was reason to assess whether there would be any emerging issues from the research which were reflected as a result of the conflict between the state laws, customary norms and the agreements entered into between the commercial users and the ordinary users.

1.4 Statement of the Problem

“The natural spring at Matukeng in Maseru district is used by JAAT Water Bottling (Pty) Ltd for water bottling for commercial purposes. JAAT Water Bottling (Pty) Ltd was incorporated in May 2000 to bottle natural spring water. It has two (2) springs at the bottling site but only one is operational.

The spring in operation has a capacity to produce 18 000 litres per 24 hours. The trade is “Mountain Fresh” bottled at source from a village of Matukeng about 20km from Maseru. Water in Lesotho and particularly at this source is known for its high quality.”³



Figure B: A photograph of bottles of “Mountain Fresh” spring water bottled at Matukeng.

³ www.Projects Profiles Framework, Lesotho National Development Corporation (LNDC), We Build Industry. Page 9.



Figure C: A photograph of part of the water bottling operations at the plant in Matukeng.

According to the Lesotho Water Act, 2008, Section 19 thereof, deals with natural springs. The section provides as follows:-

- (1) The Minister may, by notice in the gazette, in consultation with the Minister responsible for land, declare certain natural springs as protected springs and prohibit or regulate use unless authorised.*
- (2) Use of or entry into natural springs, without a permit, may be authorised if necessary for implementing measures for protection and conservation of such springs.*
- (3) A person who wishes to engage in a commercial activity in respect of obstructing and using water from a natural spring for purposes of bottling water shall make an application for a water use permit to the Director, in accordance with Section 20.*
- (4) No person shall damage, destroy or cause any harm to a natural spring.*
- (5) A person who contravenes Subsection (4) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti or to imprisonment for a period not exceeding two years or both.*

The problem is that even though this Section gives a mandate to people who are engaged in the commercial activity of water bottling to access and make use of the natural spring on application for a water use permit to the Director, it says nothing about the original users of the spring and what their rights are if any.

It would seem the original users of the natural spring are sidelined at the expense of commercial users. Subsection (2) states that use of or entry into natural springs, without a permit, may be authorised if necessary for implementing measures for protection and conservation of such springs. This appears to mean the original users of the spring are not free to use the spring as and when it is necessary for fetching water. In the event, it is women who suffer the most serious impact, since they are caretakers and are in need of water for domestic use for the management of their households.

If use of or entry into a natural spring without a permit is authorised, if necessary, for implementing measures for protection and conservation of such spring, does it mean that the original users of the spring, before the declaration was made are restrained from using the same? Particularly if they are not in possession of a water use permit as implied by the Act when not acting to protect and conserve the spring?

In the past communities around that natural spring used to prevent the commercial users with water use permits from accessing it on the grounds that the water belongs to them, since it is located in their area.

The commercial users have been lodging the complaints of obstruction to the permit-issuing Ministry concerned, alleging that they are been prevented from accessing the water and making use of the natural spring. However, the community members did not complain to the Ministry based on the assumption that the spring is part of their heritage which they have a natural duty to protect and conserve.

1.5 Objectives of the Study

The objectives which informed this study were as follows:

1. To ascertain whether or not the Ministry responsible for water resource management takes cognizance of the rights of the people living around the natural springs when it declares the springs as protected thereby regulating the use of the water from this source.
2. To analyse competing rights between ordinary users and commercial users to the benefits flowing from the commercialization of natural spring water in relation to issues such as accessing potable water, monetary gains, profit sharing and social responsibility in Matukeng village.
3. To analyse the impact on women's access to water of harnessing the spring water for commercial use.
4. To critically analyse the empowerment framework used or lack thereof in getting the community to negotiate social responsibility agreements and the factors leading to tensions.
5. To unearth the empowerment frameworks that could be used in such cases in order to avoid disputes.

1.6 Assumptions

There were six (6) assumptions in this research as listed below:

1. That the ordinary users around Matukeng natural spring had access to the natural spring before commercialization.
2. That the law provides for administrative procedures to be followed before it grants commercial use rights and that these procedures were followed before granting the commercial users the rights in the case of Matukeng.

3. That women are affected most by the impact of the decreased flow of water to the streams on which they rely for sustenance (survival) and household use.
4. That according to the ordinary users, the declaration of a natural spring by the Minister responsible for water resources as a protected spring should not take away their use rights as the spring is a part of the natural heritage of the community.
5. That community members interfere with the rights of commercial users because the spring and its benefits are used at the expense of the ordinary users, who did not participate effectively in reaching and enforcing the social responsibility agreements.
6. That there is need for both the commercial users and the ordinary users to work more effectively with each other in order to balance the needs of both the community and commerce.

1.7 Research Questions

The research questions which emanated from the above-mentioned assumptions were as follows:

1. Did the ordinary users around Matukeng natural spring have access to the natural spring water before commercialization?
2. Does the law provide for administrative procedures to be followed before it grants commercial use rights and were these procedures followed in the case of Matukeng?
3. How are women affected by the impact of the decreased flow of water to the streams on which they rely on for sustenance (survival) and household purposes?
4. How does the community perceive its rights to access the natural spring in the context of commercial rights?
5. Why do the community members interfere with the rights of commercial users?

6. Is there a need for both the commercial users and the ordinary users to work more effectively with each other in order to balance the needs of both the community and commerce?

1.8 Conclusion

This study is structured in such a way that it has a research topic as well as an abstract before embarking on the proceeding chapters. Chapter one (1) provides the general overview of the background to the study, demarcation of the research site, statement of the problem, objectives, research assumptions and questions. Chapter two (2) discusses the range of methodologies and data collection methods applied to this research. The discussions on the research's main findings are dealt with in chapter three (3). Emerging themes are analysed in chapter four (4) while the recommendations and conclusions are given in chapter five (5).

CHAPTER 2

2.0 METHODOLOGY AND METHODS

2.0 Introduction

This chapter deals with the methodological frameworks of the research. It discusses the various methodologies used to investigate the study. It signifies which methodologies were used and how they informed the research methods that were adopted. The importance of these methodologies and their limitations are also discussed. It concludes with an evaluation of the methodologies and methods.

2.1 METHODOLOGY

2.1.1 *Developing Grounded Theory*

“Grounded theory is an interactive process in which data and theory, lived reality and perception about norms are constantly engaged with each other to help the researcher what data to collect and how to interpret.”

(Bentzone: 1998)

This method was the basis of this research from the identification of the problem and the research topic throughout the data collection process and the interpretation of the research was grounded theory oriented.

“This approach looks at the lived realities of both men and women and the interplay of the law in trying to analyse the factors or forces that control women’s lives.”

(Bentzone et al: 1987)

Initially according to my assumption two (2), I had thought that the law does not provide for shared use of the spring water between the ordinary users and commercial users but only takes cognisance of the rights of commercial users thereby resulting in conflicts between the two categories of water users. While in the field, however, it emerged that the law provides for

administrative procedures to be followed before it grants commercial use rights and that these procedures were followed before granting the commercial users the rights in the case of Matukeng. Therefore, that appears to show that the cause of the disputes was based on an issue other than the shared use of water. Therefore, the initial assumption two (2) was challenged and adjusted accordingly.

The initial assumption three (3) that women as caretakers of their families and responsible for the management of their households are mostly affected by the denial the state as the duty bearer of this basic human right of access to potable water was challenged. In the field, it became clear that the state does not come in and therefore the assumption did not hold. I noticed that in the community of Matukeng, due to the commercialization of water, women are affected the most by the impact of the decreased flow of water into streams which they rely upon for household and sustenance purposes.

Before going to the field, my initial assumption five (5) was that the ordinary users around the natural spring have not been sensitized on the provisions of the Lesotho Water Act, (viz, the rights of commercial users), hence, they deny them access to the spring water. This assumption was challenged. After a few weeks in the field, it was realized that that was not the case. It became clear that at the root of the disputes was the failure on the part of the commercial users- JAAT to honour their promises to be socially responsible towards the ordinary users- community members. They had been sensitized on the provisions of Water Resources Act, 1978 which was operational at the time of the commencement of the operations of the commercial users-JAAT. The assumption that the ordinary users-community members were not sensitized was challenged.

While in the field, it emerged that community members interfere with the rights of commercial users because they exploit the spring to the detriment of the ordinary users who did not participate effectively in the making and enforcement of the social responsibility agreements of the commercial users.

Assumption six (6), (at the initial stage), that there is a need for the law to provide for harmonious sharing of the water resource between the ordinary users and commercial users as a way of solving the problem of their competing rights was challenged. Therefore, it was adjusted

to provide that there is a need for both the commercial users and the ordinary users to work more effectively with each other in order to balance the needs of both the community and commerce.

But most importantly, I noticed that the other assumptions were holding. For instance, according to assumption one (1) (that the ordinary users- community members around Matukeng had access to the natural spring water before the commercialization of the water as provided for in the Lesotho Water Act of 2008). It was important to investigate whether they presently have access to the natural spring water in terms of the current provisions of the Lesotho Water Act, 2008 and what the law says about their rights in accessing the natural spring water. Therefore, there was a continuation of the research based on the same assumption.

Furthermore, assumption four (4) was found to be holding that according to the ordinary users, the declaration of a natural spring by the Minister responsible for water resources as protected spring should not take away their use rights as the spring is a part of natural heritage of the community. Therefore, while in the field, it emerged that this is still the position and the assumption was holding. Therefore, the research continued based on this assumption.

Therefore, through the Grounded Theory Approach, I talked to the commercial users and the ordinary users in the area of Matukeng in order to investigate the lived realities of both categories of users prior to and after the commercialization of the water in the area. It was important to assess what is currently happening on the ground in the area of Matukeng.

2.1.2 Using Gender and Sex Analysis in the Field

In order to determine which sex is affected most in the situation of failure to access the natural spring water between the two categories of users at Matukeng Village, I had to do a gender and sex analysis which is focused on social relations and characteristics of women and men. Gender division of labour within the home was most relevant in this study.

It was realized that at Matukeng village the sourcing of water was seen as women's work, even though men sometimes do it. Therefore, since the gender division of labour generally places the burden on women, this burden gets heavier when less natural spring water flows into the stream where women do their laundry. As a result, they have to travel long distances in search of

alternative streams. This also adversely affects girls who have to fetch water for their homes, and this ultimately negatively impacts on their school attendance. The result is that, in the absence of piped domestic water, it is women who have to find alternative sources of water. The gender and sex analysis showed that due to the decrease in the flow of water in the stream at Matukeng, women spent their time on non-productive work searching for water from alternative sources, while men spent their time on productive work as opposed to sourcing for water.

Through this analysis it became apparent that the time spent accessing water added to other tasks of social reproduction generally left in the hands of women and imposed a very heavy labour regime on the female household's members. Thus the provision for the shared use of the natural spring water would contribute to the general health and productivity of household members with the result that there will be reduction of domestic labour in the care giving sphere.

According to the sex and gender analysis, it became obvious that while accessing water is women's work in the domestic sphere, in the public sphere the issues remain largely in the hands of men. For instance in the case of Matukeng sabotage is largely carried out by the area's football team and the cutting of the pipes from the main source is normally done by the herd boys (not women) thus preventing commercial users-JAAT from accessing the natural spring water.

The gender and sex analysis further indicated that women's participation in water provision policies is of paramount importance as women and girls face the problems of personal security, hygiene and health by travelling long distances in search of water during dry seasons when the taps are closed and through the use of water from uncovered wells which might be contaminated as this is the case with the Matukeng community. This study showed that prior to commercialization of water, there was enough water flowing down the stream which was used by the ordinary users- community members for washing their clothes. But currently, there is a decrease in the flow of water and it is the women who suffer the most from this negative impact. Thus it is of paramount importance that policies which address women's specific needs equip and empower women to participate at all levels in water resource programmes. This includes decision making and implementation.

A common women's complaint was that carrying water for long distances was putting too much strain on them bearing in mind that they had other households' chores.



Figure D: A photograph of a woman leaving a water point carrying a large bucket of water on her head in order to do her family's laundry. She has to collect water from here at least 5 times a day in order to have enough water for her family.

The woman in Figure D is sourcing water for the household. Her mother is working in another area as a teacher, so she is the one who is left home to take care of her siblings. She was sourcing water to do the laundry at home. While I was at the water point, she came more than five (5) times to fetch water. That is strenuous for her taking into account the fact that she still has to do other family chores.



Figure E: A photograph of a woman carrying a large bucket of water she has collected from a nearby stream.

This was the second occasion this woman (in Figure E) was met in the same place doing different things. This time she was drawing water from the dams in the stream to do the laundry at home. The first time she was doing the laundry with other women at the stream. She even asked whether I was the same person she had seen in the same place!

Therefore, through engaging in Gender and Sex Analysis, I went to the water points in the village of Matukeng and the stream which is used by women to do their laundry. I interviewed people there with a view to assessing who is most affected after commercialization of water in the village of Matukeng between men and women taking into account the different gender roles and differences in sexes since women need more water (for example, for bathing during the time of menstruation).

2.1.3 Human Rights Approach

Human rights are universal legal instruments that protect individuals, groups of people and their property against actions that interfere with fundamental freedoms and dignity; hence accountability and transparency are at the core of the Human Rights Framework. The process of investigating the competing rights between the commercial users and the ordinary users in accessing the natural spring water in Matukeng was an important aspect of the research in order to assess whose rights have been infringed upon between the two and how.

In order to challenge the socio-economic and social injustices related to the women's access to water, the human rights approach to development was looked at. Adopting a human rights approach to water focuses on issues of accessibility, availability and affordability. With the Matukeng community, they have no free access to this particular natural spring water after the commercialization of water. However, they still have free access to other natural springs which are not used for commercial purposes.

The problem arises since the ordinary users-community members around that spring and herd boys used to have free access to the natural spring water which is not the case after the commercialization of water as provided for in the Lesotho Water Act, 2008 and this is discriminatory against them which is prohibited by Articles 1 and 5 of the Convention on All Forms of Discrimination Against Women (CEDAW) and Article 18 of the Constitution of

Lesotho. Thus, the study shows that the ordinary users-community members are thus usually left out of developments since there are restrictions imposed on them in accessing the natural spring. Whereas approaching development from a rights perspective informs people of their rights and entitlements and empowers them to achieve these rights. This was to be applicable in the case of Matukeng village since there was confusion on who have rights and entitlements in accessing the natural spring water which resulted in the competing rights between the ordinary users-community members and commercial members-JAAT in accessing the natural spring water.

Since the ordinary users-community members were persuaded that they have all the rights in the natural spring because it is located in their area, they resorted to obstructing commercial users-JAAT in their operations for a period of three (3) weeks. This created the problem because the commercial users-JAAT also believed they had exclusive rights to the natural spring water, because they followed the right procedures to obtain their permit. Above all, they were in possession of a water use permit and hence protected by the law.

On the use of rights based approach, it came to my realization that human rights have implications on a range of actors directly or indirectly concerned with water issues. Therefore, there is an obligation on the part of the Government as a primary duty bearer to take concrete steps to respect, protect and fulfil the right to water and other related rights with the result that everyone operating within its jurisdiction should do the same. The step is further divided into three parts. These are the obligation to facilitate, promote and provide.

In assessing the extent to which the rights of ordinary users-community members in Matukeng Village have been infringed upon by commercialization of water, I was guided by the General Comment Number 15 on the right to water adopted in November 2002 by the Committee on Economic, Social and Cultural Rights. According to this comment, the principal elements of the right to water are availability, quality and accessibility. Supply must be sufficient for regular personal and domestic use, including drinking, food preparation, sanitation, personal and households hygiene. Goal number 7 of the Millennium Development Goal (MDG) which deals with the reduction by half by 2015 the number of people without safe and reliable potable water and basic sanitation also guided this study. Thus using the rights based approach, potable water and basic sanitation also should thus be seen as a legal entitlement rather than a commodity provided on a charitable basis.

In this study, I found the violators of these Human Rights to be non- state actors. One of the culprits consist of commercial users, JAAT in that due to their operations in commercializing of the water in the village of Matukeng, the ordinary users-community members like herd boys are denied access to the natural spring water. On the other hand, the other culprits comprise of the ordinary users- community members in that during the obstruction of the commercial users in their operations, they denied them access to the natural spring water for a period of three (3) weeks which they were entitled to according to the law.

Thus, as far as the Human Rights Approach is concerned, through the observation of the area of Matukeng with the focus on the water points and the stream and the interviews I conducted with the community members, I was able to assess whether human rights approach to water focused on issues of accessibility and availability were applicable in this area. It also came out that Governments as the duty bearers have the duty to respect, protect and fulfil the rights of the communities. For instance, there are taps installed by the Government in the village of Matukeng to meet the demands of the community.

2.1.4 Women's Law Approach

With a view to assess the ordinary users' (focused on women) access to the natural spring water which is used by the commercial users-JAAT for water bottling, it was imperative to build up a suitable framework; to do so I used the Women's Law Approach. This methodology takes women as the starting point. Therefore, this methodology was helpful in examining the lived realities of women in Matukeng.

“This theory is closely connected to the principle of taking women as a starting point in analysis of the position of women in law and society, and prompts the inclusion of empirical data about the lived reality of women.”

(Bentzone1998)

In applying this approach, I interviewed women, men, boys and girls in the village of Matukeng. I listened to them as they relate their experiences prior and after commercialization of water in the village of Matukeng.

“The Women’s Law Approach is a women centred legal discipline which takes actual lived experiences and life situations based on among others, domestic work as a starting point for analysis of the women position in the law and society, explores the realities of women’s lives by interrogating the law.”

(Bentzon 1998:91)

Women were the centre of the data collected and analysis of this research. The aim was to collect data on the lived realities of the women residing in Matukeng in relation to the duties they perform daily for the familial use. The research was also on men since it is important to understand women’s lives from the men’s point of view.

“Through the use of this methodology, there is interactive process in which data, theory and lived realities about the perceptions and norms are constantly engaged with each other.”

(Bentzone: 1998)

This methodology guided me on what data to collect and how to interpret it. Being aware of disputes and conflicts between the commercial users and the ordinary users which led to the denial of commercial users to access the natural spring water, I carried this study to establish the possible causes of the disputes and to discover how they were solved.

On the use of Women’s Law Approach, there emerged possible causes of the barriers to the commercial users-JAAT in accessing the natural spring water at Matukeng Village which was due to the social responsibility they had undertaken towards the ordinary users-community members which they were failing to honour. The issue of concern was whether it was necessary to make such an obligation. Another issue to be investigated is whether the social responsibility in reality is legally enforceable. I thought this issue was important to interrogate in this study. Obtaining this empirical data on the lives of ordinary users which included women as primary users of water was helpful in looking at issues of accessibility and availability of water, the possible human rights violations and the role of Government to respect, protect and fulfil its obligations to the community of Matukeng.

Accordingly, in Women’s Law Approach, among the groups of ordinary users, women are primary users of water and they suffer most when there is lack of access to water. I interviewed people trying to establish the lived realities of women and thus it clearly came out that there is a

gap in the law. Section 19 of the Lesotho Water Act, 2008 vis-à-vis the ‘ordinary users’ (focused on women) access to the natural spring water without a permit after the natural springs have been declared as protected springs with restrictions on their use. Also, section 18 of the Constitution was examined as to the treatment of ordinary users (focused on women) regarding their right of access to water.

In using Women’s Law Approach, I used the legal centralist outlook as a regulating test in checking whether law applied equally to all people and whether there were no other norms which may have incapacitated certain individuals, in this case ordinary users (focused on women). Thus, even though, the equality and non-discrimination principle are enshrined in section 18 of the Constitution of Lesotho, however, in practice ordinary users-community members (focussed on women) are still discriminated against by the commercial users. This is closely linked to women who are discriminated against on account of sex on matters such women’s rights and participation, women’s access to land and inheritance. And this is in contradiction of the universality and inalienability of human rights principles.

2.2 DATA COLLECTION METHODS

2.2.1 *In-depth Interviews with Key Respondents*

Interviews	Female	Male	Total numbers
The Director & officials of Department of Water Affairs	2	1	3
Community leaders	1	2	3
Members of the development committee	2	1	3
Herd boys	0	3	3
Affected women	12	0	12
School teachers	3	1	4
Students	1	1	2
Clinic Staff	2	0	2
Football team members	0	3	3
The Director- commercial users	1	0	1
Officials-commercial users	1	2	3
TOTAL	25	14	39

Table 1: Showing In-depth Interviews with Key Respondents

The key respondents were selected based on their experiences, expertise, familiarity and their way of life prior to and after the commercialization of water in the village of Matukeng. Their

experiences and expert knowledge in different structures and institutions are directly concerned with the research topic. The focus was on the administrative procedures followed before granting commercial use rights. The impact of commercialization of water on both categories of users prior to and after commercialization of water was clearly spelt out. Required data was collected as the respondents were conversant with the procedures which are followed before granting commercial use rights; the situation which was prevailing prior to commercialization of water and the problems which they encountered as a result of the commercialization of water.

These interviews were useful as they gave me a chance to get to know the key respondents personally and to share views on some of the initial findings for example (1) that the law provides for administrative procedures to be followed before it grants commercial use rights and that these procedures were followed before granting the commercial users the rights in the case of Matukeng; (2) That women are affected most by the impact of decreased flow of water to streams which they rely on for household and sustenance purposes; (3) That community members interfere with the rights of commercial users because they use the spring at the expense of the ordinary users who did not participate effectively in reaching and enforcing the social responsibility agreements; (4) That there is a need for both the commercial users and the ordinary users to work more effectively with each other in order to balance the needs of both the community and commerce. These issues turned out to be the major outcomes of this study.

However, through these interviews the perception I got was that some officers in the Ministry thought that this research was going to resuscitate the conflicts between the ordinary users-community members and commercial users-JAAT especially if I interviewed the ordinary users. They even said so. This came about when I wanted to know from them whether they monitor the flow of water which is prerequisite for the preservation of nature at the natural spring which is used by commercial users-JAAT. It seems such monitoring does not take place.

The challenge that I met was that the key respondents like the football team members who were involved in the obstruction of the commercial users in their operations were very few in number the village. The information I got was that most of them are currently working at the mines in the Republic of South Africa. Therefore, I had to rely on the evidence of a very few of them who were giving different versions of the stories. For instance while one (1) football member mentioned that they obstructed commercial users in their operations at the plant, another denied

this fact by saying that they went to the plant to present their request not to obstruct commercial users in their operations.

2.2.2 Individual Interviews

Interviews	Female	Male	Total number
NGO’s from LCN, WLSA & TRC Dealing with women’s issues	1	3	4
Matukeng village houses dwellers	45	15	60
TOTAL	46	18	64

Table 2: Showing Individuals who were interviewed on their own

The interviews were made at the offices, the chief’s place, households, water points in the village of Matukeng and the plant which is used for water bottling activity. The interviewees were young and old women, boys and girls and men.

At the offices, appointments were made with the officials concerned the day before the interview. Often, a public-gathering would take place at the chief’s place during my visit to the research site. Since I would arrive at village early, I would find the community members waiting for the commencement of the public-gathering; therefore, I would randomly select the interviewees from there.

The respondents were asked about where they are sourcing water from and the problems they encountered. They were also asked how the commercialization of the water is impacting on them. They complained of the failure by the commercial users to honour the social responsibility and duties.

Initially, I visited many households randomly. But when I was in the field, I realized that some households’ members are more affected than others. Therefore, later on, I focused on all those who are severely affected by the impact of commercialization as evidenced by my interactions with the community members who were familiar with the decrease in the flow of the water from the stream and how it is affecting the community members using the water from the source of the natural spring.

At the end of the interviews respondents were asked if they wanted to add anything further. Normally, this was left until the end to prevent other issues influencing responses to standard questions. Most of them were curious to know why I was interviewing them and what steps I would take after they had given me the information. Others would ask whether I was there to help. From my assessment, they thought I was a messiah who is send to free them from their problems since in most cases they would be saying they are not happy with the commercial users' failure to honour the social responsibility, but there is nothing that they can do. Therefore, I would assure them that something positive might emerge from my research, but that I could not promise anything. As to when that might occur, I do not know but it seemed clear that they were happy that this study had been undertaken with a view to improving their situation sometime in the future.

Through individual interviews, the respondents talked freely and hence it was easy to get the data I was looking for. When interviewed alone women felt more free to talk than when they were in the presence of men.

2.2.3 Collective Interviews

Interviews	Female	Male	Total number
Women & men at the water point	7	3	10
Boys and girls at the water point	3	2	5
Women & herd boys at the stream	4	2	6
Women at the chief's place	2	0	2
Men at the construction site	0	3	3
TOTAL	16	10	26

Table 3: Showing Respondents who were collectively interviewed

Collective interviews were held at the chief's place where the community members would be waiting for the commencement of a public- gathering; at the construction of an office near the chief's place; at the water points where community members were sourcing for water; at the stream where women are doing the laundry; and with herd boys at the stream while looking after their animals.

The respondents were asked normally about the impact of commercialization of water in the village of Matukeng on the community members. How commercialization of water is affecting them in accessing the natural spring water.

It was put to the interviewees that the water belongs to the Basotho Nation. They did not dispute this fact. However, their view is that water should not be sold. One interviewee even went further to say:

“The sale of water should not be an inconvenience to the original users of water because of commercialization.”

The challenge I met using this method is that it is time-consuming in that some interviews would take longer time than I had anticipated they would. Through these interviews, some respondents would volunteer the information which is not relevant to my research topic; such as there is another developer who was using the quarry from the village of Matukeng who bought the community members the tents and the pots as a form of social responsibility. However, I had to listen to what they were saying.

Through collective interviews, some respondents dominate others in the talking, while others are reluctant to talk. Some respondents would just be nodding their heads without talking. Therefore, even though it is a collective interview, it does not give an overall view of the respondents as it is reflected in practice.

2.2.4 Focused Group Discussions

Interviews	Female	Male	Total number
At the water point: Men and women	5	2	7
At the water point: Boys and girls	3	2	5
At the Stream: Affected women	9	0	9
At the stream: Herd boys	0	5	5
TOTAL	17	9	26

Table 4: Showing Focused Group Discussions

Focused group discussions were held by and large in places where women and men; boys and girls collected water either early in the morning or late in the afternoon. Focused group discussions were also held with women at the stream while doing the laundry and herd boys at stream where animals were drinking water from.

The focused group discussions were not arranged well in advance or called for discussion. I however, targeted those places during those times since I knew that people would be there doing performing different tasks. Fortunately, the interviewees did not have problems discussing some issues even though I had not constituted the meetings myself. At the water points especially in the morning hours, I would find around twelve (12) people; boys and girls; men and women sourcing for water. At the stream, I came across six (6) women doing the laundry, while on another occasion; I found three (3) of them. The herd boys I came across at the stream were three (3), while on another occasion, I found two (2) of them at the stream.

In engaging with the focussed group discussions, it was put to the respondents that water belongs to the Basotho Nation as per the law. Some did not dispute this fact and were supportive of that. While others were of the view that water belongs to the people of the area from where the source is located. They even went further to say the reason why the commercial users consulted the community of Matukeng before embarking on their operations is a clear indication that they knew that the water they are using for water bottling does not belong to them, but to the community members where the resource is located.

Another critical question which was put to the groups during the discussions was whether water should be harvested and sold. Most of them were of the view that water should not be sold. It can be sold only when there is sufficient water for the original users of the natural spring. They even went further to say that the sale of water should not be an inconvenience to the original users of the natural spring. It is only a few who said water should be sold for the development of the country.

2.2.5 Observations

I was able to go to the source of the natural spring water which is used for commercial purposes. It was useful to observe the source of the natural spring water to see how far it is located from the village, and whether it is possible for the ordinary users-community members to use the water from there for domestic purposes.

I observed that there are numerous public taps from where the water is brought from one (1) source in the village but not the one which is used for commercial purposes. However, there is a concern about the use of uncovered wells during dry seasons when the taps are closed.

My observations of these water points was very helpful because I could determine whether the information supplied to me during interviews was exaggerated or not. Data collected through observation is more accurate in that it allows for triangulation to verify the accuracy of data.

This is a sample of the taps installed by the Government in the village of Matukeng.



Figure F: 3 photographs of samples of taps installed by the Government in Matukeng Village.

Other activities besides sourcing for water at the water points were important in order to show that since there is no provision for washing in the village, women use the tap water sometimes to do the laundry especially during dry seasons when the rivers and the streams are dry.



Figure G: A photograph of women doing their laundry at one of the Government-installed taps.

I observed the wells which are used by the ordinary users- community members as an alternative to the taps during dry seasons. These wells are not covered and highly polluted by the dirt and the pollution which are blown into them and I was worried about the implications for hygiene, the bacterially caused diseases such as typhoid fever, dysentery and cholera on the use of the well water.

These are the wells which are used for sourcing water in Matukeng during the dry season and when the taps are closed.



Figure H: 2 photographs of 2 wells which are used for sourcing water in Matukeng Village during the dry season when the taps are closed.

Thus, my observations included: the location of the natural spring itself (from the community members); the activities going on at the water plant; the process of the water bottling. The observation of the water points, the wells and the stream of flowing water from the source was imperative in this study. An assessment on the environmental impact damage on the stream was critical and so too was it important to establish how this affects the community members.

Methodologically this was an observation of what is meant by a public gathering, a *pitso* (see Figure I below). In this gathering, a woman from The United Nations Children’s Fund (UNICEF) was addressing the community members on the donations to be given to the orphans in the village of Matukeng. This woman spent close to two (2) hours addressing the ordinary users-community members on issues related to the rights of the child. I must mention that the weather conditions were bad that day. It was cold and dusty. The ordinary users-community members were covering their faces due to the bad weather conditions. There was no participation from the ordinary users-community members.

This is the view of the public –gathering-pitso at Matukeng for development project by NGOs.



Figure 1: A photograph of the public gathering (*pitso*) at Matukeng Village.

My view is that probably this could have been what took place during the time when the commercial users-JAAT were negotiating about the social responsibility to the ordinary users. The participation of the ordinary users- community members is highly questionable as the chief representative mentioned that the agreements were made between the chief and the development committee members and whatever was agreed to was imposed on the community members.

As I observed, I was able to see what was happening on the ground without been influenced by what I had been told which sometimes could be exaggerated.

2.2.6 Access to the Records

Through my interactions with the respondents from the community of Matukeng, I was able to access the minutes of the agreement between the commercial users-JAAT and the ordinary users-community members from the chief's place from the note book. According to the records of the minutes, the commercial users-JAAT made an undertaking to the ordinary users-community members that they would fulfil certain obligations like the building of the office for the community and employment of community members to work at the plant and the payment of

R500-00 to the Government as subscription yearly. All these issues appeared in the minutes I accessed even though the date was not legible.

I must emphasise that it is the chief of Matukeng who handed the note book to me to browse through. But on the part of the commercial users I could not access the records. The information I got through the interview with the administrator and the accountant of commercial user-JAAT was that the management does not allow them to go through the records of the company.

Through accessing the records, I was able to know what exactly transpired by going through the minutes. Everything that the community members were claiming that they had agreed on appeared in the minutes.

2.3 Evaluation of the Methodology

I found the data collection methods discussed to be effective in enabling me to obtain the relevant data for this study. However, due to the limitations I encountered in the study (like respondents who were reluctant to talk during the group discussions), I had to triangulate to check the validity of the data that was supplied to me.

The fact that the ordinary users and commercial users were interviewed separately does not give a picture of the scenario since both categories of users were protecting their own interests. It was difficult to triangulate and get the correct position on some issues.

Due to the limitations I encountered like failure to meet ample number of the key respondents like the foot ball team members; who were involved in the obstruction of the commercial users in their operations, I had to rely on the evidence of a very few of them (only three) who were giving different versions. However, the data collected remains valid as possible biases were minimized by continuous triangulation. But overall, the methods applied were effective in obtaining the data that was necessary for this study.

CHAPTER 3

3.0 FINDINGS, DISCUSSIONS AND ANALYSIS

3.0 Introduction

The main findings for each assumption are presented in this chapter. The core themes addressed in this chapter include the findings on the applicable law in Lesotho and what the state did before granting commercial rights; whether the state adhered to the law or not; my view on what the state did; the views of both the ordinary users and the commercial users on the issue of social responsibility; the shifting demands of the community members; participation in decision making; environmental degradation-environmental Impact damage; and counter-arguments by the commercial users on environmental issues.

3.1 Findings on the applicable Law and what the State did before granting Commercial Rights

One of the major underlying questions of this study was to ascertain whether the state took cognisance of ordinary users before issuing the commercial water license. From interviews, it emerged that the state made a hydrological survey of the source of the natural spring water at Matukeng with a view to monitoring the capacity of the water flow and its location from the village. From the assessment, it emerged that the capacity of the flow of water is high. It is located far from the village and its use for commercial purposes of water bottling would not interfere with the community members. Therefore, it was found to be convenient for use for commercial purposes-water bottling activity. Hence, the commercial users were granted a license by the Ministry concerned.

Even though the Constitution of Lesotho does not provide that '*the right to water*' is a human right, it expressly provides for '*the right to life*' under section 5. Therefore, women could institute constitutional litigation to protect their right to life by alleging that it is being endangered because their right to water which is absolutely vital to life is being grossly violated. Ideally the Lesotho Constitution should be amended to include the right to water a specific right as is the case in terms of section 27 (1) (b) of the South African Constitution. South Africa also

has policies in place which protect the right to water. For example, in 1994, the Reconstruction and Development Programme, in line with the Constitution, declared that access to water was a basic right and set a minimum standard in the short term of 25-30 litres per person per day within 200 metres of a person's residence.

Section 4 of the Lesotho Water Act, 2008 provides that the ownership of all water resources in Lesotho is vested in the Basotho Nation and held in trust by the King on behalf of the Basotho Nation. In other words, water does not belong to the community in which it is located. It is a resource that has to be shared since it is common property held under the control of the state.

The Water Act, 2008 provides for administrative procedures to be followed before granting commercial use rights. In particular, section 19(3) stipulates that a person who wishes to engage in a commercial activity in respect of abstracting and using water from a natural spring for purposes of bottling water, shall make an application for a water use permit to the Director in accordance with section 20. It would appear, therefore, that JAAT approached the Department of Water Affairs within the Ministry of Natural Resources with the intention of engaging in water bottling activity and made an application for a water use permit. Therefore, it was imperative that the natural spring be identified. Several natural springs were identified. Among those that were identified, the one at Matukeng was found to be the most appropriate one for use by the commercial users as it is located near the services at a distance of twenty (20) km from the capital, Maseru. After the Ministry of Natural Resources was informed about the natural spring at Matukeng, the survey was done to the source of the natural spring; (how far it is located from village).

The Ministry followed the usual procedures of informing the stakeholders such as the District Council and Community Council about the assessment completed of the natural spring at Matukeng. Relying on the assessment made by the Ministry (that the use of the natural spring would not interfere with the rights of the ordinary users), it was determined that the commercial users, JAAT, qualified for granting of a water use permit. Therefore, the commercial users paid the fee for the water use permit and were granted the same by the Ministry. Furthermore, the commercial users had to comply with the obligations put forward by the Ministry, failure of which would result in the withdrawal of the water use permit that had been granted. Thus, it is a requirement that the commercial users have to show that they use the spring in accordance with the conditions of the permit granted, failing which they would lose their permit and be required

to vacate the natural spring. The commercial users, JAAT, carried out some developments in relation to the spring and were not required to vacate it. Therefore, they continued with their operations. Hence, it appears that all the administrative procedures were followed by the Ministry before granting commercial use rights in respect of the natural spring to the commercial users-JAAT.

Even though the state followed the administrative procedures before issuing commercial use license to JAAT, it did not seem to take into consideration that the rights of the original users would be infringed by the operations of the commercial users. Through the interviews and the observation of the village of Matukeng, it became clear that the original users, community members of the natural spring, are negatively affected by the impact of commercialization of water in Matukeng. The community members mentioned that the water from the stream of the flowing water from the source which they rely on for household and sustenance has diminished and is highly polluted due to over-pumping from the source.

The Lesotho Water and Sanitation Policy, 2007 states that the ownership of all water within Lesotho is vested in the Basotho Nation. Therefore, the Government of Lesotho has the duty to ensure that this resource is used in a sustainable manner and to the benefit of all users. These uses include both the commercial users and the ordinary users who compete for the natural spring water at Matukeng.

Despite the equality and non-discrimination principles enclosed in section 18 of the Constitution of Lesotho, the ordinary users of the natural springs in Matukeng are discriminated against the commercial users since they are denied access to the natural spring water which is used for commercial purposes. This is in direct contradiction of the universality and inalienability of human rights principles.

As mentioned above, although the Constitution of Lesotho does not have a provision on the right to water, section 5 protects the right to life. Furthermore, the Constitution of Lesotho does not essentially free women from discrimination. This worrisome state of affairs encouraged me to investigate **the Constitutional position of the ordinary users-community members of the spring** at Matukeng after the commercialisation of water as provided for in the Lesotho Water Act, 2008.

In 2002, the UN Committee on Economic, Social and Cultural Rights in its General Comment No.15 on the right to water, observed that:

“everyone is entitled to sufficient, acceptable, safe, physically accessible and affordable water for personal and domestic use.”

Therefore, this study is important to investigate and assess whether both the commercial users-JAAT and the ordinary users-community members have equal rights in accessing the natural spring water at Matukeng Village.

It is therefore imperative to assess and evaluate the extent to which the Government of Lesotho has fulfilled its international obligation to provide water to both categories of users at the source of the natural spring water in Matukeg Village.

3.2 Social Responsibility and the various demands of the Community as seen from the perspective of the Commercial Users

Another core underlying question was to analyse the notion of obligations that accompanied the use of water for commercial purposes. This is summarised in the notion of social responsibility.

Social responsibility is:

“An obligation beyond that required by the law and economics, for a firm to pursue long-term goals that are good for society.”

(Robbins and Coulter, 1999)

Being socially responsible means that people and organizations must behave ethically and with sensitivity towards social, cultural, economic and environmental issues. Therefore, striving for social responsibility assists individuals, organizations and governments to have a positive impact on development, business and society with a positive contribution to bottom-line results.

The commercial users undertook to do the following as part of its social responsibility involved the local community:-

Building an office for the community members; and employing community members to work at the plant.

(i) Office building

The findings as regards the fulfilment of these obligations were that; it took eight (8) years for the commercial users to bring the building materials to the village of Matukeng for the construction of the office. The materials were brought in 2010 while the operations of commercial users commenced in 2000. Also, the materials were only brought after the ordinary users obstructed the operations of the commercial users. Furthermore, the materials were just dumped at the chief's place but no construction of the office took place. Although an office has been constructed, the chief alleges that it was done by someone else.



Figure J: A photograph of the bricks which were dumped in Matukeng Village by the commercial users after the ordinary users obstructed their operations.



Figure K: A photograph showing the office which is being built by another developer and not the commercial users, JAAT.

On the other hand, the commercial users mentioned that they left the building materials and the R5000-00 for the building of the office. According to my assessment, the bricks which were dumped at the chief's place and the R5000-00 were not enough for the construction of the office which the commercial users had promised.

(ii) The employment of the community members in the plant

Commercial users have employed eight (8) people from the community of Matukeng to work at the plant. Only two (2) employees are from Maseru and they represent the plant's contribution to economic empowerment.

Another critical issue is that the demands of the ordinary users-community members keep on shifting. At one time they claimed that the source of the dispute was a failure on the part of the commercial users to honour their duties to be socially responsible. On different occasions like during the time the football team members were obstructing the commercial users and through some interviews with other community members, they claimed they wanted to be shareholders with the commercial users. Furthermore, the football team demanded a uniform from the commercial users which was not among the list of the things originally agreed upon.

Therefore, in the end it is not clear whether the demands are based on the issues of accessing potable water, monetary gains or benefits accruing out of the sale of water, profit sharing and social responsibility in Matukeng Village.

However, I see no problems with the shifting demands of the community members being imposed on the commercial users. Whatever the community members are doing could have had far more reaching implications they having realized that the commercial users had taken advantage of them.

Also, it should be taken into consideration that the community is in the best position to know its needs and liberate itself. They know their needs. Therefore, they can claim their rights in whatever reasonable form benefits them and preserves their rights.

3.3 Social Responsibility and the Commercial Users as seen from the perspective of the Ordinary Users/ Community Members

The community believes that the commercial users have to honour their promises to be socially responsible since it is an obligation towards the community members. The community is not happy with the commercial users' failure to honour their social responsibility obligations. This emerged from interviews with several community members.

They said it took the commercial users eight (8) years before they did anything after the agreements were reached. Hence, it is no wonder why the community members comprising of the football team members obstructed them in their operations as a way of forcing them to honour their duties of social responsibility towards the local community.

One of the interviewees (an ordinary user) went on to say:

“If commercial users- JAAT were fulfilling the social responsibility, we would have no problem with them selling water.”

All the commercial users-JAAT did was to give the football team members a uniform because the team obstructed them in their operations. The indication is that they are not happy about the sale of water but there is nothing they can do about it.

As women they even run short of water for domestic use as they have to wash their clothes far from their homes where there are subsidizing dongas and they have to push wheel barrows to get to those places. The safety of the dongas is questionable since they keep on falling and that can be dangerous to the women in question. The interviewees mentioned that they are aware of the obstruction of the commercial users-JAAT from accessing the natural spring water and were in support of what the football team did.

One woman said:

“If the commercial users-JAAT could fulfil their obligations the disputes would be resolved and commercial users- JAAT would be free to do whatever they want.”

Their view was that commercial users are making a lot of money because they often saw a van coming more than five (5) times a day to collect water for sale in town. Some of them indicated that their households were located far from the natural spring which is used by commercial users; therefore, they are not affected by failure to access the natural spring water.

The respondents' view was that due to the over-pumping of water from the source, there is a decrease in the flow of water to the stream which they rely upon for household and sustenance. They mentioned that there is less water which is highly polluted since there is no flow of water. Therefore, they have to seek alternative streams to do their laundry which are far (about three (3) km away) from their houses, while the stream is about fifteen (15) meters from their households. The respondents complained that their workloads have increased as a result of that.

According to the community members, the commercial users were not forced to undertake these duties. They volunteered to undertake to do so. Therefore, it is not clear why they are failing to honour their promises.

Another important issue for consideration is the participation of or the lack of women's participation in decision-making.

“People and organizations do not often understand the value of participation in standard activities in the beginning, but once involved, they see great benefits. Some of

*the benefits include; competitive intelligence, networking, skills development and prestige”.*⁴

During the decision making process, women as beneficiaries and caretakers responsible for the management of their households did not take part when the social responsibility agreements were made and enforced. Women of Matukeng who are affected were not part of the decision-making process since according to the representative of the chief, the agreements were made between the commercial users, the chief and the members of the development committee and these agreements were imposed on the community members thereafter.

However, in the long run women are the ones who suffer the negative impact of the decreased flow of water to the stream which use they rely on for household and sustenance purposes.

3.4 Environmental Impact Damage-Environmental Degradation and the stream today

It was important to define some of the key words on environmental issues in order to give a clear picture of what is illustrated. For the purposes of this study, I refer to the definitions contained in section 2 of the Lesotho Environment Act, 2008. However, other core international reports have been used in defining terms which are not covered by the Act.

‘Environment’:

“means the physical factors of the surroundings of the human beings including land, water, atmosphere, climate, sound, odour, biological factors of animals and plants and the social factors of aesthetic and includes both natural and the built environment.”

‘Pollution’ signifies:

“any indirect or direct alteration of the physical, thermal, chemical, biological or radioactive properties of a segment of the environment by discharging, emitting or depositing substances or wastes so as to affect any beneficial use adversely to cause a condition which is hazardous or potentially hazardous to public health, safety, welfare or to animals and birds, wildlife, fish or aquatic life or to plants or cause a contravention of any condition, limitation or restriction to which is subject to a license under this Act.”

⁴ ASQ-asq.org/social responsibility ,Why organizations should get involved

Feminist Perspectives

Julie Mitchell in her two books 'Woman's Estate' and 'Psychoanalysis and Feminism' is commended for having made the best attempt at summarising the underlying concepts in feminist theories. She argued that:

“Women’s condition is over-determined by the structures of production (from Marxist feminists) reproduction and sexuality (from radical feminists) and the socialization of children (from liberal feminists). Women’s status and function in all of these structures must change if she is to achieve anything approximating full liberation..... Women’s interior world (her psyche) must also be transformed (as emphasised by psycho-analytic feminists), for without such a change, improvements in her exterior world will not liberate her from the kind of patriarchal thought that undermine her confidence (as emphasized by existentialist feminists).”

The existentialist feminist concept was appropriately described by Simone de Beauvoir in 'The Second Sex' as quoted in Tong (supra) where she argues that;

“Woman is oppressed by virtue of ‘otherness’, Woman is the Other because she is not-man.”

A clear example of this is the Constitutional derogation of a women's right to equality and non-discrimination in matters of access to land and inheritance purely on the basis of her sex (see Article 18 of the Lesotho Constitution).

Eco-Feminist Perspective

There are several feminist schools of thought namely; liberal, radical, Psycho-analytical, Marxist-socialist, existentialist and post-modern feminism and nego-feminist. In (Tong R.M 1994: 6):

“Eco-feminism emerged in the 1970's at time when consciousness of the connection between women and nature increased. The term 'ecofeminism' was coined in 1977 by French writer Françoise d' Eaubonne who called upon women to lead an ecological revolution to save the planet. During the 1980s, cultural feminists in the United States injected life into ecofeminism by arguing that both women and nature could be liberated together. Liberal, cultural, social and socialist feminism have been concerned with

*improving the relationship between humans and nature and has contributed to an ecofeminist perspective in different ways.*⁵

Liberal feminism is consistent with the objectives of reform environmentalism, to alter human relations through the passage of new laws and regulations. **Cultural feminism** analyses environmental problems within its critique of patriarchy and offers alternatives that could liberate both women and nature. **Social and socialist ecofeminists** ground their analysis on reproduction, the domination of women by men and how capitalist relations of production reveal the domination of nature by men.

Generally speaking **ecofeminism** address contradictions between production and reproduction while attempting to make problems more visible and propose solutions. For instance, direct access to food fuel and clean water are imperilled by cash cropping on traditional homelands and by pesticides used in agribusiness. Such chemicals threaten women's lives by polluting their water and food system, leading to disease and birth defects. Rather than accessing short-sighted, single ended production, the eco-feminists agenda demands attention to the cyclical processes that connect and sustain all living beings.⁶

The eco-feminist perspective is not singularly defined. It is comprised of a multitude of instances which continually cross-check and critique each other. It is a dynamic and evolving perspective which like women ought not to be held in a single definition. The many strands of the ecofeminist movement are woven together by the reproduction and continuance of life on earth. In this sense there is more unity than diversity in ecofeminism, common goal of restoring the equality of the natural environment and for people and other living and non-living inhabitant of the planet.⁷

It is in that regard that in this study, a right to common property such as natural resources should not be viewed in isolation from the vital factors which determine their sustainable use for present and future generations if a "*tragedy of the commons*" is to be avoided. As popularized by Hardin (Maphosa: 2003:3) there is an assumption that, as common property, resources belong to everyone in a community, and that there is a tendency to over-exploit them, requiring

⁵ fadr.msu.ru/rodale/agsieve/txt/vol6/6/art5.html. Eco-feminist Perspectives.

⁶ fadr.msu.ru/rodale/agsieve/txt/vol6/6/art5.html. Eco-feminist Perspectives.

⁷ fadr.msu.ru/rodale/agsieve/txt/vol6/6/art5.html. Eco-feminist Perspectives.

privatization or some central administrative control to rectify the problem. **In essence, this study will adopt an eco-feminist stand point.**

In the village of Matukeng the natural spring is property viewed as common property or a resource belonging to everyone in a community. There is also a tendency to over-exploit it giving rise to the possibility that it should be privatized or brought under some central control. Since the community members perceive that they have exclusive rights to use and access the natural spring water, regardless of the administrative control in place, the Ministry finds itself incapable of resolving disputes between the community members and commercial users who compete for the spring.

Eco-feminists draw a parallel between the oppression and subordination of women in families and society by men (patriarchy), and the degradation of nature through masculine attitudes and methods under a similar patriarchal framework. Hence, traditionally, water has been personified as woman and the sea is feminized. Thus, 'she' becomes a source of tremendous natural power that men must conquer and control. Once water is feminized, it becomes clear that the similarities between water and oppression of women become more apparent. Therefore, while women are oppressed and restricted, water is conquered, forced to change its course and privatized.

Therefore, the fact that JAAT is woman-owned is an implication that women in their subordinate status contribute to the domination and exploitation of nature as it is reflected in the village of Matukeng.

In order to make assessment on the environment, it was important to observe the natural spring; how far it is located from the village and what it looks like. From my observation it emerged that it is located on the upslope of a hill which is steep, rocky and bushy about 2 km from the village.



Figure L: A photograph (left) of the view looking down from the spring on the hill and into the valley below. A photograph (right) of the view looking up towards the spring from lower down the hill.



Figure M: 2 photographs of large storage tanks capturing the spring water which flows from its source which is about 1km from the plant.



Figure N: A photograph of the source of natural spring up the hill which is sealed.



Figure O: A photograph of the plant manager at the storage tanks of the bottling plant.

From the source some of the water flows down to the stream where women do their laundry about fifteen (15) metres from their households.



Figure P: A photograph of women doing their laundry. From the source of the spring some of the water flows down to the stream where these women are doing their laundry, about 15 metres from their homes.

I observed that the water flowed from the source down the valley, and collected in dams in the stream used by women for washing their clothes and by animals which drink from it. This was important to me. I saw the colour of the water which was brown and highly polluted. In the upper part of the valley or stream, women were washing their clothes in these dams. But, further

down the same valley or stream there were pigs drinking water from the same dams. These pigs were drinking freely from different dams and I became worried about hygiene and the health implications as well. On the different occasions I went to the stream, I found pigs drinking water from there (see below).



Figure Q: A photograph of pigs drinking water from the same stream used by the women to do their laundry.

Downstream from the source domesticated animals drink water from the same stream in which the women do their laundry.



Figure R: Photograph of sheep drinking from the same stream in which the women do their laundry.

The concerns of the community members on the environment since the commercialization of water in the village of Matukeng are mainly that:-

- (1) Animals have nowhere to drink water after commercialization of the water in the village of Matukeng. There is less water in the stream where animals used to drink from due the over-pumping of the stream by the plant.
- (2) Herd boys at the stream complained of the decrease in the flow of water from the stream. They mentioned that prior to commercialization of water, there used to be plenty of water in the stream. But after commercialization they are affected since water has diminished. Therefore, they have to travel long distances in search of alternative streams where their animals can drink (see below).



Figure S: A photograph of the stream which is little more than a dirty puddle from which the sheep pictured here refuses to drink.

When I took this photograph, the herd boy said to me:

“The water in this stream is so dirty that this sheep is even refusing to drink. Now, I have to seek for other alternative streams which are far about 3km from here so that this sheep can have something to drink.”

This is the stream further down, where cows also drink water from, but there is less water after commercialization of the water and this has negative impact on the animals and the herd boys.



Figure T: 2 photographs of cattle looking for water at the stream further down which is reduced to barely a trickle.

During my interview of the herd boys who were looking after these cows at the stream (above), one of them said:

“Water has diminished at this stream after commercialization of water in this village. Before commercialization of water, there was plenty of water from this stream and the animals had enough water for drinking. But look now the stream is almost dry. In my opinion, the sale of water should not be an inconvenience to the original users of water because of commercialization.”

The view of another herd boy was as follows:

“Since water is not enough for the animals to drink in this stream, we have to travel long distances in search of alternative streams about three (3) km from here.”

Another herd boy went on to say:

“The commercial users should not be permitted to harvest and sell water at the expense of the original users.”

To show how much the community is concerned about the impact of commercialization in the village of Matukeng, the Chief of Matukeng commented as follows:

“Presently there is shortage of water. The source which is used by the commercial users-JAAT was going to be very useful because the community members used it for washing their clothes and the animals for drinking. Also, since there is an increase of population in the village, so we need more water.”

There is no water to drink for the herd boys up the hill since the source of the natural spring is sealed (see below). This is a major concern for the herd boys. That is why they vandalise the pipes; it is their way of “fixing” the commercial users.



Figure U: 2 photographs of the source of the natural spring at Matukeng Village which is now sealed off for the exclusive use of commercial users.

One herd boy who was very emotional during my interview of him exclaimed:

“The agreements that the commercial users-JAAT entered into with the ordinary users- community members clearly show that they understood that the water does not belong to them hence why they made a social responsibility.”

The herd boys constantly complain of failure to access the natural spring water for drinking purposes after the commercialization of the water since the source is sealed. Some herd boys complain that the animals have no place to drink since the water at the stream is polluted and there is not enough of it since its commercialization.

Women also complained that they have no place to do their laundry. The water in the streams where they used to do their laundry close to their homes (i.e., about 15 metres away) prior to the commercialization of the natural spring (about 2km away from their village) has diminished drastically and is highly polluted and this situation has forced them to walk up to 3km from their homes in search of water for the daily needs of their families.

This is the highly polluted stream which is used by the women for doing their laundry.



Figure V: 2 photographs of the highly polluted stream where the women of Matukeng Village are forced to do their laundry.

Women residing near the stream which is used by the commercial users were also interviewed. Their complaint was the decrease in the flow of water due to over-pumping from the source. They mentioned that the water from where they are doing their laundry is highly polluted. Therefore, they have to seek for alternative streams with subsiding dongas, some of which are in the steep areas and they are worried about their security in those areas. They also complained that their workloads have increased since the stream is about fifteen (15) metres from their households and alternative streams are far; about three (3) km from their households.

At the stream where women do their laundry, their complaint was that before the installation of the plant by the commercial users, there was plenty of water for washing. But after the installation of the plant, there is decrease in the flow of water which leads to the dams drying in the stream during dry seasons. They went further to show that life was better for them before the commercial users started operations. They concluded by saying the situation is not pleasant but they are ready to live with it since there is nothing that they can do. This debate had a special

strength in that it brought out the value depth of local understanding of issues which relates to rights and entitlements.

According to the view of one woman who uses the stream for doing laundry:

“Before the operations of the commercial users-JAAT, we used the flowing water from the source of the natural spring to the stream for washing our clothes. There was plenty of water in the stream which is not the case now.”

The view of another woman was as follows:

“After the commercial users-JAAT have started to make use of the source of the natural spring for water bottling, the flow of water has decreased due to over-pumping from the source. Also, the water is highly polluted, thus leading to the drying up of the dams in the stream sometimes. So when these dams are dry, our workloads increase because we have to walk long distances in search of alternative streams for doing the laundry very far from our households.”

Another woman who resides near the stream went on to say:

“Life was far much better for us before commercialization of water at the source of the natural spring. But as for now, we are not happy about the situation presently but we are ready to live with it since there is nothing that we can do about it.”

The view of another woman who resides near the stream who uses the stream for doing the laundry was:

“Due to the increase of population in the village, water should not be sold for the Matukeng village but for big dams like Katse dam of the Lesotho Highlands Water Project and others where there is plenty of water.”

On the issue of the maintenance of the environment through the preservation of ecosystem and biodiversity; women near the stream claim that due to the decrease of water flow in the stream where they do the laundry, the water is polluted. Therefore, they have to travel long distances in search of alternative streams with subsiding dongas where they can do the laundry and are

worried about their security in those places. They complained that their workloads have increased as a result.

3.5 The Counter-arguments of the Commercial Users on the Environmental Issues

The commercial users dispute the fact that:

- (1) There is over-pumping of water from the source to the stream as the source has plenty of water.
- (2) There is a decrease in the flow of water in the stream.
- (3) The flow of water in the stream is not the same as that prior to the commercialization of water.

According to the Plant Manager of the commercial users who is working at the plant in Matukeng, the water from the stream is not polluted.



Figure W: The water plant manager disputes the fact that the stream is polluted, despite the clear evidence to the contrary shown in these 2 photographs.

There is no logical reason why the commercial users dispute the fact that the stream from the natural spring they have a permit to use is polluted when the above photographs clearly prove that fact.

The environment near the stream

While in the field, it became clear that in practice, monitoring the flow of water which is a prerequisite is not done at all at the natural spring in Matukeng which spring is used for commercial purposes. Therefore, through my observations, it emerged that due to over-pumping there is no flow of water in the stream. The water from the dams in the stream is polluted, and is brown in colour due to non-existence of water flow.

Around the stream, there are also gum trees which consume a lot of water as reflected in this picture.



Figure X: 2 photographs of gum trees near the stream.

The community members believe they have plenty of water. For them, it is a case of *“let’s participate in the benefits flowing from the spring.”*

CHAPTER 4

4.0 EMERGING THEMES

While the study was on the competing rights between the commercial users and the ordinary users in accessing the natural spring water, it was important to examine the findings against human rights parameters. In essence, the thrust of this chapter is a human rights analysis of the emerging realities on the ground. This implies that other findings emerged with human rights implications which were not anticipated from the onset and outside the scope of the study. However, these findings were pertinent and worthy of discussion and point to areas for possible future research.

4.1 Human Rights Elements

Is there a human right to water? Analysis based on the commercialization of water in the village of Matukeng

Due to water problems around the world brought about by privatisation and the sale of water, there emerged the right to water. Therefore, in this study the issue is whether the commercial users and the ordinary users have a legal right of access to potable water in the natural spring at Matukeng and whether there is an obligation on the state to provide that need when it is lacking.

“Clean and potable water is a human right, not a profit commodity dependent on market logic.”

said the Political Justice and Peace in a recent document.

Different scholars who are against the sale of water are of the view that:

“Putting an end to the sale of water is one step towards ensuring that clean drinking water is maintained as a basic human right for all.”⁸

⁸ www.Digital journal.com (Press release).

It is important to note that reaching all eight of the Millennium Development Goals (MDGs) is closely linked to reaching goal seven (7) which calls for the reduction by half the proportion of people living without access to safe water and basic sanitation by 2015.

Human Rights and Feminist Perspectives

There are several writings in books and research articles on human rights. There are also numerous conferences and workshops held where human rights issues were discussed as the main agenda in those meetings. However, ecofeminism is a new concept and a recent development available in only few books and documents.

There have been conferences on the right to water where this right was discussed in depth. Accordingly, the right to water looks at issues from a deep ecology or spiritual ecofeminism type of perspective; meaning that it looks at water as the right-holder as contrasted to the right of water. Since water as a natural resource is necessary for sustaining the life of human beings, it has to be preserved and protected. Significantly, since water cannot physically represent itself, people must protect the rights to water.

The Human Rights Perspectives

There are several works which have been reviewed on the right to water with a view to establish the gaps, contradictions and other aspects which require further investigations. But most importantly to get an in-depth understanding of the socio-economic and cultural rights laid down in the International Human Rights Instruments. However, from the reviewed literature, it is obvious that there has never been a study which investigated the competing rights between commercial users and ordinary users in accessing natural spring water in Matukeng Village.

I however support the views of those that see it as the starting point as it provides the necessary foundation for the protection of the rights of individuals. It is also a reference of last resort by providing a basis for enforcement and redress in the case of abuse (Water aid: 2003).

Human rights are universal and fundamental legal freedoms that guarantee citizens protection from arbitrary state actions that may interfere with such freedoms. These are protected by internationally guaranteed standards that ensure the fundamental freedoms and dignity of individuals and communities. Governments have obligations to respect, protect and fulfil their citizens' rights. The obligation to respect requires that a party ratifying a treaty refrains from interfering directly or indirectly with the enjoyment of that right.

However,

“A Human Rights Based Approach (HRBA) to the right to water is significant as it challenges the common belief that only Governments have obligations to respect, protect and fulfil human rights, making explicit the duties of non-state actors, including businesses to protect such rights. While states do have clear responsibility to transform key aspects of the right to water into binding legal obligations under a right based approach, businesses too have duties to rights holders. Consequently, among the key actions that water providers and users should adopt as the duty holders under the Human Rights Based Approach are mainly to ensure:

That right holders have a means of participating in the development of policies or programs which may affect their right to water.

Also, that there is particular focus on marginalized, disadvantaged and excluded groups.

Furthermore, that outcomes and processes are monitored and evaluated using the HRBA.

As a result, such actions help to provide for a more just redistribution of the water resources based on people's rights and they also help to empower individuals especially those who have been marginalized such as the poor, the indigenous people, women and children to claim their broad rights.”⁹

The Government of Lesotho also has an obligation to prevent third parties such as corporations from interfering in any way with the enjoyment of the right. The obligation to fulfil requires that Lesotho adopts the necessary measures to achieve the full realization of the right by women.

It is now internationally acceptable that apart from the few exceptions the human rights standards contained in the various international human rights treaties and declarations form the basis upon which to measure democracy within any state or government. It is for that reason that the principles of universality and inalienability, indivisibility, interdependence and

⁹ www.righttowater.info/the-Human-Right-Based-Approach,to/water.

interrelatedness, equality and non-discrimination, participation and inclusion, as well as accountability and the rule of law, have been used to assess whether there is observance of human rights.

Human rights have been re-conceptualized through the centuries in order to meet the needs of the people especially women in different contexts. Lesotho is a party to major international and human rights instruments. However, in my opinion of most relevance to the study would be the following:

Article 14, paragraph 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which provides that:

“State Parties shall ensure to rural women the right to enjoy adequate living conditions particularly in relation to (among others) water supply.”

This section would be most appropriate because Matukeng is a rural area, hence, it can be used as a legal redress for the protection of women living in that village.

Article 24, paragraph 2 of the Convention on the Rights of the Child (CRC) requires State parties to combat diseases and malnutrition...

“through the provision of adequate nutritious foods and clean drinking water.”

Since the state has provided potable water to the community of Matukeng, there are no water-related diseases in that area.

The general comment Number 15 on Article 11 and 12 of the Covenant on Economic, Social and Cultural Rights (CESCR) clarifies that the right to adequate standard of living, including adequate food, clothing and housing should be interpreted as extending to the right to water, considering that it is the fundamental condition for survival. This article would also be suitable for application in the study as water is fundamental for survival.

Another article which is appropriate for application in the study is article 15 of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, which provides that State Parties:

“shall ensure that women have the right to nutrition and adequate food taking appropriate measures to provide women with access to clean drinking water.”

This would also apply in the research to ensure that women have clean water for familial use.

It is also important to note that Lesotho has not signed the Declaration on the Right to Water, Article 31 of which provides that:

“Everyone has the right to clean and accessible water, adequate for the health and well-being of the individual and family, and no one shall be deprived of such access or quality of water due to individual economic circumstances.”

According to the views of most NGOs in Lesotho specifically dealing with water resources management, Lesotho has not signed the Declaration on the Right to Water due to negligence, lack of know-how and lack of commitment.

4.2 The Human Right to Water

The human right to water is not specifically addressed in the 1948 Universal Declaration on Human Rights or the 1966 Covenant on Economic, Social and Cultural Rights the 1966 Covenant on Civil and Political Rights. One of the earliest comprehensive water conferences was held however in 1977 at the Mar del Plata conference. In that conference, the statement which was issued at the close of the meeting explicitly recognized that the right to access water was a basic need.

In 1986, the United Nations General Assembly adopted the Declaration on the Right to Development. Article 8 of the Declaration thereof obliges states to undertake at national level all necessary measures for the realization of the right to development and shall ensure to all in their access to basic resource. According to the interpretation of this article, the United Nations explicitly included water as a basic resource when it stated that the persistent conditions of under development in which million of humans are deprived access to such essentials as food, water and clothing in adequate measure represents a clear and flagrant mass violation of human rights (UN, cited in Gerick, 1999).

In 1989 the Convention on the Rights of the Child recognized water explicitly. Article 24 and article 25 of the Universal Declaration of Human Rights therein provide that a child has a right to enjoy the highest attainable standard of health. Among the measures, States are expected to combat diseases and malnutrition through, among other things, the provision of adequate nutritious foods and clean water. Also article 14 (2) (c) of the 1990 African Charter on the Rights and Welfare of the Child also explicitly recognizes the provision of safe drinking water as a human right. The community of Matukeng is at risk of water related diseases during dry season when the community members use the well water. Furthermore, the water at the stream where women do the laundry is highly polluted thus putting the women's lives using it at risk of contaminating diseases and hence not commendable for washing clothes.

Of great relevance is Article 14 (h) of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) which provides that state parties shall take the appropriate measures to ensure the enjoyment of adequate living conditions for rural women particularly in relation to housing, sanitation, electricity and water supply. This article would be most appropriate to apply in the study in the village of Matukeng since it is a rural area and hence rural women are left out in development.

This is in line with the fact that the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) forms the most important human rights framework for promoting women's access to water and participation in water management.

“In a single document, it encompasses a series of civil, political, economic and social human rights that have a bearing on women access to water.”

(Hellum, 2001)

Article 15 of the Women's Protocol further provides that state parties should ensure that women have a right to nutritious and adequate food. Also, State parties must take appropriate measures to provide women with access to clean drinking water and sources for domestic fuel.

The United Nations Committee on Economic, Social and Cultural rights issued General Comment number 15 of 2002 declared that water is a limited natural resource and a public good fundamental for life and health. The committee went further defined this right as a right that entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for

personal and domestic uses. According to this United Nations Committee, the principal elements to the right to water are availability, quality and accessibility.

According to the research, access to the natural spring water which is used by the commercial users for water bottling at Matukeng was free to the ordinary users prior to commercialization of water. However, after commercialization of water, the ordinary users encountered problems in accessing the natural spring water due to the restrictions and conditions which are imposed by the law. Even the water which used to flow from the source to the stream which was used by women for doing the laundry is diminished and highly polluted due to over-pumping from the source which leads to scarcity of water in the stream. Thus the water's quantity and the quality do not meet the communities' needs in that stream.

The UN which promotes and protects of Human Rights, has created Guidelines for the realization of the right to water.

The Guidelines main concepts are: availability, accessibility and affordability of water. The issue of concern is whether they are excluded or included under the right. These are water for food, for gardens and others. Therefore, the question is whether people particularly women having a right to water for (basic) agricultural purposes or for food preparation.

Availability and Water Quality

The UN Guidelines provides that water supplied must be safe for human consumption. It should be free from any contaminants. After the commercialization of the water in the village of Matukeng, the water from the stream where women are doing their laundry from is highly polluted. The water looks contaminated even by its colour for use especially for washing the clothes and for the animals to drink. The colour of the water is brown. Therefore, women and children were found to be at risk as they are the primary users of water and more in contact with water than men.

Accessibility

The UN Guidelines provide that water facilities and services must be available to every human being. They further provide that water must be within safe physical reach for all sections of the

population. Sufficient, safe and acceptable water must be accessible within or in the immediate vicinity of each household, educational facility and work place. The provision of water in Matukeng does not meet these standards because during the dry season when the taps are closed in the village and when water is not available, community members have to use the water from uncovered wells which are polluted by dirt and rubbish blown there by the wind. Therefore, the hygiene and safety of the wells are highly questionable. These wells are located far from the households as compared to the taps and those sourcing water especially women have to travel long distances through subsiding dongas in order to search for such wells. Therefore their security is at risk when travelling in those areas. Furthermore, the students are asked to bring one (1) litre of boiled water from home every day to school since there is a serious scarcity of water during the dry season.

Furthermore, women who use the stream for doing the laundry from the flowing water from the source and herd boys who use the water for the animals to drink run short of water as a result of over-pumping from the source. The little water available in the stream is highly polluted and not safe for drinking and for doing the laundry. As an alternative, they have to use other streams which are far from the households, some of which are steep and with subsiding dongas.

Despite UN Guidelines providing that physical security should not be threatened during access to water facilities and services, this study shows that women who reside near the stream at Matukeng are at risk when in search of water when the stream has dried up. They have to travel long distances about three (3) km from their households, in the remote areas where they are likely to be raped.

In addition, the UN Guidelines looks at the issue of economic accessibility which means that water facilities and services must be affordable to all. They also provide that the direct and indirect costs associated with security water must not compromise or threaten the realization of other users' rights. However, the concept of affordability does not apply in the case study in Matukeng, since the community is not paying anything for the use of the water from the taps installed in the village.

The comment provides for non-discrimination against marginalized areas or groups in that water and water facilities and services must be accessible to all, including the most vulnerable or marginalised sections of the population. Thus, Governments are obliged to take steps to remove

any de facto discrimination that could impede enjoyment of the right to water. These are the circumstances prevailing in Matukeng since the commercialization of water. The commercial users have all the rights to access the natural spring water as opposed to the ordinary users who are denied access to the natural spring water except for effecting protective measures. This discriminates against the ordinary users, and this is why the Government must remove this barrier. In my opinion, the human right to water is being infringed upon in as far as the rights of the ordinary users are concerned since they have been denied this access to the natural spring water since its commercialization.

On the issue of accessibility, the main issue is whether water is equally distributed. Priority should be given to those without or with limited access to water. And water should be near the households. According to the UN Guidelines, a community has no access if residents walk for more than 200 metres and if volumes of water collected are below 5 litres per capita per day. This is the prevailing situation in the stream where women are doing the laundry in Matukeng. Their houses are located about fifteen (15) metres from the stream. However, since the commercialization of water in the village, they have to travel long distances in search of other streams which are about three (3) km from their households.

According to the community of Matukeng, the declaration of a natural spring by the Minister responsible for water resources as protected spring should not take away their use rights as the spring is a part of the natural heritage of the community. Also the definition of the right to water is narrow and this clearly excludes the interests of primary users in breach of their human rights.

The issue of concern is how the government policies are responding to the requirement that water should be accessible to all. There should not be discrimination in the provision and management of water. Discrimination may be direct or indirect or structural or intersectional and in this research the focus is on discrimination that has a gendered outcome.

The state is under an obligation to respect and protect human rights. Under Article 1 of the International Covenant on Cultural, Economic and Social Rights, people cannot be deprived of their means of subsistence. In my opinion, people from Matukeng are being deprived of their subsistence in that herd boys can no longer drink from the source of the natural spring while watching their flock since the sealing of the spring. Women cannot do their laundry in the same stream as they could before the commercialization of the water due to the decrease in its flow of

water. Thus, the research should at this point, consider the Guidelines of the Sub Committee on the Promotion and Protection of Human Rights. The research should also consider the regulation, bye-laws and their enforcement on wetlands, and stream bank cultivation and how they can be reconciled to livelihoods of the people. It should also consider the relationship between environmental concerns and livelihoods of the people.

There is also need for an explicit recognition of the right to water under the Civil and Political rights. This is so because civil and political rights are characterized as '*hard rights*'. They are justifiable in court as they impose negative duties on states for their recognition, protection and non- interference (Goonesekere, 2000). However, the General Comment Number 15 on socio-economic and cultural rights explicitly recognize that the right to water as not adequate in itself as socio economic rights are considered to be '*soft rights*' thus imposing duties on the state. Therefore, these duties can only best be realized progressively through the allocation of resources and administrative policy planning rather than enforcement by the state. In the present study administrative policy planning would be the best way to cater for the interests of both the commercial users and the ordinary users.

4.3 Other related Human Rights Violations: Right to Health, Right to Education and Right to Sustainable Development

(a) Right to Health

In about 1946, the right to health was recognized when the World Health Organization stated that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. In 1948 the Universal Declaration of Human Rights which guaranteed all people a right to a standard of living adequate for their health and well being, came in to being. The International Covenant on Economic, Social and Cultural Rights, under Article 12 thereof also recognized the right to health. The Convention on the Rights of the Child under Article 24 guarantees that children are entitled to the highest attainable standard of health. However, the data collected in the village of Matukeng supports the view that there is complete non-compliance with the above-mentioned provisions. The community of Matukeng is exposed to various serious health risks through the human use of uncovered wells which are shared with animals and also used for washing the clothes.

(b) Right to Education

Education is recognized as a fundamental human right and essential for the exercise of all other human rights. According to the findings, there is a primary school at Matukeng. There is a tap in the school premises which is used by both teachers and students for drinking and cooking. During the dry season, the taps are closed for days at a time. In order to survive, the students are asked to bring one (1) litre of boiled water for drinking purposes every day. A student who fails to bring water is subjected to corporal punishment but is not sent home to fetch water. Some students who do not have water opt not to go to school. This enforced absenteeism from school is a denial of their right to education.

(c) Right to Sustainable Development

Sustainable Development

The Brundtland Commission Report, 'Our Common Future', which was prepared for the 1992 Earth Summit (UNECED) defines '*development*' as that:

"which meets the needs of the present without compromising the ability of future generations to meet their own needs..."

(WED 1987:43)

The right to development is a universal and inalienable right according to the Vienna Declaration. This right is also described as an integral part of fundamental human right. Article 8 (1) thereof of the Declaration on the Right to Development stipulates that state parties should undertake at national level all necessary measures for the realization of the right to development and shall ensure among other things equality of opportunity for all in their access to basic resources.

The evidence of the study reveals that this is not the case in the village of Matukeng where the ordinary users of the natural spring water are discriminated against because the interests of the

commercial users have taken unfair precedence over them. Furthermore, the community of Matukeng comprising of (women as primary users of water) did not participate when the agreement was entered into between the ordinary users and the commercial users on the commercialization of the water in the village of Matukeng, which is a clear indication that women are discriminated against. Instead, due to the hierarchical power structure in the community it was the community leaders not the original users of water who were involved in this decision making process.

The achievement of several Millennium Development Goals in Matukeng is dependent upon the availability of potable water and basic sanitation. Hence under Goal Number three (3) that is, the promotion of gender equality and the empowerment of women, there are two targets that depend on the provision of adequate sanitation and better access to improved water source which are follows: Firstly, the target on balancing the ratio of girls and boys in education is largely dependent on the availability of potable water. Secondly, the target of balancing the ratio of men and women in wage employment and non agricultural sector also largely depends on the availability of potable water and basic sanitation. The evidence from the study revealed that girls especially the first born girls are more involved in sourcing for water than boys; therefore girls' education is more likely to be affected as they have to source water before they go to school. The research showed that due to the longer distances, the girls are forced to travel from their households (which is about three (3) km during the dry seasons when the taps are closed) in search of the wells, they are tired by the time they get to school and that negatively impacts on their concentration. The study showed that the girls concentrate better in classes if they have not fetched water before going to school.

Target two (2) in relation to the study of the village of Matukeng, (i.e., balancing the ratio of women and men in wage employment) is dependent on the provision of safe water resources. The achievement of their target will reduce the burden on women spending hours sourcing water rather than engaging in productive activities.

Goal six (6) that is about combating HIV/AIDS, malaria and other diseases. From observation even though the community of Matukeng seems exposed to water related diseases (such as the bacterially caused diseases like typhoid, fever dysentery and cholera from the use of well water), the evidence from Matukeng Health Clinic is that there has never been a report of an outbreak of water-related diseases in the village. This is because the Health Environment checks the water

quarterly from the source and the taps and supplies the results to the clinic. According to the health worker, who is a nurse in charge in Matukeng Health Centre, the community members are constantly warned by the public health workers not to use water from the wells for drinking, but for cooking and washing clothes.

Furthermore, the community members mentioned that the tanks which bring the water to the taps are also cleaned which is another reason why there has never been a report of an outbreak of water related diseases in the village of Matukeng. Hence, the achieving of this target (i.e., related to combating malaria and other diseases which is dependent on the improvement of water supplies and basic sanitation) is met in as far as the community of Matukeng is concerned.

In so far as the achievement of those millennium development goals which are dependent on improving potable water and basic sanitation for the poor are concerned, the prevailing circumstances in the village of Matukeng are positive since there are many public taps available in the village for sourcing water.

Participation in relation to Sustainable Development

“Active participation in sustainable development ensures that those who are affected by the changes are the ones determining the changes. The result is the enjoyment and sharing of the benefits and products generated by the change. Participation is not exclusive, ensuring equitable input, self-determination of both genders and all races and cultural groups.”¹⁰

It is important that there be effective community participation in relation to development in poor communities. This is a fundamental principle that is vital for the proper allocation of limited resources.

The practice has shown that despite every person acknowledging the need for effective community participation, there is a tendency to regularly continue squandering scarce resources on unsustainable projects. This is brought about by lack of empowerment of the community members affected by the development. In the long run, this leads to a lack of proper guidance to the relevant communities.

¹⁰ www.hrea.org › Home › Learning Centre › Study Guides. Sustainable development.

Therefore, it is important that the community of Matukeng should participate in sustainable development so that they can determine the change which is beneficial to the community as a whole since they are the ones who are affected by change which is brought about by the commercialization of water in the village. This change which is affecting the community members has negative impacts on the lives of people, animals and the environment in the village of Matukeng, hence the need to determine change which is beneficial to the community as a whole.

4.4 The Implications of Legal Pluralism

Legal Pluralism provides:

“Legal pluralism is a set of intellectual tools for looking at common property, resource management, not just in terms of institutional mechanism, incentives, monitoring and enforcement but in terms of contesting claims conceptions through which meanings are defined and debated.”

(Bruns, B, R and Meinzen- Dick 2000:35)

“Legal pluralism argues that understanding water rights needs to start from the local perspectives of those who use water, their daily experiences, the meanings through which they conceive of water and rights, and the options they have available for acquiring water and defending their access to vital resource.”

(Bruns, B, R and Meinzen-Dick 2000:25)

Lesotho has a dual legal system consisting of customary and general laws operating side by side. Customary law is made up of the customs of Basotho. The legal system is based on English Common Law and Roman Dutch Law with judicial review of legislative acts in High Court and Court of Appeal.

Therefore, women’s rights, participation and inheritance in Lesotho are issues that have to be addressed since women are discriminated against which is contrary to section 18 of Lesotho Constitution which deals with freedom from discrimination.

A human right approach is considered to be a strategic approach, holding the government accountable, towards better access to potable water for the citizens. On the other hand, the concept of water as a human right is not alien to people in the village of Matukeng. That is why they get confused by the saying that water belongs to the Basotho Nation. For some this means water belongs to the people from where the resource is located. Thus, they have the governing traditions on the duty to share water for primary uses. This normally happens during dry seasons when the taps are closed or alternatively they have to use the wells which are not covered.

Consequently, during dry seasons the taps are closed on some days. That is; if they are opened today, tomorrow they would be closed. Even on those days when they are opened, it is only from 5:00 am to 8:00 am. Therefore, those who have boreholes in their yards share with those who do not when the taps are closed. The tradition includes potential respect sanctions on those who are not abiding and even circumstances that such rights could be limited on matters that could be equivalent to the legal expression of self-defence. For instance people, in fear of being poisoned by the water, do not share it with those with whom they are not on good terms.

“Such norms, despite their effectiveness in governing people’s relations to, better or worse have often been regarded as ‘either illegal, insignificant or irrelevant by legal centralism.”

(Bentzone 1998:131)

As a result, such norms are recognized as factors that can affect people’s access to water one way or another. Hence, I would argue that the right already has a foundation in the society upon which it can be built.

In the community of Matukeng, the commercial users and ordinary users have different perceptions about the ownership of natural resources. For instance, the ordinary users’ perception is that the natural resources belong to the community members in which the natural resource is located. This is in contrast to the commercial users’ perception. They say that they have control over the natural spring water once they are in possession of the water use permit.

There are the state laws, community norms and the contract that was entered into between the commercial users and the ordinary users even though these laws are conflicting.

CHAPTER 5

5.0. RECOMMENDATIONS AND CONCLUSION

As a way of resolving the problem of competing rights between the commercial users and the ordinary users in accessing the natural spring water, the recommendations are made in this chapter on the procedures to be followed before granting exclusive rights to the commercial users; what the state should consider when addressing the issue of water rights.

5.1 Administrative Reforms before granting Commercial Use Rights

The law in Lesotho provides for administrative procedures to be followed before it grants commercial use rights and that these procedures were followed before granting the commercial users the rights in the case of Matukeng. On account of the negative impact on the community members, there is a need for administrative reform before granting commercial use rights. The Ministry concerned should engage in Environmental Impact Assessment (EIA) not just a hydrological survey before granting commercial use rights to avoid negative impact on the ordinary users-community members which is what is going on currently in Matukeng.

It is important to define what (EIA) means as defined in the Lesotho Environment Act, 2008.

Environmental Impact Assessment in section 2 of the Act means;

“a systematic examination of a project or activity conducted to determine whether or not that project or activity may have adverse impact on the environment.”

This is what ought to have been done (EIA) before granting commercial use rights. So what was actually done was very scant in this regard.

Whoever is responsible for the provision of water should take into consideration the fact that access to potable water and basic sanitation is a human right and, therefore, they should adopt human rights centred approach in water provision.

5.2 Empowerment of Community Members before entering into Agreements

'Empowerment' means:

*"to enhance the capacity of an individual or groups to make purposive choices and to transform those choices into desired actions and outcomes."*¹¹

Thus, empowerment of the community of Matukeng was critical at the time it was negotiating the social responsibility agreements with the commercial users. From the evidence from the study, it is obvious that the community of Matukeng was not empowered during the time the final agreement was reached. Therefore, the community members later interfered with the rights of commercial users because the spring use and benefits were and are still taking place at the expense of them since they did not participate effectively in reaching and enforcing the social responsibility agreements. The issue of concern now is how to empower them to change the prevailing circumstances.

In my opinion, the community leaders should facilitate the empowerment of the ordinary users through the assistance of the NGO's. In this case, Lesotho Council of Non-Governmental Organizations, as the mother-body of other NGO's, would be appropriate to direct the community leaders to the relevant NGOs dealing specifically with water resources management to empower the community on what to consider when negotiating on re-negotiating agreements with the commercial users.

*"Empowerment influences people's ability to act through collective participation by strengthening their organizational capacities, challenging power inequities and achieving outcomes on many reciprocal levels in different domains: psychological empowerment, household relations, enhanced social capital and cohesion, transformed institutions, greater access to resources, open governance and increasing equitable community conditions."*¹²

This is what ought to have been done but was not done for the ordinary users-community members of Matukeng during the time when they were negotiating the agreements with the commercial users. Since they were not empowered, they overlooked some of the important issues like the time-frame and to make proposals for sanctions in case of failure to comply with

¹¹ www.Worldbank.org/empowerment/.

¹² What is the evidence of effectiveness of empowerment to improve health? WHO Regional Office for Europe's Health Evidence Network (HEN) February 2006.

the obligations undertaken. That is why later on there were misunderstandings between them as users leading to the conflict and dispute.

Once the community is empowered and can stand on its own, there will be a need to build partnerships between the community (the original users) and the service provider (the commercial users). The main purpose of the partnership should be aimed at building good positive relations between the commercial users and the ordinary users. Such partnerships will implant a sense of ownership within the community, which will in turn lead to sustainable development. However, this was not the case in the village of Matukeng. The community members were not empowered.

While I do not dispute the fact that the sale of water is crucial for the development of the country, due care must be taken whenever such commercial activities are undertaken. For instance, one member of personnel from the NGO Transformation Resource Centre (TRC) mentioned that during the process of commercializing of the water, the following should be taken into consideration:

- Communities have to be fully informed about the project and participate in it in order to avoid conflicts.
- Communities should benefit from the resources located in their area.
- Policies have to be participatory.
- Developers should empower the communities.
- The involvement of the community is key in developments.
- There should be laws protecting the rights of indigenous groups.
- Developers should understand the consequences for failure to comply with the obligations undertaken and should be made to account for them.
- The developers should help the local people claim their rights.
- There should be clear policies and regulations to prevent conflicts of interests arising and arbitrary irresponsible development.
- Developers should not do anything without informing the communities.
- Developers have to respect the communities which they seek to develop.
- There has to be political commitment and will because currently the issues of biodiversity and environment are not taken care of.

- There has to be a wider project policy for the rebuilding of the nation into which the local development policy fits.
- People should think ahead into the future. There has to be a long-term view of the future, since there are many things, like climate change which may have a future impact on the lives of people. Therefore, people should think about the future not just the present. For example, the needs of the growing village population have to be catered for. The fact that the resource is not in use now does not mean there will not be a need to use it in the future.

5.3 Legal Redress to cater for the Interests of both Categories of Users

Law is seen as the starting point as it provides the necessary foundation for the protection of the rights of individuals. It is also a reference of last resort by providing a basis for enforcement and redress in the case of abuse (Water Aid, 2003).

Even though the Constitution of Lesotho does not provide for the right to water, it expressly provides for the right to life (section 5). Therefore, women who reside near the stream from flowing water from the source could bring a constitutional case citing violation of their right to life as water forms the essence of life. The following examples of other countries may be helpful in this regard.

For most countries, the lack of explicit reference to a right to water in the national legislation necessitates creativity in enforcing the right through the courts.

Cases have been brought under environmental or public health legislation or courts have interpreted the right to water under other constitutional rights such as the right to life or a healthy environment in many countries.

For instance, in India, where the rights to water is not enshrined as a fundamental right in the national constitution, courts at both state and federal level have interpreted Article 21 of the Constitution, the right to life, as encompassing the right to safe and sufficient water and sanitation.

For example, in 1990 the Kerala High Court in *Attakoya Than gal v Union of India* recognized the fundamental importance of the right to water. In this case, the petitioner claimed that a scheme for pumping up ground water for supplying potable water to the Laccadives (now known as the Lakshadweep Islands) in the Arabian sea would upset the fresh water equilibrium, leading to salinity in the available water resources, causing more long term harm than short-term benefits.

The Kerala High Court, in its judgement, requested a deeper investigation and monitoring of the scheme and the judge clearly recognized the right of people to clean water as a right to life enshrined in Article 21 when he observed that:

“.... The administrative agency cannot be permitted to function in such a manner as to make inroads into the fundamental right under Article 21. The right to life is much more than a right to annual existence and its attributes are manifold, as life itself. A prioritization of human needs and a new value system has been recognized in these areas. The right to sweet water and the right to free air are attributes of the right to life for these are the basic elements which sustain life itself.”¹³

Therefore, the above-mentioned interpretation case is closely linked to section 5 of the Constitution of Lesotho on the right to life, thus implying that the people of Matukeng could bring a constitutional case citing violations of their right to life as water forms the essence of life.

Depending on their unique situations and circumstances, individuals, communities and progressive judiciaries worldwide have used numerous different methods, some of which include public interest litigation, to obtain legal redress on issues affecting the right to water. For example, in the case of the **Paynemil Mapache community in Neuquén, Argentina** an injunction against the Neuquén Government was filed in order to prevent activities impacting on the right to water of the community. The injunction was sought to make the Government accountable for its failure to meet its obligations to protect this right. According to the facts of the case, the water supply of an indigenous community, the Paynemil Mapache community in Neuquen had been polluted with lead and mercury by an oil company. The public defender of minors on Neuquen (children’s public defender) filed an injunction against the Neuquen Government on the grounds that the Provincial State was obliged to provide necessary fresh

¹³ www.righttowater.info/.../legal.../ the right-to-water-under-the-right-to life.

water for the community's survival since access to water is a basic human right. She argued that since the right to health can only be guaranteed through access to water, access to water is a fundamental human right and the Government was neglecting its obligation to safeguard the health of the population (Water Aid : 2003).

Another relevant case in the study for seeking legal redress is the one of **Coca-cola in Plachimada in Kerala, India**. According to the facts of this case:

“Before Coca-cola set up business, the village of Plachimada in Kerala, India, the area was rich in both surface and ground water. The farmers’ water sources have now dried up. Women must walk long distances to fetch water. In 2003 the Kerala High Court gave Hindustan Coca-Cola Beverages one month to close down its wells and find an alternative source of water. The court observed that groundwater is a natural resource that belongs to the whole of society. Even the government had previously ordered Coca-Cola to stop drawing groundwater from the plant premises until monsoon rains begins.”

(Holland, A, C, S 2005:256)

In this study it will be imperative to hear the views of the ordinary users-community members, who access the spring water. It is apparent that they would like shares in the plant of the commercial users (JAAT) because its vans have to pass through the village, loaded with bottled water from the spring, thus giving the impression that JAAT is profiting considerably from their venture.

(Section 5 of the Lesotho Water Act, 2008, provides that in the case of conflicting water use, if water is insufficient to cater for other uses, domestic use shall prevail and be given first preference over others, i.e. including, commercial users. This study shows that the activities of the commercial users of water in Matukeng are seriously breaching the right to water of its original users and clearly endangering their right to life. According to section 5 of the Lesotho Water Act, the rights of the domestic use, the original users of the water should now take precedence over the rights of the commercial users.

5.4 Women's Participation in Decision-making

During the decision making process, women as caretakers and managers of the households should also take part as well as men. However, in this study there is evidence that when the

agreements were entered into between the commercial users and the ordinary users, the community in general but, in particular, women were clearly excluded from the decision-making process since the decisions were made between the community leaders and the commercial users and whatever was agreed upon was imposed on the community members and this was clearly wrong.

In my opinion, since women are the primary users of water and since they suffer most when their right to it is breached, they ought to have taken part in any decision-making process concerning the use of and access to all water in Matukeng.

5.5 Political Will and Commitment to recognise the Human Right to Water as a separate Right

As mentioned previously, although the Constitution of Lesotho does not have a provision on the right to water, section 5 protects the right to life. Furthermore, the Constitution of Lesotho does not essentially free women from discrimination. This worrisome state of affairs encouraged me to investigate the Constitutional position of the ordinary users-community members of the spring at Matukeng after the commercialisation of water as provided for in the Lesotho Water Act, 2008.

In 2002, the UN Committee on Economic, Social and Cultural Rights in its General Comment No.15 on the right to water, observed that:

“everyone is entitled to sufficient, acceptable, safe, physically accessible and affordable water for personal and domestic use.”

Therefore, this study is important to investigate and assess whether both the commercial users-JAAT and the ordinary users-community members have equal rights in accessing the natural spring water at Matukeng Village.

It is therefore imperative to assess and evaluate the extent to which the Government of Lesotho has fulfilled its international obligation to provide water to both categories of users at the source of the natural spring water in Matukeg Village.

The Government of Lesotho has failed to sign the Declaration on the Right to Water, Article 31 of which provides as follows:

“Everyone has the right to clean and accessible water adequate for the health and well being of the individual and family and no one shall be deprived of such access or quality of water due to individual economic circumstances.”

This clearly shows lack of political will on the part of those who were responsible for the signing of this declaration. Considering the disputes in the village of Matukeng between the commercial users and the ordinary users-community members, if there was a right to water in Lesotho, the community would have the advantage of being able to enforce their rights in respect of water more powerfully.

5.6 Conclusion

5.7 Law Reform to address the Needs of the Community Members

During policy formulation and development of the law in water resources management, the Ministry of Natural Resources should cater for the interests of both the commercial users and ordinary users on the issue of the enjoyment of the right to water. Currently, the Lesotho Water Act, 2008 discriminates against the ordinary users in that community members are prevented from accessing the natural spring water except for effecting emergency protective measures.

The Lesotho Water Act, 2008 has to be amended to cater for the interests of the ordinary water users because currently it only protects the interests of the commercial users. In other words, the ordinary users should be allowed the same free access they had to the natural spring water prior to commercialization of water or be allowed to share the natural spring water with the commercial users. There should be no restrictions imposed on the ordinary users accessing the natural spring water used for commercialization.

The Lesotho Water and Sanitation Policy, 2007 is based on the recognition of the need for a holistic and sustainable water resource management and development approach which treats the resource as an economic, environmental and social asset. Even though the policy supports the commercial use of water, I am only in support of this where water is in abundance. However, where there is insufficient water, the sale of water should not be allowed to deprive its original

users of their rights to use it in order to sustain their lives. Life must come before profit. Where there is an abundance of water, the rights of local communities to develop their own water resources should take precedence over the claims of any outside developers.

5.8 Capacity Building for the Community Members

According to the study, the community of Matukeng is not an independent and empowered community. Even the installation of the taps in the village was done by the Government. They do little for themselves. In my opinion, it is high time for the members of the community of Matukeng to unite as a single-minded body to perform more functions for themselves, solve their own problems and set goals with a view to achieving the promotion of self-reliance and betterment of their lives so that they can withstand challenges from outside their community.

5.9 Respect of Community Members by the Commercial Users

Findings from voices of the poor establish that;

“the poor long for institutions which listen to and treat them with respect, dignity, even if these institutions cannot solve their problems.”¹⁴

In my opinion, the commercial users are not treating the ordinary users with respect in the village of Matukeng, taking in to the fact that eight (8) years elapsed since the agreement was reached and the commercial users have done little to comply with agreement. Also the act of dumping the bricks without constructing the building they promised shows a lack of genuine concern or respect for the rights of the community.

Upon realising that they were not in the position to honour the social responsibility, the commercial users should have at least communicated this to the ordinary users out of respect for them rather than doing nothing until they were obstructed in their operations by justifiably angry members of the community.

¹⁴ Narayan with others.WDR 2000/2001 and the voices of the poor study, p13.

Even though the commercial users have exclusive rights to the natural spring water at Matukeng, in order to protect and conserve water resources, they should take the issue of sustainability into consideration.

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Appendix 1: A Map showing the research site which is located about 20 km south of Maseru.



Appendix 2: Photograph of the road sign post to Matukeng Village, Lesotho.

