

# The Incorporation of Customary Water Rules under the Ethiopian Formal Water Governance System: Clash of Values between Commodification and Preservation

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## Abstract

*Customary water rules need to be adequately incorporated into the Ethiopian formal water governance system despite their significance for ensuring sustainable and equitable utilization of scarce water resources. This research, using the textual analysis method and employing the theory of institutional incongruence, seeks to explore the extent of recognition of customary water rules under the formal water governance system of Ethiopia. The article argues that there needs to be more recognition of customary water rules under the Ethiopian formal water governance system, which has led to conflicts, inefficiencies, and unsustainable use of water resources. This is due to the value clash between the formal water rules built on the notion of water as a resource for commodification and customary water rules that see water as a sacred and communal part of communities' sociocultural and ecological being. As a result of this value clash, customary water rules, however important sustainability tenets they might lend, are only easily amenable to the formal water governance framework in the first place, questioning its basic foundations. Strategies such as incorporating ecosystems-based approaches, recognizing and integrating traditional knowledge, and promoting participatory decision-making processes can assist in bridging the gaps between commodification and preservation values. This, in turn, requires and largely depends on finding the right balance between economic development and environmental sustainability. This entails a fundamental reconsideration of the very goals of the Ethiopian water resources management policy, proclamation and regulation.*

**Keywords:** Water law of Ethiopia; Customary water rules; Formal water governance; Commodification; Preservation; Sustainable development.

## Abstrak

Aturan air adat tidak cukup dimasukkan ke dalam sistem tata kelola air formal Ethiopia meskipun signifikansinya untuk memastikan pemanfaatan sumber daya air langka yang berkelanjutan dan adil. Penelitian ini, menggunakan metode analisis tekstual dan menggunakan teori ketidaksesuaian kelembagaan, berusaha untuk mengeksplorasi sejauh mana pengakuan aturan air adat di bawah sistem tata kelola air formal Ethiopia. Hasil penelitian menunjukkan bahwa ada pengakuan terbatas terhadap aturan air adat di bawah sistem tata kelola air formal Ethiopia yang telah menyebabkan konflik, inefisiensi, dan penggunaan sumber daya air yang tidak berkelanjutan. Hal ini disebabkan oleh benturan nilai antara aturan air formal yang dibangun di atas gagasan air sebagai sumber daya untuk komodifikasi, dan aturan air adat yang melihat air sebagai bagian sakral dan komunal dari masyarakat sosial budaya dan ekologis. Sebagai hasil dari benturan nilai ini, peraturan air adat, betapapun pentingnya prinsip

keberlanjutan yang mungkin mereka pinjamkan, tidak mudah diterima ke dalam kerangka tata kelola air formal tanpa terlebih dahulu mempertanyakan fondasi dasarnya. Disimpulkan bahwa strategi seperti menggabungkan pendekatan berbasis ekosistem, mengenali dan mengintegrasikan pengetahuan tradisional, dan mempromosikan proses pengambilan keputusan partisipatif dapat membantu menjembatani kesenjangan antara nilai komodifikasi dan pelestarian. Ini, pada gilirannya, membutuhkan dan sangat tergantung pada menemukan keseimbangan yang tepat antara pembangunan ekonomi dan kelestarian lingkungan. Ini memerlukan pertimbangan ulang mendasar dari tujuan kebijakan, proklamasi, dan regulasi pengelolaan sumber daya air Ethiopia.

**Kata kunci:** Hukum air Ethiopia; Aturan air adat; Tata kelola air formal; Komodifikasi; Pelestarian; Pembangunan berkelanjutan.



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## A. INTRODUCTION

Customary water rules have played and continue to play a vital role in the governance of water resources in Ethiopia, as in many other countries. Customary water rules refer to the traditional practices and norms that have been developed and adopted by communities for generations to manage their water resources. These rules basically consist of traditional practices and norms that guide the use and management of water resources within communities. Customary water rules in many rural areas are deeply embedded in the cultural fabric of the society and are considered the primary device for water allocation and dispute resolution.<sup>1</sup>

The Ethiopian government, in recognition of the importance of customary water rules, seeks to incorporate them into the formal legal and regulatory frameworks. This formal water governance system includes, *among other things*, policy, legislation and institutional frameworks to regulate water resources and ensure equitable access to water for all users. Some efforts have been made with the view to harmonizing customary water rules with the existing formal laws and policies in addition to involving local communities in the decision making process of water management. A case in point is the Ethiopian water resource management policy that encourages the incorporation of customary water rules and the participation of local communities in water resource management planning. It also promotes community-based organizations and local water user associations as important actors in the implementation of water governance measures.

The integration of customary rules into the formal water governance system in Ethiopia is, however, still an ongoing process with a number of challenges ahead. Some of these challenges, for example, include potential conflict that may arise between customary water rules and the requirements of formal regulation, leading to confusion and uncertainty. While the formal water rules are built on the notion of water as a resource for commodification, customary

<sup>1</sup> PETER H GLEICK, "The World's Water 1998--1999: The Biennial Report on Freshwater Resources," *Population and Development Review* 25 (March 11, 1999): 815, <https://link.gale.com/apps/doc/A63296791/AONE?u=anon~2c9f6ece&sid=googleScholar&xid=27ba03d9>.

water rules see water as a sacred and communal part of their sociocultural being. As a result of this value clash, customary water rules, however important sustainability tenets they might lend, are only easily amenable to the formal water governance framework with, in the first place, questioning its basic foundations.

## **B. METHOD**

This research, using the textual analysis method and employing the theory of institutional incongruence, seeks to explore the extent of recognition of customary water rules under Ethiopia's formal water governance system. Accordingly, the article is organized into seven sections. While section one introduces the article, the second section deals with the nature and importance of customary water rules. Sections three and four are devoted to some examples of customary rules and approaches to integrating them into the formal water governance system. Section five deals with the place of customary water rules under International and national law, followed by section six, which deals with the problems of and reasons for the limited recognition of customary water rules in Ethiopia in light of the theory of institutional incongruence. Finally, section seven concludes the article.

## **C. RESULTS AND DISCUSSIONS**

### **1. Customary Water Rules: Nature and Importance**

Customary water rules refer to the traditional practices and norms that have been developed and adopted by communities for generations to manage their water resources.<sup>2</sup> These rules consist of traditional practices and norms that guide the use and management of water resources within communities. By their nature, customary water rules are deeply embedded in the cultural fabric of the society in many rural areas. They are considered the primary devices for water allocation and dispute resolution.<sup>3</sup>

The benefits of customary water rules over the formal water governance system are manifold. Water is undoubtedly an invaluable natural resource that occupies a critical role in sustaining life, economies and ecosystems. Water is a scarce and essential resource for life; thus, its appropriate management is crucial for sustainable development.<sup>4,5</sup> It is an indispensable but challenging endeavor to ensure fair and efficient water resource allocation and management if we have to sustain livelihoods.

Although the conventional formal water governance system, often driven by top-down approaches and government regulations, have been widely implemented in the process of water resource management, customary water rules that had evolved through community practices

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<sup>2</sup> Jessica Troell and Stephanie Keene, "Legal Recognition of Customary Water Tenure in Sub-Saharan Africa: Unpacking the Land-Water Nexus" (Colombo, Sri Lanka, 2022), <https://doi.org/10.5337/2022.215>.

<sup>3</sup> Troell and Keene.

<sup>4</sup> Aymere Awoke et al., "River Water Pollution Status and Water Policy Scenario in Ethiopia: Raising Awareness for Better Implementation in Developing Countries," *Environmental Management* 58, no. 4 (2016): 694–706, <https://doi.org/10.1007/s00267-016-0734-y>.

<sup>5</sup> P Woodhouse and M Muller, "Water Governance—An Historical Perspective on Current Debates," *World Development* 92 (2017): 225–41, <https://doi.org/10.1016/j.worlddev.2016.11.014>.

have also demonstrated their effectiveness.<sup>6</sup> Customary water rules, thus, offer a number of advantages over the formal water governance system that includes, but not limited to, enhanced equity and efficiency, ecosystems preservation, social cohesion, and adaptability to local contexts. These traditional knowledge systems, developed and refined for over generations, significantly contribute to the achievement of sustainable development.<sup>7</sup> They offer a comprehensive and holistic approach to water management, deeply rooted in indigenous knowledge and wisdom. Policymakers can harness the powers of local wisdom and community engagement to realize sustainable and equitable water resource management by acknowledging the values of customary water rules and integrating them into the formal water governance system.

a. Sustainability, Equity and Efficiency

Customary water rules significantly contribute to sustainable development by promoting water conservation and efficient utilization.<sup>8</sup> For example, many traditional societies practice water harvesting techniques such as building reservoirs, tanks and canals for capturing and storing rainwater. Such techniques enable local communities to mitigate water scarcity during periods of low rainfall and assure a reliable water supply for different uses. Customary water rules can also promote efficient irrigation, mulching techniques, and sharing of scarce water resources among multiple users in a community. These practices improve water efficiency and unnecessarily minimize wastage, contributing to sustainable agriculture.

As they are basically passed down through generations, customary water rules are formulated based on community needs and reflect cultural values and social norms.<sup>9</sup> Consequently, customary water rules often give priority to equitable access to water resource in such a way that assures fair distribution among various users. Customary water rules provide a platform for dialogue and collaboration as they involve local stakeholders in decision making processes.<sup>10</sup> This will, in turn, foster a sense of ownership and encourage responsible use of water resources. This bottom-up approach helps enhance social equity, prevent conflicts, and boost water resource allocation and management efficiency.

b. Preservation of Ecosystem

It is likely that formal water governance systems usually give primacy to economic development over environmental sustainability.<sup>11</sup> Conversely, a deep-rooted relationship

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<sup>6</sup> B. van Koppen, “Living Customary Water Tenure in Rights-Based Water Management in Sub-Saharan Africa” (Colombo, Sri Lanka, 2022), <https://doi.org/10.5337/2022.214>.

<sup>7</sup> van Koppen.

<sup>8</sup> David S Henkel, “Community-Based Water Systems: Preserving Livelihood, Ecology, and Community,” *Human Ecology Review* 20, no. 2 (March 11, 2014): 75–95, <http://www.jstor.org/stable/24707627>.

<sup>9</sup> Elizabeth Gachenga, “Customary Law Systems for Water Governance and the Human Rights Based Approach to Water: A Case of Marakwet of Kenya” (Strathmore University, 2013), <https://su-plus.strathmore.edu/server/api/core/bitstreams/d6ffe6d9-cd0f-48f3-8f60-2225b35385bd/content>.

<sup>10</sup> Gachenga.

<sup>11</sup> Henkel, “Community-Based Water Systems: Preserving Livelihood, Ecology, and Community.”

between communities and their surrounding ecosystem lies at the center of customary water rules. Indigenous cultures deeply respect nature and acknowledge the interdependence between humans and the environment. They also recognize the interconnectedness of water resources with biodiversity, watersheds, and overall ecosystem health. Customary water rules safeguard sensitive environments and maintain ecological balance, not least because they often include provisions for water conservation practices such as seasonal allocation and restrictions on water-intensive activities.<sup>12</sup> Customary water practices, for example, prohibit activities that may harm water quality or quantity, such as unsustainable extraction and encroachment on water catchment areas. As a consequence of this kind of community-based stewardship, there will be an increase in sustainable water use practices and long-term preservation of ecosystems.

#### c. Social Cohesion

Customary water governance systems promote collective decision making which fosters social cohesion.<sup>13</sup> This is so because customary water governance systems are predicated on community interdependence and shared responsibility for water resources. In this sense, customary water rules mostly promote cooperation, self-regulation, and a common goal, which builds trust and strong social bonds among community members.

An important aspect of customary water rules is the emphasis they place on community participation and collective decision making.<sup>14</sup> In many traditional societies, the water allocation decision is reached through consensus, considering the needs and priorities of all the concerned stakeholders. This inclusive approach leads to fair and sustainable water management practices by ensuring a fair representation of the interests of all community members. When allowed to participate in water management decisions, individuals develop a sense of belongingness that is the requisite of a strong community fabric. By involving individuals and communities in decision making processes, customary water rules foster local ownership and stewardship of water resources that eventually minimizes potential conflicts and supports sustainable development. Moreover, customary water rules help to ensure the voices of marginalized groups are heard and their interests are protected by prioritizing their needs.<sup>15</sup>

#### d. Adaptability to Local Contexts

Formal water governance systems, compared to the informal ones, have so standardized structures and implementation frameworks that they struggle to address varying local needs.<sup>16</sup> On the other hand, customary water rules are not only embedded in local contexts but are inherently flexible. Customary water rules can easily adapt to

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<sup>12</sup> van Koppen, "Living Customary Water Tenure in Rights-Based Water Management in Sub-Saharan Africa."

<sup>13</sup> Getachew Zerfu, "Management Aspects of Rural Water Sustainability in Ethiopia" (International Institute for Infrastructural, Hydraulic and Environmental Engineering, 2013).

<sup>14</sup> Zerfu.

<sup>15</sup> Toufik Ftaïta, "Community Water Management. Is It Still Possible? Anthropological Perspectives," *Anuário Antropológico*, no. v.36 n.1 (December 1, 2011): 195–212, <https://doi.org/10.4000/aa.1161>.

<sup>16</sup> Gachenga, "Customary Law Systems for Water Governance and the Human Rights Based Approach to Water: A Case of Marakwet of Kenya."

changing social, economic and hydrological circumstances as generations of trial and error shape them. This adaptability, *in turn*, empowers communities to better respond to unforeseeable challenges like climate change and population growth. Incorporating customary water knowledge and practices into the formal system can also increase their resilience and effectiveness.<sup>17</sup>

## 2. Customary Water Rules and Practice in Ethiopia: Some Examples

There are multitudes of traditional water rules and practices in Ethiopia that play a vital role in ensuring the sustainable management and utilization of water resources. Ethiopia, known for its numerous lakes, rivers and underground water, has a robust history of diverse water management practices that have developed and refined for centuries. This section seeks to explore some examples of customary water rules and practices in Ethiopia to highlight their significance in water resource management. Although the country has multitudes of customary water rules and practices, the section is only devoted to some notable examples.

One notable example of customary water rule practiced in Ethiopia is the “Qene” system.<sup>18</sup> A term derived from the Amharic language in Ethiopia, ‘Qene’ refers to a traditional community-based water allocation scheme. Water, in this system, is allocated to various users on the basis of a predetermined set of rules and taking into account the specific need of each user. A local committee or council composed of respected members of the community will oversee such water allocation. The ‘Qene’ system provides an equitable water distribution mechanism ensuring the availability of water both for domestic and agricultural consumptions especially in times of water scarcity.

Another example of customary water rules practiced in Ethiopia is “Birr Kat”.<sup>19</sup> Generally, ‘Birr Kat’ is a traditional practice that consists of mobilizing local community members to collectively commit their labor and resources in order to construct and maintain water infrastructure. Individuals and households, in this system, voluntarily contribute their time and resources to excavating, maintaining and repairing water sources like wells, canals and ponds. In this respect, the practice of ‘Birr Kat’ fosters a sense of collective ownership, responsibility and pride within a community while simultaneously ensuring the sustainable utilization and management of water resources.

Furthermore, a traditional practice termed as “Haregot” is widely exercised in Ethiopia.<sup>20</sup> Basically, ‘Haregot’ is a customary water rule that obligates individuals or communities who reside near water bodies to protect and conserve these resources. More specifically, it involves such rules as an obligation to refrain from polluting water bodies, prevent overfishing, and preserve the surrounding ecosystems. The importance of this practice lies in maintaining ecological balance, preventing resource depletion, and promoting sustainable water management.

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<sup>17</sup> Gachenga.

<sup>18</sup> Mehretie Belay and Woldeamlak Bewket, “TRADITIONAL IRRIGATION AND WATER MANAGEMENT PRACTICES IN HIGHLAND ETHIOPIA: CASE STUDY IN DANGILA WOREDA,” *Irrigation and Drainage* 62, no. 4 (October 1, 2013): 435–48, <https://doi.org/https://doi.org/10.1002/ird.1748>.

<sup>19</sup> Belay and Bewket.

<sup>20</sup> Zerfu, “Management Aspects of Rural Water Sustainability in Ethiopia.”

At the end, the above examples of customary water rules and practices in Ethiopia highlight the country's robust cultural heritage and people's deep connection with water resources. While these customary water rules are founded upon local beliefs and usages, they have proven effective in ensuring the sustainability of water resources. Customary water rules can, therefore, complement the formal water governance system in several ways, provided that they are appropriately integrated.

### **3. The Status of Customary (Water) Rules: International and National Laws**

Since time immemorial, communities all over the world have developed their own customary water rules governing the use, management and allocation of water resources.<sup>21</sup> These norms have, from time to time, been shaped by local, cultural and ecological factors ensuring sustainable water management practices. It is, however, worth noting the fact that there is a growing need to evaluate the level of recognition of customary water rules under International Law following the increasing complexities of water-related challenges and their transboundary nature.<sup>22</sup>

#### **a. Customary Water Rules Under International Law**

Although a soft law, the United Nations Declaration on the Rights of Indigenous People (UNDRIP) clearly establishes the rights of indigenous people to own, use, develop and control their traditionally owned or otherwise occupied and used lands, territories, waters and coastal sea and other resources.<sup>23</sup> Such an entitlement, presumably, entails using, by indigenous people, their own customary rules in using and managing their resources envisaged under the provision. The declaration calls upon countries to legally recognize and protect their lands and resources with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned and specifically to recognize Indigenous Peoples' land tenure systems within these territories.

International Law provides a framework for regulating transboundary water resources and fostering cooperation among states. A case in point is the United Nations Convention on the Law of Non-Navigational Use of International Watercourse (also called the UN Watercourse Convention), which lays down the principles regarding water-related activities between countries sharing water courses.<sup>24</sup> This convention, however, does not recognize customary water rules explicitly while it mainly capitalizes on the legal aspects of water governance.

Customary water rules, in spite of their exclusion for the formal International water governance framework, have gained acceptance in regional legal frameworks and

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<sup>21</sup> Troell and Keene, "Legal Recognition of Customary Water Tenure in Sub-Saharan Africa: Unpacking the Land-Water Nexus."

<sup>22</sup> Marco Ramazzotti, "Customary Water Rights and Contemporary Water Legislation," *FAO Legal Papers Online* 76 (2008).

<sup>23</sup> U N General Assembly, "United Nations Declaration on the Rights of Indigenous Peoples," *UN Wash* 12 (2007): 1-18.

<sup>24</sup> Laurence Boisson de Chazournes et al., *The UN Convention on the Law of the Non-Navigational Uses of International Watercourses: A Commentary* (Oxford Commentaries on Interna, 2019).

practices. In this respect, include the Australian Aboriginal customary water rights<sup>25</sup> and the customary water management practices of Canada<sup>26</sup> are some notable examples.

b. Customary Water Rules under National Law: The Policy and Legal framework

In Ethiopia, as in many African countries, there is water scarcity and competition for water resources.<sup>27</sup> In an attempt to deal with such challenges, the country has attempted to recognize and integrate customary water rules into its formal water governance system, albeit not adequately. The country aims to ensure equitable and sustainable utilization of its water resources by integrating customary water rules in the formal water governance system.<sup>28</sup> This approach is largely predicated on the recognition of the knowledge and expertise of local communities in managing their water resources. The approach combines traditional practices with modern water management techniques for the best possible outcome. In this way, it is possible to promote community participation, ensure water resource sustainability, and address water challenges in the country.<sup>29</sup>

The Ethiopian Water Resource Management Policy not only acknowledges the importance of customary water rules but also encourages their incorporation into the formal legal framework of the country.<sup>30</sup> It is possible to integrate customary water rules into a country's formal legal framework in a number of ways. One of such ways is through the establishment of Water User Associations (WUAs). Water User Associations (WUAs) are community-based organizations that are in charge of the management and distribution of water resources at local levels.<sup>31</sup> These associations, most often than not, incorporate customary water rules into their bylaws and decision making processes.

The 1995 Ethiopian Constitution does not as such give adequate recognition to customary water rules. The constitution, under its third chapter, in fact recognizes the applicability of customary rules only in relation with the adjudication of disputes related to personal and family law.<sup>32</sup> In light of the Constitution, the Ethiopian 2000 water resources management proclamation<sup>33</sup> along with the 2005 water resources management regulation<sup>34</sup> Serve as the bedrock of water law in the country. These legislations seek to

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<sup>25</sup> Donna Craig and Elizabeth Gachenga, "The Recognition of Indigenous Customary Law in Water Resource Management," *Water Law* 20, no. 5/6 (2010): 278.

<sup>26</sup> Linda Nowlan, "Customary Water Laws and Practices in Canada," 2004, [https://www.fao.org/fileadmin/templates/legal/docs/CaseStudy\\_Canada.pdf](https://www.fao.org/fileadmin/templates/legal/docs/CaseStudy_Canada.pdf), .

<sup>27</sup> Troell and Keene, "Legal Recognition of Customary Water Tenure in Sub-Saharan Africa: Unpacking the Land-Water Nexus."

<sup>28</sup> IMERU TAMRAT, "Policy and Legal Framework for Water Resources Management in Ethiopia," in *Conference on Water Management in Federal and Federal Types Countries, Zaragoza*, 2008.

<sup>29</sup> TAMRAT.

<sup>30</sup> Federal Democratic Republic of Ethiopia, "The Ethiopian Water Resources Management Policy," *Ministry of Water Resources*, 1998, <https://faolex.fao.org/docs/pdf/eth158196a.pdf>.

<sup>31</sup> E Aarnoudse, Alvar Closas, and Nicole Lefore, "Water User Associations: A Review of Approaches and Alternative Management Options for Sub-Saharan Africa," 2018, <https://doi.org/10.22004/ag.econ.284166>.

<sup>32</sup> Federal Democratic Republic of Ethiopia, "Constitution of the Federal Democratic Republic of Ethiopia," *Proclamation No. 1/1995, Federal Negarit Gazttee* 1, no. 1 (1995).

<sup>33</sup> Federal Democratic Republic of Ethiopia, "Water Resources Management Proclamation," *Proclamation Number 197/2000, Federal Negarit Gazette* 6, no. 25 (1998).

<sup>34</sup> Federal Democratic Republic of Ethiopia, "Water Resources Management Regulation," *Regulation Number 115/2005, Federal Negarit Gazette* 11, no. 27 (2005).

set up a hierarchical system of water rights that prioritizes state control and regulation of the country's water resources. The main objective of this centralized model of water governance is to ensure an equitable and sustainable utilization of water resources by all users.

The Ethiopian Water Resource Management Proclamation recognizes the rights of communities to managing and using water resources in accordance with their customary practices in as long as they do not conflict with its national interest.<sup>35</sup> This shows that the government has taken steps to protect and regulate customary water rights to recognize their importance in water resource management. However, the problem is that the recognition given for customary water rules under the Ethiopian formal system needs to be improved needs to be improved. Customary water rules are subordinate to the formal water governance system, and their application and enforcement are subject to the government's discretion. This kind of limited recognition of customary water rules leads to governance gaps since the needs and concerns of local communities cannot be adequately addressed.<sup>36</sup>

There are multitudes of obstacles that lie behind the limited recognition of customary water rules into the Ethiopian formal legal system. One of such hindrances is the lack of clear mechanism for their incorporation into the formal legal framework.<sup>37</sup> Even if the law often acknowledges the importance of customary water rules, it needs to provide detailed guidelines for their recognition and implementation. This absence of clarity, in turn, creates ambiguity and widens the government's discretionary decision-making power, leading to inconsistent applications and potential conflicts. Another important obstacle is the limited capacity of local communities to assert and defend their customary water rights.<sup>38</sup> Many local communities are not, often, aware of their rights and the mechanisms to enforce them. The formal legal system is complex and inaccessible that makes it difficult for community members to effectively navigate the system and assert their interests.

In order to tackle these challenges, it is necessary to develop a comprehensive framework for the recognition and incorporation of customary water rules into the country's formal system.<sup>39</sup> This framework will, among others, clarify the recognition procedure, define stakeholder participation mechanisms, and create a forum for dispute resolution. In addition, capacity-building initiatives must be taken to empower local communities to assert their rights and meaningfully participate in the water resources management process.

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<sup>35</sup> Federal Democratic Republic of Ethiopia, "Water Resources Management Proclamation."

<sup>36</sup> Reta Hailu, Degefa Tolossa, and Getnet Alemu, "Water Institutions in the Awash Basin of Ethiopia: The Discrepancies between Rhetoric and Realities," *International Journal of River Basin Management* 16, no. 1 (January 2, 2018): 107–21, <https://doi.org/10.1080/15715124.2017.1387126>.

<sup>37</sup> Ayalew Getachew Assefa, *Customary Laws in Ethiopia: A Need for Better Recognition?: A Women's Rights Perspective* (Danish Institute for Human Rights, 2012).

<sup>38</sup> Assefa.

<sup>39</sup> TAMRAT, "Policy and Legal Framework for Water Resources Management in Ethiopia."

#### 4. The Limited Recognition of Customary Water Rules in Ethiopia: Reasons and Problems

The limited recognition, in Ethiopia, of customary water rules in the formal water governance system has led to multitudes of problems. Customary water rules that are developed and practiced among local communities have been indispensable in the management of the country's water resources for centuries. The meager place given for these rules is contributing to conflicts, inefficiencies, and unsustainable water resource exploitation.

##### a. The Reasons for the Limited Recognition of Customary Water Rules

As a country with ethnic and cultural diversity and traditions, Ethiopia holds a robust tapestry of customary water rules that had endured the test of time. These customary rules, as shown in the above section, are accorded low level of recognition in the formal system of the country. This section is devoted to exploring the reasons that lie behind the limited recognition of customary rules in Ethiopia.

According to the theory of institutional incongruence conflicts arise when there is misalignment between formal institutions (ex. laws, policies) and informal institutions (such as customary water rules).<sup>40</sup> In the context of water resources management customary water rules are often embedded in local traditions, culture, and historical relationships with water, hence they may significantly differ from the formal water law framework. Conflicts are bound to arise when the formal water governance framework, consequently, does not adequately consider and recognize the values, knowledge and practices embedded in customary water laws.

The major reason, therefore, that limits the recognition of customary water rules in the formal water governance system of the country is the clash of values and the resulting tensions between the two systems. The formal water governance system often places value on commodification and privatized allocations and utilizations of water resources for economic motives.<sup>41</sup> A formal water governance system, led by market-oriented approaches and economic development priorities, views water as a mere economic good to be allocated, bought, and sold. This mechanism often employs pricing mechanisms, and market-based allocation systems, and prioritizes uses with economic return like commercial or industrial activities. The aim is to promote efficiency, productivity, and economic growth at the expense of sustaining water resources.

In sharp contrast to this, customary water rules give primacy to the preservation of water resources, sustainability, and long-term well-being of ecosystems and communities.<sup>42</sup> Customary water rules are grounded in cultural, ecological and social values that prioritize the preservation and sustainable management of water resources. These rules, most importantly, acknowledge the interconnection of water with the overall

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<sup>40</sup> Cathy Rubiños and Maria Bernedo Del Carpio, "Institutional Fit in the Water Sector," in *Oxford Research Encyclopedia of Environmental Science* (Oxford University Press, 2022), <https://doi.org/10.1093/acrefore/9780199389414.013.787>.

<sup>41</sup> Amare Bantider et al., "Voices in Shaping Water Governance: Exploring Discourses in the Central Rift Valley, Ethiopia," *Water*, 2023, <https://doi.org/10.3390/w15040803>.

<sup>42</sup> Bantider et al.

well-being of communities, ecosystem and the future generations. More specifically, customary water rules emphasize on equitable access, communal water management, and traditional practices that have sustained communities for generations.

The theory of intuitional incongruence, most importantly, suggests that any attempt to integrate customary water rules into the formal water governance system must first address the value divergences between the two systems.<sup>43</sup> Based on the literature and reports analyzed, attempts to recognize customary water rules under the Ethiopian formal water governance appear to be either a superficial cross reference to or an embodiment of customary water rules under the formal system. This reduces the important issues to the normative question instead of addressing the value clash between the two systems, which is the real limitation of recognizing customary water rules.

An investigation of some customary water practices (such as *Qene*, *Birkat*, and *Hareegot* systems) reveals that they prioritize preserving water resources, sustainability and the long-term well-being of ecosystems and communities. In fact, water forms part of the community's socio-cultural and ecological beings, resulting in it being seen as a sacred entity. Therefore, customary water rules emphasize equitable access, communal water management, and traditional practices that have sustained communities for generations. Conversely, a closer look at the Ethiopian water resources management policy, proclamation and regulation reveals that they are predicated on the notions of water as a mere resource subject to commodification and private allocations. The formal water governance system, led by market-oriented approaches and economic development priorities, views water as a merely economic good to be allocated, bought and sold. This mechanism often employs pricing and market-based allocation systems and prioritizes uses with economic returns like commercial or industrial activities. Therefore, customary water rules, however important sustainability tenets they might lend, are only easily amenable to the formal water governance framework in the first place, questioning its basic foundations.

In order to address this value clash, there is growing recognition of the necessity to incorporate environmental and social considerations into the formal water governance framework of a country.<sup>44</sup> This entails a fundamental reconsideration of the very goals of the Ethiopian water resources management policy, proclamation and regulation. Strategies such as incorporating ecosystems-based approaches, recognizing and integrating traditional knowledge, and promoting participatory decision-making processes can assist in bridging the gaps between commodification and preservation values. This, in turn, depends on finding the right balance between economic development and environmental sustainability.

Another important reason for the low level of recognition of customary water rules in Ethiopia is associated with historical factors. The Ethiopian legal system had historically been influenced by the colonial-imperial Western models of modernity and

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<sup>43</sup> Rubiños and Bernedo Del Carpio, "Institutional Fit in the Water Sector."

<sup>44</sup> Hugo Tremblay, "A Clash of Paradigms in the Water Sector? Tensions and Synergies Between Integrated Water Resources Management and the Human Rights-Based Approach to Development," *SSRN Electronic Journal*, 2010, <https://doi.org/10.2139/ssrn.1661146>.

its legacy.<sup>45</sup> This led to the adoption of a centralized legal system disregarding traditional practices and customary rules, including those related to water. The low recognition of customary water rules can be traced back to this inherited system, which needs to acknowledge the longstanding and localized water management practices exercised by local communities nationwide. In this light, it is worth noting the 1960 Civil Code of Ethiopia that explicitly relegates customary rules to the formal legal framework of the country.<sup>46</sup>

Thirdly, lack of documentation and codification plays an important role for the low recognition of customary rules in Ethiopia.<sup>47</sup> It is not easy to document and codify customary water rules since they are rooted in oral traditions. As in many countries, a formal legal system dominated by written statutes in Ethiopia adds another layer of complication in incorporating and enforcing customary water rules. Moreover, the lack of inclusive and comprehensive integration procedures significantly hinders the acceptance of these rules within the formal system.

Fourthly, centralized governance and poor local representation are attributed to Ethiopia's low recognition of customary water rules. The Ethiopian governance structure tends to be centralized, concentrating key power and decision-making on the federal organ.<sup>48</sup> The inevitable consequence of this kind of top-down approach is that it dilutes the significance of localized water management practices and restricts the leeway for their incorporation into the formal legal system. Additionally, local communities that predominantly rely on such traditional water rules often need more representation and participation in the law-making process, which further reinforces the low level of recognition they received in the first place.

#### b. The Problems of the Limited Recognition of Customary Water Rules in Ethiopia

The first negative effect of the limited recognition of customary water rules in Ethiopia is that it undermines the authority and legitimacy of such community-based regulations.<sup>49</sup> Customary water rules are built upon traditional knowledge, usages, and beliefs that have evolved over generations. These rules seek to ensure fair and equitable water resource allocation and utilization by considering different communities' specific needs, values, and cultural contexts. However, the absence of formal recognition of these rules means that they are disregarded by individuals and the larger society, resulting in a sense of injustice and increasing the likelihood of conflicts.

Secondly, the limited recognition of customary water rules into the formal system hinders an effective water resource management practice.<sup>50</sup> Across many parts of

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<sup>45</sup> Hailu, Tolossa, and Alemu, "Water Institutions in the Awash Basin of Ethiopia: The Discrepancies between Rhetoric and Realities."

<sup>46</sup> Federal Democratic Republic of Ethiopia, "Civil Code of the Federal Democratic Republic of Ethiopia," *Proclamation No. 165/1960, Negarit Gazttee* 19, no. 2 (1960).

<sup>47</sup> Hailu, Tolossa, and Alemu, "Water Institutions in the Awash Basin of Ethiopia: The Discrepancies between Rhetoric and Realities."

<sup>48</sup> Federal Democratic Republic of Ethiopia, "Constitution of the Federal Democratic Republic of Ethiopia."

<sup>49</sup> Assefa, *Customary Laws in Ethiopia: A Need for Better Recognition?: A Women's Rights Perspective*.

<sup>50</sup> Assefa.

Ethiopia, customary water management techniques have proved their efficiency and sustainability. Local communities have coped with seasonal water variability and scarcity using mechanisms to allocate water equitably and efficiently. By not incorporating these practices into national laws, we restrict our ability to prevent over-extraction, pollution and mismanagement of water resources. Consequently, unsustainable water use patterns that exacerbate water scarcity will emerge that endanger the livelihoods of communities that depend on such resources.

The third problem associated with the limited recognition of customary water is that it impedes the achievement of social and environmental justice.<sup>51</sup> Traditional water rules have long occupied a central role in ensuring equitable access to water resources, especially for marginalized and vulnerable sections of society. The exclusion of these rules from the formal system further perpetuates inequality and discrimination. This is so because the most influential stakeholders with greater political and economic resources will have the opportunity to exploit water resources without considering the needs and interests of those who rely on them for survival. This will result in social injustice, such as denial of access to water, unequal allocation, and, at times, inadequate consideration of gender-specific water needs.

The other impact of the limited recognition of customary water rules is that it impedes the realization of sustainable development.<sup>52</sup> It is known that water plays a vital role in human life, such as agricultural activities, energy production, industrial manufacturing, and ecosystem preservation. Integrating customary water rules into the formal system provides the basis for ensuring sustainable water management, enhancing agricultural productivity, promoting renewable energy, and safeguarding fragile ecosystems. Any development activity taken in their absence is bound to lack consideration for long-term socioeconomic and environmental consequences and exacerbate water-related challenges.

## **5. Approaches to Integrating Customary Water Rules into the Formal Water Governance System**

There are many alternative ways to incorporate customary water rules into a country's formal water governance system, each with its own pros and cons. In what follows, a brief discussion of these alternatives is presented.

- a. **Recognition and Documentation:** The first step in the process of recognizing the significance of customary water rules is recognition and documentation.<sup>53</sup> This means that customary water rules should be documented and codified so as to ensure clarity and consistency.

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<sup>51</sup> Madga Nassef & Mulugeta Belayhun, "Water Development in Ethiopia's Pastoral Areas: A Synthesis of Existing Knowledge and Experience" (USA, 2012).

<sup>52</sup> Madga Nassef & Mulugeta Belayhun.

<sup>53</sup> Elizabeth Gachenga, "Integrating Customary and Statutory Law Systems of Water Governance for Sustainable Development: The Case of Marakwet of Kenya" (University of Western Sydney, 2012).

- b. Incorporation into Legal and Policy Frameworks: Customary water rules should be incorporated into existing water laws and policies of a country.<sup>54,55</sup> This can be done by amending laws and regulations with the view to including provisions that recognize and respect customary water rules.
- c. Capacity Building and Awareness: This requires taking steps to raise awareness of government officials, water resource managers, and stakeholders about the importance of customary water rules.<sup>56</sup> In order to achieve this, training programs and capacity building initiatives can be adopted to enhance understandings about customary water practices and their incorporation into the formal system.
- d. Collaboration and Inclusion: Any water governance decision making process must essentially involve local communities, traditional leaders, and customary water use associations.<sup>57</sup> This helps to incorporate their expertise and perspectives in the formulation, implementation and evaluation of water management policies and practices.
- e. Hybrid Governance Approaches: A hybrid governance model is one that combines together both formal and customary water governance systems.<sup>58</sup> The importance of this model is that it creates opportunities for joint decision-making and shared responsibilities by promoting communication and collaboration between formal authorities and traditional water users.
- f. Conflict Resolution Mechanisms: This requires the establishment of an effective dispute resolution mechanism which combines formal legal systems and customary dispute resolution practices.<sup>59</sup> The aim of this is to ensure a fair and culturally appropriate resolution of disputes and conflicts arising from the integration process.
- g. Monitoring and Evaluation: Adopting regular monitoring and evaluation mechanisms is vital for assessing the effectiveness of integrating customary water

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<sup>54</sup> Elizabeth Gachenga.

<sup>55</sup> N Kliot, D Shmueli, and U Shamir, "Institutions for Management of Transboundary Water Resources: Their Nature, Characteristics and Shortcomings," *Water Policy* 3, no. 3 (2001): 229–55, [https://doi.org/10.1016/S1366-7017\(01\)00008-3](https://doi.org/10.1016/S1366-7017(01)00008-3).

<sup>56</sup> Elizabeth Gachenga, "Integrating Customary and Statutory Law Systems of Water Governance for Sustainable Development: The Case of Marakwet of Kenya."

<sup>57</sup> Barbara Van Koppen, "Integrated Water Resource Management in Tanzania: Interface between Formal and Informal Institutions," 2005, <https://doi.org/10.22004/ag.econ.158022>.

<sup>58</sup> Faustin P Maganga, "Incorporating Customary Laws in Implementation of IWRM: Some Insights from Rufiji River Basin, Tanzania," *Physics and Chemistry of the Earth, Parts A/B/C* 28, no. 20 (2003): 995–1000, <https://doi.org/10.1016/j.pce.2003.08.011>.

<sup>59</sup> Elizabeth Gachenga, "Integrating Customary and Statutory Law Systems of Water Governance for Sustainable Development: The Case of Marakwet of Kenya."

rules into the formal system. This is important for identifying gaps or challenges and creating room for continuous improvement.

#### **D. CONCLUSION**

Customary water rules have played and continue to play a vital role in the governance of Water resources in Ethiopia as in many other countries. The integration of customary rules into Ethiopia's formal water governance system is, however, still an ongoing process with several challenges ahead. Some of these challenges, for example, include potential conflict between customary water rules and formal regulation requirements that lead to confusion and uncertainty. Moreover, even if the government recognizes the importance of customary water rules, gaps remain to be more formalizing and standardizing such rules to ensure their consistency and clarity. The limited recognition of customary water rules under the Ethiopian formal water governance system has led to several problems. By paying attention to these traditional community-based regulations, the country is exposed to conflicts, inefficiencies, and unsustainable use of water resources. According to the theory of institutional incongruence, conflicts arise when there is a misalignment between formal institutions (ex., laws and policies) and informal institutions (such as customary water rules). In water resources management, customary water rules are often embedded in local traditions, culture, and historical relationships with water. Hence, they may significantly differ from the formal water law framework. Conflicts are bound to arise when the formal water governance framework does not adequately consider and recognize the values, knowledge and practices embedded in customary water laws.

An investigation of some customary water practices (such as *Qene*, *Birkat*, and *Hareegot* systems) reveals that they prioritize preserving water resources, sustainability and the long-term well-being of ecosystems and communities. Water forms part of the community's socio-cultural and ecological beings, resulting in it being seen as sacred. Therefore, customary water rules emphasize equitable access, communal water management, and traditional practices that have sustained communities for generations. Conversely, a closer look at the Ethiopian water resources management policy, proclamation and regulation reveals that they are predicated on the notions of water as a mere resource subject to commodification and private allocations. The formal water governance system, led by market-oriented approaches and economic development priorities, views water as a merely economic good to be allocated, bought and sold. This mechanism often employs pricing and market-based allocation systems and prioritizes uses with economic returns like commercial or industrial activities. Therefore, customary water rules, however important sustainability tenets they might lend, are not easily amenable to the formal water governance framework without, in the first place, questioning its basic foundations. Based on the literature and reports analyzed, attempts to recognize customary water rules under the Ethiopian formal water governance appear to be either a superficial cross reference to or an embodiment of customary water rules under the formal system. This reduces the important issues to the normative question instead of addressing the value clash between the two systems, which is the real limitation of recognizing customary water rules. As a result of this value clash, customary water rules, however important

sustainability tenets they might lend, are not easily amenable to the formal water governance framework without, in the first place, questioning its basic foundations.

To address this value clash, there is growing recognition of the necessity to incorporate environmental and social considerations into a country's formal water governance framework. This entails a fundamental reconsideration of the very goals of the Ethiopian water resources management policy, proclamation and regulation. It is worth noting that strategies such as incorporating ecosystems-based approaches, recognizing and integrating traditional knowledge, and promoting participatory decision-making processes can assist in bridging the gaps between commodification and preservation values. This, in turn, depends on finding the right balance between economic development and environmental sustainability.

## E. REFERENCE

- Aarnoudse, E, Alvar Closas, and Nicole Lefore. "Water User Associations: A Review of Approaches and Alternative Management Options for Sub-Saharan Africa," 2018. <https://doi.org/10.22004/ag.econ.284166>.
- Assefa, Ayalew Getachew. *Customary Laws in Ethiopia: A Need for Better Recognition?: A Women's Rights Perspective*. Danish Institute for Human Rights, 2012.
- Assembly, U N General. "United Nations Declaration on the Rights of Indigenous Peoples." *UN Wash 12* (2007): 1–18.
- Awoke, Aymere, Abebe Beyene, Helmut Kloos, Peter L M Goethals, and Ludwig Triest. "River Water Pollution Status and Water Policy Scenario in Ethiopia: Raising Awareness for Better Implementation in Developing Countries." *Environmental Management* 58, no. 4 (2016): 694–706. <https://doi.org/10.1007/s00267-016-0734-y>.
- Bantider, Amare, Bamlaku Tadesse, Adey N Mersha, Gete Zeleke, Taye Alemayehu, Mohsen Nagheeby, and Jaime Amezaga. "Voices in Shaping Water Governance: Exploring Discourses in the Central Rift Valley, Ethiopia." *Water*, 2023. <https://doi.org/10.3390/w15040803>.
- Belay, Mehretie, and Woldeamlak Bewket. "TRADITIONAL IRRIGATION AND WATER MANAGEMENT PRACTICES IN HIGHLAND ETHIOPIA: CASE STUDY IN DANGILA WOREDA." *Irrigation and Drainage* 62, no. 4 (October 1, 2013): 435–48. <https://doi.org/https://doi.org/10.1002/ird.1748>.
- Chazournes, Laurence Boisson de, Makane Mbengue, Komlan Sangbana, and Mara Tignino. *The UN Convention on the Law of the Non-Navigational Uses of International Watercourses: A Commentary*. Oxford Commentaries on Interna, 2019.
- Craig, Donna, and Elizabeth Gachenga. "The Recognition of Indigenous Customary Law in Water Resource Management." *Water Law* 20, no. 5/6 (2010): 278.
- Elizabeth Gachenga. "Integrating Customary and Statutory Law Systems of Water Governance for Sustainable Development: The Case of Marakwet of Kenya." University of Western Sydney, 2012.
- Ethiopia, Federal Democratic Republic of. "The Ethiopian Water Resources Management Policy." *Ministry of Water Resources*, 1998. <https://faolex.fao.org/docs/pdf/eth158196a.pdf>.
- Federal Democratic Republic of Ethiopia. "Civil Code of the Federal Democratic Republic of

- Ethiopia.” *Proclamation No. 165/1960, Negarit Gazztee* 19, no. 2 (1960).
- . “Constitution of the Federal Democratic Republic of Ethiopia.” *Proclamation No. 1/1995, Federal Negarit Gazztee* 1, no. 1 (1995).
- . “Water Resources Management Proclamation.” *Proclamation Number 197/2000, Federal Negarit Gazettee* 6, no. 25 (1998).
- . “Water Resources Management Regulation.” *Regulation Number 115/2005, Federal Negarit Gazettee* 11, no. 27 (2005).
- Ftaïta, Toufik. “Community Water Management. Is It Still Possible? Anthropological Perspectives.” *Anuário Antropológico*, no. v.36 n.1 (December 1, 2011): 195–212. <https://doi.org/10.4000/aa.1161>.
- Gachenga, Elizabeth. “Customary Law Systems for Water Governance and the Human Rights Based Approach to Water: A Case of Marakwet of Kenya.” Strathmore University, 2013. <https://su-plus.strathmore.edu/server/api/core/bitstreams/d6ffe6d9-cd0f-48f3-8f60-2225b35385bd/content>.
- GLEICK, PETER H. “The World’s Water 1998--1999: The Biennial Report on Freshwater Resources.” *Population and Development Review* 25 (March 11, 1999): 815. <https://link.gale.com/apps/doc/A63296791/AONE?u=anon~2c9f6ece&sid=googleScholar&xid=27ba03d9>.
- Hailu, Reta, Degefa Tolossa, and Getnet Alemu. “Water Institutions in the Awash Basin of Ethiopia: The Discrepancies between Rhetoric and Realities.” *International Journal of River Basin Management* 16, no. 1 (January 2, 2018): 107–21. <https://doi.org/10.1080/15715124.2017.1387126>.
- Henkel, David S. “Community-Based Water Systems: Preserving Livelihood, Ecology, and Community.” *Human Ecology Review* 20, no. 2 (March 11, 2014): 75–95. <http://www.jstor.org/stable/24707627>.
- Kliot, N, D Shmueli, and U Shamir. “Institutions for Management of Transboundary Water Resources: Their Nature, Characteristics and Shortcomings.” *Water Policy* 3, no. 3 (2001): 229–55. [https://doi.org/10.1016/S1366-7017\(01\)00008-3](https://doi.org/10.1016/S1366-7017(01)00008-3).
- Koppen, B. van. “Living Customary Water Tenure in Rights-Based Water Management in Sub-Saharan Africa.” Colombo, Sri Lanka, 2022. <https://doi.org/10.5337/2022.214>.
- Koppen, Barbara Van. “Integrated Water Resource Management in Tanzania: Interface between Formal and Informal Institutions,” 2005. <https://doi.org/10.22004/ag.econ.158022>.
- Madga Nassef & Mulugeta Belayhun. “Water Development in Ethiopia’s Pastoral Areas: A Synthesis of Existing Knowledge and Experience.” USA, 2012.
- Maganga, Faustin P. “Incorporating Customary Laws in Implementation of IWRM: Some Insights from Rufiji River Basin, Tanzania.” *Physics and Chemistry of the Earth, Parts A/B/C* 28, no. 20 (2003): 995–1000. <https://doi.org/10.1016/j.pce.2003.08.011>.
- Nowlan, Linda. “Customary Water Laws and Practices in Canada,” 2004. [https://www.fao.org/fileadmin/templates/legal/docs/CaseStudy\\_Canada.pdf](https://www.fao.org/fileadmin/templates/legal/docs/CaseStudy_Canada.pdf), .
- Ramazzotti, Marco. “Customary Water Rights and Contemporary Water Legislation.” *FAO Legal Papers Online* 76 (2008).
- Rubiños, Cathy, and Maria Bernedo Del Carpio. “Institutional Fit in the Water Sector.” In

- Oxford Research Encyclopedia of Environmental Science*. Oxford University Press, 2022. <https://doi.org/10.1093/acrefore/9780199389414.013.787>.
- TAMRAT, IMERU. “Policy and Legal Framework for Water Resources Management in Ethiopia.” In *Conference on Water Management in Federal and Federal Types Countries*, Zaragoza, 2008.
- Tremblay, Hugo. “A Clash of Paradigms in the Water Sector? Tensions and Synergies Between Integrated Water Resources Management and the Human Rights-Based Approach to Development.” *SSRN Electronic Journal*, 2010. <https://doi.org/10.2139/ssrn.1661146>.
- Troell, Jessica, and Stephanie Keene. “Legal Recognition of Customary Water Tenure in Sub-Saharan Africa: Unpacking the Land-Water Nexus.” Colombo, Sri Lanka, 2022. <https://doi.org/10.5337/2022.215>.
- Woodhouse, P, and M Muller. “Water Governance—An Historical Perspective on Current Debates.” *World Development* 92 (2017): 225–41. <https://doi.org/10.1016/j.worlddev.2016.11.014>.
- Zerfu, Getachew. “Management Aspects of Rural Water Sustainability in Ethiopia.” International Institute for Infrastructural, Hydraulic and Environmental Engineering, 2013.