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COLLEGE OF LAW AND GOVERNANCE STUDIES

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Master of Laws (LL, M) in Public International Law

Title: Responsibility for Improper Solid Waste Disposal: the case of Addis Ababa Rubbish Dump Landslide

By:

Eyilachew Gedif Mengistie

Supervisor: Dr. Mellese Damtie (Associate Professor)

June 2019

**Responsibility for Improper Solid Waste Disposal: the case of Addis
Ababa Rubbish Dump Landslide**

*A thesis submitted in partial fulfillment of the requirements for the Award of
Master of Laws (LLM) in Public International Law at School of Law, College of
Law and Governance Studies Addis Ababa University*

**By
Eyilachew Gedif**

Advisor: Dr. Mellese Damtie (Associate Professor)

June 2019

Declaration of originality

I, **Eyilachew Gedif**, hereby declare that the thesis titled “**Responsibility for Improper Solid Waste Disposal: The case of the Addis Ababa Rubbish dump landslide**” is my original work and has never been presented or published in any other institution. I also declare that any information used has been duly acknowledged.

Eyilachew Gedif Mengistie

Signature_____

Date_____

Supervisor: **Dr. Mellese Damtie (Associate Professor)**

signature_____

Date_____

Approval Sheet by Board of Examiners

Eyilachew Gedif Mendistie's thesis which entitled as "Responsibility for Improper Solid Waste Disposal: The case of Addis Ababa Rubbish Dump landslide" is approved by the undersigned members to the examining board.

Board of Examiners

Signature

Supervisor **Dr. Mellese Damtie (Associate Professor)**

Examiner **Mekete Bekele (Associate Professor)**

Examiner **Mr. Yenehun Birlie (LL, M, Lecturer)**

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Acronyms

| | |
|--------|--|
| APAP | Action professional Association for the People |
| Art. | Article |
| ACHPR | African Commission on Human and Peoples' Right |
| CESR | Center for Economic and Social Rights |
| ECHR | European Court on Human Rights |
| EIA | Environmental Impact Assessment |
| EPA | Environmental Protection Authority |
| Et al | and others |
| EU | European Union |
| CESCR | Committee on Economic Social and Cultural rights |
| FDRE | Federal Democratic Republic of Ethiopia |
| Ibid | In the same source |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| NGO | Non-Governmental Organizations |
| No. | Number |
| OECD | Organization for Economic Cooperation and Development |
| P | Page |
| PP. | Pages |
| PIEL | Public Interest Environmental Litigation |
| SERAC | Social and Economic Rights Action Center |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nation |
| UNEP | United Nation Environmental program |
| UNFCCC | United Nation framework convention on climate change |

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Abstract

Improper solid waste disposal is one of the bold factors that adversely affect the health of the public and the environment. Solid wastes disposed of improperly deprive various rights of the people. The government has the obligation to ensure that the disposal of a given solid waste is not detrimental to the environment and the health and the life of the people. The obligation of the government traced from environmental undertakings particularly environmental rights, and from various human rights instruments.

Governments have the obligation to protect the people from the externality of improper solid disposal. Improper solid waste disposal can deny the rights of the people to live in a clean and healthy environment, the right to health, the right to life and other related rights. Accordingly, governments have a duty to control private conduct that has a substantial impact on the environment and provides a favorable condition that enables individuals to exercise environmental rights. More importantly, they have the obligation to prevent and minimize the damage resulted from solid waste disposal. In light of this, this research investigated the Ethiopian government's compliance with its obligations concerning solid waste disposal. In doing so, the research pays particular attention to the Repie rubbish heap landslide. Accordingly, the research reaches to the conclusion that the Ethiopian government has failed to discharge its duty with regard to solid waste disposal, inter alia, environmental protection. This failure caused the violation of various rights of individuals resided around Repie rubbish heap including, among others, the right to clean and healthy environment, the right to life, right to health and other procedural environmental rights. The Ethiopian government is, therefore, responsible for the violations of these rights.

CHAPTER ONE

1. Introduction

1.1. Background of the study

Improper solid waste management negatively affects human health and the environment. It may contribute to a worsening environmental degradation of a given community. As observed by Ejaz et al “due to improper solid waste disposal and collection systems dwellers are facing serious negative environmental impacts in developing countries”¹ since it is a source of environmental pollution and damage.² It has also a potential impact to affect the environment negatively.

The cotemporary environmental protection issues become human rights concern. It is considered as a shift of protection of the environment from ‘ecosphere’³ perspective to environmental human rights perspective. The change is happening because of increasing evidence that climate change is not only about the change in temperature, precipitation level, melting of the ice or rise in the sea level, but also hold up human rights.⁴

Improper waste management is dangerous to human health and the environment.⁵ “Inadequately disposed of or untreated waste may cause serious health problems for populations surrounding the area of disposal.”⁶ States have an obligation to protect the environment and to prevent environmental damage. Currently, states extended their commitment to environmental protection up to recognizing environmental rights at national and international level. The recognition or entrenchment of rights in the constitution or other laws alone is not an end by itself. It demands the positive and negative obligation of a state to make the recognized right meaningful.

¹ N. Ejaz et al, Environmental impacts of improper solid waste management in developing countries: a case study of Rawalpindi City, WIT Transactions on Ecology and the Environment, Vol. 142, 2010

² PERVEZ ALAM and KAFEEL AHMADE, IMPACT OF SOLID WASTE ON HEALTH AND THE ENVIRONMENT, Special Issue of International Journal of Sustainable Development and Green Economics, Vol.2, 2013, P.168

³ The ecosphere is composed of four equally important constituents: atmosphere (air), hydrosphere (water), lithosphere(soil) and biosphere (organisms).Linda Hajjar Leib, Human rights and environment: Philosophical, Theoretical and Legal Perspective (2011), Brill, PP. 11-12

⁴ Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, Understanding Human Rights and Climate Change, P.2 available at <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf> accessed on 06/03/2018

⁵ World Health Organization (WHO), Waste and human health: Evidence and needs, Germany, 2015, P.14

⁶ Ibid.

Environmental rights were recognized as a right for the first time on Declaration of United Nations Conference on the Human Environment (hereafter Stockholm declaration).⁷ The declaration affirms that ‘Man has the fundamental right to freedom, equality, and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being’.⁸ This was the first step of the world community that gives cognizance to ‘environmental quality’ which shade light for the development of human rights to the people. After the Stockholm declaration, a number of widely accepted declarations supporting the individual rights to a clean environment have been adopted.⁹ Currently, a number of instruments proliferated globally that bestow environmental rights to all the people and impose an obligation, in turn, on the government/state.¹⁰

In cognizance of the international development, the Constitution of the Federal Democratic Republic of Ethiopia (FDRE constitution hereafter) has recognized environmental rights and accepts international agreements as integral law of the land as well.¹¹ The constitution under Article 44 recognizes ‘the right to clean and healthy environments to all persons’. The constitution further recognizes the right to consultation¹², participation either directly or indirectly by chosen representatives¹³ and the right to information.¹⁴ Other laws¹⁵ and the environmental policy¹⁶ of Ethiopia recognize the environmental rights of the citizens.

⁷ Declaration of United Nations Conference on the Human Environment, 1972, Stockholm Declaration, A/RES/2994, Principle 1.

⁸ Ibid, Principle 1.

⁹ Tim Hayward, Constitutional Environmental Rights (2005), Oxford University Press Inc., New York, United states, P.55.

¹⁰ United Nations Conference on Environment and Development, 1992, Rio Declaration, principle 1, Doc. A/CONE151/5/Rev.1; African charter on human and people’s right, 1981, Nairobi, Art.24; The African convention on the conservation of nature and natural resources, adopted on 1 July 2003, Article III; United Nation Framework Convention on Climate Change (UNFCCC), adopted 1992 and entered in to force 1994, New York, Art. 4; Stockholm convention on persistent organic pollutants, adopted on 22 may 2001; Rotterdam convention on the prior informed consent procedure for a certain Hazardous chemicals and pesticides in International trade, adopted 10 September 1998.

¹¹ Constitution of the Federal Democratic Republic of Ethiopia (FDRE constitution hereafter), 1995, Proc. No. 1, Art. 9 and 13.

¹² Ibid, Article 92 (3).

¹³ Ibid, Art. 38(1).

¹⁴ Ibid, Art.29/2.

¹⁵ For Example, Environmental impact Assessment proclamation, 2002, Article 15, Proc. No.299/2002, FEDERAL NEGARIT GAZETA, 9 th Year No. 11.

¹⁶ Environmental policy of Ethiopia (EPE), 1997, adopted by the council of Ministers, Art. 2.3/a.

Poorly collected or improperly disposed of waste can have a detrimental impact on the environment.¹⁷ It is among the factors that damage the environment or affect the environmental rights of the people, improper waste disposal can be mentioned in a bold manner. Solid waste dumps are seriously spoiling the environmental conditions if there is improper disposal.¹⁸ “An inefficient municipal solid waste management system may create serious negative environmental impacts like infectious diseases, land and water pollution, obstruction of drains and loss of biodiversity”.¹⁹ Its environmental threats include contamination of groundwater and surface water by leachate, as well as air pollution from burning of waste that is not properly collected and disposed.²⁰

The recent cases are revealing that improper waste management or disposal is one of the stumbling blocks for the enjoyments of the rights of the people and a detrimental factor for environmental damage.²¹ In those cases, the governments held responsible for the violation of human rights ensuing from improper waste management and environmental damage. There are also various decisions that held the government responsible for environmental damage even in the absence of clear environmental rights stipulations.²²

The government is the ultimate bearer of the obligation that originated from the rights of individuals or groups.²³ The Africa human rights Commission rightly affirmed that “the State must take measures to prevent pollution and ecological degradation”.²⁴

It was on March 11, 2017, that tragic rubbish dump landslide happened in Addis Ababa and ‘cost the life of 130 (one hundred thirty) people including devastating economic loses which coerced the government to declare three days of mourning’.²⁵ The site of Repie/koshe (the name of the rubbish dump) was from the outskirts of Addis Ababa at the beginning and become urban landscape due to the expansion of the city. It served more than fifty years as a barn of waste, and

¹⁷ Daniel Hoornweg and Perinaz Bhada-Tata, WHAT A WASTE: A Global Review of Solid Waste Management, 2012, P.26.

¹⁸ N. Ejaz et al, cited above note 1, P.1

¹⁹ Ibid

²⁰ Daniel Hoornweg and Perinaz Bhada-Tata, cited above note 17, P.27.

²¹ Anna Maria Guerra and 39 Others v. Italy, (116/1996/735/932),1998, European Court of Human Rights; Öneriyildiz v. Turkey, (Application no. 48939/99), 18 June 2002, The European Court of Human Rights, and Lopez-Ostra v. Spain case, (File no. 41/1993/436/515), 1994, European Court of Human Rights

²² Ibid and In Hatton and others v. United Kingdom, (36022/97), 2001, European Court of Human Rights.

²³ African charter on human and people’s rights, cited above note 10, Article 1.

²⁴ African Commission Human and people’s Rights, 155/96, 2002, Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) V. Nigeria (Ogoni case hereafter), Para. 52.

²⁵ <https://www.unenvironment.org/news-and-stories/story/ethiopias-waste-energy-plant-first-africa> accessed on 14/03/2018

it still serving. The environment around the area is not favorable to dwell there. However, people settled around the rubbish dump, and minimal efforts have been taken to remove individuals to a safe area and to clean the polluted environment.²⁶ It has been created no a buffer zone or built no fencing to separate the dweller and the rubbish hill. Therefore, this paper tries to address responsibility for improper waste disposal and it's causality that happened in Addis Ababa rubbish heap slide.

1.2. Statement of the problem

The issues of environmental protection have been recently shifted from merely 'ecosphere' or anthropocentric approach to an integrated approach to environment and human rights.²⁷ Corollary to this, both international and national instruments recognize environmental rights and thereby impose obligation up on governments to protect the environment.²⁸ In the same vein, the FDRE Constitution recognizes the right to clean and healthy environment and the principle of public participation; and thereby imposing a clear duty up on the government to give effect to such rights.²⁹ It is also constitutionally required that the design and implementation of projects, programs, and developmental activities should not harm the environment.³⁰

Besides, international instruments ratified by the country are integrated into the domestic laws of Ethiopia; they are also elevated to the status of interpretive guidelines.³¹ Thus, conjoined reading of these all instruments, including the constitution divulge that the government has the obligation to protect the environment so that the disposal of waste should not cause substantial harm to human health and safety or to the environment. This is particularly true given the fact that negative effects of improper waste disposal not only end in a disgusting view but also affects the overall environment as well as human health and livelihood.

Solid waste disposal at Repie, Ethiopia has been very alarming; and experiencing tragic rubbish landslides which claim the life of the people and destruction of the property, and thereby leads to human rights violations, like the right to clean and healthy environment, the right to life and the

²⁶ Addis Fortune (PUBLISHED ON MAR 25,2017 [VOL 17 ,NO 881]) available at <https://addisfortune.net/columns/impunity-continues-unchecked-in-a-climate-of-deadly-unaccountability/> accessed on 4/26/2018.

²⁷ Linda Hajjar Leib, cited above note 3.

²⁸ See for example African charter on human and people's rights, cited above note 10, cumulative reading article 24 and 1.

²⁹ FDRE Constitution, cited above note 11, Arts.44 & 92.

³⁰ Ibid.

³¹ Ibid, Art.9 and 13.

right to health. Against this backdrop, this researcher tried to critically examine the responsibility of the government regarding landslide at the Koshe garbage dump in Addis Ababa in March 2017.

1.3. Objective of the study

This study has both general and specific objectives.

1.3.1. General objective

The centerpiece objective of this research is examining the responsibility of the government for the improper disposal of waste that happened in Addis Ababa in the Vicinity of Repie Rubbish heap.

3.3.2. Specific objectives

1. Analyzing how improper waste disposal damage the environment in general and environmental rights in particular from the perspective of national and international environmental instruments.
2. Critically investigating the obligation of the government to prevent environmental damage that resulted from improper solid waste disposal.
3. Assessing the endeavor of the government to protect nationally and internationally recognized environmental rights in the case of Repie rubbish heap.
4. Examining the state responsibility for improper waste disposal specifically to Repie/Koshe dumpsite landslide

1.4. Research Questions

This research strives to answer the following questions:

1. What are the available legal and institutional frameworks that solid waste disposal?
2. What are the obligations of the government for proper waste disposal to protect?
3. What measures need to be taken by the government to protect environmental rights of the people regarding solid waste disposal?
4. What the measures need to be taken by the government before and after Repie rubbish heap slide happened?
5. Were the measures taken by the government before and after the Repie rubbish heap slide enough?
6. What remedies have been given to the victim of improper waste management?

1.5. Scope of the study

This research covers the investigation about the responsibilities for improper waste management which affects the environment in general and environmental rights in particular. It mainly examines the measures which would have been taken by the government to ensure a given waste disposal is not the threat of the environment. The research concerns showing how improper solid waste disposal affect environmental rights, discovering the obligation of the government to prevent environmental damage from improper waste disposal and analyzing government responsibility for improper waste disposal from the perspective environmental rights of the people. It mainly focuses on the case of Repie rubbish heap landslide.

1.6. Significance of the study

This study can serve for various stockholders as a reference to determine the level of state responsibility when improper waste management brought environmental damage and violate the environmental rights of the people. Second, it can be opened the path of further research on the area and it also serve as a secondary source, and will be used as a reference to academicians. Thirdly, it may be beneficial for individuals to claim their environmental rights. It enables to ascertain the obligation of the government towards waste disposal to protect the environment and environmental rights. Therefore, this study has both legal and social benefits.

1.7. Methodology

This research is primarily non-doctrinal. It employed both primary and secondary sources. As for Primary sources international legal instruments, general comments and domestic laws were thoroughly analyzed. Victims of improper waste disposal and informants concerned governmental institutions were also interviewed. While random sampling method used in selecting interviewees from victims from victims, purposive sampling method was employed for governmental institutions. Regarding secondary sources, the research analyzed legal precedents, books, journals and academic articles as well as recommendations and resolutions of various international organizations. These sources were selected based on their significant in addressing the question of this thesis.

1.8. Organization of the study

This thesis paper will be organized into five chapters. The first chapter focuses on the introduction parts of the paper. It includes the background, objective, significance, research question, scope, limitation, and organization of the study as well as the statement of the problem.

The second chapter discusses how improper waste disposal affect the environment and environmental rights. It underscores state responsibility for improper waste disposal of Repie Rubbish Heap which brought tragic slide.

The third chapter exclusively focuses on assessing the laws and policy of Ethiopia chiseled for environmental protection and for determining the manner on which waste managed and disposed. In the fourth chapter, data and facts collected from the concerned bodies have been analyzed based on the law to examine state responsibility for improper waste disposal. The last chapter is about conclusion and recommendation.

1.9. Limitation of the study

One of the limitations of this study is it is not covering tort based liability of improper waste disposal. It is not directly addressing on proving the injury and calculating the damages of the victims ensuing from improper waste disposal. The second limitation of the study is it is not addressing individual responsibilities that liable for the injury of improper waste disposal which causing environmental damage.

CHAPTER TWO

2. General Obligation and Responsibility of the Government for Improper Solid Waste Disposal

2.1. Introduction

Improper solid waste disposal, which causes negative impacts on health and environment, is one of the most serious environmental problems facing many countries in the globe; undermining the efforts to create clean and healthy environment. As States bear the obligation to protect the environment so that the disposal of waste should not cause substantial harm to human health and safety or to the environment, they are responsible for any damages that emanate from their failure to comply with the duty. As rightly observed by Schneider, such responsibility emanated from “acts and omissions may be categorized as illegal by reference to the rules establish rights and duties.”³² In this chapter, the paper addresses the general concept, content and limits of state responsibility in the perspective of international law. The legal basis of environmental rights of the people; the connection between rights and state obligation are the points of discussion under this chapter.

2.2. Solid Waste Disposal

2.2.1. Concept of solid waste

Under the existing international law regime, there is no clear and agreeable definition and understanding of the meaning and content of solid waste. International instruments chiseled to regulate solid waste with different objectives varied each other in defining solid waste. The Cairo Guidelines and Principles on Environmentally Sound Management of Hazardous wastes define waste by referring to the law of a given state. As per this guideline, “waste is any material legally defined as waste or considered as waste in the state”.³³ The London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, to which Ethiopia is party, on the other hand, defines waste as “material and substance of any kind, form or

³² Jan Schneider, “State Responsibility for Environmental Protection and Preservation: Ecological Unities and a Fragmented World Public Order”, *Yale Journal of International Law*, Vol.2, 1975, P.34

³³ Cairo guidelines and Principles for environmentally sound management of hazardous wastes, UNEP/GC.14/17, Article 1

description”.³⁴ The Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes, which Ethiopia ratified in April 2000, also defines waste as “substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law”.³⁵ The EU Council Directive on Waste defines waste as any substance or object in which the holder discards or intends or is required.³⁶ The assertion all the above definition is that domestic or national legislations play a pivotal role in defining and determining what is solid waste. However, solid wastes include all discarded material or substances produced in solid form that originated from various sources like households, hospitals and other industrial establishments.

2.2.2. The types of solid waste

Solid wastes can be classified into different categories depending on the nature, source, and severities. Accordingly, solid wastes can be classified into three broad categories: municipal waste, hazardous and toxic wastes and radioactive waste.³⁷ “Municipal waste, which is not deemed to be hazardous, generally includes that generated by households, shops, offices and other commercial units, and includes paper and cardboard, glass, plastics, metals, organic matters and putrescible materials”.³⁸ Hazardous wastes refer to wastes that may, or tend to cause adverse health effects on the ecosystem and human beings.³⁹ Their source may be industrial, agricultural or mining. “Radioactive wastes, which are generally subject to special rules, are the product of nuclear power generation, military sources, and medical, industrial and university establishments”.⁴⁰ Generally, such solid waste required to be disposed of in landfill, incineration and preferably recycling and reuse. However, it is prohibited to dispose of solid waste at sea, river and lakes.

2.2.3. The threats of solid waste for the environment

As it is mentioned above, improper waste disposal is spoiling and damaging the environment. “Waste should be managed without endangering human health and harming the environment, in

³⁴ Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London convention), 1972, Art.III/4

³⁵ Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal (Basel convention), 1989, Art. 2/1

³⁶ EU Council Directive on Waste, 75/442/ EEC, 1975, Art.1/a

³⁷ <http://www.encapafrica.org/EGSSAA/solidwaste.pdf> accessed 10/05/2019

³⁸ Philippe Sands, Principles of International Environmental Law(2003), 2 nd edit., Cambridge university press, P.679

³⁹ <https://www.ehs.uci.edu/programs/enviro/DTSCHazardousWasteIdentification.pdf> accessed on 10/05/2019

⁴⁰ Sands, cited above note 37, P.679

particular without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odors, and without adversely affecting the landscape or places of special interest”.⁴¹ The main and common disposal mechanism of municipal waste is landfill and incineration. The environmental problem of landfill disposal are “the generation of methane (a greenhouse gas), and the production of leachates which may contaminate surface or groundwater’s”.⁴² Solid wastes are a source of environmental pollution. It can harm and damage the environment adversely. Pollution to the atmosphere by heavy metals and radioactive materials, dumping of hazardous and toxic in the vicinity of peoples home viewed as environmental harm and violations of fundamental rights.⁴³ This environmental damage could affect the fundamental rights of the people, especially environmental rights.⁴⁴

Solid waste can pollute the air, water and soil, and leave various environmental impacts, and cause health hazard, due to improper handling.⁴⁵ States should take all practicable steps to ensure that wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.⁴⁶ In short, improper solid disposal is a threat to the environment and it affects many rights of individuals including environmental rights. Accordingly, the government has the obligation to protect the environment in general and environmental rights in particular.

2.3. State obligations

States have commitments to ensure a given solid disposal should not affect human life, health and the environment. States shall take measures that “ensure the availability of adequate disposal facilities, for the environmentally sound wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal”.⁴⁷ As the negative effects of improper waste disposal not only end in a disgusting view but also affect the overall environment as well as human health and livelihood, states have the obligation to give effect to human rights, and environmental obligations while disposing their solid waste. Thus, “states are duty bound to

⁴¹ WHO, P.6

⁴² Sands, cited above note 37, P. 679.

⁴³ Sands, cited above note 37, P.298

⁴⁴ Florica BRASOVEANU and Alexandru Petru LISIEVICI BREZEANU, “Conditions for Legal Liability for Environmental Damage”, Contemporary Readings in Law and Social Justice, Volume 4(2), 2012, P.1050.

⁴⁵ Chadar SN and Keerti Chadar, Solid Waste Pollution: A Hazard to Environment, Recent Advances in Petrochemical Science, Vol.2, 2017, P.1

⁴⁶ Basel convention, cited above note 35, Art. 2/8

⁴⁷ Ibid, Art.4/2/

refrain from causing environmental harm while disposing their solid wastes, take reasonable measures to reduce environmental damages and take protective and preventive measures with respect to the activities of third parties”.⁴⁸ Particularly, they bear the obligation “to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources”.⁴⁹ Specifically, as for solid waste disposal, the major obligations of the government include “procedural obligations, substantive obligations, and obligations in relation to individuals who are members of specific groups”.⁵⁰ The substantive can be reduced in to four: namely the duty to respect, protect, promote, and fulfill these rights.⁵¹ These obligations universally apply to all rights and entail a combination of negative and positive duties.⁵²

2.3.1. Procedural obligations

The procedural obligation of states to the environment is ensuing from the procedural environmental rights of the people. Procedural rights are a means for achieving human rights including environment, and promote discourse and democratization on this regard.⁵³ The concept of procedural rights developed during the work of *Silent Spring* by Rachel Carson who articulated the importance of the right to information and public participation.⁵⁴ Although for a long period of time environmental procedural rights depends on the application of existing participatory rights to environmental context, and recently a substantial specialized body of law has developed regarding participatory rights on environmental context.⁵⁵ For the proponent of environmental democracy theory “environmental procedural rights such as the rights to participation, the rights to access to information, access to justice and remedies are playing the pivotal role for the governance of ecological sustainability and protection of environmental rights”.⁵⁶

⁴⁸ H. Knox, “Linking Human Rights and Climate Change at the United Nations”, *Harvard Environmental Law Review*, Vol.33, (2009), P.195.

⁴⁹ Ogoni case, cited above note 24, Para.52

⁵⁰ UNEP, *Climate Change and Human Rights*, (2015), UNON Publishing Services Section, Nairobi, P.15

⁵¹ Ogoni case, cited above note 24, Para.44

⁵² *Ibid.*

⁵³ James R. May, *Constitutional Directions in Procedural Environmental Rights*, *J. ENVTL. LAW AND LITIGATION* [Vol. 28, 27], 2013, P.28.

⁵⁴ Lynda Collins, “Are We There Yet? The Right to Environment in International and European Law”, *McGill International Journal of Sustainable Development Law and Policy*, Vol. 3, No. 2, 2007, P.139.

⁵⁵ *Ibid.*

⁵⁶ Linda Hajjar Leib , cited above note 3, P.81.

However, prominent environmental instruments are developed recognizing procedural environmental rights.⁵⁷ There are three pillars of procedural environmental rights: access to information, participation in decision-making, and access to justice.⁵⁸ Accordingly, the government has a procedural obligation to those procedural rights of the people. The obligations include gathering and disseminating information about environmental impacts, to facilitate public participation in environmental decision-making, and to provide access to remedies for environmental harm.⁵⁹

I. The obligation to make environmental information public

This obligation of the states is the corollary of the environmental rights of individuals or groups. The right to access environmental information concern about providing environmental information to individuals, prior notification of environmental emergencies and the duty to provide – and the right to obtain – access to information on the environment.⁶⁰ The right to access information is recognized on all major human rights instruments such the 1948 Universal Declaration of Human Rights,⁶¹ the 1966 International Covenant on Civil and Political Rights,⁶² and the 1981 African Charter on Human and Peoples' Right.⁶³ Those rights interpreted as it has a pivotal role for access to environmental information, and the obligation of the state underscored, to make available environmental information, in the interpretation of the right to access information.⁶⁴

International instruments specifically chiseled to address environmental issues recognize the right to access environmental information. Some of the instruments, including, the 1992 Rio Declaration on Environment and Development,⁶⁵ the Aarhus Convention⁶⁶ and the Framework

⁵⁷ United Nations Conference on Environment and Development cited above note 7, principle 10 and convention on access to information, public participation in decision-making and access to justice in environmental matters, 1998, Aarhus, Denmark; and United Nations Conference on Environment and Development, cited above note 4, principle 1.

⁵⁸ Erin Daly, “Constitutional Protection for Environmental Rights: The Benefits of Environmental Process”, *International Journal of Peace Studies*, Volume 17, Number 2, 2012, P.72

⁵⁹ John H. Knox, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2015, P.6

⁶⁰ Philippe Sands, cited above note 37, P.852

⁶¹ Universal Declaration of Human Rights (UDHR here in after), 1948, Adopted and proclaimed by General Assembly resolution 217 A (III), Article 19

⁶² International Covenant on Civil and Political Rights (ICCPR), 1976, General Assembly resolution 2200 A (XXI), Art.19

⁶³ African charter on human and people’s right, cited above note 10, Article 9

⁶⁴ *Öneryildiz v. Turkey*, cited above note 18, (Application no. 48939/99), Para.84

⁶⁵ United Nations Conference on Environment and Development, cited above note 7, Principle 10

Convention on Climate change⁶⁷ has recognized the right to access to information. Similar stipulation recognized on Stockholm convention on persistent organic pollutants,⁶⁸ the Rotterdam Convention on prior informed consent procedure for certain hazardous chemicals and pesticides in international trade⁶⁹ and other environmental instruments.

Accordingly, states have an obligation to assess and disclose foreseeable environmental risks as part of their positive duties to protect, respect, and fulfill various human rights.⁷⁰ This includes any environmental risks caused by government activity, as well as other environmental risks that threaten the exercise of human rights including prevention of environmental damage of third persons.⁷¹ Those mentioned environmental instruments impose an obligation on states to disclose environmental information. UNFCCC, for instance, specifically require states to promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies.⁷²

II. Obligation to facilitate public participation in environmental decision-making

The public participation includes informing the public by providing information about the environment, consulting the public to obtain their feedback and alternative solution, involving the public to ensure their concern in decision making, collaborative with the public to develop decision-making criteria and empowering the public final decision making power in their hands.⁷³ Public participation has its own procedures such as reasonable time informing to the public, time for preparation and for participation effectively during the environmental decision-making.⁷⁴ Major human right instruments, as that of the right to access information, recognize the right to public participation in the affairs of decision making.⁷⁵

⁶⁶ convention on access to information, public participation in decision-making and access to justice in environmental matters, Aarhus convention, Art.4

⁶⁷ UNFCCC, cited above note 10, Art.4

⁶⁸ Stockholm convention on persistent organic pollutants, cited above note 10, Art. 10.

⁶⁹ Rotterdam convention, cited above note 7, Art.14.

⁷⁰ Öneriyildiz v. Turkey, cited above note 21, Para. 90.

⁷¹ UNEP, cited above note 48, P.16.

⁷² UNFCCC, cited above note 10, Art. 4/1/h

⁷³ <https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation> accessed 19/07/2018

⁷⁴ Azene Endalamaw Basazinew, “Access to Environmental Justice in Oromiya Region”, International Journal of Research and Scientific Innovation (IJRSI), Volume III, Issue XI, November 2016, P.3

⁷⁵ UDHR, cited above note 59, Art.21; ICCPR, cited above note 60, Art.25 and African charter on human and people’s right, cited above note 10, Art.13

The environmental instruments recognize the full consideration of the public in environmental decision-making. World charter for nature provides “all persons in accordance with their national legislation shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment”.⁷⁶ Other similar environmental conventions such as Rio declaration,⁷⁷ the Framework Convention Climate Change,⁷⁸ Desertification Convention,⁷⁹ Biodiversity Convention,⁸⁰ Aarhus Convention⁸¹ and other related convention recognize the right to public participation in environmental decision. Accordingly, governments have an obligation to facilitate public participation in decision-making of conducting an activity that potentially damages the environment to protect the rights of people.⁸² States required for promoting and facilitating public participation in addressing climate change and its effects and developing adequate responses.⁸³

III. Obligation to provide access to legal remedies

Access to justice is the right to reach the judicial system of a country including environmental tribunals’, chambers or courts designed to facilitate legal action to promote the vindication of environmental rights.⁸⁴ James May nailed that “access to justice plays a direct and important role in promoting government accountability and has a principal purpose of strengthening freedom of information, ensure citizen’s right to participate meaningfully and appropriately included in the decision-making process”.⁸⁵ Obligation in relation of this right is corollary to the recognition of it in various major human right and environmental instruments. The UDHR,⁸⁶ ICCPR,⁸⁷ ICESCR⁸⁸ and African charter on human and people’s right⁸⁹ all recognize that states

⁷⁶ UN General Assembly, World Charter for Nature, 28 October 1982, A/RES/37/7, principle 23 available at <https://www.refworld.org/docid/3b00f22a10.html> accessed on 19/07/2018

⁷⁷ United Nations Conference on Environment and Development, cited above note 7, principle 10

⁷⁸ UNFCCC, cited above note 46, Art. 4

⁷⁹ International convention to combat Desertification in those countries experiencing serious Droughts, particularly in Africa adopted in 1994 and enforced in 1996, Art. 10 (2) (e) and Art. 19 (1) (a).

⁸⁰ United Nation convention on biological diversity, 1992, Art. 14

⁸¹ Convention on access to information, public participation in decision-making and access to justice in environmental matters, cited above note 45, Art. 6.

⁸² UNEP, cited above note 48, P.17.

⁸³ UNFCCC, cited above note 10, Art.6

⁸⁴ James R. May, cited above note 53, P.35.

⁸⁵ George (Rock) Pring & Catherine (Kitty) Pring, Greening Justice: Creating and Improving Environmental Courts and Tribunals, 2009, available at <https://www.eufje.org/images/DocDivers/Rapport%20Pring.pdf> accessed on 10/09/2018.

⁸⁶ UDHR, cited above note 59, Art. 8.

⁸⁷ ICCPR, cited above note 60, Art. 2/3

⁸⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976, Article 2

should provide an “effective remedy” for violation of rights. Environmental instruments such as the Rio Declaration,⁹⁰ the Aarhus Convention,⁹¹ and a variety of other multilateral environmental agreements recognize access to justice.

As per the above instruments, states should provide effective remedies when the violation of rights happened. This obligation has two aspects. First, states must provide access to administrative and judicial proceedings to adjudicate claims of human rights violation. Second, states must also ensure that compensation or other forms of redress are available when violations do occur.⁹²

2.3.2. Substantive obligations

This obligation primarily concerns on the protection of environment basing substantive human rights. Rights which have been recognized in major human right instruments were applied for environmental purpose. On this regard Expansion theory plays pivotal role. Expansion theory imparts an environmental interpretation upon well-established human rights like the right to health, the right to life, the right to adequate living standard and others.⁹³ The notion of this theory is that it is difficult for fully exercise human rights in the environmentally degraded world. The General Comment of the CESCR affirms that the right to health is inextricably dependent on environmental conditions. It specifically acknowledges the right to health as;

*The improvement of all aspects of environmental and industrial hygiene comprises...the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly affect upon human health.*⁹⁴

In short, Expansion theory focused on environmental conservation on the reinterpretation of human rights incorporated in international instruments.⁹⁵ Currently, the environmental protection

⁸⁹ African charter on human and peoples’ right, cited above note 10, Art.1

⁹⁰ United Nations Conference on Environment and Development, cited above note 7, principle 10

⁹¹ Convention on access to information, public participation in decision-making and access to justice in environmental matters, cited above note 45, Art. 9.

⁹² UNEP, cited above note 48, P.18.

⁹³ Linda Hajjar Leib, cited above note 3, P.71.

⁹⁴ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, Para. 15

⁹⁵ Philippe Cullet, Definition of an Environmental Right in a Human Rights Context(1995), International Environmental Law Research Centre, Netherlands, P.25

discourse developed into recognition of the independent right to an environment which is the right to a clean and healthy environment.

The rights to clean and healthy can be expressed as the right to be free from excessive pollution of the land water or air, or soil, from noise, the right to enjoy unspoiled nature, and the right to enjoy biological diversity.⁹⁶ The first international instrument that recognizes the right to a healthy or clean environment is the Stockholm Declaration. The declaration adheres that ‘man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being’.⁹⁷ Although the Stockholm declaration does not directly specify the right to clean or a healthy environment, there is an implication in this principle that a healthy environment is necessary for the appreciation of other human rights.⁹⁸ It is considered as the landmark declaration for the development of the right to clean environment although the wording is too vague and general.⁹⁹ International instruments proclaimed under the auspices of the regional organization recognize the right to a clean and healthy environment.¹⁰⁰

The government has the obligation to this substantive right-the right to a clean and healthy environment. According to the finding of African Commission on Human and People’s right: *Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic, generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfill these rights.*¹⁰¹

I. Obligation to respect

According to the decision of African human and people’s rights commission the obligation to respect “entails that the State should refrain from interfering in the enjoyment of all fundamental

⁹⁶ K Solo, “keeping a clean environment-the case of Botswana”, The South African Journal of Environmental Law and Policy , Vol. 6(2), 1999, p,237.

⁹⁷ Declaration of United Nations Conference on the Human Environment, cited above note 7, principle 1

⁹⁸ Laura Horn, “The Implications of the Concept of Common Concern of a Human Kind an a Human Right to a Healthy Environment”, Macquarie Journal of International and Comparative Environmental Law, Vol 1, 2004, P.235

⁹⁹ Thomas A. Mensah, Law of the Sea, Environmental Law and Settlement of Disputes(2007), Martinus Nijhoff Publisher, Netherlands, pp.58-59.

¹⁰⁰ African charter on human and peoples’ right, cited above note 10, Art. 24, The African convention on the conservation of Nature and Natural Resource, cited above note 7, Article III and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988, Protocol of San Salvador, Art. 11.

¹⁰¹ Ogoni case, cited above note 24, para.44

rights; it should respect right-holders”.¹⁰² It demands the refrainment of states or its agent from violating or unduly interfering individual rights.

The duty to respect may be extended up to preventing state agents from violating individual entitlements and providing reparation when duty has been breached.¹⁰³ Accordingly, the government has the obligation to refrain from interfering of the enjoyment of rights. The government should make sure of that the developmental activities undertaken in the country are not adversely affecting fundamental rights of individuals and groups. The state should refrain from disposing of solid waste in manner that adversely affects the rights of individuals.

II. Obligation to protect

The obligation to protect entails the responsibility of a state to regulate the behavior of third parties with respect precluding individuals from interfering others’ rights.¹⁰⁴ The state is demanded to prevent third parties from unduly interfering in the right-holder’s enjoyment of a particular entitlement.¹⁰⁵ The African human and people’s commission affirms “obligation to protect requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences”.¹⁰⁶ This obligation primarily requires state action to prevent, stop, redress or punish individual violators.¹⁰⁷ Accordingly, the government bears the obligation to prevent the way solid disposal of third person should not obstruct the enjoyment of the rights of individuals.

III. Obligation to fulfill

The obligation to fulfill requires a state to take positive actions to enable individuals to fully exercise their rights.¹⁰⁸ As Victor Wankwa phrased, “this duty emphasizes that a comprehensive set of intervention measures require action by States including those relating to legislation,

¹⁰² Ibid. para.45

¹⁰³ The Maastricht Guidelines on Violations of Economic, Social and Cultural rights((hereinafter ‘Maastricht Guidelines’), was adopted in 1997, P.42.

¹⁰⁴ Victor Dankwa, et al, “Commentary on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”, *Human Rights Quarterly*, Vol.20 No.3, 1998, P.20 available at <http://www.icescr-pakistan.org/wp-content/uploads/2013/11/20-02.pdf> accessed on 18/06/2018

¹⁰⁵ International Commission of Jurists (hereinafter ‘ICJ’), “Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experience of Justiciability,” Human Rights and Rule of Law Series, No.2 (2008), P.45.

¹⁰⁶ Ogoni case, cited above note 24, Para.46

¹⁰⁷ International Commission of Jurists (hereinafter ‘ICJ’), cited above note 103, P.45.

¹⁰⁸ Lilian Chenwi, Monitoring the progressive realization of socio-economic rights: Lessons from the United Nations Committee on Economic, Social and Cultural Rights and the South African Constitutional Court, 2010, Studies in Poverty and Inequality Institute, P.17

administration, budget and the judiciary.”¹⁰⁹ It demanded the state to take all measures to make sure individuals exercise their natural entitlements. According to the decision of African Commission, “the State should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures”.¹¹⁰ Accordingly, the state is duty bound to provide a means of realizing fundamental rights to the extent its resources permitted to do so.

IV. Obligations to a specific group

The major human rights instruments incorporated the clause of non-discrimination.¹¹¹ In accordance with this principle, countries must ensure that the measures they take to address climate change are implemented in a non-discriminatory fashion.¹¹² Obviously, human right instruments give special protection to a certain group such as women, indigenous groups, and children.

2.4. The responsibility of the government for improper waste disposal

As it is mentioned above, improper waste disposal hampered the environment in general and various human and environmental rights in particular. Improper waste disposal affects the rights of the people related to nature. “Where environmental rights are formulated as basic rights, then certainly the state is the one obligated to supply the means of protection in the forms of specific legislation and policies as well as to refrain from the activities detrimental to the environment”.¹¹³ According to African Commission on Human and Peoples’ Right, environmental rights “imposes clear obligations upon a government, and it requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources”.¹¹⁴ Apart from protection, environmental rights impose an obligation on the government to refrain from threatening and interfering on the environmental rights held in an unreasonable manner.¹¹⁵

¹⁰⁹ Victor Dankwa, et al, cited above note 102, P.21.

¹¹⁰ Ogoni case, cited above note 17, Para.46

¹¹¹ UDHR, cited above note 59, Art.2, ICCPR, cited above note 60, Art.2, ICESCR, cited above note 86, Art.2, African charter on Human and Peoples’ right, cited above note 10, Art.2

¹¹² UNEP, cited above note 48, P.27

¹¹³ Airi Andresson and Tim Kolk, The Role of Basic Rights in Environmental protection: Basic Right to Environment , 2003, Juridica International, P.144.

¹¹⁴ Ogoni case, cited above note 24, Para.52

¹¹⁵ Ibid.

Treating the environment in blemishing manner or failure to discharge environmental obligation corollary to environmental rights bring responsibility to the government. Bill of rights can be violated when the government failed to discharge its obligation ensuing from those rights. Various judgments of courts and tribunals made the government responsible for failure to discharge environmental obligations even in the absence of clear recognition of environmental rights.

In *Lopez-Ostra v. Spain*, the government held responsible for failure to protect the environment. In this case, European Court of Human Rights (ECHR) decided “the degrading treatment of the environment resulted from the inaction of the state”.¹¹⁶ The court further stated that environmental violation afflicts individual rights even without seriously endangering healthy of individuals.¹¹⁷ The government of Spain was responsible for “the public authorities were aware of the harm caused by the plant and States have a supervisory duty over the actions carried out on their territory, in order to protect individual rights”.¹¹⁸ This case reveals that failure to protect individual rights brings responsibility against the government. Moreover, the court underscored improper waste disposal is one of the bottlenecks for the enjoyment of individual rights.

In *Anna Maria Guerra and 39 Others v. Italy case*, ECHR decided, “environmental pollution, without being severe, might affect individuals’ well-being”.¹¹⁹ As per the decision of the court “severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely”.¹²⁰ The government held responsible for breach of the rights of information which “necessary for the evaluation of environmental pollution risks involved to which the applicants and their families were exposed”.¹²¹ In *Hatton and others v. United Kingdom* case ECHR affirmed: “the state must regard all range of consideration and in particularly sensitive field of environmental protection, the mere reference to the economic well-being of the country is not sufficient to outweigh the rights of others”.¹²² The court further analyzed the complaints of the applicant in terms of

¹¹⁶ *Lopez-Ostra v. Spain* case, cited above note 21, Para. 40

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Anna Maria Guerra and 39 Others v. Italy*, cited above note 21, Para. 60.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² In *Hatton and others v. United Kingdom*, cited above note 22, Para.

“positive duty on the State to take reasonable and appropriate measures to secure the applicants’ rights”.¹²³

In another case, the court reiterates the responsibility of the government for the failure of discharging environmental obligations. Especially when the polluting activity is not owned by the state, the responsibility of the government to environmental harm is emanated from a “failure to regulate private industry or Polluter”.¹²⁴ In another important case, *ÖNER YILDIZ v. Turkey*, the issue of state responsibility for environmental harm was well addressed. In this case, the dump landslide happened caused by mounting pressure, and claimed the life of thirty-nine people and buried ten slum dwellings.¹²⁵ The investigation of the incident revealed that two mayors held responsible for failure to discharge their duty that does account negligence especially for failure to order destruction illegal huts and rehabilitate the rubbish tip or ordering its closure.¹²⁶ The court, further, held responsible for the government for failing to give information about the danger posed against the victim due to environmental contamination.¹²⁷

Indian courts have a good reputation for deciding environment cases. In *Virender Gaur’s case*, the supreme courts of India decided that “the right to life includes environmental rights, and human dignity encompasses the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed”.¹²⁸ In *Dr. B.L. Wadehra v. Union of India and others case*, the Supreme Court of India decided, “the authorities, responsible for pollution control and environment protection, have not been able to provide a clean and healthy environment to the residents”.¹²⁹ This court further ordered, “all garbage dumping places and city garbage collection centers...should be clean and tidy”.¹³⁰

In Ethiopia, one of the failed cases on environmental issues was Action Professionals Association for the People (APAP) case. The case was concerning the alleged pollution of the rivers of Akaki and Modjo and its effect on the health and the livelihood of the peoples living in

¹²³ *ibid.*

¹²⁴ *Fadeyeva v Russian Federation*, (App No 55723/00), 2005, European Court of Human Rights, Para. Available <http://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-69315&filename=CASE%20OF%20FADEYEVA%20v.%20RUSSIA.pdf>. accessed

¹²⁵ *ÖNER YILDIZ v. Turkey case*, cited above 21, Para, 17

¹²⁶ *Ibid*, Para,28

¹²⁷ *Ibid*, Para, 87.

¹²⁸ *Virender Gaur & Ors. v State of Haryana & Ors.*, Supreme Court of India, Judgement of 24 November 1994, (1995) 2 SCC 577 [hereafter *Virender Gaur’s case*], Para. 1

¹²⁹ *Dr. B.L. Wadehra v. Union of India and others*, in the Supreme Court of India, AIR1996SC2969, Decided On 1996, 2001(5)SCALE304, (1996)2SCC594, [1996]3SCR80, Para.1

¹³⁰ *Ibid*, Para.3

the respective area.¹³¹ This case first appeared before the Ethiopian Environmental Authority (EPA). Later on, APAP was taken the case to the courts due to the reservation it had upon the decision of EPA. The courts at all level declined to dispose of the merits of the case.¹³²

¹³¹ Sisay Alemayehu Yeshanew, “Action Professionals’ Association for the people v. the Ethiopian Environmental protection authority: A Torchbearer or a Lost Opportunity”, Ethiopian Human Rights Serious, Vol.IV, 2012

¹³² Ibid, P.70-75.

CHAPTER THREE

The obligation of the government of Ethiopia for Solid waste Disposal and environmental protection

3.1. Solid waste disposal in Ethiopia

Solid waste disposal is a major challenge for counties across the world. Its improper disposal brings damage on various rights of the individuals, and the environment. According to Solomon Cheru, the solid waste disposal of Ethiopia “is very poor and determinate to environmental rights and public health”,¹³³ and studies conducted in various city of Ethiopia are revealing that solid waste disposal is a major stumbling block to the environmental situation of the country.¹³⁴ As yami Birke reiterate it, “most of the urban areas in Ethiopia are believed to use open dump for disposal. Open dumps pollute surface and ground water, soil and the natural environment as a whole”.¹³⁵

The waste disposal situation of Addis Ababa is much worst and complicated. The main waste disposal of the City is held at Repie Rubbish dump site. “The dumpsite does not have any proper gas or leachate collection system. The boundaries of the dumpsite are not exactly known as it does not even have a proper fence”.¹³⁶ “The waste is not covered with soil nor is there anything on top to cover it. It is exposed to heavy rains in the summer for two months and intense sunlight throughout the year”.¹³⁷ The dumpsite is causing serious damage to the environment and is a significant threat to the health and lives of many living around the area.¹³⁸

In Ethiopia, there is a law that governs solid waste management in addition to environmental law which discussed here below. As per Solid Waste Management Proclamation, “anything which

¹³³ SOLOMON CHERU, ASSESSMENT OF MUNICIPAL SOLID WASTE MANAGEMENT SERVICE IN DESSIE TOWN, Addis Ababa University, 2011, P.26

¹³⁴ Biruk Abate Fenta, “Waste management in the case of Bahir Dar City near Lake Tana shore in Northwestern Ethiopia: A review”, African journal of environmental Science and Technology, Vol.11(8), 2017, P. 396, and Mengist Hailemariam and Assegid Ajeme, “Solid Waste Management in Adama, Ethiopia: Aspects and Challenges”, World Academy of Science, Engineering and Technology International Journal of Environmental and Ecological Engineering, Vol.8, 2014, P. 675

¹³⁵ Yami Birke, Solid Waste Management in Ethiopia, Addis Ababa, 1999, P. 326

¹³⁶ Meaza Cheru, Solid Waste Management in Addis Ababa: A new approach to improving the waste management system, 2016, Helsinki Metropolia University of Applied Sciences, P.17

¹³⁷ Ibid.

¹³⁸ Ibid.

neither liquid nor gas and discarded as unwanted is solid waste”.¹³⁹ This proclamation, further, demands solid wastes to be disposed of as per environmental standards.¹⁴⁰ The urban administration has a responsibility ensure that environmental auditing is held in every existing solid waste disposal sites, and if the result of the audit reveals that the continuation of the operation of the site is a threat to the environment and human health, the urban administration has the obligation to order modification or other alternatives.¹⁴¹ As it is discussed in the following chapter, solid waste disposal at Repie brought a numbers of causality on the rights of individuals. However, the government of Ethiopia has the obligation to prevent that solid waste disposal should not be detrimental various rights of the people.

3.2. The right to clean environment

The right to clean environment is recognized in the laws of Ethiopia as all person. The FDRE constitution recognizes “all persons have the right to a clean and healthy environment”.¹⁴² This constitutional stipulation is concomitant to African charter on human and people’s right.¹⁴³ This right is recognized as group rights for all people. However, some others constitutions like South Africa recognizes environmental rights as individual rights.¹⁴⁴

The African Convention on the Conversation of Nature and Natural Resources, in which Ethiopia is a party, recognizes environmental rights. As per the convention, all peoples have a right to a satisfactory environment favorable to their development.¹⁴⁵ The right to a clean and healthy environment is also recognized in other laws and policy of Ethiopia. The environmental impact assessment proclamation, for instance, has been proclaimed to protect “environmental rights and objectives enshrined in the Constitution”.¹⁴⁶

The environmental policy of Ethiopia recognizes environmental right as an individual’s right. According to the policy stipulation of Ethiopia, “every person has the right to live in a healthy

¹³⁹ Solid Waste Management Proclamation, 2007, Proc. No.513, Art.2/6, Negarit Gazeta, 13 th Year No.

¹⁴⁰ Ibid, Art.14/1

¹⁴¹ Ibid, article 15

¹⁴² FDRE constitution, cited above note 11, Art.44

¹⁴³ African charter on human and people’s right, cited above note 7, Art.24

¹⁴⁴ Eric C. Christiansen, “Empowerment, Fairness, Integration: South African Answers to the Question of Constitutional Environmental Rights”, STANFORD ENVIRONMENTAL LA WJOURNAL, Vol. 32:215, 2015, P.242

¹⁴⁵ The African convention on the conversation of nature and natural resource, cited above note 10, Article III

¹⁴⁶ Environmental Impact Assessment Proclamation, cited above note 15, preamble

environment”.¹⁴⁷ Unlike the constitution, the environmental policy of Ethiopia adheres environmental rights as individual rights.

Additionally, Ethiopia is a member of international soft laws that recognize the right to a clean and healthy environment. The Stockholm declaration can be mentioned as an example of this regard.

3.3. Access to information

The right to access information is one of constitutionally guaranteed right in Ethiopia. As per the grand law of the country, freedom of information is one of the fundamental rights of individuals. The constitution in white and black recognizes “everyone has the right to seek, receive and impart information all kinds regardless of the frontier”.¹⁴⁸ The constitution entitles individuals to access information of “all kind” including environmental matters.

The Solid Waste Management Proclamation imposing a responsibility on Urban Administrations “to carry out public awareness raising activities”.¹⁴⁹ One of the mechanisms that raise public awareness is making information available to the public. The general public has a right to obtain and impart information held by the government.¹⁵⁰ The Environmental Impact Assessment Proclamation requires the concerned body to make environmental information available to the public.¹⁵¹ The Environmental Protection Organs Establishment Proclamation demands the authority to promote public awareness and to make environmental information available to the public.¹⁵²

International instruments signed and ratified by Ethiopia are also the law of the land.¹⁵³ Accordingly, international human and environmental instruments signed by Ethiopia can be applied to the right to access information for environmental matters. Ethiopia signed major international instruments such as International Covenant on Civil and Political Rights, UDHR, African charter on human and people’s right and others, which all are recognizing access to information.

The right to access to environmental information is also recognized by environmental instruments in which Ethiopia is a party. The framework convention on climate change obliges

¹⁴⁷ Environmental policy of Ethiopia (EPE), cited above note 16.

¹⁴⁸ FDRE constitution, cited above note 11, Art.29/2

¹⁴⁹ Solid waste management proclamation, cited above note 139, Art.5/4/d

¹⁵⁰ Freedom of the Mass Media and Access to Information Proclamation No. 590/2008, 14th Year No. 64, Art.11

¹⁵¹ Environmental Impact Assessment Proclamation, Art.15

¹⁵² Environmental organs establishment proclamation, Art.6/16 &17

¹⁵³ Ibid, Art.9

member state to facilitate public access to information on the environment.¹⁵⁴ The Stockholm convention on persistent organic pollutants,¹⁵⁵ Cartagena protocol on biodiversity,¹⁵⁶ Rotterdam convention¹⁵⁷ and others have stipulations entitling individuals to claim access to environmental information. The Rio Declaration also recognizes the right to access to information although it has no binding effect on member states. Accordingly, the people of Ethiopia have the right to access environmental information. This right extended to get an early warning for environmental harm, information about the situation of the environment and other related issues which essential to the public to rescue themselves.

3.4. Public participation

Public participation in the environmental matter “allows the public to shape environmental decision making through comments and other means”.¹⁵⁸ The constitution of Ethiopia affirms participatory right allowing “nationals right to participate in national development and, particularly to be consulted in respect of projects which potentially affecting them”.¹⁵⁹ The constitution, further, in its policy aspirations affirms the rights of the people to be fully consulted and their views to be considered in the plan and implementation of environmental projects that affect them directly.¹⁶⁰

The Solid Waste Management Proclamation demands solid waste management to be held allowing the participation of the local community level.¹⁶¹ The Environmental Impact Assessment proclamation demands the authority to consider the comments of the communities likely affected by the implementations of the projects.¹⁶² In the same vein, environmental policy of Ethiopia recognizes the rights of public participation in environmental decision-making.¹⁶³

¹⁵⁴ UNFCCC, cited above note 10, Article 4

¹⁵⁵ Stockholm Convention on Persistent Organic Pollutants (POPs), cited above note 10, Article 10/b

¹⁵⁶ Cartagena protocol on biodiversity to the convention on biological diversity, adopted 29 January 2000, entered in to force on 11 September 2003, article 23/b

¹⁵⁷ Rotterdam convention, cited above note 7, Article, 15/2

¹⁵⁸ JAMES R. MAY, cited above note 53, P.41

¹⁵⁹ FDRE constitution, cited above note 11, Art.43/2

¹⁶⁰ Ibid, Art.92/3

¹⁶¹ Solid Waste Management Proclamation, cited above note 139, Art.5/1

¹⁶² Environmental impact Assessment Proclamation, Cited above note 15, Art.15/2

¹⁶³ Environmental policy of Ethiopia, cited above note 16, Art. 2.2(h)

3.5. Access to Justice

As of other procedural environmental rights, access to justice has gotten constitutional approval in Ethiopia. The constitution in black and white stipulates “everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power”.¹⁶⁴ In addition to individual rights, the constitution recognizes access to justice as group rights saying “this right is claimed by, any association representing the collective or individual interest of its member and, any group or person who is a member of, or represents a group with similar interest”.¹⁶⁵

This right has been recognized in international human instruments to which Ethiopia is party such as UDHR, ICCPR, ACHPR and the international convention on Economic, Social and Cultural Rights (ICESCR). Environmental instruments such Rio declaration recognizes the rights access to justice. Rio declaration stipulates “effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”.¹⁶⁶ Access to justice for environmental wrong/harm is recognized under Ethiopia’s law. However, access to justice for environmental harm best realized through the mechanism of public interest litigation.

3.5. Public Interest Litigation

Public interest litigation is an action initiated before the court of law or other administrative tribunals to enforce the interest of the public.¹⁶⁷ As per this system, redress sought in respect of injury of the public.¹⁶⁸ It is a mechanism enabling alert citizens and public interest groups to initiate legal action when damage is done to the environment. It presupposes the avoidance of the procedural requirements of standing. Standing is having interest to the relief sought from the court.¹⁶⁹

In Ethiopia, the civil procedure code follows rigid requirements of standing. It states “no person may be a plaintiff unless he has a vested interest in the subject matter of the suit”.¹⁷⁰ As per this stipulation, public interest litigation seems impossible. However, the constitution and corollary

¹⁶⁴ FDRE constitution, cited above note 11, Art.38

¹⁶⁵ Ibid, Art.38

¹⁶⁶ United Nations Conference on Environment and Development, cited above note 7, principle 10

¹⁶⁷ Yenehun Birlie, “Public Interest Environmental Litigation in Ethiopia: Factors for Its Dormant and Stunted Features”, *Mizan Law Review*, Vol. 11, No.2, 2017, P.306

¹⁶⁸ Ibid, P.307

¹⁶⁹ Jonathan H. Adler, “Stand or Deliver: Citizen Suits, Standing, and Environmental Protection”, *Duke Environmental Law & Policy Forum*, [Vol.12:39], 2001, P.40

¹⁷⁰ Civil procedure code of the Empire of Ethiopia, 1965, Negarit Gazeta , DECREE No. 52 OF 1965, 15th Year No.3, article 32/2

legislations deem liberalizing the requirements of vested interest and open the opportunity of public interest litigation to environmental claims. The FDRE Constitution, as per article 37, entitles everyone the right to access justice and the requirement of “vested interest” is not the parts of the stipulation.¹⁷¹ However, some argue that article 37/2 of the constitution seems to limit public interest litigation. According to Amare “If it(public interest litigation) has been allowed, there is no need of having sub-article 2 of Article 37 since the person or group of persons or an association can bring a case without showing an interest in the matter, thus making article 37 (2) meaningless as there is no room for its application.”¹⁷²

For the researcher, this argument seems not plausible for two reasons. First, Article 37/2 has a phrase, which provides “decision or judgment referred to under sub-article one may also be sought”. This phrase does not seem to limit the meaning of sub-article 1 of article 37. Rather, the phrase ‘may be also sought’, seems to give additional clarification to the meaning of the provision. Second, article 37/2/b, which stipulate “any group or person who is a member or representing a group with similar interest” open for further interpretation. This constitutional stipulation can be constructed “the decision or judgment in sub-article 1 of this article may also be sought by any group or person who represents a group with similar interest”. The constitutional construction seems open the door of public interest litigation. Yenehun argues that: *The broader interpretation of Article 37(2(b)) that allows PIEL seems more plausible because during the enactment of the FDRE Constitution, PIEL was in the mainstream in most countries and the protection of environment, particularly with participation of all including NGOs, was a pertinent agenda of the time by the world community.*¹⁷³

There are laws that have been enacted as per of the constitutional arrangement to enable public interest litigation although lacks consistency. The pollution prevention proclamation provides that “any person shall have, without showing vested interest, the right lodge complain to the concerned environmental authority against any person alleged actual or potential damage”.¹⁷⁴ The proclamation, further, recognizes “when the concerned environmental authority failed to give a decision within thirty days or the applicant dissatisfied on the decision of the authority, he may institute a court case within sixty days from the date the decision was given or the deadline

¹⁷¹ FDRE constitution, cited above note 11, Art. 37/1.

¹⁷² Amare Tesfaye, Justiciability of Socio-Economic rights in the Federal Democratic Republic of Ethiopia(unpublished), 2010, Addis Ababa University, P.90.

¹⁷³ Yenehun Birlie , cited above note 167, P.321

¹⁷⁴ Environmental Pollution control proclamation, 2002, Proc. No.300, article 11, Negarit Gazeta, year

for a decision has elapsed”.¹⁷⁵ It is a clear provision that allows public interest litigation although direct access to court is not allowed. The litigation held between APAP Vs. EPA was depending on this provision.¹⁷⁶

The federal courts advocate licensing and registration proclamation has a clue for public interest litigation. In this proclamation there are three types of licenses are given to the applicants.¹⁷⁷ Of the three types of license, especial advocacy license is issued to any Ethiopian lawyer who seeks to defend the general interest of the public and the rights of the society.¹⁷⁸ This provision is important to open the path of public interest litigation including environmental matters. The Ethiopian Human Rights Commission and the Institution of Ombudsman establishment proclamations have the provisions that enable public interest litigation.

3.6. The General obligation of the government to environmental rights

The government, upon recognition of rights, pledges to discharge obligations emanating from individual or group rights. As per the decision of African commission, states have the obligation to protect, respect and fulfill the rights of individuals or groups.¹⁷⁹ Ethiopia has an obligation to protect, respect and fulfill environmental rights that have been given legal cognizance at national and international level. The international obligation of the state is mentioned above and Ethiopia has no exception on this regard.

The constitution of the country, Ethiopia, imposes an obligation on the government to refrain from activities which detrimental to the environment. The government of Ethiopia has the “duty to protect the environment”.¹⁸⁰ The government has a duty to ensure “the design and implementation of developmental programs and projects cannot damage the environment”.¹⁸¹ If environmental damage happened, the government has a responsibility to pay “commensurate monetary or alternative means of compensation, including relocation with adequate state assistant”.¹⁸²

¹⁷⁵ Ibid.

¹⁷⁶ Sisay Alemahu Yeshanew, cited above note 131, Vol.IV, P.70

¹⁷⁷ Federal Courts Advocates Licensing and Registration Proclamation, 2000, Proc. No. 199, Art. 7, Federal Negarit Gazeta, Year 6, No.27.

¹⁷⁸ Ibid, Art. 10/1.

¹⁷⁹ Ogoni case, cited above note 24, Para. 44.

¹⁸⁰ FDRE constitution, cited above note 11, Art.92/4

¹⁸¹ Ibid, Art.92/2

¹⁸² Ibid, Art.44/2

Having the constitutional and international commitments in mind, the government of Ethiopia proclaimed different laws and establish institutions at a different level. The pollution control proclamation states that “no person pollute or cause any other person to pollute the environment”.¹⁸³ The proclamation further requires that “when the activities pose danger to human health or environment” the concerned authority has an obligation to order closure or relocation of any project.¹⁸⁴ Closure or relocation of the project is not enough, the polluter has the obligation to clean or pay the cost of cleanup of the damaged environment.¹⁸⁵ This proclamation, further, impose an obligation on, all urban administration to implement safe disposal municipal wastes and, the concerned federal environmental authority to monitor and evaluate the employment of adequate solid waste disposal mechanism in each urban administration.¹⁸⁶

The environmental impact assessment proclamation has been enacted to achieve environmental rights and objectives enshrined in the constitution by predicting and managing the likely adverse environmental impact.¹⁸⁷ As per this proclamation, all projects identified by directive should be subject to environmental impact assessment.¹⁸⁸ The directive issued to determine projects subject to environmental impact assessment incorporate “urban and industrial waste facility” in the list of project type’s that demands assessment of their environmental impact.¹⁸⁹ Additionally, the Solid Waste Management Proclamation imposes an obligation on concerned urban administration’s to ensure “solid waste disposal site that was under construction or was constructed prior to the coming into force of this Proclamation” is subject to environmental auditing and impact assessment.¹⁹⁰ If the result of environmental audit shows that the solid waste disposal site poses risk on human health, the urban administration should take measure for modification of the site.¹⁹¹ Thus, the government of Ethiopia in general and the Addis Ababa City Government in particular have the obligation to ensure that a given solid waste disposal is not affecting the livelihood and the rights of the people.

¹⁸³ Environmental Pollution control proclamation, cited above note 174, Art.3/1

¹⁸⁴ Ibid, Art.3/5

¹⁸⁵ Ibid.

¹⁸⁶ Ibid, Art. 5

¹⁸⁷ Environmental Impact Assessment Proclamation, cited above note 15, preamble

¹⁸⁸ Ibid, Art.5/1

¹⁸⁹ Directive No.2/2008 issued to determine the category of projects subject to environmental impact assessment, No.12

¹⁹⁰ Solid Waste Management Proclamation, cited above note 139, Art.14(2and 3)

¹⁹¹ Ibid, Art.15/2.

3.7. Institutional Arrangement

Inform of institutional setup, Ethiopian government established “environmental protection organ” by proclamation No.295/2002. This proclamation “established Environmental Protection Authority”¹⁹² which has a mandate and power ensuring environmental objectives enshrined in the constitution, providing environmental policies and laws and other related mandates.¹⁹³ A proclamation to provide for the definition of powers and duties of the executive organs of the federal democratic republic of Ethiopia No. 916/2015 changed the authority to “the Ministry of Environment, Forest and Climate Change”¹⁹⁴ with the mandate, among others, to promote “social, economic and environmental justice”.¹⁹⁵ Currently, this institution changed to commission level up on the new arrangements.

Regional governments also have the power to establish an environmental protection agency. Addis Ababa city administration established environmental protection authority which accountable to the mayor of the city with the mandate, among others, to “follow up and control that the disposition of industrial residue, by-products, and waste in accordance of the law”.¹⁹⁶ The city government establishes also solid waste management agency which accountable to the General Manager of the city government. The agency has the power, among others, of control integrated waste management work based on the study, finding alternative cleaning service, superiorly control the disposal and reuse of solid waste, administer Repie solid waste disposal site and controlling the site not to cause a negative impact on the health of the public and on the environment.¹⁹⁷

All in all, we have legal framework that impose obligation upon the government to ensure that a given solid waste disposal should not violate the rights of the people.

¹⁹² Environmental Protection Organs Establishment Proclamation, 2002, Proc. No.295/2002, Art. 2/1, Negarit Gazeta, 9 th year No.7.

¹⁹³ Ibid.

¹⁹⁴ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, 2015, Poc. No. 916, Art. 9/18, Negarit gazetta, 22 nd Year No.12.

¹⁹⁵ Ibid, Art. 30(1,C).

¹⁹⁶ The Addis Ababa City Government Executive and Municipal Service Organs Reestablishment Proclamation, 2012, proc. No. 35, Art. 11/3, 4 th year No.35.

¹⁹⁷ A Proclamation for the Re-amendment of the Addis Ababa City Government Executive and Municipal Service Organs Re-establishment Proclamation No 35/2012.

CHAPTER FOUR

Government Responsibility for Addis Ababa's Rubbish Dump Landslide

4.1. Repie Rubbish dump heap

The Repie landfill site, established in the 1960s, has served the city as the only solid waste disposal site for the past five decades.¹⁹⁸ This rubbish dumps heap area commonly known as “Koshe”. “KOSHE is located to the south West of Addis Ababa. It is about 12.5 km away from the center of Addis Ababa city. KOSHE is found at the border of Nifas Silk Lafto sub-city and Kolfe Keranio Sub-City.”¹⁹⁹ It was the outskirts of Addis Ababa at the beginning and become urban landscape due to the expansion of the city. “It is an open landfill, unfenced, with a poor disposal system, and it is devoid of any infrastructure”.²⁰⁰ However, a promising and multipurpose plant that can generate energy from solid waste is built in the scene recently although its operation is in contestation.

The heap is the sole open rubbish dump that is serving as the barn of all solid waste of Addis Ababa. It covers 34 (thirty-four) hectares of the city.²⁰¹ There is a report that shows the coverage of the rubbish dumpsite extended up to forty-three hectares.²⁰² According to the City Government Administration, from the total area of the site covers, eighteen hectares of it closed and the remaining sixteen hectares are still active.²⁰³ Some argue that “there has not been any proper record of the amount of waste being dumped at the site and there has not been any leachate or emission collection system; therefore, the amount of damage it has caused cannot be estimated”.²⁰⁴ Some others estimated “about 7000 m³ solid waste per day is being dumped at the site”.²⁰⁵ The site is open dump area with poor monitoring and management system. “Nowadays due to the participation of private sectors and poor monitoring systems wastes from industries,

¹⁹⁸ Axel Baudouin and Camilla Louise Bjerkli and others, *The Politics of Solid Waste Management in Accra, Addis Ababa, Maputo and Ouagadougou: different Cities, similar Issues*, 2017, P.5

¹⁹⁹ Massreshaw Assnakew Abebe and Atiku legese Abitew, “Repie Open Dump Site Environmental Health Problem on Workers and People around It”, *International Research Journal of Pharmacy and Medical Sciences*, ISSN (Online): 2581-3277, Volume 1, Issue 4, 2018, P.5

²⁰⁰ Axel Baudouin and Camilla Louise Bjerkli and others, cited above note 198, P.5

²⁰¹ Interview with Mrs. Konjit Debela, Deputy General Manager of Addis Ababa city government, on 31/10/2018.

²⁰² <http://capitalethiopia.com/2012/12/04/koshe-to-close/#.WuQ0SdRubIU> accessed on 28/04/2018

²⁰³ Interview with Mrs. Konjit Debela, cited above note 201.

²⁰⁴ Meaza Cheru, cited above note 136, P.16.

²⁰⁵ Massreshaw Assnakew Abebe and Atiku legese Abitew, cited above note 199, Volume 1, P.5

hospitals (health institutions) and different organizations are being mixed with municipal solid wastes and dumped together into this site.”²⁰⁶

The area around Repie (Koshe) rubbish site is environmentally debasing. “The dumpsite is causing serious damage to the environment and is a significant threat to the health and lives of many residing around the area”.²⁰⁷ The noxious odor of the rubbish tip disturbs/calls from a long distance of the city. It has three types of pollution on the environment: bad smell, fire due to fermentation and effluent.²⁰⁸

4.2. The Rubbish Dump Landslide

On March 11, 2017, the Repie/Koshe rubbish dumpsite hosted the tragic landslide. It was horrific and shocking rubbish hill slide. The disaster brought a number of casualties against the people dwelling around there. The number of people dwelling there legally and illegally became the victim of the rubbish tip slide. According to Mr. Abale “the Rubbish hill slide primarily hurt sixteen families resided there legally”.²⁰⁹ Within these sixteen families, there were 12 co-families lived with their families who are reach majority and got married.²¹⁰ There were also 54 lessees living in the service house of those sixteen families.²¹¹ There were also 102 families dwelling there illegally by building huts and house of mud although the extent of their injury is less than that of the aforementioned families.²¹² The total numbers of victims of the rubbish hill landslide were 184 families and 592 individuals.

Among the total victims, 115 individuals died, and six of them were unidentified due to the decay of their corpse.²¹³ Additionally, the tragedy brought physical injury and mental trauma of rescued people. Properties damaged including livestock and household materials.²¹⁴ “The causes of the blast/slide of the rubbish tip are still under investigation. The Addis Ababa University and

²⁰⁶ Ibid.

²⁰⁷ Meaza Cheru, cited above note 136, P.16

²⁰⁸ Interview with Mr. Massreshaw Asnakew, Deputy Authority of Addis Ababa Solid Waste Recycling and Disposal Project Office, on 23/10/2018.

²⁰⁹ Interview with Mr. Abale, Deputy Authority of Addis Ababa City Government Labor and Social Affairs, held on 02/11/2018

²¹⁰ Ibid.

²¹¹ Ibid, and interview with Mr. Feyissa Feleke, Head of Kolfe Keranio sub-city labor and social affairs office, on 20/08/2018.

²¹² Ibid.

²¹³ Interview with Mr. Abale, cited above note 209.

²¹⁴ Interview with Mr. Feyissa Feleke, cited above note 211.

Texas University in the coalition have taken the responsibility of investigating the cause of the explosion the rubbish dump. The result has not disclosed yet.”²¹⁵

4.3. Things aggravating the causality of Repie rubbish hill slide

Some exacerbating factors exceedingly increase the causality of the rubbish dump slide. Had some measures taken, there could be the possibility that the crisis would have been minimal. First, as my interview with Konjit Debela the site is unscientific and unmanageable.²¹⁶ Due to the absence of implementation of robust waste management practice, the landfill of Repie/Koshe becomes a direct source of human catastrophe.

Second, the rubbish hill has no buffer zone and fencing. During the slide happened, there is no free area between the residents and the rubbish heap or any fencing that protect the residents from a direct rubbish landslide. However, before the rubbish heap pushed forward towards residents and it became the threat of their health, there was a free area between the rubbish tip and the residents. The Addis Ababa Solid Waste Disposal and Recycling Project Agency claimed that the absence of clear frontier and master plan to the rubbish cite complicated the process of isolating the rubbish site with that of residents.²¹⁷ It made the separation of a rubbish site from human contact very complicated.

The third factor was the reluctance of the City Administration to move residents to another safe area. Some research conducted the environmental harm of the vicinity around Repie at individual and institutional level via the Agency of Solid Waste Disposal and Recycling Project.²¹⁸ The finding of the research showed that the vicinity vulnerable to environmental harm and it triggered a threat to the health of the public and the environment.²¹⁹ The agency alleged that it wrote a number of letters to the city administration expressing the environmental hazard of around Repie and suggesting the relocation of the residents to another safe area.²²⁰ However, the city administration was reluctant to concerns of the agency. According to the Deputy General Manager of the City Administration, the plan of the city administration was to close the open

²¹⁵ Interview with Mr. Abale, cited above note 209.

²¹⁶ Interview with Mrs. Konjit Debela, cited above note 201.

²¹⁷ Interview with Mr. Atiku Legesse, Directorate Director of Addis Ababa Solid Waste Recycling and Disposal Office, on 24/10/2018.

²¹⁸ Ibid and interview with Mr. Masreshaw Asnakew, cited above note 208.

²¹⁹ Ibid

²²⁰ ibid

dump but not to move residents to another area.²²¹ Of course, there was a few public meeting on this issue, which concluded with disagreement as mentioned here below.

Fourthly, the awareness of the public about environmental right or pollution is minimal. The researcher understood from the interview, victims are alien to environmental rights. However, they have understood the threat that rubbish hill poses on their health and life. They expressed their grievance in a different mechanism. If they have had awareness about environmental rights, they would have taken the case before judicial or quasi-judicial institution to prevent the threat they have encountered before the slide happened.

Fifth, reinstatement of dumping from Sundaffa to Repie also exacerbating the rubbish landslide that has happened. The city administration has built a modern waste landfill at “in Sendafa area around the place called “Chele Wergeno” located 37Km North East of Addis Ababa”.²²² Three years before the rubbish slide occurred, the city administration started dumping at Sendafa and partially closed Repie. However, the Sendafa landfill encountered with public resistance and opposition.²²³ Following the public resistance, the city administration forced to resume dumping of rubbish at Repie.²²⁴ The reinstatement increased the pressure of the rubbish heap, and it contributed to the rubbish landslide.

4.4. The Relief given to the victims

After the news of the accident released, it puts the country under a grief sorrow and mourning. “Many Ethiopians and residents of Addis Ababa participated to help the victims, and the city administration established a committee that organizes and facilitates public aid participation. The committee facilitates relief donated from Ethiopians and non-Ethiopians both in kind and cash.”²²⁵ “Although the total amounts of collected money not audited and disclosed to the public, nearly 97 (ninety-seven) million birr entered in the closed account of the committee opened in Commercial Bank of Ethiopia for this purpose.”²²⁶ However, the victims have a difference in the total amounts of money collected from the public. According to them, the reliefs were collected from enterprises and companies and the aid was multidimensional on

²²¹ Interview with Mrs. Konjit Debela, cited above note 201.

²²² <http://capitalethiopia.com/2012/07/19/koshe-still-up-in-the-air/#.WuQ1y9RubIU> accessed on 28/04/2018

²²³ Interview with Mr. Atiku Legesse, cited above note 217 and interview with Mr. Masreshaw Asnakew, cited above note 208.

²²⁴ Ibid

²²⁵ Interview with Mr. Feyissa Feleke, cited above note 211.

²²⁶ Interview with Mr. Abale, cited above note 209.

which Diasporas, different Ethiopians at the individual level and Tele-telethon were participated to help and rehabilitate the victims, which increased the amount of money collected than admitted by the government.²²⁷

The main packages of the reliefs that were given to the victims sourced from the contribution of various volunteers. For those 16 (sixteen) families: a plot of land as per to their prior use; (sixteen) 16 million birr for house compensation-one million for each was given; 40000 (forty-thousand) as death compensation for a person given; property and household equipment replacement compensation and lump sum money that cover six month house rent given to them.²²⁸ For those 13 families: communal apartment house was intended to be built (has been not built yet), 40000 (forty thousand) birr death compensation per person, compensation to replace household equipment and cloth, and lump sum money that cover cost of house of lease.²²⁹ For those 54 leaser families: 10/90 condominium houses were given to each of the families, death compensation per person and lump sum money that assumed to cover the cost various affairs of the victims.²³⁰ For those 102 illegal settlers: they were given a house built by the city administration for purpose indigents (poor of poor's), death compensation per person, lump sum money that replace household equipment, food and cloth.²³¹ The city administration spent forty-three million (43,000,000) birr paying to the victims until the researcher collected his data. Nearly fifty-four million birr is remaining in the account of the committee.²³²

4.5. Government responsibility in Relation to:

4.5.1. The right to a clean and healthy environment

In Ethiopia, the right to a clean and healthy environment is a constitutional right and it is internationally recognized commitment. A clean and healthy environment is an essential ingredient of human survival. As Dinah Shelton phrased it, “human survival depends upon a safe and healthy environment; it places the claim of the right to a clean environment fully on the human rights agenda”.²³³ However, the area around Repie/kosh is/was not friendly to inhabit

²²⁷ Interview with (confidential), victims, on 03/08/2018 and 07/11/2018

²²⁸ Interview with Mr. Feyissa Feleke, cited above note 211.

²²⁹ Ibid.

²³⁰ Ibid

²³¹ Ibid

²³² Interview with Mr. Abale, cited above note 209.

²³³ Dinah Shelton, HUMAN RIGHTS, HEALTH AND ENVIRONMENTAL PROTECTION: LINKAGES IN LAW AND PRACTICE, P.16 available at http://www.who.int/hhr/Series_1%20%20Sheltonpaper_rev1.pdf accessed 06/04/2018.

there. It had/has a polluted and damaged environment that can deny the rights of individuals. It is also contrary to the essentiality of a clean and healthy environment for human survival as enshrined under Stockholm Declaration on Human Environment, which declare that “man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing”.²³⁴ It is not also compatible with Rio Declaration that provides “human beings are entitled to a healthy and productive life in harmony with nature”.²³⁵

Furthermore, it is against the FDRE constitution that entitles all persons to have the right to live in clean and healthy environment.²³⁶ The constitution is not only bestowing environmental rights to individuals and groups but also impose a duty upon the government to protect and respect this environmental right.²³⁷ It also transgresses African Charter on Human and People’s Right.²³⁸

Though the right to a clean and healthy environment has been entrenched under the FDRE Constitution and international human rights instruments, to which Ethiopia is a party, the government’s efforts to make healthy the vicinity around Repie was minimal. According to Addis Ababa Solid Waste Recycling and disposal office, researches were conducted about the environmental condition of the area around the rubbish dump site and their findings reveal that the surrounding environment has been damaged and hence not compatible to resides around the rubbish heap.²³⁹ Accordingly, the office has written a number of letters to the city government administration underscoring the environmental condition around Repie/koshe is contaminated and not suitable to live there, and it recommended tangible measures to be taken, like relocating individuals to a safe area, to protect individuals from environmental harm/pollution.²⁴⁰

However, the plan of the government was not to relocate citizens resided around the hazardous environment but to close the open dumpsite, which considered as unscientific with poor management.²⁴¹

Of course, the city administration commenced recycling plant years before which become finalized and inaugurated in this year. “The recycling center will feature, among other things, the

²³⁴ Declaration of United Nations Conference on the Human Environment, cited above note 7, principle 2

²³⁵ Unite Nation Conference on Environment and Development, cited above note 7, principle 1

²³⁶ FDRE constitution, cited above note 11, Art. 44/1

²³⁷ Ibid, Art. 92/1

²³⁸ African charter on human and people’s right, cited above note 10, Art.1 and 24.

²³⁹ Interview with Mr. Atiku Legesse, cited above note 217.

²⁴⁰ Ibid.

²⁴¹ Interview with Mrs. Konjit Debela, cited above note 201.

production of organic fertilizers, construction and building materials, electric power generation, carbon-free charcoal and briquettes and Liquefied Petroleum Gas (LPG), used as biogas source to dweller”.²⁴² As the researcher ascertained through observation and interview with different stakeholders, the recycling center seems not effective, stating that it operated only for days following its inauguration.²⁴³ Apart from it, the recycling center has minimal contribution to compensate for the injury of citizens sustained due to long year pollution of the environment. All the above legal and factual grounds reveal that the government has transgressed its environmental obligation and thereby jeopardizes the environmental rights of citizens. As it is mentioned above:

*Environmental rights impose clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources.*²⁴⁴

Therefore, the government violated environmental rights of individuals or groups.

4.5.2. The right to health

The right to health and environmental protection is highly interconnected. The end purpose of environmental protection is to secure the health of the people.²⁴⁵ The right to health has not aspired in the degraded and depleted environment. In turn, “a healthy environment has deemed a *sine qua non* for the right to health to be meaningful”.²⁴⁶ The right to health and the environmental right are protected by different instruments but “concern for health is a constant theme in environmental agreements, indeed one of the principal aims of environmental protection”.²⁴⁷

However, the solid waste disposal condition around Repie/Koshe was detrimental to the health of individuals. The people lived and living around the rubbish heap is/was exposed to various health problems. The unmanaged and scientifically poor open dump of Repie endangers the

²⁴² <http://capitalethiopia.com/2012/12/04/koshe-to-close/#.WuO0SdRubIU> accessed 28/04/2018

²⁴³ Interview with Mr. Atiku Leggesse, cited above note 217 and Interview with Mrs. Konjit Debela, cited above note 201.

²⁴⁴ Ogoni case, cited above note 24, Para 52.

²⁴⁵ Patrick D. Okonmah, “Right to a Clean Environment: The Case for the People of Oil-Producing Communities in the Nigerian Delta”, *Journal of African Laws*, Vol. 41, No. 1, 1997 P.57.

²⁴⁶ Ben Farkas, et al, *Human Rights and Climate Change Obligations*, Draft Memorandum for the Experts’ Group on Global Climate Obligations, 2013, Allard K. Lowenstein International Human Rights Clinic (Yale Law School), P.16

²⁴⁷ Dinah Shelton, cited above note 233, P.4.

health of individuals dwelling and working there. It is against international instruments that recognize the right to health such as UDHR,²⁴⁸ ICESCR- an instrument that recognizes the right to physical and mental health-extended to have improved aspect of environmental and industrial hygiene²⁴⁹ as well as the Charter of African Human and Peoples' Right.²⁵⁰

The right to health imposes an obligation up on the government to prevent any impending circumstances. According to the Committee on Economic, Social and Cultural Rights, state parties to the Covenant have obligations that include “adopting measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose, states should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline.”²⁵¹ Accordingly, states have the obligation to prevent environmental pollution emanating from improper solid waste disposal that poses danger to the health of individuals/groups. The Stockholm declaration also demanded states “to take all possible steps to prevent pollution by substances that are liable to create hazards to human health”.²⁵²

Besides international instruments that recognize the right to health, the FDRE constitution entitle every Ethiopian a right to access to publicly funded social services, and the government has the obligation to allocate an ever-increasing resource to provide to the public health service.²⁵³

Having the above facts in mind, the solid waste disposal of at Repie/Koshe was/is detrimental to the health of individuals. The inhabitants of the slum area are exposed to highest health risk, and the mountain of the garbage equipped not with collection, composition or recycling system with poor drainage and purification system.²⁵⁴ According to Masreshaw and Atiku Study reveals: *Higher prevalence of respiratory diseases, skin diseases, eye diseases, gastrointestinal diseases, and allergic problems were reported by solid waste disposal workers and dwellers. Frequently, the experience of a headache, nausea, vomiting, eye irritation, soreness of throat and depression were reported by solid waste disposal workers. An indication of cancer and other irreversible health damage situations for solid waste disposal workers and dwellers.*²⁵⁵

²⁴⁸ UDHR, cited above note 59, Art. 25/1.

²⁴⁹ ICESCR, cited above note 86, Art.12.

²⁵⁰ Charter of African human and people's right, cited above note 7, Art. 16

²⁵¹ ICESCR committee, 2000, General Comment 14, at para. 36.

²⁵² Declaration of United Nations Conference on the Human Environment, cited above note 7, principle 7.

²⁵³ FDRE constitution, cited above note 11, Art. 41(1&2).

²⁵⁴ Interview with Mr. Atiku Leggesse, cited above note 217.

²⁵⁵ Massreshaw Assnakew Abebe and Atiku legese Abitew, cited above note 199, Volume 1, P.7.

As the African Commission Human and Peoples' Right pronounced itself in the Ogoni case, "an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibrium is harmful to physical and moral health".²⁵⁶

Even schools around Repie have complained about bad smells originated from the rubbish heap. Students of Abun Theyoflose School are fainting and falling down accidentally due to the noxious odor of the dumpsite.²⁵⁷ Despite the above entire problem, the measure taken by the government to secure the health of the residents is/was not satisfactory. The power to administer Repie open rubbish dumpsite is given to Addis Ababa city Solid Waste Management Agency (which was named as cleanliness Administrative Agency).²⁵⁸

The agency has the mandate to improve the waste disposal site, enable the disposal site not to cause a negative impact on the health of the public and on the environment, and control and follow up the site whether it poses danger to the health of the public.²⁵⁹ According to the agency officials, they have written repeated letters to the city administration revealing their concerns of the health danger posed on residents around Repie/Koshe.²⁶⁰ Despite their repeated letter of warning, the city administration was reluctant to take immediate measure to avert the health problems of inhabitants. The plan of the city administration was to close the rubbish dumpsite in long run. It did not take other alternative measures to rescue residents from a health problem.²⁶¹

The Solid Waste Disposal Proclamation demands "waste disposal site that was constructed prior to the coming into force of this Proclamation is subjected to environmental auditing as per the relevant law."²⁶² Urban administration has a responsibility to ensure environmental auditing is carried out on every existing solid waste disposal site.²⁶³ When the environmental auditing shows the existing waste disposal site continued operation pose danger/risk on public health or

²⁵⁶ Ogoni case, cited above note 24, para. 28.

²⁵⁷ Interview with Mr. Atiku Leggesse, cited above note 217 and Interview with Mr. Feyissa Feleke, cited above note 211.

²⁵⁸ A Proclamation for the Re-amendment of the Addis Ababa City Government Executive and Municipal Service Organs Re-establishment Proclamation No 35/2012, Art. 55/14.

²⁵⁹ Ibid.

²⁶⁰ Interview with Mr. Atiku Leggesse, cited above note 217 and interview with Mr. Masreshaw Asnakew, cited above note 208.

²⁶¹ Interview with Mrs. Konjit Debela, cited above note 201.

²⁶² Solid Waste Management Proclamation, cited above note 139, Art.14/2.

²⁶³ Ibid, Art.15/1.

environment, the owner/urban administration has the obligation to make necessary modification.²⁶⁴ However, no environmental auditing held on Repie rubbish dumpsite²⁶⁵ until the researcher collected the data. The Addis Ababa Environmental Protection Authority also has the mandate to follow up and monitor the disposal of “industrial residue, by-products and waste”.²⁶⁶ However, the authority played no paramount role in monitoring the waste disposal of Repie open dump.²⁶⁷ Accordingly, inhabitants have exposed to the various health problems.

4.5.3. The right to life

The right to life, which considered as bedrock right could be troubled on the debased environment. It is hard to think the right to life could be realized in an impaired environment. It is claimed that environmental harm/impairment threaten life more than preventable diseases.²⁶⁸ All other rights are meaningless without respecting the rights of life. Alike of many other rights, the right to life has been gotten blessing in various international right based instruments. All basic international human rights documents to which Ethiopia is party recognized the right to life. Among others, UDHR,²⁶⁹ the International Covenant on Civil and Political Rights (ICCPR)²⁷⁰ and African Charter on Human and People’s Right²⁷¹ recognize the rights to life and prohibit arbitrary deprivation of this right. In the same vein, the FDRE constitution considers the right to life as one of fundamental rights.²⁷² Recognition of rights is not an end by itself, and it demands a state “not only to refrain from taking a life intentionally but also to take adequate steps to safeguard it”.²⁷³ States have an obligation to protect this right from environmental hazard ensued from its activity or the activity of other entities or persons within its jurisdiction. “The *jus cogens* nature of the right to life makes states, as traditional duty-bearers, accountable

²⁶⁴ Ibid, Art.15/2.

²⁶⁵ Interview with Mr. Atiku Leggesse, cited above note 217.

²⁶⁶ The Addis Ababa City Government Executive and Municipal Service Organs Reestablishment Proclamation, 2012, Proc. No.35, Art. 11/3, Negarit Gazeta, 4th year No.35.

²⁶⁷ Interview with Mr. Lemessa, legal head of Addis Ababa environmental authority, on 19/10/2018. According to him the authority only concern on input source of waste to be disposed at Repie open dump area, and they are not worry about whether it pose danger public health or an environment. To use his on word “it is (damage of environment around Koshe) not our concern. It is the concern of solid waste disposal recycling and disposal agency”.

²⁶⁸ Ben Farkas et al, cited above note 246, P.8

²⁶⁹ UDHR, cited above note 59, Art.3.

²⁷⁰ ICCPR, cited above note 60, Art.4.

²⁷¹ African charter on human and people’s right, cited above note 10, Art. 4.

²⁷² FDRE constitution, cited above note 11, Art.15.

²⁷³ Patrick D.Okonmah, cited above note 245, P.53.

not only when it infringes on the right to life but also when it fails to take necessary measures to prevent its infringement”.²⁷⁴

The improper waste disposal held at Repie caused a number of people to lose their life. As the researcher learned from the various office of Addis Ababa, one hundred fifteen peoples died in the rubbish heap slide²⁷⁵ although there were reports that extend the numbers of deceased up to 130.²⁷⁶ The victims include children, women, pregnant women and students at all level including university graduates.²⁷⁷ The cause of this tragic incident was improper waste disposal resulted from the reluctance of the government (the City administration) to take measures that could have averted the catastrophe.

The main victims of the rubbish heap slide, as mentioned else above, were sixteen families who settled in the area during the military reign. Most of them settled there in congregation on the beginning of 1990s.²⁷⁸ The rescued victims alleged that when the then government gave the land of residence, it also promised to relocate the rubbish open dump to another area.²⁷⁹ After two years of their settlement, the military government has been overthrown and relocating the rubbish dump forgotten.²⁸⁰ When the victims settled around Repie/Kosh, there was wide free space between the heap of the rubbish and the inhabitants. The free area was used to the inhabitants for rearing livestock, soccer field to their children, plowing and plantation.²⁸¹ Eventually, the rubbish tip becomes the pillow of the residents due to ever-increasing amounts of rubbish dumped there and governmental deployed excavators, bulldozer and rollers pushed it towards to the victims.²⁸²

Facts on the ground reveal the government was the architect of the threat of environmental harm. Apart from damaging the environment and creating a threat to life on inhabitants, no reliable measure is taken to save the lives of the citizens. Even temporally, neither buffer zone reserved nor fencing built to save the lives of inhabitants. Such facts prove the failures of the government to discharge its obligation. For instance, the European Courts of Human Rights held

²⁷⁴ Linda Hajjar Leib, cited above note 3, P.72.

²⁷⁵ Interview with Mr. Atiku Leggesse, cited above note 217 and Interview with Mr. Abale, cited above note 209.

²⁷⁶ Ethiopian Reporter, available at <http://www.thereporterethiopia.com/content/another-garbage-slide-kills-one-koshe> accessed 28/04/2018

²⁷⁷ Interview with (confidential), cited above note 227.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Ibid.

responsible for its failure to build “the mud-retention dam and collector”.²⁸³ The government has the obligation to protect human life and to prevent situations that might imperil human life.²⁸⁴ In the same vein, Inter- American Commission on Human Rights found environmental degradation indeed violates the right to life and government (Brazilian) had violated the human rights of its citizens, by not taking timely and effective measures to prevent environmental harm leading to the loss of life.²⁸⁵

Similar standing was held by European Court of Human Rights. The court decided “states have an obligation to take appropriate steps to safeguard the lives of those within their jurisdiction from any activity, whether public or not, in which the right to life may be at stake”.²⁸⁶ In the same fashion, no preventive or protective measure was taken on parts of Ethiopian government/ Addis Ababa city administration. Before the tragic rubbish heap slide happened, the vicinity was affected by recurrent flooding caused by stiffening drainage of beck by rubbish fill.²⁸⁷ However, the government was not taken the flooding as alerting message to secure the lives of the citizens. Of course, the government/ the city administration held the discussion, as it discussed here below, with the citizens of the vicinity although it concluded without consensus.²⁸⁸

Illegal settlers of the vicinity of Repie came to the area at different times. Especially in the past 10 years, their number increased due to rural-urban migration of the people. Although the city administration has the obligation to prevent any illegal settlement within the jurisdiction of the city, it was hesitant to clear vicinity of the rubbish site from illegal settlers. As it is mentioned above, Turkey’s court held two mayors responsible for failure to discharge their duty, especially for failure to order the destruction of illegal huts and rehabilitate the rubbish tip or ordering its closure.²⁸⁹ This case can be taken as a good lesson for our case.

All in all, the negligence of the government/the city administration contributed the causalities to increase. If the government had taken different measures that prevent the slide, the possibility of

²⁸³ Budayeva and Others v. Russia, (application nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), ECHR, Para.4. The case concerned the events of 18-25 July 2000, when a mudslide led to a catastrophe in the Russian town Tyrnauz: it threatened the applicants’ lives and caused eight deaths, among them the husbands of one of the applicants. The European Court of Human Rights was asked to that the Russian government had failed to fulfill its obligations, namely to protect the right to life of people under its jurisdiction.

²⁸⁴ Patrick D. Okonmah, cited above note 245, P.53.

²⁸⁵ Sawhoyamaya Indigenous Community v. Paraguay, (petition No. 0322/2001), 2006, the inter-American court on human rights, Para. 146.

²⁸⁶ Oneyrildiz v. Turkey, cited above note 18, Para. 71.

²⁸⁷ Interview with (confidential), cited above note 227 and Interview with Mr. Feyissa Feleke, cited above note 217.

²⁸⁸ Ibid.

²⁸⁹ Oneyrildiz v. Turkey, cited above 18, Para. 28.

death would have been minimal. Different cost-effective measures such as building fencing that separated rubbish site from the inhabitants and reserving buffer zone between the rubbish heap and the resident can reduce the possibility of mass death ensuing from rubbish mount slide. Relocating peoples resides in slum area to a safe area could perpetually save citizens from the imminent threat of environmental harm and prevent engulfment of the house of the inhabitant. Destruction of illegal huts situated around the rubbish tip and rehabilitating them in a sustainable manner would have reduced the excessive death of citizens.

4.5.4. The right to public participation

The other important right that violated in environmental damage of Repie has been the right to public participation. As it is mention in the above chapters, this right is recognized in various human and environmental instruments.

UDHR is the first international instrument that recognizes the right to public participation.²⁹⁰ ICCPR²⁹¹ and ACHPR²⁹² also recognize the right to take part in governmental decision especially if it directly affects their lives. The committee on ICESCR in its General comment affirms “governments have an obligation to facilitate public participation in environmental decision-making in order to protect human rights against environmental harm”.²⁹³ The UNFCCC also demands states to promote and facilitate public participation in addressing climate change and its effects and developing adequate responses.²⁹⁴

The FDRE constitution also recognizes the rights of public participation. As per Article 43 of the constitution, “nationals have the right to participate in national development, in particular, to be consulted with respects of projects affecting their community”.²⁹⁵ In accordance with this constitutional stipulation, the government has a duty to consult nationals while executing projects that have a direct or indirect influence on their life. As it is mentioned in the previous chapter, the constitution also affirms public participation in its policy aspirations.²⁹⁶

²⁹⁰ UDHR, cited above note 59, Art.21.

²⁹¹ ICCPR, cited above note 60, Art. 25

²⁹² African charter on human and people’s rights, cited above note 10, Art. 13.

²⁹³ CESCR General Comment No. 15, p. 56, UN Doc. E/C.12/2002/11 (Jan. 20, 2003).

²⁹⁴ UNFCCC, cited above note 46, Art. 6.

²⁹⁵ FDRE constitution, cited above note 11, Art.43.

²⁹⁶ Ibid, Art.92/3.

As it is mentioned above in this chapter, there was a governmental promise to residents to relocate the open dump to another area²⁹⁷ and there was a buffer zone between the residents and the rubbish heap.²⁹⁸ Gradually, the rubbish tip pushed forward towards to the residents by government/the city administration towards inhabitants. People resided in the area started to express their concern when the rubbish mountain had approached to them.²⁹⁹ However, the government gave a deaf ear to the concerns of the citizens.³⁰⁰ This fact reveals the government was not ready enough to consult the people as per the constitutional and international requirements.

When the threat of rubbish heap triggered to the resident and it became imminent, they coerced to prohibit vehicles that spilled refuse in the area. However, the government deployed force to suppress their question and refrain to share the concerns of the citizens.³⁰¹ Later on, the community optioned to plant eucalyptus to separate them from the rubbish tip and reduce its threat of slide.³⁰² Nevertheless, the government cleared off all the trees and used the cleared area to dump the refuse.³⁰³ The more surprising fact is the dump area has no clear boundary, map and plane until recently.³⁰⁴ This was what makes burdensome the works of solid waste management agency to build fencing or other means to protect citizens at least from slide accident.³⁰⁵

4.5.5. Access to information

As it is mentioned above, access to information is all about providing environmental information to individuals, prior notification of environmental emergencies and the duty to provide – and the right to obtain – access to information on the environment.³⁰⁶ As per the assessment of the researcher, the role of the government to inform the public about the environmental threat of Repie to the public was unsatisfactory. Of course, a few discussions were held between government agents and the people residing around Repie.³⁰⁷ However, all the public forums

²⁹⁷ Interview with (confidential), cited above note 227.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Interview with Mr. Atiku legesse, cited above note 217.

³⁰⁵ Ibid.

³⁰⁶ PHILIPPE SANDS, cited above note 37, P.829-852.

³⁰⁷ Interview with Mr. Atiku Leggesse, cited above note 217 and Interview with Mr. Feyissa Feleke, cited above note 211.

ended without consensus.³⁰⁸ The agents of the government and the victims raised their own justification as the points of disagreement.³⁰⁹

The Kolefie Keranew Sub-city officials claimed that they have consulted the community about the environmental risk of Repie and tried to move the victims to another safe area before the emergency happened³¹⁰ after recurrent flooding affecting the community. Sub-city officials raised five justifications that complicated the relocation of citizens into a safe area. First, the area served as a refuge of peoples that engaged on illegal activity. Second, the people lived around there were the victims of leprosy and they refused the quest the city fearing social stigma and discrimination in another place. Thirdly, illegal settlers are not volunteering to move in another area fearing not to get substituted land, and the community refused the relocation for fear of disturbance of social relations built for a long time.³¹¹ However, most of the justification raised by the sub-city authority seems not plausible. The first thing most of victims are not live with leprosy and only very a few victims were living with such disease. Second, the government has the duty to control peoples engaged in illegal acts. Thirdly, it was possible to relocate the victims in manner that cannot disturb their social relationship.

The victims have quite different arguments. As it mentioned above, they have recurrently resisted the pushing forward of the rubbish dump towards their residences. Of course, they have admitted meeting was held between the community and government officials. The points of disagreement were the issue raised in the forum. According to the victim, government officials have not raised environmental threat as points of discussion and they stick on points that the area is demanded for development and the government wants that land. On the other forum, government officials come up with the idea that the community should agree to leave the area and the government covers the cost of house lease. However, the residents refused this idea not to leave the area without compensation to their property and substituted land. Additionally, most of the victims have live stocks and they feared that no one can lease a house with their castles in Addis Ababa.

The researcher learned from the deputy manager of the city administration seems to strengthen the points raised by the victim. The Deputy Manager said that the “city administration had no

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Interview with Mr. Feyissa Feleke, cited above note 211.

³¹¹ Ibid.

plans to relocate residents to another safe area and our plan was to close the open dump”.³¹² According to Konjit, no researches were conducted to study the level of environmental risk, and no information is given to the citizens on this regard and the problem is/was noticeable.³¹³ According to the Solid Waste Disposal and Recycling Agency, “researches were conducted both at the institutional and individual level to identify the extent of environmental risk”.³¹⁴ The agency wrote letters to the city administration about the environmental risk of the vicinity.³¹⁵ According to the agency officials, “the problem was the city administration gave a deaf ear to our concerns, and the environmental threat triggered on health and life the residents.”³¹⁶ From these facts, one can easily understand that the government was reckless to inform and create awareness of the public about environmental risk of the vicinity around Repie. By doing it, the government is accountable for violation of environmental rights. It obvious, “states have an obligation to assess and disclose foreseeable environmental risks as part of their positive duties to shelter, respect, and fulfill various human rights”.³¹⁷ The right to access environmental information is considered as vital environmental procedural rights because it “viewed as a prerequisite to the exercise of other procedural rights relating to public participation and access to remedies, and these procedural rights have been interpreted as critical to the exercise of substantive human rights, such as the rights to life, health, and privacy”.³¹⁸ The government was negligent to prevent the environmental risk that the inhabitants faced off. Minimal efforts were done to raise the awareness of the nationals about the environmental hazard that they encountered. Even detail information was not given to inhabitants when a few forums were arranged to discuss on the issue of evacuation.

4.5.6. Access to justice and other remedies

Access to environmental justice and other remedies are the other bedrock of environmental rights that needs active discharge of government obligation. As it mentioned in chapter three, this right is recognized in Ethiopia using constitutional stipulation and adherence of international commitments. It plays a pivotal role by ensuring environmental democracy. “Access to justice

³¹² Interview with Mrs. Konjit Debela, cited above note 201.

³¹³ Ibid.

³¹⁴ Interview with Mr. Atiku Leggesse, cited above note 217.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ *Öneryildiz v. Turkey*, cited above note 21, Para. 90.

³¹⁸ CESCR, General Comment No. 14, p.3, UN Doc. E/C.12/2000/4 (Aug. 11, 2000).

allows people to hold government agencies, companies and individuals accountable in case they cause environmental damage”.³¹⁹

Obviously, the rights (environmental) of the inhabitants lived around the vicinity of Repie/Koshe was violated and needs remedies that redress the damage. However, it is problematic to weigh whether the right to access environmental justice was violated or not. The victims brought their case neither before a court of law or any other quasi-judicial institution empowered to decide environmental complaints. Although all the victims believe that the tragic incident happened due to the negligence of the government/the city administration, they are not aware of the possibility of demanding the government to rehabilitate and compensate victims in a formal way.³²⁰

Access to environmental justice or remedies involves “normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight”.³²¹

According to Amare Tesfaye, to redress the violation of rights three basic cumulative requirements should meet together.³²² These three normative preconditions are the existence of legally protected rights (claim); the existence of an institution having judicial or quasi-judicial power to adjudicate socio-economic rights (setting); and the availability of remedies (the consequence of the claim).³²³ As it is discussed above, in Ethiopia there are plenty of environmental privileges protected by domestic and international laws to which Ethiopia is a party. Concerning the existence of an institution, having judicial and quasi-judicial powers that can adjudicate the violation of right also is not the point of an altercation in Ethiopia.

However, in relation to the institutions, there are some points that need to be improved in order to flourishing access to environmental justice. According to Yenehun Berlie, there are factors that impeding the blooming of environmental justice in Ethiopia.³²⁴ The first one is a very powerful executive and a relatively weak judiciary, which does not take initiatives to protect human rights. Others are lacks of necessary courage on parts of the judiciary to enforce constitutional rights, our legal tradition, weak separation of power with higher domination of executive organs and

³¹⁹ Azene Endalamaw Basazinew, cited above note 72, P.4.

³²⁰ Interview with (confidential), cited above note 227.

³²¹ Necessary Condition: Access to Justice, United States Institute of peace Making Peace Possible, available at www.usip.org/...and.../access-justicepdf

³²² Amare Tesfaye, cited above note 172, P.86.

³²³ Ibid.

³²⁴ Yenehun Berlie, cited above note 167, P.331-340.

lack of awareness about environmental rights are the major bottlenecks that hinder environmental justice.³²⁵

On the issues of compensation/remedies, it is difficult to examine whether enough compensation was given to victims or not. The victims refrain from taking their case before the court of law. All the rehabilitation held, the damages have been given and the relief supplied to the victims determined by the cabinet of the city administration.³²⁶ As it is mentioned above, the city administration provided a different package of aid depending on the relief and support collected from the public.

The package of rehabilitation is not without raising murmuring on the parts of the victims. Although the victims are exceedingly rejoicing on the effort of Ethiopian people, they have a grievance on the way collected relief distributed.³²⁷ The first complaint related to the amount of money given to them for house building is not sufficient to build the house as per the prescription of the city's plane.³²⁸ They are given one million birr for each family (for 16 families) and required to build G+ 3 apartments. As this writer directly observed the construction sites, most of the houses of the victim are at the level of the basement. The city administration also believes that the amount of money given to the victims is not enough to build a house in compliance of the city master plane.³²⁹ However, "the reparation of the damages...requires, whenever possible, the full restitution which consists of the reinstatement of the situation prior to the violation".³³⁰ It may be extended to "remedy the consequences of the breaches and impose the payment of compensation for the damages caused".³³¹

The second complaint of the victim related with the calculation of compensation held without consideration of their source of income from the lease of the service houses. The lump sum of money given to the victim as compensation of house was valued without calculating the income they generate from leasing service houses.³³² As per the victims' view, they prevented from gains of income or the rubbish slide reduced/prevented the source of their income and that leads

³²⁵ Ibid.

³²⁶ Interview with Mr. Abale, cited above note 209.

³²⁷ Interview with (confidential), cited above note 227.

³²⁸ Ibid.

³²⁹ Interview with Mr. Abale, cited above note 209.

³³⁰ Sawhoyamaya Indigenous Community v. Paraguay cited above note 285, P.91.

³³¹ Ibid.

³³² Interview with (confidential), cited above note 227.

them to live in dire condition.³³³ Such types of problem can be solved if the case would have been taken before the courts of law. On this regard, the inter-American courts of human rights ruled “pecuniary damage involves a loss of, or detriment to, the income of the victims, the expenses incurred as a result of the events and the pecuniary consequences that may have a cause-effect link with the events in the instant case”.³³⁴ Therefore, the grievances of the victims seem sound.

The third complaint related with the difference of money collected from the public and distributed to them. According to the victims, the money collected in their name from the public is double folding the amount of money that has been given to them.³³⁵ From the total collected money above 41(forty-one) million birr paid to the victim for the different reason.³³⁶ According to Addis Ababa city government labor and social affairs, nearly 56 (fifty-six) million birr still remain closed accounts of the committee.³³⁷ The victims believe that the government collected the money in their name and spent for it’s on purpose.³³⁸ The researcher believes that such doubts/suspicion emanated from lacks of openness on parts of the government on the amounts of collected money and the fate of the remaining money deposited in closed accounts of the committee.

The fourth grumbling emanated from the construction of alleged apartment building for those 13 families. The government promised to build a communal apartment for those 13 families who are majority reached children of 16 legal residents lived in cohabitation with the latter. The alleged apartment is not still constructed. The city administration connects the problem with design defects.³³⁹ Whatever the justification, the apartment is not still constructed, and it became the source of complaints of the victims. Those illegal settlers are relatively happy on aid have been given to them.

4.6. General remedies for improper waste disposal that cause environmental damage

It is important to address, some remedies that redress the victims of improper waste disposal in brief and general manner. The first one is a civil remedy. Civil remedies are different in type and

³³³ Ibid.

³³⁴ Sawhoyamaya Indigenous Community v. Paraguay, cited above note 285, P.99.

³³⁵ Interview with (confidential), cited above note 227.

³³⁶ Interview with Mr. Abale, cited above note 209.

³³⁷ Ibid.

³³⁸ Interview with (confidential), cited above note 227.

³³⁹ Interview with Mr. Abale, cited above note 209.

number.³⁴⁰ It targets the full restitution of the victim to the previous position as much as possible or remedying the consequence of an injury. Civil remedies may include compensation, injunction, restitution, and remediation.³⁴¹ Compensation is given in terms of money and it includes pecuniary and non-pecuniary damage. Pecuniary damage can be calculated and it includes “loss of, or detriment to, the income of the victims, the expenses incurred as a result of the events and the pecuniary consequences that may have a cause-effect link with the events in the instant case”.³⁴²

Non-pecuniary damage is difficult for calculation. However, it must include “distress and suffering caused directly to the victims or their relatives, tampering with individual core values, and changes of a non-pecuniary nature in the living conditions of the victims or their families”.³⁴³ In Ethiopia’s law, there are some clues about the compensation of environmental harm. Solid Waste Management Proclamation states “any owner of solid waste disposal site should be civilly liable, regardless of fault, for any damage caused to the environment, human health or property in the course of its operation or after its closure”.³⁴⁴ According to Dejene, courts can order “such person to clean up the pollution he has caused or to restore the environment to its previous position or to pay compensation to those who are victimized by his operation”.³⁴⁵ Other civil remedies such as injunction or compensation, under tort law can be ordered by the court if the claimant capable to prove the causal link between the environmental harm and the harm sustained.³⁴⁶

The second possible redressing mechanism is an administrative measure. An institution established to administer and control environmental matters takes this measure. Various environmental legislation of Ethiopia empowered the concerned institution to take different environmental protective measure. For instance, environmental pollution control proclamation empowered the concerned authority to take “an administrative or legal measure against a person who, in violation of law, releases an, pollutant to the environment”.³⁴⁷ It has the power to

³⁴⁰ Dejen Girma Janka, “Remedies for Environmental Wrong-doings in Ethiopia”, *Mekelle University Law Journal*, Vol.2 No. 1 (2013), P.6.

³⁴¹ *Ibid*, P.6-7.

³⁴² *Sawhoyamaya Indigenous Community v. Paraguay*, cited above note 285, P.99.

³⁴³ *Ibid*.

³⁴⁴ Solid Waste Management Proclamation, cited above note 139, Art. 16.

³⁴⁵ Dejen Girma Janka, cited above note 340, P.12.

³⁴⁶ *Ibid*, P.13

³⁴⁷ Environmental pollution control proclamation, cited above note 174, Art. 3/2.

demand the polluter to install sound technology minimize pollution or cost of cleanup including closure and relocation of the enterprise.³⁴⁸

The third possible remedy is a criminal prosecution. The criminal code of Ethiopia criminalizes anyone, who in violation of the law, pollute the environment.³⁴⁹ Mismanagement and/or unlawful transfer of hazardous waste or other material, implementing the needed project without impact assessment or making a false statement about the assessment are also bringing criminal liability.³⁵⁰ Environmental legislations of Ethiopia also provide criminal liability against those suspects of environmental harm. For instance, Ethiopian Environmental Pollution Control Proclamation is prescribing various crimes for environmental harm.³⁵¹ According to this proclamation, criminalize mismanagement, misinformation or ill trafficking of hazardous waste or other materials.³⁵² The Environmental Impact Assessment Proclamation prescribes some criminal acts related with presentation false of information of the impact assessment, failure to keep records and other related transgressions.³⁵³ The Solid Waste Management Proclamation,³⁵⁴ Water Resource Management Proclamation³⁵⁵ and the Public Health Proclamation³⁵⁶ can be mentioned as examples that criminalize environmental harm.

³⁴⁸ Ibid.

³⁴⁹ The criminal code of Federal Democratic Republic of Ethiopia Criminal, 2004, come in to force 9 may 2005, Proc. No. 414, Art. 519.

³⁵⁰ Ibid, Art. 520-521.

³⁵¹ Environmental Pollution Control Proclamation, cited above note 174, Art. 12-17.

³⁵² Ibid, Art.15.

³⁵³ Environmental Impact Assessment proclamation, cited above note 15, Art. 18.

³⁵⁴ Solid Waste Management Proclamation, cited above note 139, Art. 17.

³⁵⁵ Water Resources Management Proclamation, 2000, Proc. No. 197, Art. 29, Federal Negarit Gazeta, 6 th year No.25.

³⁵⁶ Public Health Proclamation,2000, Proc.No.200, Art. 20, Federal Negarit Gazeta, 6th year No.28.

CHAPTER FIVE

Conclusion and recommendations

5.1. Conclusion

Improper waste disposal is one of the damaging factors of the environment. Damaged environment again affects various rights of the people including environmental rights. Environmental rights get paramount acceptance in this contemporary world. Countries recognize environmental rights in various manners including direct incorporation to a constitutional stipulation, promulgating subsidiary laws and policies or by accepting international commitments. These environmental rights are substantive and procedural in nature. Substantive environmental rights bestow individuals/groups an entitlement to live in a clean and healthy environment. It concerns about having a pollution free environment compatible with human health and wellbeing. Procedural environmental rights, on the other hand, chiseled to flourish the environmental decision-making. It plays a pivotal role in protecting the environment and enriching environmental democracy in decision making that directly or indirectly detrimental to the environment. It entitles individuals or groups to access environmental information, to participate in environmental related decision-making and to access environmental justice and other remedies.

Like any other rights, environmental rights brought an obligation to a given state/government. It is urging the government to take protective, respective and fulfilling measures. Accordingly, the government has an obligation to prevent environmental damage, refrain from harming the environment and providing a necessary situation that enables citizens to exercise environmental rights. Therefore, the state has an obligation to prevent environmental degradation, abstain from depleting the environment and providing a means that the citizen to participate in environmental decision-making and to challenge it. Accordingly, the government has the obligation to ensure given waste disposal is proper and not detrimental to human health and the environment.

Improper waste disposal brought state responsibility on various grounds. The grounds that brought state responsibility include failure to conduct a private activity which affects the environment, directly engaging in an activity that damage an environment, or by denying necessary procedural environmental rights such as access to necessary environmental information, participation in decision making and access to environmental justice and other

remedies. In Ethiopia, there are laws that protect environmental rights. Starting from the constitution up to various national laws and policy and international commitments adhered by the country recognize environmental rights. There is also institutional setup established for the protection of the environment in general and environmental rights in particular.

Despite this environmental rights recognition and corollary obligation ensuing from it, the situation around the vicinity of Repie has a much depleted environment. Repie is an open dump, serving the city as rubbish dumping site nearly for five decades, which is/was unfenced or no buffer zone. The site of Repie boldly has known in its unscientific establishment, poor management, and weak controlling mechanism. This environmental harm brought injurious impact on the health and the lives of citizens inhabiting around Repie. The worst thing was the rubbish heap slid that brought a number of casualties.

A number of environmental and related rights violated due to the damaged environment of around Repie. The environmental situation of Repie was not in a manner that enables citizens to exercise their rights. The first environmental right violated was the right to a clean and healthy environment. The vicinity around Repie has the polluted environment that has bad smell and effluent that disturb in the long distance of the city. The role of the government to cure that environment was very nominal saving the effort taken recently. Therefore, the government violated the rights of citizen's failure to protect the environment and directly engaging an activity that affects the environment rights of citizens.

The second violated right is the right to health. The sound environment is the prerequisite for the realization of the right to health. It is naivety to imagine the right to health in a poor and damaged environment. The place around Repie was exposing inhabitants to various health problems. The area has poor sanitary and hygiene with a noxious odor, which endangers the health of inhabitants. The other violated right is the right to life due to an unmanageable rubbish site. That damaged environment aggravated by rubbish heap slide claimed the life of 115 (one hundred-fifteen) citizens. The role of the government to take different protective measure was not noticeable.

Procedural environmental rights were also disrupted. The rights to access to environmental information, public participation in environmental decision-making and access to environmental justice have been at stake. The government was lenient to inform the public about the environmental risk of the area, to conduct research to identify the level of environmental harm

and to inform citizens about the health danger ensuing from residing there. The government also underestimated the concerns of the citizens about the rubbish heap. Inhabitants repeatedly expressed their worry and grievance to the government when rubbish heap pushed forward towards their residence. However, the government prefers to use force to suppress the quest of inhabitants.

Concerning access to environmental justice and other remedies, it is difficult to gauge the level of violation. The victims have not taken their case before judicial or quasi-judicial organs. The compensation and other emergency relief were given to the victims by the government collecting it from the public. However, victims have complained about the amount of compensation and the extent of the relief given to them. One important point that needs underscore here is that the issue of standing. Environmental justice best realized when there is the room of liberalization of standing. Although we have laws that enable public interest litigation, some issues need improvement. Improving the attitude of our judges to enforce constitutional rights, liberalization of some laws to make a clear enabling environment of public interest litigation, encouraging the participation of civil societies and increase the awareness of citizens need special attention to flourish environmental justice.

All in all, the environmental damage happened around Repie brought responsibility to the government on two grounds. The first ground is the government has damaged the environment for a long period. The government has used the area for dumping garbage and household refuse without developing infrastructure and conducting necessary improvement. The second ground is the government failed to discharge its obligation to protect and provide a necessary condition to exercise environmental rights. The government disrupted innumerable environmental rights in contravention of its obligation.

5.2. Recommendations

The rubbish landslide of Repie was the result of excessive environmental damage, and to prevent related tragic slide, the following recommendations should be suggested.

- Rubbish dumpsites should be constructed based on scientific requirements suggested for such purpose. It should be constructed in the manner that could not pose danger on the lives and health of individuals and the environment as well. Especially recycling of solid waste should be given priority. Apart from construction, strong controlling, monitoring and managing system should be employed to reduce the negative externalities of the rubbish dumpsite. If the site is

open dump area like Repie, environmental auditing should be held. If the result of the auditing reveals the continuation of the site poses danger on public health and environment, measures that improve or modify the site should be taken.

- Buffer zone should be established. There should be a free area between the rubbish heap and the residents at least to reduce direct death ensuing from the slide. To have a buffer zone, the site should have map and plan in order to demarcate the clear boundary of the site and to freeze the area between residents and the site. If creating buffer zone became difficult for a different reason, it can be possible to build fencing to separate rubbish tip from human contact and to reduce its slide casualties.

- Moving inhabitants into another safe area. It can be perpetual solutions to relocate citizens that reside around the site are exposed to danger. Before requesting the residents to leave the area, there should be a mutual consensus about the environmental risk they encountered. There are people who still reside around Repie despite imminent danger of environmental risk is encountered them. These citizens should be moved to another safe area before the related accident happens.

- Awareness of the citizens about environmental rights should be increased. The government should create awareness of citizens about their environmental rights. Interested civil societies should discharge their own obligation on this regard. It enables the citizen to claim their rights when they deemed it violated. For instance, in Repie case, citizens understood the danger posed by the rubbish tip and resisted it by different means. However, they did not dare to take the case before formal institutions due to lack of awareness. Victims have complained about the amount of compensation given to them. However, they are not aware of holding responsible the government before the courts of law.

- Encouraging civil societies to participate in public interest ligation in order to bloom environmental justice. The existing laws prohibit civil societies from engaging in such types of business. It is detrimental to environmental rights and liberalization our law should not be underestimated. However, the upcoming civil society law expected for addressing such an issue.

- Those officials showed negligence to prevent the environmental risk and to save the lives of nationals should be held responsible. Such types of liability give mental relief to the victim and make officials alert to discharge their obligations. Of course, there could be responsible officials after the investigation accomplished and opened to the public.

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