ADDIS ABABA UNIVERSITY

College of Law and Governance Studies

The place and Relevance of Public interest litigation in Ethiopia

By: - Kassahun Mulatu Gurmu.

Advisor: - Dr. GetachewAssefa (Associate professor of law)

A Thesis Submitted to School of Graduate Studies of Addis Ababa University in Partial Fulfillment of the Requirements for Degree of LLM in Constitutional and Public law.

April, 2017
Addis Ababa, Ethiopia

Addis Ababa University College of Law and Governance Studies

The place and Relevance of Public interest litigation in Ethiopia

By

Kassahun Mulatu Gurmu

Advisor

Dr. Getachew Assefa (Associate professor of law)

A Thesis Submitted to School of Graduate Studies of Addis Ababa University in Partial Fulfillment of the Requirement of Masters of law (LLM in Constitutional and Public law).

April, 2017
Addis Ababa, Ethiopia

Declaration

I, Kassahun Mulatu Gurmu, declare this thesis is my original work and has not been submitted for a degree in any other University and all sources of materials used have been duly acknowledged.

Declared by

Name: - **Kassahun Mulatu Gurmu**

Signature_____

Date_____

Name of Advisor: - **Dr. Getachew Assefa (Associate professor of Law)**

Signature_____

Date_____

Approval Sheet by the Board of Examiners

The place and Relevance of public interest litigation in Ethiopia

Submitted to College of Law and Governance studies of Addis Ababa University, in partial fulfillment of the requirements of Masters of law

By: kassahun Mulatu Gurmu.

Approved by Board of Examiners

	Name	*Signature*
1. Advisor	**Dr. Getachew Assefa** (**Associate professor of law**)	_____
2. Examiner	**Yenehun Birlie** (**Assi. Professor of law**)	_____
3. Examiner	**Dr. Yonas Birmeta**	_____

Acknowledgement

First and foremost, praises and thanks to the God, the Almighty, for His showers of blessings throughout my research work to complete the research successfully.

Then, I would like to express my deep and sincere gratitude to my research advisor **Dr. Getachew Assefa** (Associate professor of law at Addis Ababa university school of law). His dynamism, vision, sincerity and motivation have deeply inspired me. He has taught me the methodology to carry out the research and to present the research works as clearly as possible. It was a great privilege and honor to work and study under his guidance. I am extremely grateful for what he has offered me. I would also like to thank him for his friendship, empathy, and great sense of humor.

I am also extremely grateful to my parents for their love, prayers, caring and sacrifices for educating and preparing me for my future. Besides that, I wouldn't forget the time when we studied and research for information in the library together.

Finally, my thanks go to all the people who have supported me to complete the research work directly or indirectly.

Acronym

- APAP----------Action professional Association for People
- CCI----------Council of Constitutional Inquiry
- ELA----------Ethiopian Lawyers Association
- EWLA----------Ethiopian Women Lawyers Association
- FDRE----------Federal Democratic Republic of Ethiopia
- HOF----------House of Federation
- PIL----------Public Interest Litigation
- UEDF----------United Ethiopian Democratic Forces
- USA----------United States of America.

Abstract

Similar to the need for a democratic constitution and modern laws, the realization of effective access to justice holds an indispensable place. Without effective means of redressing injustices, constitutionalism and rule of law are unattainable and citizen's rights recognized by the Constitution will be a mere wish. However, effectively realized access to justice serves as a means to enforce rights and deter unlawfulness. A country having liberal rules of standing for enforcing constitutional rights has more enhanced public participation in ensuring the observance of laws. To the reverse jurisdiction having strict procedural rules of standing will unreasonably prevent citizens from protecting the Constitution and other laws. Even though its level of implementation and the subject matter it involves differ across the world, Public interest litigation, which is the result of liberal rules of standing, has been successfully utilized to vindicate public interests using law and judicial bodies. It has shown significant achievements in countries like USA, India and South Africa for realizing justice mainly to those who are unable to access justice due to various forms of barriers and disabilities.

Though PIL is not familiar with the Ethiopian legal system, there are some few subsidiary laws in the country which expressly provide for broad rules of locus standi for instituting proceeding. However, even though the need for PIL is undeniable, the PIL experience of our country is near to none. The constitutional space of PIL in Ethiopia is one of a constitutional issue surrounded by controversial arguments of legal scholars. Therefore, the study has attempted to thoroughly examine the constitutional place of public interest litigation in Ethiopia by indicating its relevance if adequately introduced into the country's legal system. The study has also identified some of the main problems attributed to the weak practice of PIL in the country's legal system. Basing on the gaps and problems identified by the study, relevant recommendations are provided.

TABLE OF CONTENTS

CHAPTER ONE

1. Introduction

The term public interest litigation ("PIL") originated in the United States in the mid-1960s.[1] In the nineteenth century, various movements such as the legal aid movement and the participation of lawyers and ordinary citizens bringing cases of the underprivileged to fight injustices in that country have contributed to public interest law, which is a part of the legal aid movement.[2] Most literature defines Public Interest Litigation as a legal action brought before a court of law for the enforcement of public interest or general interest in which the public or a section of the society commonly shares.[3] Therefore, PIL is a court proceeding in which an individual or group seeks judicial relief in the interest of the public and not for private purposes.

PIL has evolved and shown various developments across different parts of the world, basing on common objectives but within specific conditions and different legal traditions.[4] "Depending on the national social, economic and political circumstances and the independence of the judiciary, there are different pressures and opportunities for PIL''.[5] In some jurisdictions PIL can be instituted in relation to almost all social, economic and environmental rights, whilst, in others, its application is restricted to a specific subject.[6] Both Substantive and procedural legal requirements for the use of PIL differ widely between different jurisdictions.[7]

Concerning the purpose it has, there is considerable consensus and it is widely argued as PIL enhances enforcement of laws, leads to reform of unconstitutional laws, deter unconstitutional acts and encourage governments to make their human rights obligations meaningful to all parts of society.[8] It encourages government accountability for the fact that government agencies perform better when they know that they can be held accountable by the courts.[9] PIL Provides

[1] P.D. Mathew, "public interest litigation'', Social Work Intervention with Individuals and Groups, p. 310.
[2] Ibid.
[3] Id, p. 309.
[4] Christoph Scwarte, public interest litigation, International Institute for Environment and Development, p. 3.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Parmanand Singh, "promise and perils of public interest litigation in India'', The Indian law institute, (2010), p. 173.
[9] Ibid.

enforcement assistance since no government has absolute capacity and resources to monitor and enforce all potential violations of the law.

Where individuals, groups, and communities do not have the necessary resources to involve in litigation, PIL provides an opportunity for realizing constitutional justice using the law and judicial bodies.[10]

2. Statement of the Problem

Public interest litigation is an important instrument for vindicating constitutional rights of people, mainly when the victims are not in a position to access justice or to challenge injustices.

In countries where the jurisprudence of PIL is developed, it has been used as an essential legal instrument in which the general public or societal interest is upheld by court decision to restrain unlawfulness, arbitrariness, violation of rights and injustices affecting the society mainly those who are poor, underprivileged, minority, disadvantaged, marginalized, vulnerable and unrepresented or under- represented.

Unless the legal system of the country embraces public interest litigation, the fundamental human rights and freedoms enshrined in the constitution and other subsidiary laws will not be effectively implemented in a country like Ethiopia where the majority is poor, illiterate and where a significant number of minorities and marginalized people exist. Lack of access to legal information is a challenge which is a forefront. Let alone the general public, even members of the legal profession and government institutions have problems of accessing legislations. Although Proclamations (the primary legislation) and regulations (delegated legislation by the Council of Ministers) are published in the official gazette, there are no creative and effective means of disseminating them to make them accessible to the public. The Amharic and English language in which the federal laws of the country are published is not easily understandable by a considerable number of the population which speaks other languages in the country. Directives issued by individual government institutions are also inaccessible and vague. Since the number of practicing lawyers is few, legal services are either inaccessible or unaffordable to the majority of the population.

[10] Ibid.

In the absence of public interest litigation, making the government transparent, accountable and amenable to basic constitutional principles and governance is more challenging. Study revealed that, in many developing countries, laws benefiting the poor exist on paper without being implemented unless the poor or their allies push for the law enforcement.[11]PIL helps the dissatisfied section of society to have access to justice and judicial remedy rather than resorting to violence.

Since the practice of public interest litigation in Ethiopia is not well known and developed, it is important to critically analyze the place of public interest litigation in the country's legal system in relation to the relevance it has which it might have if introduced adequately in the legal system of the country. On the other side, there are recent studies in Ethiopia, which indicate as a violation of environmental standard and human rights violations are rampant in both local investment activities and transnational corporate activities.[12] There are also studies which revealed as environmental pollution is increasing from time to time in urban areas of the country including Addis Ababa.[13]

These all raised problems are challenges of access to justice in Ethiopia. So in order to mitigate such challenges, it is better to conduct a detailed study to explore the extent our legal system gives space for public interest litigation. In a country where lack of good governance is high as officially admitted by the EPRDF, the party ruling the country, both at the center and regional level, public interest litigations are essential to challenge unlawfulness and to contribute for rule of law, democratic constitutionalism, accountability and transparency of government.

Therefore, investigating the legal space of public interest litigation in Ethiopia and creating awareness of concerned stakeholders contribute a lot in ensuring justice within the community and for the country's transition to democracy.

[11] Stephen Golub, beyond rule of law orthodoxy the legal empowerment alternative, (Carnegie Endowment for International Peace, Number 41, October 2003), p. 3.
[12] Mizanie Abate Tadesse, "Transnational Corporate Liability for Human Rights Abuses: A Cursory Review of the Ethiopian Legal Framework'', Mekelle University Law Journal, Vol. 4 (June 2016), p. 69. See also Ben Daley, Environmental issues in Ethiopia and links to the Ethiopian economy, October, 2015, p, 10. Accessed at http://dx.doi.org/10.12774/eod_hd.september2015.daleyb, on December 27, 2016.
[13] Reporter,the Amharic version, (Ethiopia), March 12, 2017, p. 3, section.1.

3. Research Questions.

1. Does our legal system allow access to justice through public interest litigation, including cases involving constitutional review?
2. Is public interest litigation relevant for Ethiopia?
3. Are the existing laws in Ethiopian legal system conducive and sufficient for public interest litigation?
4. Are there PIL practices in federal courts and organs interpreting the constitution?

4. Objectives of the Study.

The general objective of the study is exploring the place and relevance of public interest litigation in the Ethiopian legal system. For the comparative purpose, the thesis has explored some selected foreign experience of public interest litigation as well as the contribution it has in building enhanced democratic constitutionalism and socioeconomic justice. Specifically, the thesis has the aim of examining the place of public interest litigation in FDRE constitution and other subsidiary laws of the country. After thoroughly examining the place of PIL in the country's legal system, analyzing the adequacy of existing laws governing PIL and the practice of PIL is the other main objectives of this thesis.

Finally providing a recommendation to alleviate basic legal gaps and problems identified by the study is the objective addressed.

5. Significance of the Study.

The thesis has the following significances:-

1. It indicates the place of public interest litigation in the Ethiopian legal system in providing access to justice including constitutional justice.

2. It indicates how PIL is relevant for ensuring the observance of the constitution.

3. It serves as a reference for policy and lawmakers to make the necessary policy and legal reform in relation to public interest litigation.

4. It provides basic awareness for any concerned body in relation to public interest litigation in Ethiopia.

5. The study also serves for other researchers as a springboard to conduct detailed study in the area.

6. **The Scope of the study.**

The study exhaustively investigates the place and relevance of public interest litigation in the Ethiopian legal system. Accordingly, federal laws and regional state constitutions are examined to identify the legal place given for public interest litigation. In order to analyze the practice of PIL, the case experiences of federal courts (both located in Addis Ababa and Dire Dawa) and the organ interpreting the constitution is assessed.

7. **Methodology of the Study**

The study critically analyzed the place and relevance of public interest litigation in the Ethiopian legal system using both primary and secondary sources of data. The study used interviews with personnel's of the concerned organ and relevant laws as a primary source of data. Books, articles, cases, documents and others research are utilized as secondary source of data. The study has been conducted interview with judges of Federal Supreme Court cassation bench based on purposive sampling. Similarly the study has also conducted interview with NGOs working in the justice sector such as Ethiopian women lawyers Association and Ethiopian lawyers Association based on purposive sampling. For analyzing the practice of PIL, the study exhaustively searched PIL cases from database of Federal courts (both in Addis Ababa and Dire Dawa) and CCI. In addition to finding PIL cases from databases, Judges of federal high court and the Supreme Court are consulted to identify the existence of PIL practices based on purposive sampling.

The study has a nature of qualitative research for the fact it devotes on the reasons, justifications or logical arguments of legal provisions and available court cases to show the place of public interest litigation in the country's legal system. The study has also indicated public interest litigation experiences of some selected countries such as India, South Africa, Uganda and Kenya where the jurisprudence of public interest litigation is well known.

8. Limitations of the Study.

The Inadequacy of literatures which are written on public interest litigation of Ethiopia is one of the main limitations of the study. The lack of awareness about public interest litigation among the court and CCI staffs mainly registrar personnel's has made finding PIL cases from courts and CCI very challenging.

CHAPTER TWO

2. Public Interest Litigation: Conceptual Framework and Selected Foreign Experiences

2.1. Meaning, origin, features, and Purpose of public interest litigation (PIL)

2.1.1. The Meaning of PIL.

Public interest litigation has been subject to different, but related scholarly definitions. In terms of naming, it is referred as 'strategic litigation' or 'impact litigation'. In 1976, Professor Abram Chayes of Harvard Law School coined the phrase "public law litigation'' to refer the practice of lawyers in the United States seeking to bring social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms''.[14]

This is a relatively explained definition which defines PIL as using the law for social change through court judgments leading to legal reform, legal enforcement and expressing the public interests than the definition of PIL which Black law dictionary provides as:-

> "Public interest litigation, also known as strategic litigation or impact litigation, is a legal action initiated in a court of law for the enforcement of public interest or general interest, in which the public or class of the community has a pecuniary interest or some interest by which their legal rights or liabilities are affected".[15]

In 1976 the Council for Public Interest Law set up by the Ford Foundation in the USA defined "public interest litigation" in its report of Public Interest Law, as follows:

> "Public Interest Law is the name that has recently been given to efforts which provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant

[14] Helen Hershkoff, "Public Interest Litigation: Selected Issues and Examples", p. 1. Accessed from internet at http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/PublicInterestLitigation%5B1%5D.pdf,last accessed on April 3, 2017.

[15]Serges Djoyou Kamga, "an assessment of the possibilities for impact litigation in Francophone African countries", African human rights law journal, 14(2014), p. 451.

interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others''.[16]

In this definition, we can observe that PIL is a means which can be used as a tool to bring public interests or rights which are in need of justice but unable to be brought before justice organs due to various barriers. So the above definition forwarded by the Ford Foundation considers PIL as an option of accessing justice when justice is unattainable through other available means of accessing justice.

In a leading judgment in 1982, Justice Bhagwati (who served as chief justice of Indian Supreme Court) described PIL as "litigation undertaken to redress the public injury, enforce public duty, protect collective or "diffused" rights and interests, or for the vindication of the public interest''.[17] This definition also elaborates Professor Abram Chayes's definition of PIL earlier noted.

Expressing concisely, Schwarte defined public interest litigation as using litigation for the public good.[18] The other sound definition of PIL provided by The South African Law Reform Commission is "public interest action as one brought by a plaintiff who, in claiming the relief he or she seeks, is moved by a desire to benefit the public at large or a segment of the public".[19] The intention of the plaintiff is to protect the public interest, not his or her own interest, although he or she may incidentally achieve that end as well.[20]

All the above definitions have commonalities, but with various forms of expression defined public interest litigation as bringing and litigating legal case entailing public interest before organ having judicial power in seeking a judicial remedy that has a purpose of redressing the public wrong.

---

[16] B.L. Wadhera, "Public Interest Litigation", Universal Law Publishing Co. Pvt. Ltd, (2009), P.144.
[17] Monika Sangeeta Ahuja, **"**Public interest litigation in India; A Socio-legal study'', Published by Pro Quest LLC, (2014), p. 81.
[18] Joseph Otteh (edition), Litigating for Justice, A primer on Public interest litigation, Produced by access to justice, p. 8.
[19] Melaku Adinew, "the place of public interest litigation in the Ethiopian legal system with a particular reference to the charities and societies proclamation'',International Journal of Law and Policy Review, Vol. 4 (July, 2015), p. 223.
[20] Ibid.

Therefore analyzing the above definitions helps to understand Public interest litigation as a legal notion that has a broader social goal as part of its purpose and mainly targeted to achieve a certain public good through a court judgment. While most legal cases focus on obtaining a certain result for a specific client, public interest litigation focuses on achieving social change that will impact the lives of many people through a single case. As a result, most public interest litigation involves human rights violations that affect many people, such as discrimination, torture of political opponents, gender-based violence, or concerns about freedom of speech or freedom of association, right to exercise constitutional rights, consumers' right and so on.[21]Therefore Public interest litigation has broadened the accessability of justice for citizens by relaxing the traditional rule of locus standing.

In line with the above meanings attributed to PIL, this study adopted a working definition of PIL as a court proceeding in which an individual or group seeks relief in the interest of the general public and not for sole private purposes by bringing justiciable matters to the court by way of litigation.

2.1.2. Historical Origin of PIL

Most scholars trace the history of public interest litigation to the early African-American struggle for equality, that is, the civil rights movement in the USA. As Hershkoff stated, commentators frequently date the emergence of public law litigation in the U.S. to the celebrated campaign which accompanied the case of Brown v Board of Education.[22] In this case, the Warren Court declared that the segregation of children in public schools solely on the ground of races was a violation of equal educational opportunities clause of the country's constitution.[23] The court in its decision emphatically stated that "In the field of public education, the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal''. [24]

[21]B L Wadhera, cited above at note 16, p. 46.
[22] Helen Hershkoff, cited above at note 14, p. 3. See also Laura Van den Eynde, Interpreting Rights Collectively Comparative Arguments in Public Interest Litigants' Briefs on Fundamental Rights Issues, (2015), p. 9. Accessed from internet at http://droit-public.ulb.ac.be/wp-content/uploads/2015/12/introductorychapterthesisLVDE.pdf, last accessed on April 12, 2017.
[23] Ibid.
[24]Ibid.

Consolidating the American origin of public interest litigation, Dr. Rajeev Dhavan, described public interest litigation as "a culture-specific phenomenon which was developed in America and confidently exported to the rest of the world".[25]

"A number of movements in the USA are also cited as the cause of public interest law: the first was the legal aid movement which was started during the 1870s and the institutionalization of pro bono work.[26] Secondly, the progressive legal reform in which new legislation protecting the consumer and workers is enacted.[27]The third cause for the emergence of public interest litigation in the USA is the activities of the American Civil Liberties Union and the National Association of the Advancement of Colored People and its Legal Defense and Educational Fund.[28]

Therefore, public interest litigation is mostly said as it originates from the United States since the landmark case Brown v Board of Education of Topeka in 1954, in which the US Supreme Court abolished the segregation of public schools by race, though some scholars believed it to have an earlier origin.[29]

2.1.3. Basic Features of PIL.

PIL has its own features which make it different from the ordinary course of court litigation. Some of the main features of PIL are elaborated in this section.

One of the main features of PIL is its liberalization of the traditional rule of *locus standi,* or standing, which requires litigants to show personal legal injury in order to maintain an action for judicial redress.[30] This means the petitioner of Public interest case is not required to show his personal vested interest in the case rather the existence of genuine public interest suffices the court to entertain the case.Public interest litigation is not in the nature of adversary litigation rather parties are required to strive towards a common goal in order to find a solution to

[25]Rajeev Dhavan, "Law as struggle, public interest law in India'', Journal law the Indian law institute, Vol. 36(1994), pp 302-304.
[26] Laura Van den Eynde, Interpreting Rights Collectively Comparative Arguments in Public Interest Litigants' Briefs on Fundamental Rights Issues, (2015), p. 9. Accessed from internet at http://droit-public.ulb.ac.be/wp-content/uploads/2015/12/introductorychapterthesisLVDE.pdf, last accessed on April 12, 2017.
[27] Ibid.
[28] Ibid.
[29] Karen Kong, "Public Interest Litigation in Hong Kong: A New Hope for Social Transformation?'' Civil Justice Quarterly Issue 3, (2009), p, 328.
[30] Avani Mehta Sood, "Gender Justice through Public Interest Litigation: Case Studies from India", Vanderbilt journal transnational law, 41(2008), p. 839.

problems.[31] Due to this public interest litigation involves "collaboration and cooperation between the government and its officers and the bar and the bench for the purpose of making human rights meaningful for the weaker sections of the society''.[32]

The other key feature of PIL is that, the litigation has the aim of redressing public wrongs as opposed to private interest litigation which has a sole purpose of rectifying private injuries.[33]

Strict application of a procedural law is not also adhered in public interest litigation rather flexibility in the application of the procedural law is observed as its basic feature.[34] In public interest litigation, the petitioner is also released from the burden of proving the allegation.[35]

The basic feature of PIL is that the end result of a particular case is not the benchmark to measure the success of public interest litigation, rather the impact that the case will have in the long term in transforming the law for the benefit of the public worth's high.[36] In this respect, "PIL aims to change things and promote the public good as opposed to that of interest groups and political parties who care only for their members".[37]

2.1.4. The Purpose of PIL

"Law and litigation are important mechanisms for enforcing human rights, extending public participation, improving economic conditions, encouraging grassroots empowerment, reforming laws and legal systems, and fostering government accountability aspects of what some commentators loosely refer to as "rule of law" values".[38]

Some of the dominant hypothesis which has been offered as the rationales for PIL are the following.[39] The first theory puts as "PIL improves access to justice for marginal and vulnerable

[31]Monika Sangeeta Ahuja, Supra note 17, p. 98
[32]Ibid.
[33] A guide to public interest litigation in Kenya, Kenyans for Peace with Truth and Justice (KPTJ), Africa Centre for Open Governance and the Katiba Institute, p. 1. See also Akinrinmade Olomu Gbade, "Public interest litigation as a catalyst for sustainable development in Nigeria", OIDA International Journal of Sustainable Development, (2013), p.87.
[34]Aman Hingorani, "public interest litigation'', Annual survey of Indian law, Vol. L (2014), pp. 997-998.
[35] Ibid.
[36]Serges Djoyou Kamga,cited above at note 15. P. 452.
[37] Ibid.
[38] Joseph Otteh (edition), cited above at note 18, p. 14.
[39] J. oloka Onyango, "human rights and public interest litigation in East Africa: A bird eye view", The Geo. Wash. Int'l L. Rev, Vol. 47(2015), p. 764.

communities".[40] The second argues that "PIL develops the overall state of legal protection in a country by eliminating bad law and fostering legal review''.[41] A third hypothesis is that "PIL raises awareness and debate about a particular issue of general public concern, while also helping to reduce political tension and resolve social conflict".[42] Finally, in light of all the above theories justifying PIL, it is recognized that PIL serves as a mechanism of empowerment, voice, and accountability.[43]

"Public interest litigation enables individuals, communities, and organizations to challenge government decisions, the constitutionality of legislations, policies, their lack of regulation or positive actions to ensure the fulfillment of their peoples' rights and where necessary to hold the authorities to account".[44] In a case when disadvantaged, marginalized and vulnerable communities face different forms of incapacity to claim their right before courts of law, public interest litigation will serve as an instrument to use the law for ensuring constitutional justice.[45]

It also serves as a means for effective realization of collective or diffused rights such as the environment and other commonly owned natural resources for which individual litigation is neither practicable nor an efficient method.[46]

Furthermore, PIL gives an opportunity for civil society organizations in order to employ court litigations for enforcing rights rather than merely relying on right advocacy and awareness creation works.[47]

As Lord Diplock said in the English House of Lords:

> ''There would be a grave lacuna in our system of public law if a pressure group, like the Federation, of even a single public spirited taxpayer, were prevented by out-dated

[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Jennifer R Escott, Broadening Access to Justice in Rwanda: analyzing the opportunity for Public Interest Litigation, 2011, p. 6.
[45] Ibid.
[46] Surya Deva, "Public Interest Litigation in India: A Critical Review'', Civil Justice Quarterly, vol. 28(2009), p. 20.
[47] Phillip Karugaba, Public Interest Litigation in Uganda: Practice and Procedure, Shipwrecks and Seamarks, (September 2005), pp. 3-4.

technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get unlawful conduct stopped.''[48]

The above statement of Lord Diplock strongly justifies how PIL is essential to uphold rule of law and on the other side, it shows how preventing citizens due to the procedural rule of standing not to fight injustices is very dangerous.

PILs aim to redress injustices or wrongs happening to specific groups of people using the judicial process. PIL tries to use the power of judicial review which courts have to determine complaints brought by persons who act for others in order to remedy the infringements of the rights which the affected groups suffer, even though the petitioner is indirectly to be benefited.[49]

Most of the time, PILs has been used as a venue where disadvantaged people who have no other means of accessing justice, will engage and challenge the government and question policies which adversely affect them. Accordingly PIL has a purpose of exposing the flaws, biases, unreasonableness, illegalities, bad faith, or unconstitutionality of such policies or actions (or inactions).[50] Enhancing civic participation in good governance is also the other purpose of PIL.[51]

Helen Hershkoff & Aubrey McCutcheon expressed that:-

> "From Nigeria to India, public interest lawyers have used litigation for various purposes: they have documented injustice and exposed the inequalities of repressive regimes; they have repeatedly gone to court to help implement constitutional principles and laws, as well as to further legal reform through creative forms of lawyering; and they have struggled to integrate favorable international norms into their domestic legal systems and pursued vindication of rights in international tribunals."[52]

In developing countries where access to courts are difficult for considerable number of citizens because of poverty, illiteracy, inaccessibility of laws and other prevailing conditions PIL is a

[48]Gurdial singhnijar, "Public Interest Litigation: A matter of justice an Asian perspective'', p. 2.
[49]Joseph Otteh (edition), cited above at note 18, p. 22.
[50] Ibid.
[51] Ibid.
[52] Id, p. 23.

viable form of litigation to redress violations of the rights of large and vulnerable groups, or to oppose dictatorships.[53]

Justice Benjamin Odoki, Chief Justice of Uganda reasons that;

> '' Public interest litigation gives more hope for the people than any other strategy given the current socio-economic conditions in our developing societies". He stated that many people are illiterate and unaware of the law and their rights. The vast majorities of the people are poor and cannot afford the services of a lawyer. There is also apathy because of mistrust of the legal system. Therefore it is necessary and healthy to allow public-spirited individuals to take up worthy causes on behalf of others who are not in a position to do so."[54]

Justice P.N. Bhagwati of the Supreme Court of India also described PIL as "the strategic arm of the legal aid movement which aims at bringing justice within the reach of the poor, vulnerable masses and helpless victims of injustice''.[55]

In spite of many purposes it has, PIL has its own limitation. The abuse of PIL is also increasing along with its extended and various purposes. Of late, many of the PIL activists in the country have found the PIL as a handy tool of harassment since frivolous cases could be filed without investment of heavy court fees as required in private civil litigation and deals could then be negotiated with the victims of stay orders obtained in the so-called PILs.[56] Just as a weapon meant for defence can be used equally effectively for offence, the lowering of the *locus standi* requirement has permitted privately motivated interests to pose as public interests.[57]

2.1.5. Conditions for admissibility of cases for PIL

Different countries jurisprudence has followed their own approach of putting conditions for admissibility of PIL cases. For example in the Canadian jurisprudence, in order to be granted

[53] Id, p. 28.
[54] Ibid.
[55] Ibid.
[56] Manoj Kumar Sadual, "Public interest litigation in India: Pros and Cons'', A Peer-Reviewed International Journal of Humanities & Social Science, Volume-IV (July 2015), p. 35.
[57] Ibid.

public interest standing for challenging constitutionality, a litigant must demonstrate the following:

1. There must be a serious justiciable issue as to the validity of the law in question;

2. The litigant must be directly affected by it or have a genuine interest as a citizen in the validity of the legislation; and

3. There must be no other reasonable and effective manner in which the issue may be brought before the court. [58]

In Australia, the Public Interest Law Clearing House adopts a three-way test to decide whether issues are of public interest. Accordingly the issue must affect a significant number of people and not just an individual, or it must raise matters of public concerns; it must impact disadvantaged or marginalized groups, and it must be a legal matter which requires addressing pro bono publico for the common good.[59]

In India to stand for public interest litigation**,** public interest must be real, and it must not be to invoke personal calls of enmity. In *Delih municipal workers Union (regd) v. Delih Municipal Corporation*, it was observed –‘’

> "When there is a material to show that a petition styled as public interest litigation is nothing but intentionally used for personal dispute, said petition has to be rejected. Public interest litigation which has now come to occupy an important field in the administration of law should not be 'publicity interest litigation' or 'private interest litigation' or' politics interest litigation'. There must be real and genuine public interest involved in the litigation and it cannot be invoked by a person or body of person to further his or their personal cause or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be abused by abusive litigants in the name of PIL. Due to this person acting bona fide and of sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to justify violation of

[58] Andrew Valentine, Joining in the Jurisprudence*:* Public Interest Litigation and Interventions in the Law of Charity, (the Pemsel Case Foundation, 2015), p. 27. See also Phillip Karugaba, Public Interest Litigation in Uganda: Practice and Procedure, Shipwrecks and Seamarks, (September 2005), pp, 2-3.
[59] Joseph Otteh, cited above at note 18, pp.16-17.

fundamental rights and genuine infringements of legal provisions, but not for personal gain or private motive or political project or any hidden agenda.''[60]

Therefore in India to be granted standing for PIL, one has to show the existence of genuine public interest in the case, he/she has to handle the case without receiving remuneration from community she/he represents, and should not have any motive of using PIL for private purpose.

2.1.6. Types of PIL.

Broadly speaking, two types of public interest litigation have been identified, these are test cases and structural reform suits. [61].

(a) Test Cases.

"This type of cases is instituted for the prime purpose of challenging the legality of existing laws or attempts to give new meanings to such laws. Decisions given in test cases become precedent in other related cases and also shape and or influence government policies''.[62] In this case a test case may be filed on the cause of a single individual, but the effect of stare dacisis mainly in constitutional review will give the judgment precedential effect in other lawsuits filed by other individuals. Furthermore, government organs and other institutions may also feel obliged to confirm their programs or conduct to a test-case ruling without further action by a judiciary.

(b) Structural Reform Suit[63].

This type of suit challenges deficiencies in the enforcement of existing laws, and seek to regulate the defendant's future conduct through judicial decisions which spell out in very specific terms of the constitution or statutory requirements rights accruing to such defendants.[64] Here, In addition to ordering the defendant institution or organ from acting in a particular unconstitutional fashion, the court passes a judgment having a content of forward looking or affirmative steps to prevent future violations. Therefore such suit is essential and legally viable when the constitutional violation is taking place through institutional practices.

[60] B L Wadhera, supra note 16, p. 46.
[61] Akinrinmade Olomu Gbade, Public interest litigation as a catalyst for sustainable development in Nigeria, OIDA International Journal of Sustainable Development, 2013, p. 89.
[62] Ibid.
[63] Ibid.
[64] Ibid.

2.2. Comparative Experience of PIL in selected Countries.

India and South Africa are selected for comparative study of PIL in this thesis because of their well-trodden experience as witnessed by their extensive PIL jurisprudence in these two countries. Kenya and Uganda are also selected from Africa jurisdictions because of their recently introduced PIL legal regime and showing significant development in those countries and for the fact they share some common features with Ethiopia as developing countries.

2.2.1. Experience from India.

It is difficult to point out a specific date when PIL started in India. However, most literature points at the end of 197o's as a period when PIL is entertained as a business of Indian court.[65]

Two judges of the Indian Supreme Court (Bhagwati and Iyer JJ) prepared the playing field, from mid-1970s to early 1980s, for the birth of PIL in India.[66]"This modified the traditional requirements of locus standi, liberalizing the procedure to file writ petitions, creating or expanding fundamental rights, solving evidentiary problems, and evolving innovative remedies''.[67]

Modification of the traditional requirement of standing was a base for the evolution of PIL and enhanced public participation in justice administration of India.[68] The need was more pressing in a country like India where a great majority of people were either unaware of their rights or were too poor to access the court. Realizing this need, the Court held that any member of public acting bona fide and having sufficient interest has a right to access the court for redress of a legal infringements, mainly when the actual plaintiff suffers from some disability or the violation of collective diffused rights is at stake.[69]

Justice Bhagwati explains:

> *"The weaker sections of Indian humanity have been deprived of justice for long years; they had no access to justice on account of their poverty, ignorance and illiteracy. They*

[65]Monika Sangeeta Ahuja, cited above at note 17, p. 2.
[66]Surya Deva, Cited above at note 46, p. 23.
[67] Ibid.
[68] Id, p. 24.
[69] Id, p. 24.

are not aware of the rights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice."[70]

The historical case which indicated the emergence of public interest litigation in India, which later known to every legal community in India as Hussainara Khatoon case was the well known PIL case in India.[71]"Mrs. Pushpa Kapila Hingorani was the first Indian lawyer to file a PIL on behalf of prisoners awaiting trial in the jails of Bihar for a period longer than the sentence supposed to be imposed''.[72] Forty thousand prisoners in jails all over India were set free.[73] This case gave rise to a revolution in the Indian legal system.[74]

In public interest cases the court jurisdiction is not restricted to the aggrieved person but is made widely open to any public-spirited individual or group, acting pro bono publico and seeking the redreesal of grievances or elimination of injustice or discrimination from the society.[75]

The scope of public interest litigation was determined by the Supreme Court of India in the case of S.P. Gupta v President of India. The Court observed:[76]

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under article 226 of the constitution, and in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme

[70] Faqir Hussain, Public interest litigation, (published by Sustainable Development Policy institute, 1992), p. 2.
[71] Aman Hingorani, cited above at note 34, p. 969.
[72] Ibid.
[73] Ibid.
[74]Ibid.
[75] Faqir Hussain,Cited above at note 70, p. 3.
[76] Ibid.

Court under article 32 constitution seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."[77]

The Indian constitution has no provision expressly recognizing PIL, however it is through judicial activism that PIL become matured and popularized in the country's legal system. Accordingly, the constitutionality of public interest litigation in India is founded on the provisions of Article 32 and 226 of the Indian Constitution through court interpretations. Article 32 and 226 of the Indian Constitution was indicated as a potential for PIL in a number of cases.[78]"In 1966, the Supreme Court held that this article confers wide powers on the High Courts to "reach injustice wherever it is found", enabling the High Courts to "mould the reliefs to meet the peculiar and complicated requirements of the country".[79] "Similarly in 1974 it was held that all the residents of a municipality have a personal interest in the actions of a municipal body and would therefore have *locus standi* to petition the High Court under Article 226 of the constitution''.[80]

The contribution of PIL in India is one among the most praised legal events. Some of the most important contribution of PIL in India is realizing access to justice for the disadvantaged sections of society such as prisoners, destitute, child or bonded labourers (those who provides labour to pay off debts), women, and historically disadvantageous people of India.[81] Making justice accessible, expansion of the jurisprudence of fundamental rights, encouraging the promotion of the rule of law and protection of the constitution, good governance, legislative reforms, and increased trust in the judiciary as independent and in touch with social realities, are the benefits of PIL in India.[82] It is also through the means of PIL, that the Indian Courts have come to adopt the strategy of awarding monetary compensation for constitutional wrongs such as unlawful detention, custodial torture and extra-judicial killings by state agencies.[83]

---

[77] Ibid.
[78]Monika Sangeeta Ahuja, cited above at note 17, p. 61
[79]Ibid.
[80] Id, p. 61-62.
[81]Surya Deva, Supra note 46, p. 31.
[82] Bemih Luseka, Public interest litigation-Securing protection of social and economic rights: challenges, opportunities and lessons, LLM thesis submitted to Central European University, unpublished, November 30, 2012, p. 64.
[83]See observations justifying the payment of compensation for human rights violations by state agencies in the following decisions: Bhim Singh v. State of Jammu and Kashmir, (1985) 4 SCC 677; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; D.K. Basu v. Union of India, (1997) 1 SCC 416; Also see: Lutz Oette,

2.2.2. PIL in the South African Legal System.

PIL in South Africa is mainly linked with the civil society movement.[84] The ability of these civil society organizations in trying to use the law as an instrument of social change in the worst repressive regime of apartheid and later to mobilize societies around the calls to eradicate the deeply rooted social ills resulted from the apartheid legacy gives them a very special place in the evolution and development of PIL in South Africa.[85] Civil society organizations have been actively engaged in promoting the enforcement of laws and rule of law through advocacy, awareness creation and court litigation.[86] The most successful of these were the Legal Resources Centre (LRC), the Centre for Applied Legal Studies (CALS) and Lawyers for Human Rights.[87] For instance the legal resource centre had managed to bring relief to the homeless and the landless using PIL even basing on laws enacted during apartheid regime.[88]However prior to 1994, the practice of PIL is very limited due to prevailing conditions of the time such as absence of bill of rights and complete sovereignty of the parliament.[89]

In post apartheid era the contribution of PIL in South Africa is also considerable. For instance, Minister of Health vs. Treatment Action Campaign, which was brought before South Africa's Constitutional Court by TAC, resulted in the rolling out of a major program for distribution of generic anti-retroviral drugs to prevent mother to child HIV infection.[90] Other PIL actions have resulted in the abolition of the death penalty, protection of squatters from eviction without provision of alternative housing.[91]

'India'sInternational obligations towards victims of human rights violations: Implementation in domestic law and practice' in C. Raj Kumar & K. Chockalingam (eds.), Human rights, Justice and Constitutional empowerment (OUP, 2007) at p. 462-485.

[84] Bemih Luseka, Supra note 82, p. 65.

[85] Ibid.

[86] Ibid.

[87] Yoseph Mulugeta Badwaza, Public interest litigation as practiced by South African human rights NGOs: any lesson for Ethiopia, unpublished thesis submitted for the fulfillment of LLM degree in Pretoria University at the faculty of law, October 2015, p. 34

[88] Fayeeza Kathree, public interest law: its continuing role in South Africa, December 2002, p. 33.

[89] Yoseph Mulugeta, cited above at note 87, p. 34.

[90] See the Minister of Health v Treatment Action Campaign 2002 5 SA 721 (CC), where the Constitutional Court found in favour of the Treatment Action Campaign that the government had a legal duty to provide anti-retroviral drugs to HIV-positive pregnant women.

[91] A guide to public interest litigation in Kenya, Supra note 33, p. 5.

Therefore in the South African context, public interest litigation could be viewed from two historical perspectives.[92] The first one is the public interest movement of the apartheid era where human rights activists and civil society organizations sought to fight the oppressive regime by using gaps in the laws and the internal contradictions of the system. The second one is fighting the harmful legacy of apartheid regime basing on constitutionally recognized rights of access to justice and public interest *locus standi* guarantees.[93]Meaning, there has been an inevitable shift from challenging unjust system towards litigating cases that are aimed at enforcing Constitutional provisions.[94]

Under the current South African constitution PIL is explicitly recognized. The 1996 Constitution of South Africa, under its Section 38 (d) , entitles "anyone acting in the public interest" to approach a competent court and seek remedies when they feel that a fundamental right is infringed or threatened.[95]

It is worthwhile to reproduce the full content of Section 38 of the constitution:

It provides that:

> ''Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-
>
> (a) Anyone acting in their own interest;
>
> (b) Anyone acting on behalf of another person who cannot act in their own name;
>
> (c) Anyone acting as a member of, or in the interest of, a group or class of persons;
>
> (d) Anyone acting in the public interest; and
>
> (e) An association acting in the interest of its members."

[92] Yoseph Mulugeta, cited above at note 87, p. 34.
[93]Ibid.
[94]Id, p. 35.
[95]Id, p. 36.

Therefore the South African Constitution has explicitly recognized a very liberal *locus standi* for those who want to litigate in the public interest for the rights and freedoms entrenched in the Constitution. Accordingly Human rights groups in South Africa have utilized the liberalized standing requirement by bringing cases involving public interests mainly to vindicate fundamental civil and political as well as social and economic rights recognized by the Constitution.[96] They also intervene on behalf of disadvantaged groups and individuals in litigation on various human rights issues.[97]

Therefore, it is asserted that the explicit constitutional recognition of liberal locus standi with wide guarantee of fundamental rights and freedoms as well as the historical and active use of legal action by civil society and the well-reasoned and high-profile constitutional court judgments have made South Africa a good illustration of PIL.[98]

2.2.3. Example of some other African Countries recently embracing PIL.

A growing number of nations are entrenching liberal rules of locus standi granting public interest standing in their constitutions. Some of African countries such as Uganda, Kenya, Ghana, Botswana[99], Gambia, Zimbabwe[100] and South Africa, explicitly permit public interest standing in their constitutional documents.[101] Among some African nations which are embraced public interest standing in their constitution, I have selected Kenya and Uganda for the fact that those countries are began using PIL to promote constitutionalism and rule of law and showed some remarkable achievements.[102]

Article 22 of Kenya's 2010 constitution recognizes petitioners' right to locus standing without facing personal harm and even before a violation materializes if a threat of violation is evident:[103] The provision provides that:-

[96] Ibid.
[97] Ibid.
[98] Id, p. 37.
[99] Section 18(1) of Botswana constitution
[100] Section 85 of the 2013 Zimbabwe constitution entrenched a broad locus standi by allowing citizens to litigate public interest.
[101] Aparna Polavarapu, Expanding Standing to Develop Democracy: Third-Party Public Interest Standing as a Tool for Emerging Democracies, The Yale journal of international law, Vol. 41(2016), p. 121.
[102] J. oloka- onyango, cited above at note 39, p. 764.
[103] See article 22 of the 2010 Kenyan constitution.

(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceeding under clause(1) may be instituted by:-

(*a*) A person acting on behalf of another person who cannot act in their own name;

(*b*) A person acting as a member of, or in the interest of, a group or class of persons;

(*c*) A person acting in the public interest; or

(*d*) An association acting in the interest of one or more of its members.

The above Kenyan constitutional provision grants public interest standing to institute court proceeding for enforcing fundamental freedoms in the bill of rights.

Similarly, Article 258(2) of Kenyan constitution also grants public interest standing to institute proceedings on behalf of another when constitutional provision is violated or threatened with contravention.[104] These constitutional provisions aims to reduce formalities and free the courts from unreasonable procedural restrictions in order to expand the options of access to justice for all persons as required by Article 48 (a provision which declares access to justice for all persons).[105] In addition, Article 22 provides that formalities are to be kept to a minimum, and the court may "entertain proceedings on the basis of informal documentation" (this can be traced to what in India is called "epistolary jurisdiction").[106]

Even though public interest standing in Kenya is still quite new and government compliance with court decisions is not satisfactory, rights organizations have been passionately making use of the doctrine and the process of litigation is forcing discussion of constitutional issues by those political elites who had previously been able to ignore them. In addition, media attention garnered by constitutional lawsuits adds visibility to these issues and expands the discussion.[107]

Like the above provisions of Kenyan constitution, the 1995 Uganda constitution also clearly recognize public interest standing. Article 50(2) of the 1995 Uganda Constitution says that: "Any

[104] See also article 258 of the 2010 Kenyan constitution.
[105] A guide to public interest litigation in Kenya cited above note 33, p. 7.
[106] Id, p. 8.
[107] Aparna Polavarapu, cited above at note 101, p.136.

person or organization may bring an action against the violation of another person's or group's human rights."[108]Furthermore Article1 37(3) of Uganda constitution also gives the right to petition to constitutional court for any person who alleges as there is a violation of the Constitution. The article provides that;

"A person who alleges that;-

a) An Act of Parliament or any other law or anything in or done under the authority of any law; or

b) Any act or omission by any person or authority is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect and for redress where appropriate."[109]

So this is a constitutional provision which gives right for all citizens of the country to protect the constitution from any form of violation.

Concerning the practice, there are important constitutional matters which are brought to the constitutional court of Uganda by civil societies and citizens to up hold constitutionalism and rule of law in the country using the liberal rules of standing recognized by the 1995 of Uganda Constitution. For instance "On 25th March 2002, two soldiers of the Uganda Peoples Defense Forces were charged, tried and executed on the same day for the murder of three civilians in Kotido District in North Eastern Uganda.''[110] The Uganda law society filed two petitions seeking declarations that the entire process was unconstitutional.[111] The case for the petitioners was that the soldiers who were executed had never received a fair trial as recognized by articles 28 and 44 of the Constitution.[112] It was submitted that under those articles, the soldiers were entitled to a fair, speedy hearing before an independent and impartial tribunal. The gist of the arguments is that the trial was too speedy that it was not possible to give the accused the safeguards they were entitled. The trial took less than three

[108]See article 50(2) of the 1995 constitution of Uganda.
[109] Id, p. 4-5.
[110] See Constitutional Petitions No 2 of 2002 and 08 of 2002, Uganda Law Society & Anor v The Attorney General. The study selected some pertinent decisions of the constitutional court of Uganda; Accessed from internet at http://www.ulii.org/node/15834, last accessed on April10, 2017.
[111] Ibid.
[112] Ibid.

hours. [113] The constitutional court decided that the constitutional provisions guaranteeing fair trial and right to life of citizens is violated by the field marshal court of Uganda.[114]

Basing on article 137(3) of Uganda constitution which allows public interest standing, the Uganda Association of Women lawyers also brought petition by challenging certain sections of the divorce act (Cap 249) as being inconsistent with various articles of the constitution and seeking constitutional remedies which uphold constitutionally guaranteed rights.[115] Accordingly the constitutional court has declared the inconsistency of some of the provisions of the divorce act (Cap 249) with the constitution.[116]

The other well known public interest litigation case brought before the constitutional court of Uganda is a public interest case brought by Foundation for Human Rights Initiatives.[117]"The petitioner requested certain provisions of the Trial on Indictments Act (CAP 23), the magistrates courts Act (CAP 16), the Uganda Peoples defense forces Act No 7 of 2005(UPDE) and 2005 (UPDF) and The Police Act (CAP 303) to be declared as inconsistent with the 1995 of Uganda constitution.[118] Basing on the request of the petitioner the constitutional court declared some provisions of the above laws as unconstitutional which violates human rights of the people''.[119]This all shows how PIL has been serving as an instrument to realize the constitutionally entrenched fundamental freedoms and rights of citizens and to protect the overall constitutional system.

[113] Ibid.
[114] Ibid.
[115] Constitutional petition No 2 of 2003, Constitutional court of Uganda, Uganda Association of Women Lawyers etalv.Attorney General.Accessed frominternet at http://ww.lawschool.cornell.edu/AvonResources/j_other_judgments5CUgandaAssociationofWomenLawyers_TheAttorneyGeneral4.pdf, last accessed on April 10, 2017.
[116] Ibid.
[117] Constitutional petition No 20 of 2006, Foundation for human right initiatives Vs Attorney general, 25, March 2008.
[118] Ibid.
[119] Ibid. See the full judgment of the court from the constitutional petition No 20 of 2006.

CHAPTER THREE

3. The place of public interest litigation in Ethiopian legal system

3.1. The constitutional status of Public interest litigation in Ethiopia

As discussed in the previous chapter, effective options of access to justice are crucial to the realization of constitutional rights. To realize such access, it is essential that rules of standing are not very restrictive or narrow to the level of unnecessarily denying the potential litigants from accessing justice.[120] "This view is supported by Kay who is of the opinion that liberal standing rules enhance an active enforcement of human rights, whilst excessively strict rules stultify the opportunity of review for constitutionality''.[121] Adem Kassie has also similarly argued as "liberal standing rules supports the active enforcement of human rights, whereas prohibitively strict rules, on the other hand, unreasonably deny the opportunity of review for constitutionality, and will result to tolerance of much unconstitutional behavior''.[122] Among other means of accessing justice, public interest litigation, which is the result of liberal rules of standing is one where injustices can be redressed by using law and courts in areas where the general societal and public interest is affected. In countries where liberal rules of standing are provided to seek constitutional justice, PIL has been serving as a legal tool to challenge unconstitutional acts and to strengthen constitutionalism and the rule of law. However, in many jurisdictions, where strict rules of standing are in place, it has been observed when the procedural rules of standing become a barrier for the protection of constitutional rights.

The FDRE constitution has a provision recognizing access to justice. Article 37 of FDRE constitution recognized access to justice as follows:-

1. 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.

2. The decision or judgment referred to under sub-Article 1 of this Article may also be sought by:

[120] L Chiduza and PN Makiwane, "Strengthening Locus Standi in Human Rights Litigation in Zimbabwe: An analysis of the Provisions in the New Zimbabwean Constitution'', PER / PELJ, 19(2016), p. 4. Last accessed on October 16, 2016, 8:30 A.M at http://dx.doi.org/10.17159/1727- 3781/2016/v19i0a742.
[121] Ibid.
[122] Ibid.

(a) Any association representing the Collective or individual interest of its members or

(b) Any group or person who is a member of, or represents a group with similar interests.

The constitutional recognition of public interest litigation by FDRE constitution is not explicitly observable from the above constitutional provision dealing with access to justice and it has been the subject of controversy by legal scholars of the country. For instance, Yoseph Mulugeta argued that "although sub-article 1 of Article 37 seems to be referring to individuals pursuing their own interests when it says 'everyone', it could also broadly be applied to include persons (natural or juristic), who seek to litigate in pursuit of interests other than their own.''[123] He has the opinion that since no condition is attached to the right, which means vested interest requirement to the person approaching the court as the provision could be used by NGOs and private persons to take public interest cases to courts.[124]

By consolidating his justification Yoseph also argued as a close examination of Article 84(2) of the Constitution gives further evidence by embracing liberal rules of standing particularly in cases concerning the constitutionality of laws.[125] He said that the term 'interested party' could be understood both in its narrow and broad sense.[126] "In his view, the narrow sense of understanding refers to a person who is actually a party to litigation but the broad understanding implies as any person or entity who wants to challenge the constitutional validity of a law irrespective of having personal interest affected by the challenged legislation ''.[127] Finally, he concluded as there are sufficient grounds to assume that the Constitution embraces a broad *locus standi* regime that is conducive to public interest litigation.[128]

Ayalew Bitew has also argued in a line of Yoseph. Ayalew argued that:-

> "Art. 37(1) entitles '*everyone*' with justiciable claim to approach judicial bodies and get remedies and the term ''every one'' can be construed broadly to include both natural and

[123] Yoseph Mulugeta Badwaza, Supra note 87, p. 40.
[124] Ibid.
[125] Ibid.
[126] Ibid.
[127] Id, p. 41.
[128] Ibid.

juristic persons so long as there is no condition attached to interest specific to the person approaching the court, rather the focus is on the justiciability of the claim''.[129]

On the other side, there are scholars who argued as the provision of article 37 of FDRE constitution dealing with access to justice is not incorporating public interest litigation. Sisay Alemahu wrote that ''even though Article 37 of FDRE constitution allows an individual or group of persons to bring a justiciable matter to a judicial or quasi-judicial body and to obtain a decision thereof, it requires that the person to be a member of the affected group or an association representing the interests of its members.''[130] Even where the person is interested in the case, she/he needs to be authorized by the people on whose behalf she/he takes the case.''[131] Accordingly, he concluded as the constitution doesn't allow actio popularis (public interest litigation).[132] Similar interpretations and understanding are made by Melaku Adinew. He argued that "had PIL been accommodated under Article 37 (1), it is unlikely or unreasonable to deny it through the requirement of vested interest in the next sub-article (Art.37 (2))''.[133] He said that "the only way to avoid such contradiction or superfluous standing is the narrow understanding of sub-article 1''.[134] Finally, he remarked that the close and cumulative reading of both sub-articles of Article 37 imply the unlikely place of PIL under FDRE Constitution.[135]

The position of the framers of the constitution seems clear as whether the constitution allows PIL or not. Because there are few subsidiary laws granting liberal rules of standing made by the federal parliament which is overwhelmingly dominated by EPRDF political group in the whole five-term of the national election. EPRDF is apolitical group who has played a major role during the making process and ratification of the 1995 FDRE constitution and it has also secured the vote necessary to form a government in the whole past national elections conducted after the

[129] Ayalew Bitew Bishaw, "Public interest environmental litigation under Ethiopian law'', the International Journal Research Publications, Vol. 05, Number. 7 (November 2015), p. 82.
[130] Sisay Alemahu, "The justiciability of human rights in the Federal Democratic Republic of Ethiopia", African Human Rights Law Journal, Vol. 8(2008), p. 291.
[131] Ibid.
[132] Ibid.
[133] Melaku Adinew, "the place of public interest litigation in the Ethiopian legal system with a particular reference to the charities and societies proclamation'', International Journal of Law and Policy Review, vol. 4, No.2 (July 2015), p. 238.
[134] Ibid.
[135] Ibid.

enactment of the current constitution.[136] Therefore the inclusion of liberal rules of standing in some few subsidiary legislation of the government such as the environment pollution control proclamation at least reflect the position of the government concerning the constitutionality of third party standing or PIL which has not been familiar with the country legal system.

As indicated in the above the liberal expression of access to justice under Article 37 (1) of FDRE constitution, which seems to give standing to every person without showing vested interest on the matter and the provision dealing specifically with a representative action under its sub-article 2 has made legal scholars and law students to hold opposite views on whether access to justice under FDRE constitution incorporates public interest litigation or not.

It is clear that as a principle in legal jurisprudence a person cannot litigate the private interest of another person without his/her authorization. So the word ''everyone'' under Article 37(1) of FDRE constitution cannot entitle every person to bring a justiciable matter which is purely a private interest of certain individual on behalf of him or her without his/her authorization. Similarly, by interpretation, sub article 1 of Article 37 also couldn't be a barrier from bringing the common or collective interest of the public by everyone as long as the case is not purely private nature and out of justiciability. However, sub-article 2 of article 37 of FDRE constitution has to be considered as the extension of its sub-article 1 which gives liberal rules of standing for instituting proceedings through representatives rather than the one limiting it. Because sub-article 2 of article 37 of FDRE constitution liberalizes the rules and the practice of receiving the agreement or authorization of the members for Associations to defend the common or the private interest of their members as it is stated under Article 38 of the civil procedure code.[137]

[136] See also at Adam kassie, "Access to Constitutional Justice in Ethiopia'', in Pietro S. Toggia, Thomas F. Geraghty, Kokebe W. Jemane,(eds) Access to justice in Ethiopia: Towards an Inventory of Issue, Center for Human Rights Addis Ababa University (May 2014), p.58. Here the Author stated as the FDRE Constitution was drafted and adopted in 1995 by the dominant political group, i.e., the EPRDF and indicated as it is largely a reflection of the philosophical and ideological stance and perspectives of this group.

[137]Civil procedure code of the Empire of Ethiopia, Negarit gazzette –extraordinary issue No.3 of 1965, Addis Ababa, 1965, article 38. It provides as follows (1) Where several persons have the same interest in a suit, one or more of such persons may sue or be sued or may be authorized by the court to defend on behalf or for the benefit of all persons so interested on satisfying the court that all persons so interested agree to be so represented.
(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-article (1) may apply to the court to be made a party to such suit.

But it is submitted that the FDRE constitution lacks explicit recognition of public interest litigation like the current South Africa and Kenya constitutions.

Undeniably, the absence of explicit constitutional recognition or prohibition of public interest litigation in the FDRE constitution calls for constitutional interpretation. Therefore the issue such as does the FDRE constitution envisage broad rules of standing in which one can approach the appropriate judicial body for requesting judicial relief, including constitutional review without showing vested interest or not needs to be answered, by way of constitutional interpretation. Implementing the constitution and upholding constitutionalism and the rule of law among many other works requires constitutional interpretation. Interpreting the constitutional provision to broaden the fundamental rights and freedoms of citizens without encroaching into other constitutional provisions and values as well as to give positive meaning to the constitutional provision to implement the constitution is recommended and not contentious. Similarly, giving a broad meaning for the provision of access to justice declared under the section of FDRE constitution covering fundamental rights and freedoms will not amount to the constitutional violation as long as the interpretation compliments with the provisions and the objective of the constitution. Furthermore, providing liberal rules of standing for enforcing laws is opening an opportunity for enhancing public participation in the enforcement of laws.

Moreover interpreting and giving meaning to a specific constitutional provision also requires structural examining of constitutional texts and its objectives rather than merely relying on the words of specific provisions, specifically when a given provision is ambiguous. Accordingly, Article 37 Of FDRE constitution declaring access to justice has to be interpreted taking into consideration the whole constitutional provisions and its objectives.

Even though the constitution lacks explicit recognition as well as the prohibition of PIL in its provisions, there are some structural considerations and objectives of the constitution which indicate as PIL is embraced in the FDRE constitution. For instance Article 9 of FDRE constitution, a provision declaring the supremacy of the constitution, in its sub-article 2 provides that:-

> "All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.

Under the above provision of the constitution, right and responsibility are provided for all citizens, organs of state, political organizations, other associations as well as on their officials to ensure observance of the Constitution''.

The minutes of the Constituent Assembly's deliberations on the draft constitution, elaborate article 9 (2) of FDRE of the constitution as follows:-

> *"ዜጎች ሕገመንግስቱ ያጎናፀፋቸውን መብት ማስጠበቅ ብቻ ሳይሆን ሕገመንግስቱ ተጥሶ ቢያገኙም ሕገመንግስቱን ለመጣስ የተነሳውን ኃይል የማስቆም መብትና ኃላፊነት ተሰጥቷቸዋል። የህዝብን መብት የሚነጥቅና ነፃ ፍርድቤት የመሳሰሉትን ህገመንግስታዊ ተቋማት ለማፍረስ አንድ ኃይል ቢነሳ ማንኛውም ዜጋ በነጠላም ሆነ በጎበረት ቢቻል በሰላማዊ መንገድ ይህ ካልተቻለ ደግሞ በኃይል የማስቆም መብት አለው። መንግስታዊ አካላት፤ ፖለቲካዊ ቡድኖች እንዲሁም ለተለያዩ ዓላማ የተደራጁ ማኅበራትና እነዚሁኑ የሚመሩ ባለስልጣኖች ሕገመንግስቱ በዝምታም ሆነ በድርጊት ቢጣስ መመልከት የለባቸውም፤ ሕገመንግስቱ መብትና ኃላፊነት ሰጥቷቸዋልና ሕገመነግስቱን ለማስከበር አስፈላጊውን ሁሉ ማድረግ ይጠበቅባቸዋል"።*
>
> *Meaning*: - "The right of the citizens is not only protecting their constitutionally guaranteed right, rather they are entitled to the rights and responsibilities to stop any forces which contravenes the constitution. If any groups, which can violate public rights and which can destroy constitutionally established institutions such as independent courts occur, every citizen either unilaterally or jointly, if possible using peaceful means, if not using force, have the right to stop such groups. Government organs, political groups, and associations organized for different objectives as well as their officials are not required to remain silent when the constitutional violation occurs either through action or omission; since the constitution has granted them, rights and responsibilities, they are expected to take all necessary action for protecting the constitution''(translation mine).[138]

Therefore, the constitution gives all citizens the right as well the responsibility to ensure the observance of the constitution to the least using all peaceful and legal means, but if not, including using force.[139] So it can be argued that the right and responsibilities of citizens, organs of state, political organizations, other associations and their officials under article 9(2) of FDRE constitution includes enforcing the constitution by instituting proceedings without being showing

[138] Explanatory note of the Ethiopian draft constitution ratified by House of people's representatives on October 28, 1994, Accessed from archive of the house of federation. See the draft of the constitution which the constitutional assembly ratified.

[139] Ibid. The translation made from the Amharic version to English is mine.

personal injury on the matter. As per the provision of Article 9(2), it is not only those who suffered personal injury who should be afforded standing in challenging constitutionality, rather it is a right and responsibility left to all citizens and their associations.

Therefore, PIL can be one major means through which one can ensure his/her constitutional rights and responsibility of ensuring the observance of the constitution, in cases when the constitutional provision is violated but his private interest is not affected. For instance how citizens can ensure the observance of the constitution using legal means if the federal government took some of the power of the regions such as their power to make their own regional constitution by violating the constitution unless every citizen are entitled to locus standing to seek constitutional justice without vested interest requirement. Therefore, ensuring the observance of Constitution is a right and responsibility given to all citizens to protect the constitution from any form of violation using all legal means including PIL irrespective of the requirement of personal interest related to constitutional issues in question.

3.2. Public interest litigation in subsidiary laws of Ethiopia.

In spite of the absence of clear constitutional provisions dealing with public interest litigation, there are some laws enacted by the Federal Parliament which deals with PIL or allowing liberal rules of standing as discussed below.

3.2.1. Environmental pollution control proclamation.

The Environmental Pollution Control Proclamation mainly prohibits any person from polluting the environment.[140] Then, it empowers the then Federal EPA (the current environment, forest, and climate change ministry)[141] to take administrative or legal action in case its stipulations are violated.[142] The proclamation gives locus standing to any person without showing any vested interest on the matter. It provides that "any person shall have, without the need to show any vested interest, the right to lodge a complaint at the Authority (currently the Ministry) or the relevant regional environmental agency against any person allegedly causing actual or potential

[140] Article 3(1), Environmental Pollution Control Proclamation, Proclamation No. 300/2002, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 9th Year No.12, Addis Ababa, 3rd December 2002.
[141] Firstly the power and functions of the Environmental Protection Authority re-established under Proclamation No. 295/2002 are transferred to the Ministry of Environment and Forest by proclamation No. 803/2013 and then to the Ministry of environment, forest and climate change by Proclamation No. 916/2015.
[142] Article 3(2) of Environmental Pollution Control Proclamation, Proclamation No. 300/2002.

damage to the environment''.[143] Therefore, any person has the right to bring suit against any person allegedly causing actual or potential damage to the environment before the ministry or the relevant regional environmental office without the need to show any vested interest. However, this provision is not practically used by public interest litigants, including citizens, civic societies, and NGOs working on the environment as well as those advocating human rights, except one court case brought by APAP to protect the environment and citizens affected by different kinds of pollution.[144]

The proclamation has also its own observable limitations in creating an enabling environment for public interest environmental litigation. One observable gap of the proclamation is the absence of clear provision which establishes a tribunal which handles complaints and gives a decision. Due to this the way the ministry handles complaints is short of litigation, rather the ministry has been handling grievances and giving decisions through established committees and departments in a manner different from the way tribunals or courts litigate cases and give decisions.[145] The other limitation of the proclamation attributes to its failure to regulate the basic procedural aspects of PIL such us issues related to court fee, burden of proof, issues in relation to execution of judgments and others procedural issues which the special nature of PIL requires.

As per sub article 11 (2) of the environmental pollution control proclamation No. 300/2002, when the Authority or regional environmental agency fails to give a decision within thirty days or when the person who has lodged the complaint is dissatisfied with the decision, the claimant may institute a court case within sixty days from the date the decision was given or the deadline for decision has elapsed. This provision shows as a complaint has a chance to litigate his case in regular court when the ministry or the agency fails to give decision or when the complaint is dissatisfied with the decision given. Here the respondent or the defendant may not have a legal ground to object the claim brought before a court basing on the procedural requirement of vested interest which is set on article 33 (2) of Ethiopian civil procedure code. Since both the civil procedure code and the proclamation are under the same hierarchy of laws, the recently enacted

[143] Id, Article 11(1).
[144] Interview with Wondosen Sintayehu, the head of legal department at the Ministry of environment, forest and climate change, interview conducted at the office of the ministry located at Arat kilo at 10/19/2016 morning shift. He has been working in the office for the past ten years including during time when the office was under the name of environmental protection authority. Wondoson said that almost all complaints are brought by persons or groups alleging personal injury.
[145] Ibid.

environmental pollution control proclamation prevails over previously enacted civil procedure code. Therefore the claimant may push his case up to federal Supreme Court to exhaust his request of judicial remedy and to the House of Federation in case when the issue is referred to council of constitutional inquiry by courts or any interested party in claiming as the issue requires constitutional interpretation.[146] So it is clear as the Ethiopian environment pollution control proclamation No. 300/2002 allows public interest environmental litigation beginning from the ministry or Agency to the judiciary up to that of organ constitutionally empowered to make constitutional review which is House of Federation.

3.2.2. Federal Courts Advocates Licensing and Registration proclamation.

The federal courts advocate licensing and registration proclamation No. 199/2000 empowers the ministry of justice with the power of registration of federal advocates, issuance, renewal and revocation of licenses.[147] Currently this power is transferred to the newly established federal government ministerial office, which is Federal Attorney General by the proclamation enacted to establish federal Attorney general proclamation No 943/2016.

The federal courts advocate licensing and registration proclamation provides for three types of federal advocates licenses that confer qualifications upon advocates to appear before different levels of federal courts. These licenses are issued primarily based on qualifications and experience of legal professionals.[148] From the three types of licenses, special advocacy license is issued to lawyers who seek to defend the general interests and rights of the society.[149] Interestingly, the law provides less rigorous requirements for obtaining such license than the other two.[150] Applicants for this license are exempted from such requirements as furnishing of evidence of professional indemnity insurance and sitting for the advocacy entrance examination.[151] Additionally, any person who has an advocacy license can render advocacy service to defend the general interest and right of the society without holding a special advocacy license as long as he delivers the service in pro bono and entitled with character which is suitable

[146] See Article 80 (3) and 84 (2) of FDRE constitution.
[147] Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000, federal Negarit gazette, 6th Year, No. 27, 9th March, 2000.
[148] Id, Article 8, 9 and 10.
[149] Id, Article 10.
[150] Ibid.
[151] Ibid.

for shouldering such responsibility. However, a person has to notify the Ministry before rendering such service.[152] The ministry of justice is not empowered by the proclamation either to give or deny permission for advocates holding federal courts advocate license to handle PIL cases rather the duty imposed upon federal courts advocate when they handle issues related to the general interest and the rights of the society is notifying the ministry.[153]

But as the data received from the ministry of justice (now the Attorney General) show that, even though there are around 3438 lawyers who have received federal court advocates license, no federal courts advocate has notified the ministry as he/she is going to handle public interest case before organ having judicial power.[154] Since the enactment of the proclamation only two lawyers have received the special advocacy license in 2005, which later after one year cancelled due to its non-renewal.[155]

Though the legal space is in general too tight for PIL, the federal courts advocates registration and licensing proclamation provides a legal base in which legal professionals and federal courts advocates' exercises public interest litigation in order to defend the general interests and the rights of the society.

3.2.3. Environmental Impact Assessment Proclamation.[156]

The proclamation has the objective of minimizing and regulating the environmental, social, cultural and economic impacts which may possibly result in project implementation.[157]

The environmental protection Authority (currently Ministry of the environment, forest and climate change[158]) is the responsible organ for the evaluation of an environmental impact study report and the monitoring of its implementation when the project is subject to licensing,

[152] Ibid. See Article 10(2) of the same proclamation.
[153] Ibid.
[154] Interview conducted with Mr. Reta Nigat, who is public prosecutor at the department of Advocate license and administration directorate in Ethiopian federal attorney general office, the interview is conducted on the office of federal attorney general located around Bambis, at 30/01/2009 E.C. and 01/02/2009 E.C, morning shift.
[155] Ibid.
[156] Environmental Impact Assessment proclamation No. 299/2002, Federal Negarit gazette, 9thYear No. 11, 3rd December, 2002.
[157] Ibid. see the preamble of the proclamation.
[158] Proclamation No. 916/2015, proclamation enacted to define the power and duties of executive organ of the federal government of Ethiopia, Federal Negarit gazette, 22nd , year No 12, Addis Ababa, 9th December, 2015,

execution or supervision by a federal agency or when it is likely to produce trans-regional impact.[159]

As per article 17 of this proclamation, any person dissatisfied with the authorization or monitoring or any decision of the Authority (now the ministry) or the relevant regional environmental agency regarding the project may submit a grievance notice to the head of the ministry or the relevant regional environmental agency, as may be appropriate.[160] The decision of the head of the Authority or relevant regional environmental agency shall, as provided under Article 17 (1) above, be issued within 30 days following the receipt of the grievance.[161] Here the provision gives the right to institute a proceeding for any person which means both for natural and juridical person irrespective of showing vested interest on the subject matter of the claim. Unfortunately, the proclamation is silent as to whether the decision of the Authority is final or appealable. However, for the fact that the proclamation makes every person to have vested interest in order to bring claims to the Authority or relevant environmental agency in relation to authorization and monitoring of projects nothing precludes the applicant from taking the case to court as long as his/her claim is justiciable. The federal Supreme Court Cassation bench has also given a binding interpretation by saying that "a subject matter which is justiciable and if a power to adjudicate that subject matter is not vested on another organ as the issue will be adjudicated by regular courts.[162]

3.2.4. The status of PIL under Sub national Constitutions of the country.

None of the regional state constitutions have expressly recognized broad locus standing. All of the nine regional states constitutions have similar constitutional provision recognizing access to justice. All provides that:-[163]

[159] Environmental impact assessment proclamation No. 299/2002, Federal Negarit gazette, 9thYear No. 11, 3rd December, 2002, article 14 (1).
[160] Id, Article 17 (1).
[161] Id, Article 17 (2).
[162] See the FDRE Federal Supreme Court Cassation bench decision at Hagos Shigo etal Vs Meshen Municipality on file No.80202. This decision is published at Vol. No. 15 of Federal Supreme Court Cassation decisions publication. The court has justified its decision basing on article 37(1) and 79(1) of FDRE Constitution as well as article 4 of Ethiopian civil procedure code.
[163] See article 38 of the 1995 Tigray regional state constitution, article 36 of the 2002 revised Afar regional state constitution, article 37 of the 2001 revised Amhara regional state constitution, article 37 of the 2002 revised Oromia regional state constitution, article 37 of the 2001 revised Ethiopian Somali regional state constitution, article 38 of the 2003 revised Benishangul regional state constitution, article 38 of the 2003 revised Gambela regional state

1. 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.

2. The decision or judgment referred to under sub-Article 1 of this Article may also be sought by:

   (a) Any association representing the Collective or individual interest of its members or

   (b) Any group or person who is a member of, or represents a group with similar interests.

Similar to the FDRE Constitution the above provision of the regional state constitutional provisions neither prohibits nor permits PIL. As per sub article 1 of the above provision, 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. However, it is not clear whether everyone has the right to adjudicate justiciable matters irrespective of the requirement of being showing vested interest on the matters or not. But similar to the FDRE constitution, it liberalizes the locus standi of the association representing the collective or individual interest of their members as well as groups or person who represents a group with similar interest by avoiding the requirement of authorization of members as prescribed under article 38 of the civil procedure code.

Therefore, all Ethiopia's regional state constitutional provisions affirming access to justice are silent, none of them neither expressly recognizing nor denying PIL. But in ensuring the observance of the constitution the approach seems different. Except for the current Harari regional state constitution and the Amhara regional state constitution, all other regional state constitution provides that:-[164]

---

constitution, article 38 of the 2003 revised Benishangul regional state constitution, article 37 of the 2001 revised Southern Nation Nationalities and Peoples regional state constitution and article 37 of the the 2004 revise Harari regional state constitution.

[164] See Article 9(2) of the revised 2004 Harari constitution, article 9 (2) of the 2001 revised Amhara regional state constitution, article 9(2) of the 2002 revised Afar regional state constitution, article 10(2) of the 2002 revised Benishangul regional state constitution, article 10(2)of the revised Gambella regional state constitution, article 9(2) of the 2001 revised SNNP regional state constitution, article 10(2) of the 2002 revised Somali regional state constitution, article 9 (2) of the Oromia regional state constitution and article 9(2) of the 1995 Tigray regional state constitution.Article 9(2) of the 2004 revised Harari regional state constitution only provides as residents have the duty to respect the constitution and to abide by it. Concerning the Amhara regional state constitution there is discrepancy between the Amharic and English version. Article 9(2) of Amhara regional state constitution also only provides as residents have the duty to respect the constitution and to abide by it.

''All residents of the regional state, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it''.

Like the FDRE constitution, the above provision of regional states constitutions affirming the supremacy of their respective constitution gives residents of the regional states the right and responsibility of protecting the constitution using all legal means. Therefore, protecting the regional constitutions is not also only left to those their personal interests and right is affected by the violation rather all residents of the regional states and different forms of association have the right and responsibility to protect their respective regional constitution. So the implication is, all regional state constitutions, except the Harari and Amhara regional state constitutions give the right and responsibility of defending the regional constitutions to their respective residents regardless of vested interest requirement. However, the practice of constitutional adjudication at regional level is a surprise. Until recent years, regional states have not even established organ interpreting the constitution.[165]

3.3. The practice of PIL in Federal courts and the organs interpreting the constitution in Ethiopia.

As I have argued in the above, there are constitutional grounds for PIL. I have also attempted to show that some subsidiary laws permit PIL in Ethiopia. However, the practice of PIL in reality is far less than the narrow legal space provided for PIL. Among hundred thousands of court cases opened at federal court and around 2089 application filed for constitutional interpretation since the enactment of FDRE constitution, almost no case has been instituted as a PIL case.[166] In spite

[165] Solomon Emiru, "compatibility of the revised Oromia regional state constitution of 2001 with the FDRE constitution with respect to adjudication of constitutionality issues and its possible effects'', LLM thesis submitted to Addis Ababa University, unpublished, June 2011, p. 52.

[166] The data base of the federal courts both in Addis Ababa and Dire Dawa shows as there is no separate file category for PIL cases like cases of contract, tort, succession, robbery and e.t.c. Additionally as the response of 8 interviewed judges of the federal Supreme Court cassation bench indicates even though they have been serving within the judiciary more than 10 years, they have never entertained PIL case. Three federal high court judges are also interviewed but they had never faced PIL case in their career.

of the challenge of accessing PIL cases from federal courts and CCI, only one case[167]is identified as PIL for the study.

The case which is identified by the study as PIL case is a case brought by a plaintiff named Action professional association for people (APAP) against the defendant Ethiopian environmental protection authority. This association has conducted a study on two rivers of the country, namely Kality and Modjo rivers. The study identified as the rivers are highly polluted to the extent of endangering human life. The plaintiff claimed that the pollution happening on the rivers have been severely harming the health of the community and their socio-cultural asset. Solid and liquid Pollutant waste products released into the rivers by governmental and non-governmental industries located in the capital city and solid and liquid pollutant waste products released into Modjo River by Modjo tannery industry located in Modjo town are identified by the study as the main causes for the pollution. As the statement of claim and the attached study brought as evidence, says the pollution happening on these rivers have been affecting the community right to live in a clean and healthy environment, their right to life and their right to live in dignity among many other rights. Due to this, the plaintiff has requested the Environmental Protection Authority to take action against such pollutant industries basing on the power given to the authority by Article 3 of the environmental pollution control proclamation No. 300/2002.[168] APAP considered the response or decision given by the authority for the claim presented as insufficient to immediately alleviate the pollution happening on the rivers and its adverse effect on the society's health, economic and social rights.

Then APAP brought the case to court (Federal first instance court) as per the provision of Article 11(2) of Proclamation No. 300/2002 when becoming dissatisfied with the decision given by the Authority. The plaintiff had sought judicial relief against the Authority to cease the pollution happening on the rivers, to clean up the polluted rivers and the establishment of an independent commission by the court for the follow-up of the implementation of the reliefs sought.

[167] A PIL case brought to Federal first instance court by Association named as Action professional Association for People (APAP) against defendant Federal democratic republic of Ethiopia environmental protection Authority, on file no. 64902. This case is brought in 2006 which means before 11 years.

[168] See article 3 of Environmental pollution control Proclamation NO.300/2002. Under this article the then time Environmental protection Authority (now Ministry of environment, forest and climate change) is empowered to take an administrative or legal measure against a person who, in violation of law, releases any pollutant to the environment. When any activity poses a risk to human health or to the environment, the Authority or the relevant regional environmental agency shall take any necessary measure up to the closure or relocation of any enterprise in order to prevent harm.

However, the case is dismissed by preliminary objection and the court argued that Article 11 (2) of the environmental pollution control proclamation[169] gives the right to sue before a court not the authority who gave the inappropriate decision or who fail to give decision but it only gives a right to sue a person who caused the pollution.[170] APAP appealed the case to the federal high court, claiming the decision given by the first instance court is contrary to the law. However, the decision of the first instance court is confirmed by the appellate court.[171] Then the plaintiff brought the case to the cassation bench of the Federal Supreme Court in arguing the decision given by the lower courts entails fundamental error of law. The claim of the plaintiff is rejected by cassation bench of the Supreme Court in confirming the decision given by the lower courts as free from fundamental error of law.[172]

In the above single illustrative case of PIL, the litigation strategy pursued by the plaintiff has its own factor for the loss of the court battle. The plaintiff could have instituted the proceeding at least by including some of the main polluters to expand its option of judicial success. On the other side, the argument given for the decision of the Federal first instance Court and the confirmation of the decision by the Federal High Court and Federal Supreme Court Cassation bench doesn't sound enough. As per article 11(1) of the environmental pollution control proclamation any person has the right to institute a proceeding against those "allegedly causing actual or potential damage'' to the environment. As the provision clearly puts, one can institute proceeding against those allegedly causing actual or potential damage to the environment. So the court could have considered the failure of Environment Protection Authority not to properly regulate those pollutant industries as an omission of legal responsibility that causes actual or potential damage to the environment, which suffices the plaintiff to institute a proceeding against the Authority as per article 11(1) of the proclamation.

[169] Article 11 (2) of the environment pollution control proclamation No. 300/2002 provides that when the Authority or regional environmental agency fails to give a decision within thirty days or when the person who has lodged the complaint is dissatisfied with the decision, he may institute a court case with in sixty days from the date the decision was given or the deadline for decision has elapsed.
[170] Action Professional Association for People V. Federal Democratic Republic of Ethiopia Environmental Protection Authority, (Federal First instance court, file number 964902, 21/02/1999 E.C).
[171] Action Professional Association for People V. Federal Democratic Republic of Ethiopia Environmental Protection Authority, (Federal high court, file number 51052, 05/10/2000 E.C).
[172] Action Professional Association for People V. Federal Democratic Republic of Ethiopia Environmental Protection Authority, (Federal Supreme court cassation bench, file number 39779, 24/03/2001 E.C).

Accessing constitutional justice through a constitutional review in Ethiopia is also too restricted by preconditions and strict rules of standing. The proclamation re-enacted for the strengthening and specifying the powers and duties of the council of constitutional inquiry of FDRE[173] puts pre-requisites and restrictive rules of standing for seeking constitutional justice. As per article 3(2) of the proclamation, issues of constitutional interpretation will be submitted to the council:-

a) If it is justiciable matter of court, when it has been brought to and heard by, the court having jurisdiction;
b) If it is justiciable matter of an administrative organ, when a final decision has been rendered by the competent executive organ with due hierarchy to consider it;
c) Constitutional interpretation on any unjusticiable matter may be submitted to the Council by one-third or more members of the federal or state councils or by federal or state executive organs.

The above provision of the proclamation provides that, when constitutional interpretation on issues before a court of law arises, it is only either the court or interested party who may submit the issue to the council.[174] In addition to the condition of bringing the case to court for a justiciable matter of a court and exhaustion of remedies for a justiciable matter of administrative organ, strict rules of vested interest requirement are adhered by the proclamation. Even in case, any law issued by a federal government or state legislative organs is contested as being unconstitutional, the proclamation gives the right to submit the case to the CCI only for the concerned court or interested party.[175] The restrictive rules of standing set for requesting constitutional justice imposed by proclamation enacted to re-enact for the strengthening and specifying the powers and duties of the council of constitutional inquiry of FDRE, Proclamation No. 798/2013, prevents citizens and different forms of citizens Association not to ensure the observance of the constitution until they face personal injury due to the alleged unconstitutional act.

[173] A proclamation to re-enact for the strengthening and specifying the powers and duties of the council of constitutional inquiry of FDRE, Proclamation No. 798/2013, Federal Negarit Gazzete, 19th year No 65, Addis Ababa 30th August, 2013.
[174] Id, article 4(1).
[175] Id, article 5(3).

So such restrictive rule clearly prohibits citizens and different forms of associations not to protect the constitution while the constitutional provisions are in violation until the violation affects their personal interest, which is contrary to the provision of article 9(2) of the FDRE constitution which gives the right and responsibility for all citizens to protect the constitution regardless of any condition.

In practice only a relatively few cases have been submitted to CCI for requesting constitutional interpretation within the past twenty-two years since the enactment of the current FDRE constitution. Around 2089 cases are brought to CCI in seeking a constitutional interpretation.[176] Among those cases submitted to CCI for constitutional interpretation, 1674 were seen by the council until the end of November 2016 and only thirty-two cases are considered as necessary by the council to interpret the Constitution and recommended to the HOF.[177]

In practice, strict rules of vested interest requirement are required for those claiming constitutional justice. For instance, in case forwarded to CCI by HOF in relation to the claim brought by a political party named United Ethiopian Democratic Forces (UEDF), the council indicated as a vested interest requirement is mandatory. UEDF requested the HOF to replace a person assigned as representatives of the Kambta ethnic group in the HOF by the SNNP Council without being the person is elected by Kambata people as their representatives to the state council in the 2005 national and regional election by a person elected by the people of kambata for the state council in the same election year by emphasizing as it contravenes constitutional rights of the people.[178]

So, in the above case CCI clearly expressed in its recommendation part as UEDF lack locus standing to present such claim without being represented by Kambata people.[179] So accessing constitutional review is too restricted both by proclamation discussed above and its subsequent practices.

[176] Data accessed from data base of council of constitutional inquiry office registrar on January 20, 2016. This data is accessed from the data base of council of constitutional inquiry with the support of Gebeyanesh Abebe, who is registrar officer at the council.
[177] Ibid.
[178] See the application of HOF which is available at the Council of Constitutional Inquiry office, file No. I/Q/1/1/1/2000 (አ/ጉ/1/1/1/2000). The HOF wrote the application to CCI on October 18, 2000 E.C by file No. ፌ.ም. 3/ሀ1/አ.38/5/2.
[179] See the recommendation given by CCI on file No. (አ/ጉ/1/1/1/2000).

On the other side, the few legal spaces provided for PIL, such as environmental PIL are not realized in practice. For instance Mr. Wondosen Sintayehu, who is head of the legal department of the ministry of environment, forest and climate change confirms as environment related claim brought through public interest litigant is almost none. Rather, almost all claims are brought by persons or groups alleging personal injury.

As Mr. Reta Nigat, who is a public prosecutor at the department of Advocate license and administration directorate under the current Federal Attorney General Office noted the awareness of the advocates in particular and that of lawyers in general concerning special advocacy license is limited.[180] Advocates understand special advocacy license as a license which is provided for the mere purpose of giving pro bono service for clients who do not afford the fee required for legal services.[181]Mr. Reta expressed that, in addition to the lack of awareness about public interest litigation most of the advocates are not interested in giving free legal service even to the extent of discharging their legal responsibility of giving pro bono service as required by federal court advocate code of conduct regulation.[182] Mr. Abera Hailemariam who is the acting director of Ethiopian lawyers association also shares the idea of Mr.Reta by saying that lack of awareness, absence of willingness and the lack of commitment from the legal community and civic societies are some of the factors for the absence of PIL practice even in the areas of public interest or rights where PIL is permitted.[183]

Mr. Abera's view is in a line of the existing reality. For instance, different studies show that urban areas in Ethiopia have been affected by environmental pollution due to wastes released by factories and other sources.[184] In major cities including Addis Ababa industrial wastes which are released in to rivers are in the condition of threatening human life and their economic and social

[180] Interview conducted with Mr. Reta Nigat, who is public prosecutor at the department of Advocate license and administration directorate in Ethiopian federal Attorney General Office, the interview is conducted in the office of Attorney General located around Bambis, at 30/01/2009 E.C and 01/02/2009 E.C morning shift.
[181] Ibid.
[182] Federal court advocate code of conduct regulation No. 57/99, Federal Negarit Gazzette, 6th year, No.1, 24th September, 1999, Article 49. As per this provision practicing lawyers are required to provide pro bono services for at least fifty hours a year.
[183] Interview conducted with Mr. Abera Haile Mariam who is the acting director of Ethiopian lawyers Association. The interview is conducted in the office of Ethiopian lawers Association located around Ambasador near to the head office of Ethiopian postal office at 07/02/2009 E.C, morning shift.
[184] Ben Daley, Environmental issues in Ethiopia and links to the Ethiopian economy, October, 2015, accessed at http://dx.doi.org/10.12774/eod_hd.september2015.daleyb, on December 27, 2016, p. 10.

assets.[185] Mr. Lammessa who is environmental awareness and pollution control team coordinator at Addis Ababa environmental protection authority expressed as the chemicals released in two rivers of the capital city namely Akaki large and Akaki Small River scientifically confirmed as they can endanger human life and lower the intelligence level of human being.[186] However, even though the environmental pollution related problem is increasing from time to time in the country mainly in the major cities to the extent of threatening basic human rights such as the right to live in clean and healthy environment, citizens and civic societies has not yet utilized the liberal rules of locus standing provided by the environment pollution control proclamation to protect such constitutional infringements. This shows that, though the need for PIL is uncontested, the practice is very weak or non- existent.

In general, civic associations working in the area of justice sector, hasn't yet also utilized PIL as a means to realize constitutionally guaranteed rights and freedoms of citizens, mainly for those who are unable to access justice due to various reasons. The two prominent civic societies currently working in justice sector in the country are Ethiopian women lawyers Association (EWLA) and Ethiopian lawyers association. EWLA has mainly focused on providing legal aid to women's and children in need of legal services before courts, advocating and creating awareness on women right and gender equality. The association has worked by making a lobby for the amendment of laws affecting women right such as the 1957 Penal code and the provisions of the 1960 civil code governing family issues.[187] However as the project coordinator of the association said, after the enactment of the charities and societies proclamation no 621/2009 the activities of the association is severely restricted due to the fact that the proclamation restricts Ethiopian charities and association not to receive more than 10% of their budget from foreign sources.[188] Due to this currently, the activity of the association is mainly limited in giving free legal services for women who are unable and incapable of accessing justice while they are in need of.

Ethiopian Lawyers Association (ELA) is also the other visible civic society working in the justice sector of the country. The ELA mainly works for promoting the interest of its members,

[185][185]Reporter,the Amharic version, (Ethiopia), March 12, 2017, p. 3, section.1.
[186] Ibid.
[187] Interview with Meron Aragaw, Project Coordinator at Ethiopian Women's Lawyers Association, date 14/02/2009 E.C, the interview is conducted at the head office of the association in Addis Ababa, located around Mexico at Building named " Temama fok".
[188] Ibid.

the development of the legal profession, promoting rule of law and the independence of the judiciary, good governance, and human rights. EWLA has the objective of ensuring the dignity and independence of the legal profession, upgrading the legal skills of practicing lawyers along with the provision of legal aid service to the needy.[189]However, the association has never used PIL as a means of realizing justice for those who are in need of.

[189] Interview conducted with Mr. Abera Haile Mariam who is the acting director of Ethiopian lawyers Association. The interview is conducted in the office of Ethiopian lawyers Association located around Ambasador near to the head office of Ethiopian postal office at 07/02/2009 E.C, morning shift.

CHAPTER FOUR

4. Conclusion and Recommendation

4.1. Conclusion

The thesis has shown that as public interest litigation is a litigation brought to adjudicative bodies by a person who desires to vindicate the public interest or right for redressing injustices and violation of laws affecting the public. In PIL, the aim of the plaintiff is to protect the public interest, not his or her own interest, although he or she may incidentally achieve that end as well.

In its nature PIL involves a lot of distinctive features from that of conventional private interest litigation. The liberal rules of standing, relaxed rules of procedure, cooperative and collaborative approach PIL involves between parties and the court are some of the main distinctive features of PIL. For effective realization of access to justice using PIL, relaxed procedural approach are required starting from filing suits to that of hearing, production of evidence and execution of judgments. Applying the procedural rules of private interest litigation (ordinary course of litigation) in PIL results to a miscarriage of justice. For instance, leaving all procedural burdens such as paying a court fee, production of evidence, and duty of executing judgments on public interest litigants will discourage the potential litigants and can be a barrier for effecting PIL. Rather relieving court fees, appointing independent fact finding commission and organ executing the relief is required in addition to the collaborativeness of the parties and the bench. However, setting strict rules for identifying genuine public interest case from privately motivated frivolous cases is essential to prevent PIL from different forms of abuses or inappropriate uses.

In practice, PIL has been used as an instrument of realizing constitutional justice starting from the well known USA case of Brown v. USA Board of Education, which declared the segregation of children in public schools solely on the ground of races as a violation of equal educational opportunity clause of the country's constitution. The wide practices of PIL in India and South Africa indicated as PIL is a means in which the marginalized, vulnerable groups and people under different forms of disabilities access justice. Recently, some African countries like Uganda, Kenya, Ghana, Gambia and Zimbabwe have indicated the necessity of PIL by embracing PIL in their constitution as one means of realizing constitutional justice to the public.

Furthermore, using PIL for vindicating environmental rights of people and environmental protection has become a widely practiced phenomenon across the world.

In countries where there is a high illiteracy rate, poverty, lack of good governance, inaccessibility of courts, inaccessibility of laws and legal services PIL helps justice to be reached to the wider public where justice has not been reached by the ordinary course of private interest litigation.

The Constitutional status of PIL in Ethiopia has been the subject of contrary arguments among legal scholars. Almost, all the contrary arguments reflected in relation to the constitutionality of PIL relied on the provision of article 37 of the Constitution dealing with access to justice. In understanding and interpreting the constitution, it is not always necessary to stick on the textual readings of the certain constitutional provision. Rather considering the whole constitutional structure, provisions and constitutional objectives are also essential to have a clear view about the meanings of a constitutional provision. The absence of clear constitutional provision recognizing PIL under FDRE Constitution invites inter alia academicians for constitutional interpretation. The provision declaring access to justice under FDRE Constitution has neither expressly permitted nor prohibited PIL. But its implied meaning has led academicians to hold opposing views in arguing as whether PIL is a component of access to justice as described in Article 37 of FDRE constitution.

Article 9(2) of FDRE Constitution declares as all citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it. This is a provision which gives the right and responsibility for all citizens, organs of state, political organizations and associations to ensure the observance of the Constitution without any condition like the requirement of vested interest in case litigation is the viable solution of guarding the constitution. However, for the fact that a clear constitutional provision recognizing PIL and its basic procedural means are not addressed in FDRE constitution, it is undeniable that PIL lacks the deserving place in FDRE constitution.

There are few subsidiary laws such as the Environmental pollution control proclamation, environmental impact assessment proclamation, and Federal courts advocacy license and registration proclamation which allow PIL. However, the practice of PIL is by far less than the

narrow legal space given to PIL. It is more than a challenge to find a single PIL case from court files. Only the well known APAP v. FDRE environmental protection authority case is identified as PIL from federal courts, which was unsuccessfully rejected at the stage of preliminary objection. The organ interpreting the constitution also practically applies restrictive rules on those seeking constitutional justice.

In general, the thesis has argued that the FDRE Constitution is permissive to PIL. It has also shown that as some few subsidiary laws of the country discussed above allows PIL. The inadequacy of laws allowing PIL and absence of clear procedural law regulating PIL are identified as a gap which hinders the practice of PIL. The strict rules of vested interest requirement adopted by the civil procedure code and by a proclamation to re-enact for the strengthening and specifying the powers and duties of the council of constitutional inquiry of FDRE prevent potential public interest litigants from approaching courts and organ interpreting the Constitution respectively. The lack of awareness among the legal community, civic associations and citizens concerning PIL and its purpose has taken its own share for the weak practice of PIL even in the area of laws where PIL is permitted.

However, factors demanding PIL in the country has been increasing from time to time. The wide spread environmental pollution mainly occurring across urban areas and adversely threatening human life, lack of good governance which is admitted by government, violation of environmental standards and abuse of human rights in investment activities among many other calls public interest litigation to ensure the observance of the constitution. The existence of high barriers of access to justice such as inaccessibility of laws, legal services, courts and high illiteracy rate requires PIL to fill the gap of realizing justice to the wider public.

Above all ensuring the observance of the constitution which is a right and responsibility given for all citizens without the requirement of vested interest also requires employing PIL when the constitutional provisions are violated and transgressed. Therefore upholding constitutionalism, rule of law, democratic order, economic and social development which the FDRE constitution aspires to achieve requires genuine PIL.

4.2. Recommendation.

After thoroughly examining the place and relevance of PIL in Ethiopia, the study has identified as PIL is component of FDRE Constitution. However, only some few subsidiary laws discussed above are regulating PIL. The practice of PIL in federal courts and organs interpreting the constitution is near to none. Considering the existing legal gap and very weak practice of PIL on one side and the prevailing necessity of PIL on the other side, the study has recommended the following measures to minimize the problems identified and to enable PIL contributes its own share for the achievement of constitutional objectives of FDRE constitution such as rule of law, democratic order, social and economic development.

1. The provisions requiring strict rules of standing to seek constitutional review provided under the proclamation enacted for strengthening and specifying the powers and duties of the council of constitutional inquiry proc. No. 798/2013 are contrary to the constitutional objectives of FDRE Constitution and its constitutional provisions imposing duty of ensuring the observance of the constitution on citizens. Due to this the study recommends such unconstitutional provisions of the proclamation to be amended and provision allowing liberal rules of standing to seek constitutional justice has to be enacted to make all citizens, organs of state, political organizations, other associations and their officials ensure the observance of constitution when the viable solution is litigation.
2. Introducing separate special procedural rules regulating PIL from filing pleading up to execution of judgment is essential. Because applying the procedural rules of private interest litigation (the existing civil procedure code) in PIL discourage public interest litigants by imposing cumbersome procedural duty on them and results to a miscarriage of justice. Furthermore the collaboration and cooperativeness required b/n the bench, the parties and the government will not be practical by procedural rules governing private interest litigation rather it calls for the enactment of procedural rules governing PIL.
3. Laws allowing PIL has to be introduced mainly in areas where there is public interest such as protection of human rights and freedoms.
4. Establishing environmental tribunal or adjudicative organ in the ministry of environment, forest and climate change is essential to properly handle adjudicate complaints brought on environmental issues including environmental PIL.

5. Awareness creation concerning PIL and its use has to be made for citizens and civic associations by stakeholders working in justice sector such as government, law schools and the legal community in general.
6. Civic associations and citizens have to utilize the available legal space to vindicate public interests or rights through PIL. Particularly the rampant and ever growing environmental problems happening in the major cities of the country and its surrounding requires using PIL as one means of ensuring people's right to leave in clean and healthy environment.
7. Judicial vigilance is required from the judges, members of CCI and HOF for effective realization of the constitutional promises such as rule of law, democratic order, lasting peace and advancing social and economic development which their fulfillment inter alia requires the full respect of individual and people's fundamental freedoms and rights.
8. The FDRE constitution has to be amended and expressly recognize PIL to enable all citizens' the guardian of the constitution as it is provided under article 9(2) of FDRE constitution.
9. The civil procedure code of Ethiopia also has to be amended in manner in which it provides the required legal space for genuine PIL in matters of public interest.

Bibliography.

A. Books.

2. Andrew Valentine, Joining in the Jurisprudence: Public Interest Litigation and Interventions in the Law of Charity, (the Pemsel Case Foundation, 2015).
3. Faqir Hussain, Public interest litigation, (published by Sustainable Development Policy institute, 1992).
4. Monika Sangeeta Ahuja, Public interest litigation in India; A Socio-legal study, (Pro Quest LLC, (2014)).
5. Phillip Karugaba, Public Interest Litigation in Uganda: Practice and Procedure, (Shipwrecks and Seamarks, September 2005).
6. Stephen Golub, beyond rule of law orthodoxy the legal empowerment alternative, (Carnegie Endowment for International Peace, Number 41, October 2003).

B. Articles in Journal or Magazine, and Archives

7. Adem kassie, "Access to Constitutional Justice in Ethiopia'', in Pietro S. Toggia, Thomas F. Geraghty, Kokebe W. Jemane,(eds) Access to justice in Ethiopia: Towards an Inventory of Issue, Center for Human Rights Addis Ababa University (May 2014).
8. Adem K Abebe, "towards more liberal standing rules to enforce constitutional rights in Ethiopia'', African Human Rights Law Journal, vol.10 (2010).
9. A guide to public interest litigation in Kenya, Kenyans for Peace with Truth and Justice (KPTJ), Africa Centre for Open Governance and the Katiba Institute.
10. Akinrinmade Olomu Gbade, "Public interest litigation as a catalyst for sustainable development in Nigeria", OIDA International Journal of Sustainable Development, (2013).
11. Aman Hingorani, "public interest litigation'', Annual survey of Indian law, Vol. XLIX (2014).
12. Amit kumar Ishwarhai Parmar, "Public Interest Litigation: An Indian Scenario'', international journal of multidisciplinary research and development, Volume: 2, Issue: 9, (Sep 2015).

13. Aparna Polavarapu, Expanding Standing to Develop Democracy: Third-Party Public Interest Standing as a Tool for Emerging Democracies, The Yale journal of international law, Vol. 41(2016).
14. Avani Mehta Sood, "Gender Justice through Public Interest Litigation: Case Studies from India", Vanderbilt journal transnational law, 41(2008).
15. Ayalew Bitew Bishaw, "Public interest environmental litigation under Ethiopian law'', the International Journal Research Publications, Vol. 05, Number. 7 (November 2015).
16. Bemih Luseka, Public interest litigation-Securing protection of social and economic rights: challenges, opportunities and lessons, Central European University, November 30, 2012.
17. B.L. Wadhera, "Public Interest Litigation", Universal Law Publishing Co. Pvt. Ltd, (2009).
18. Christoph Scwarte, "public interest litigation'', International Institute for Environment and Development.
19. Gurdial singhnijar, "Public Interest Litigation: A matter of justice an Asian perspective''.
20. Helen Hershkoff, "Public Interest Litigation: Selected Issues and Examples".
21. Hingorani, "public interest litigation'', Annual survey of Indian law, Vol. L (2014).
22. Jeff Handmaker,''Public interest litigation for refugees in South Africa and the potential for structural change''),South African journal on human rights law, 27(2011),
23. Jennifer R Escott, Broadening Access to Justice in Rwanda: analyzing the opportunity for Public Interest Litigation
24. J. oloka- onyango, "human rights and public interest litigation in East Africa: A bird eye view", The Geo. Wash. Int'l L. Rev, Vol. 47(2015).
25. Joseph Otteh (edition), Litigating for Justice, A primer on Public interest litigation, Produced by access to justice.
26. Karen Kong, "Public Interest Litigation in Hong Kong: A New Hope for Social Transformation?", Civil Justice Quarterly Issue 3, (2009).

27. Laura Van den Eynde, Interpreting Rights Collectively Comparative Arguments in Public Interest Litigants' Briefs on Fundamental Rights Issues, (2015).
28. L Chiduza and PN Makiwane, "Strengthening Locus Standi in Human Rights Litigation in Zimbabwe: An analysis of the Provisions in the New Zimbabwean Constitution'', PER / PELJ, 19(2016).
29. Manoj Kumar Sadual, "Public interest litigation in India: Pros and Cons'', A Peer-Reviewed International Journal of Humanities & Social Science, Volume-IV (July 2015).
30. Melaku Adinew, "the place of public interest litigation in the Ethiopian legal system within a particular reference to the charities and societies proclamation", International Journal of Law and Policy Review, Vol. 4 No. 2 (July 2015).
31. Mizanie Abate Tadesse, "Transnational Corporate Liability for Human Rights Abuses: A Cursory Review of the Ethiopian Legal Framework'', Mekelle University Law Journal Vol. 4 (June 2016).
32. Parmanand Singh, "promise and perils of public interest litigation in India'', The Indian law institute, (2010).
33. P.D. Mathew, "public interest litigation'', Social Work Intervention with Individuals and Groups.
34. Serges Djoyou Kamga, "an assessment of the possibilities for impact litigation in Francophone African countries", African human rights law journal, 14(2014).
35. Sisay Alemahu Yeshanew, "The justiciability of human rights in the Federal Democratic Republic of Ethiopia'' African Human Rihts Law Journal, Vol. 8 (2008)
36. Solomon Emiru, "compatibility of the revised Oromia regional state constitution of 2001 with the FDRE constitution with respect to adjudication of constitutionality issues and its possible effects'', LLM thesis submitted to Addis Ababa University, unpublished, June 2011.
37. Surya Deva, "Public Interest Litigation in India: A Critical Review'', Civil Justice Quarterly, vol. 28(2009).
38. Yoseph Mulugeta, "public interest litigation as practiced by South African human rights NGOs: any lesson for Ethiopia, unpublished LLM thesis submitted to Faculty of Law, University of the Western Cape Town, South Africa, 31 October 2005.

C. Laws.

1. A proclamation to re-enact for the strengthening and specifying the powers and duties of the council of constitutional inquiry of FDRE, Proclamation No. 798/2013, Federal Negarit Gazzete, 19th year No 65, Addis Ababa 30th August, 2013.
2. Charities and societies proclamation No. 621/2009, Federal Negarit Gazzete, 15th year, No 25, Addis Ababa, 13th February, 2009.
3. Civil procedure code of the Empire of Ethiopia, Negarit gazzette – extraordinary issue No.3 of 1965, Addis Ababa, 1965.
4. Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, 9th, December, 2015, article 16(8) (a), Neg. Gez, proclamation No. 916.
5. Environmental Impact Assessment proclamation No. 299/2002, Federal Negarit gazette, 9thYear No. 11, 3rd December, 2002.
6. Environmental Pollution Control Proclamation, Proclamation No. 300/2002, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 9th Year No.12, Addis Ababa, 3rd December 2002.
7. Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000, federal Negarit gazette, 6th Year, No. 27, 9th March, 2000.
8. Federal court advocate code of conduct regulation No. 57/99, Federal negarit Gazzette, 6th year, No.1, 24th September, 1999.
9. Proclamation of the constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, 1st year No.1, 21 August 1995.
10. The 1995 Tigray regional state constitution, the 2002 revised Afar regional state constitution, the 2001 revised Amhara regional state constitution, the 2002 revised Oromia regional state constitution, the 2001 revised Ethiopian Somali regional state constitution, the 2003 revised Benishangul regional state constitution, the 2003 revised Gambela regional state constitution, the 2003 revised Benishangul regional state constitution, the 2001 revised Southern Nation Nationalities and Peoples

regional state constitution and the 2004 revised Harari regional state constitution

D. <u>Interviews</u>.

1. Interview with Wondosen Sintayehu, the head of legal department at the Ministry of Environment, Forest and Climate change, the interview is conducted at the office of the ministry located at Arat kilo at 10/19/2016.
2. Interview conducted with Mr. Reta Nigat, who is a public prosecutor at the department of Advocate license and administration directorate in Ethiopian federal attorney general office, the interview is conducted on the office of federal attorney general located around Bambis, at 30/01/2009 E.C. and 01/02/2009 E.
3. Interview conducted with Mr. Abera Haile Mariam who is the acting director of Ethiopian lawyers Association. The interview is conducted in the office of Ethiopian lawers Association located around Ambasador near to the head office of Ethiopian postal office at 07/02/2009 E.C.
4. Interview with Meron Aragaw, Project Coordinator at Ethiopian Women's Lawyers Association, date 14/02/2009 E.C the interview is conducted at the head office of the association in Addis Ababa, located around Mexico at Building named " temama fok".
5. Structured Interview made with Almaw Wele, Judge at Federal Supreme Court Cassation Civil Bench comprising five judges.
6. Structured Interview made with Senait Adinew, Judge at Federal Supreme Court Cassation Civil Bench comprising five judges.
7. Structured Interview made with Kenea kiteta, Judge at Federal Supreme Court Cassation Civil Bench comprising five judges.
8. Structured Interview made with Abraha Mesele, Judge at Federal Supreme Court Cassation Civil Bench comprising five judges.
9. Structured Interview made with Teferi Gebru, Judge at Federal Supreme Court Cassation Civil Bench comprising five judges.
10. Structured Interview made with Mustefa Ahmad, Judge at Federal Supreme Court Cassation Civil Bench comprising five judges.
11. Structured Interview made with Lelise Adugna, Vice president of Federal High Court, the interview is conducted in the office located at Lideta.

12. Structured interview with Anonymous judge of Federal Supreme Court Cassation Bench.
13. Interview conducted with Mulugeta Mengesha, Judge at Federal High Court, Dire Dawa bench. The interview is conducted in the office of the court at 21/02/2009 E.C.
14. Interview conducted with Ibrhaim Huseen, Judge at Federal High Court, Dire Dawa bench. The interview is conducted in the office of the court at 21/02/2009 E.C.

E. <u>Cases.</u>

1. Action Professional Association for people (APAP) Vs. The FDRE Environmental protection Authority, case taken from Federal Supreme Court.
2. House of Federation Vs. United Ethiopian Democratic forces, case taken from Council of Constitutional Inquiry(CCI)

APAP

አክሽን የባለሙያዎች ማህበር ለሕዝብ
ACTION - PROFESSIONALS' ASSOCIATION FOR THE PEOPLE

ቀን 07/07/98
Date
ቁጥር AP/E-APM/047/98
Ref No.

በኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፑብሊክ
ለፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት
አዲስ አበባ

ከሳሽ፡ አክሽን የባለሙያዎች ማህበር ለህዝብ (አፕአፕ)

አድራሻ፡ አዲስ አበባ አራዳ ክፍለ ከተማ ቀበሌ 11/12 የቤት ቁጥር 959

ተከሳሽ፡ የኢትዮጵያ የአካባቢ ጥበቃ ባለስልጣን

አድራሻ፡ አዲስ አበባ የካ ክፍለ ከተማ

የክሱ አርዕስት፡ ፍ/ቤቱ የካቲት 27 ቀን 1998 ዓ.ም ከሳሽ የካቲት 14 ቀን 1998 ዓ.ም በተፃፈ ያቀረበው አቤቱታ በአጭሩ ተሻሽሎ እንዲቀርብ በሰጠው ትዕዛዝ መሰረት በአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 አንቀፅ 11 ንዑስ ቁጥር 2 መሰረት የአካባቢ ብክለት እንዲገታ የቀረበ አቤቱታ

- ፍ/ቤቱ ክሱን ተመልክቶ ውሳኔ ለመስጠት በአዋጅ ቁጥር 25/1988 አንቀፅ 14 እና በአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 አንቀፅ 11 ንዑስ ቁጥር 2 መሰረት ስልጣን አለው።
- ከሳሽ ክሱን ለማቅረብ በአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 አንቀፅ 11 ንዑስ ቁጥር 2 መሰረት ያልተከለከለ ችሎታ አለው።
- ከሳሽ ክሱን የሚከታተለው በድርጅቱ ተቀጣሪ በሆኑና ነፃ የህግ አገልግሎት ለመስጠት ፍቃድ ባላቸው ጠበቆች አማካኝነት ሲሆን እንዳስፈላጊነቱ ሌሎች ጠበቆችን በመወከል ክርክሩን ሊከታተል ይችላል።
- ከሳሽ የፍ/ቤቱን መጥሪያ ለተከሳሽ በአድራሻው ያደርሳል።

TELEPHONE 4 35 55-57 | MOBILE (09)20 22 43 | FAX 24 35 58 | P.O.Box 12484 | ADDIS ABABA, ETHIOPIA

የክሱ ዝርዝር

ክሳሽ በአገራችን በሚገኙ ሁለት ወንዞች ማለትም የአቃቂ እና የሞጆ ወንዞች ላይ ከተደረጉ የተለያዩ ጥናቶች በወንዞቹ ላይ ብክለት እየደረሰ እንደሆነ ሊገነዘብ ችሏል። ድርጅቱ በወንዞቹ ላይ እየደረሰ ያለው ብክለት በአካባቢው ነዋሪዎች ጤንነት እንዲሁም ኢኮኖሚያዊና ማህበራዊ ሁኔታ ላይ እያስከተለ ያለውን ችግር በተመለከተ አንድ አጥኚ ቡድንም አሰማርቶ ጥናቱን አከናውኗል። ከጥናቶቹ ለመረዳት እንደተቻለው ለአቃቂ እና ለሞጆ ወንዞች መበከል ዋነኛው ምክንያት እንደቅደምተከተላቸው በአዲስ አበባ ከተማ አስተዳደር ከሚገኙ የተለያዩ መንግስታዊ እና መንግስታዊ ያልሆኑ ፋብሪካዎች ወደ ወንዙ የሚለቀቁ ፈሳሽ እና ጠጣር የሆኑ በካይ የፋብሪካ ተረፈ ምርቶችና ከከተማው ነዋሪ ወደ ወንዙ የሚለቀቀው ጠጣርና ፈሳሽ ቆሻሻ እና በኦሮሚያ ክልላዊ መንግስት ምስራቅ ሸዋ ዞን ሞጆ ከተማ ከሚገኘው የሞጆ ቆዳ ፋብሪካ ወደ ወንዙ የሚለቀቀው ፈሳሽና ጠጣር በካይ የፋብሪካ ተረፈ ምርቶች ናቸው፡

ወንዝ ማለት ለሰው ልጆች በህይወት ለመኖር አስፈላጊ የሆነው ውሃ የሚገኝበት ቦታ ነው። ውሃ ደግሞ አካባቢ በሚለው ትርጉም ውስጥ የሚካተት ነው። የዚህ የተፈጥሮ አካባቢ ጥራት መለወጥ ወይም የሚሠጠው ጥቅም እንዲቀንስ መደረግ በሰው ልጆች የጤና መብት እንዲሁም ለሰው ልጆች ክብር ያለው ህይወት መኖር አስፈላጊ የሆኑ ነገሮች ላይ አሉታዊ ተፅእኖ እንደሚያሳድር ግልፅ ነው።

ጥናቶች እንደሚያሳዩት ወንዞቹ ለከተማውና በከተማው ዳርቻ ነዋሪዎች የተለያየ ጥቅም የሚሰጡ ሲሆን። ለአዲስ አበባ አብዛኛው ነዋሪ የሚቀርቡ የአትክልት ምርቶች ለምሳሌ ቲማቲም ፣ሳመን ፣ካሮት የሚመረቱት ከአቃቂ ወንዝ በመስኖ በተጠለፈ ውሃ አማካኝነት ነው።

ከዚህም በተጨማሪ የከተማዎቹ ነዋሪዎች የወንዞቹን ውሃ በመጠቀም አካላታቸውን ይታጠቡበታል ልብሳቸውንም ያጥቡበታል። ከከተማዎቹ ወጣ ባሉ የገጠር አካባቢዎች የሚኖረው ነዋሪ ደግሞ የወንዙን ውሃ ለመጠጥ ይጠቀምበታል። የሚያረባቸው ከብቶችም ውሃ የሚጠጡት ከነዚሁ ወንዞች ነው። በወንዞቹ ላይ በደረሰው ብክለት ምክንያት ወንዞቹን ጥቅም ላይ ለማዋል አዳጋች እየሆነ ከመምጣቱም በተጨማሪ ወንዞቹ ውስጥ የሚለቀቀው ጠጣር ወይም ፈሳሽ በካይ የሚያመነጨው ክርፋት (መጥፎ ሽታ) በነዋሪው ህብረተሠብ ጤንነት ላይ የበኩሉን አሉታዊ ተዕእኖ እያሳደረ ይገኛል። በዚሁ ከወንዞቹ በሚመነጨው ክርፋት ምክንያት ነዋሪው ህብረተሠብ ለተለያዩ የጤና ችግሮች ተጋልጧል። በአካባቢው የሚገኙ እንስሳትና እፅዋት ላይ እየደረሰ ያለው ጉዳትም በህብረተሠቡ ኢኮኖሚያዊ እና ማህበራዊ ሁኔታ ላይ ከፍተኛ ጉዳት እያስከተለ ይገኛል።

በአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 አንቀፅ 3 ላይ ማንም ሰው ተገቢውን የአካባቢ ደረጃ በመተላለፍ አካባቢን ሊበክል ወይም በሌላ ሰው በኩል እንዲበከል ለማድረግ እንደማይችል የተደነገገ ሲሆን ሕግን በመተላለፍ ማንኛውንም በካይ (pollutant) ወደ አካባቢ በሚለቅ ሰው ላይ የባለስልጣን መስሪያ ቤቱ አስተዳደራዊ ወይም ሕጋዊ ዕርምጃ መውሰድ እንዳለበትም ይኸው የሕግ አንቀፅ ይደነግጋል። በጤና ወይም በአካባቢ ላይ አደጋ እንዳያስከትል ከሚያሰጋ የሥራ እንቅስቃሴ ሊመጣ የሚችል ጉዳትን ለመከላከል የባለስልጣን መስሪያ ቤቱ ድርጅትን የመዝጋት፣ የማዛወር እንዲሁም ሌላ ማንኛውንም አስፈላጊ ዕርምጃ የመውሰድ ሥልጣን በዚሁ የሕግ አንቀፅ ተሰጥቶታል። በዚሁ አንቀጽ ንኡስ አንቀጽ 4 መሠረት የአካባቢ ባለሥልጣን በሚወስነው ሁኔታና የጊዜ ገደብ መሠረት ብክለት ያደረሰው ሰው አካባቢውን ከበካይ ማጽዳት፣ ወይም ለማጽጃ የወጣውን ወጪ መሸፈን አለበት በማለት ይደነግጋል። የከተማ ቆሻሻ አያያዝን አስመልክቶም ባለሥልጣኑ ከሌሎች መስሪያ ቤቶች ጋር በመተባበር የከተሞች ቆሻሻ ማስወገጃ መገልገያዎችን መገምገምና በአጥጋቢ ሁኔታ መሟላታቸውን ለማረጋገጥ አስፈላጊ እርምጃ የመውሰድ ስልጣን አለው።

በመሆኑም ከላይ በተገለፀት ሁለት ወንዞች ላይ እየደረሰ ያለው ብክለት አካባቢውን ከብክለት ለመጠበቅ የወጡ ህጎችን በመጣስ በተፈፀሙ ድርጊቶች በመሆኑና ይኸው ብክለትም በህብረተሠቡ የጤና ሙበት ላይ አሉታዊ ተፅእኖ እያደረሰ ስለሚገኝ ለብክለቱ ሃላፊ በሆነው በማንኛውም ሰው ላይ የባለስልጣን መስሪያ ቤቱ ተገቢና አስፈላጊውን እርምጃ በአፋጣኝ ወስዶ በአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 አንቀፅ 11 ንዑስ ቁጥር 2 ስር በተጠቀሰው የጊዜ ገደብ (30 ቀናት) ውስጥ ውሳኔውን ለድርጅታችን እንዲያሳውቀን ሕዳር 28 ቀን 1998 ዓ.ም. በቁጥር አኘ/13.ልመላ/681/98 በተፃፈ በማመልከቻ ጠይቀናል።

ባለስልጣን መስሪያ ቤቱ ታህሳስ 17 ቀን 1998 ዓ.ም በቁጥር 1/አጥ-ጉ1/1 በተፃፈ ውሳኔ የሰጠ ሲሆን ከሳሽ ውሳኔው በወንዞቹ ላይ እየደረሰ ያለውን ብክለት እና ብክለቱ በአካባቢው ነዋሪዎች ጤንነት እንዲሁም ኢኮኖሚያዊና ማህበራዊ ሁኔታ ላይ እያስከተለ ላለው የሙብት ጥሰት አፋጣኝ መፍትሔ የሚያስገኝ ሆኖ አላገኘውም። በመሆኑም ተከሳሽ በህግ የተጣለበትን ግዴታውን እንዲወጣ ለማስገደድ ይህንን ክስ ለፍ/ቤቱ አቅርቧል።

ከሳሽ የሚጠይቀው ዳኝነት

1. የተከሳሽ መስሪያ ቤት በህግ በተሰጠው ስልጣን መሰረት ህግ ማውጣትን ጨምሮ አስፈላጊ የሆኑ የተለያዩ እርምጃዎችን በመውሰድ በወንዞቹ ላይ እየደረሰ ያለውን ብክለት እንዲያስቆም እንዲሁም በወንዞቹ ላይ የሚገኘውን በካይ እንዲያፀዳ ፍ/ቤቱ ውሳኔ እንዲሰጥልን።
2. ፍ/ቤቱ የተከሳሽ መስሪያ ቤት ብክለቱን ለማስቆም የወሰዳቸውን ዕርምጃዎችና የተገኘውን ውጤት የሚከታተልና ፍ/ቤቱ በሚወስነው ጊዜ ውስጥ ሪፖርት የሚያቀርብ ባለሙያዎች ማኅበር

መንግስታዊና መንግስታዊ ያልሆኑ ድርጅቶች የሚወክሉ ግለሰቦችን ያካተተ ተቆጣጣሪ እንዲሾምልን።

ከላይ የተገለፀው በሙሉ እውነት መሆኑን ከሳሽ ያረጋግጣል።

ስለ ከሳሽ

ጠበቃ ወንጌል ጌባቱ

A.P.A.P

መጋቢት 7 ቀን 1998 ዓ.ም

በኢትዮጲያ ፌዴራላዊ ዴሞክራሲያዊ ሪፑብሊክ
ሰፊዴራል የመጀመሪያ ደረጃ ፍ/ቤት
አዲስ አበባ

ከሳሽ፡ አክሽን የባለሙያዎች ማህበር ለህዝብ (አፕአፕ)

አድራሻ፡ አዲስ አበባ አራዳ ክፍለ ከተማ ቀበሌ 11/12 የቤት ቁጥር 959

ተከሳሽ፡ የኢትዮጲያ የአካባቢ ጥበቃ ባለስልጣን

አድራሻ፡ አዲስ አበባ የካ ክፍለ ከተማ

በፍ/ብ/ሥ/ሥ/ሕ/ቁ 223 መሰረት የቀረበ የማስረጃ ዝርዝር መግለጫ

ከሳሽ ላቀረበው ክስ የሚከተለውን ማስረጃ ያቀርባል

1. የአቃቂ ወንዝ የብክለት ደረጃን አስመልክቶ በተከሳሽ መስሪያ ቤት በሐምሌ ወር 1997 የተሰራ ጥናት በተከሳሽ መስሪያ ቤት የሚገኝ ሲሆን ይህንኑ ማስረጃ ፍ/ቤቱ በፍ/ብ/ሥ/ሥ/ሕ/ቁ 145 መሰረት አሰቀርቦ እንዲመለከትልን፡፡
2. በሞጆ ቆዳ ፋብሪካ ላይ በተከሳሽ ድርጅት የተደረገ የአካባቢ አዲት ሪፖርት በተካሳሽ መስሪያ ቤት የሚገኝ ሲሆን ይህንንም ማስረጃ ፍ/ቤቱ በፍ/ብ/ሥ/ሥ/ሕ/ቁ 145 መሰረት አሰቀርቦ እንዲመለከትልን፡፡

3. ከሳሽ በአቃቂና በሞጆ ወንዞች ላይ እየደረሰ ያለውን ብክለት አስመልክቶ ያስጠናው ጥናት አጭር ዘገባ 25 ገፅ ተያይዞ ቀርቧል፡፡

4. በኤንዳ ኢትዮጲያ ፣በአዲስ አበባ አካባቢ ጥበቃ ቢሮ፣በአዲስ አበባ ውሃና ፍሳሽ ባለስልጣን፣ በአዲስ አበባ ጤና ቢሮ፣ በአቃቂ ቀይ መስቀል ፅ/ቤት አዘጋጅነት በአቃቂ ወንዝ ብክለት ላይ በመስከረም 5 ቀን 1992 ዓ.ም ለመከረው አውደ ጥናት በባለሙያዎች የተዘጋጁ የጥናት ፅሁፎች 62 ገፅ ተያይዞ ቀርቧል፡፡

5. በፍ/ቤት ቀርበው በወንዞቹ ላይ የደረሰውን ብክለት እንዲሁም ብክለቱ ያስከተለውን ችግር አስመልክቶ የሙያ ምስክርነታቸውን የሚሰጡ የከሳሽ ምስክሮች

ሀ. ዶ/ር ፍስሃ ኢታና፡ አድራሻ አዲስ አበባ ዩኒቨርሲቲ ባዮሎጂ ዲፓርትመንት

ለ. ዶ/ር ጎበና ከበደ፡ አድራሻ አዲስ አበባ አቃቂ ቃሊቲ ክፍለ ከተማ ቀበሌ 10 የቤት ቁጥር 1668

ሐ. አቶ መኩሪያ ሀ/ዮሀንስ፡ አድራሻ አዲስ አበባ የካ ክፍለ ከተማ ቀበሌ 12 የቤት ቁጥር 596

መ. አቶ ዉብሸት ጌታሁን ዝቅአርጋቸው፡ አድራሻ አዲስ አበባ ቦሌ ክፍለ ከተማ ቀበሌ 01 የቤት ቁጥር 1524

6. የተከሳሽ መስሪያ ቤት ድርጅታችን ላቀረበው አቤቱታ ታህሳስ 17 ቀን 1998 ዓ.ም በቁጥር 1/አጥ-ጉ1/1 በተፃፈ የሰጠው መልስ 3 ገፅ ተያይዞ ቀርቧል፡፡

የከሳሽ ማስረጃ ከላይ የተገለፀው መሆኑን ከሳሽ ያረጋግጣል፡፡

ስለ ከሳሽ

ጠበቃ ወንጌል አባተ

መጋቢት 7 ቀን 1998 ዓ.ም

በኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ሪፑብሊክ
ለፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት
አዲስ አበባ

ከሳሽ፡ አክሽን የባለሙያዎች ማህበር ለህዝብ (አፖአፕ)

አድራሻ፡ አዲስ አበባ አራዳ ክፍለ ከተማ ቀበሌ 11/12 የቤት ቁጥር 959

ተከሳሽ፡ የኢትዮጵያ የአካባቢ ጥበቃ ባለስልጣን

አድራሻ፡ አዲስ አበባ የካ ክፍለ ከተማ

በከሳሽ የቀረበ የህግ ክርክር (Memorandum of Law)

I. ለመብቶቹ ጥበቃ የሚያደርጉ አለም አቀፍ፣ አህጉራዊና ብሔራዊ ህጎች

እንደሚታወቀው አገራችን ኢትዮጵያ የተለያዩ አለም አቀፍና አህጉራዊ የሰብአዊ መብት ሰምምነቶችን አፅድቃለች፡፡ ከነዚህም ውስጥ የሲቪልና ፖለቲካ መብቶች አለም አቀፍ ቃልኪዳን ስምምነት፣ የኢኮኖሚ፣ ማህበራዊ እና ባህላዊ መብቶች አለም አቀፍ ቃል ኪዳን ስምምነት፣ የአፍሪካ የሰብአዊና የህዝቦች መብቶች ቻርተር፣ የህፃናት መብቶች ስምምነትንና በሴቶች ላይ የሚፈፀም ማንኛውም አይነት አድሏዊ አሰራር ለማስወገድ የተደረገው ስምምነት በዋነኝነት ሊጠቀሱ ይችላሉ፡፡ የኢፌዴሪ ህገ-መንግስት አንቀፅ 9 ንዑስ ቁጥር 4 ኢትዮጵያ የተቀበለቻቸው አለም አቀፍ ስምምነቶች የአገሪቷ የህግ አካል እንደሆኑ ይደነግጋል፡፡

በኢኮኖሚ፣ ማህበራዊ እና ባህላዊ መብቶች አለም አቀፍ ቃል ኪዳን ስምምነት ላይ እያንዳንዱ ግለሰብ ክብር ያለው ሕይወት እንዲኖር አስፈላጊ የሆኑ የተለያዩ መብቶች የተካተቱ ሲሆን ከነዚህ መብቶች ውስጥም በስምምነቱ አንቀፅ 12 ላይ የሠፈረው ደጤና

መብት አንዱና ዋነኛው ነው። ይህ አንቀፅ ሊገኝ የሚችል ከፍተኛ የጤንነት ደረጃ ለማግኘት አስፈላጊ የሆኑ የተለያዩ መገልገያዎች፣ ቁሳቁስ፣ አገልግሎትና ሁኔታዎች የማግኘት መብት የሰው ልጆች መሠረታዊ መብት እንደሆነ አረጋግጦአል። መብቱ ለእያንዳንዱ ዜጋ የሚያጎናፅፋቸው የተለያዩ መብቶች ያሉ ሲሆን እነሱም የእናቶች እንዲሁም የሥነ ተዋልዶ ጤና መብት፣ ጤንነቱ የተጠበቀ የተፈጥሮ እንዲሁም የሥራ ቦታ የመኖር መብት፣ የበሽታ መከላከያ ምርመራ እንዲሁም መቆጣጠሪያ የማግኘት መብት እና የጤና መገልገያዎች ቁሳቁስ እና አገልገሎቶችን የማግኘት መብት ናቸው።

ከላይ ለመግለፅ እንደተሞከረው የጤና መብት ከሚያካትታቸው መብቶች መካከል አንዱ ጤንነቱ በተጠበቀ የተፈጥሮ እንዲሁም የሥራ አካባቢ የመኖር መብት ነው። ይህም መብት ልክ እንደሌሎቹ ሰብዓዊ መብቶች በመንግስት ላይ ሶስት ግዴታዎችን የሚጥል ሲሆን መንግስት መብቱን በተመለከተ ያለበትን የማክበር፣ የማስከበር እና የማሟላት ግዴታዎች በጥቂቱ ቀጥሎ ለማሳየት እንሞክራለን።

የመንግስት የማክበር ግዴታ - በዚህ ግዴታ ሥር መንግስት ሊወስዳቸው የሚገቡ እርምጃዎች ያሉ ሲሆን እነሱም

* የነርቭ ሲያር፣ ባዮሎጂካል ወይም ኬሚካል የጦር መሣሪያዎች መጠቀም ወይም መሞከር ለጤና ጎጂ የሆኑ ንጥረ ነገሮችን የሚያመነጭ ከሆነ ድርጊቱን ከማድረግ መቆጠብ፣
* ሕገወጥ በሆነ መንገድ ከባቢ አየርን፣ ውሃንና አፈርን ለምሳሌ በመንግስት ይዞታ ስር ባሉ ፋብሪካዎች ተረፈ ምርት ከመበከል መቆጠብ አለበት። ከባቢ አየር ጎጂ በሆኑ የማዕድናት ወይም የዘይት ምርትና ፍለጋ፣ በደን ልማት፣ በአሳ ማጥመድ ሥራና በእርሻ እንዲመረዝ ወይም እንዲጠፋ መፍቀድ የለበትም።

የማስከበር ግዴታ - በዚህ ግዴታ ሥር መንግስት ሊወስዳቸው የሚገቡ እርምጃዎች ደግሞ

* በግል ኮርፖሬሽኖች በማዕድናት አውጪዎች ወይም አምራች ፋብሪካዎች ውሃ፣ አየር እና አፈር እንዳይበከል ለመከላከል ሕጎችን ማውጣትና ማስፈፀም፣

* የአልኮል ምርትን፣ ሽያጭን እንዲሁም ሲጋራ እጾችና ሌሎች ጐጂ ንጥረ ነገሮችን መጠቀምን ማዳከም፣

* ግለሰቦች፣ ቡድኖች፣ ድርጅቶችና ኮርፖሬሽኖች የሌሎችን የጤና መብት እንዳይጥሱ ለመከላከል የሚያስናውኗቸውን ተግባራት መቆጣጠር፣

* ሸማቾችና ሰራተኞች ለጤናቸው አስጊ ከሆኑ ተግባራት እንዲጠበቁ ማድረግ፣

* ሶስተኛ ወገኖች ጤናን የሚመለከቱ መረጃዎች የማግኘት መብት ላይ ገደብ አለመጣላቸውን ማረጋገጥ ለምሳሌ አሠሪዎች መድሃኒትና ምግብ አምራቾች። በዚህ ውስጥ በተቻለ መጠን በሥራ ቦታ በተፈጥሮ ለጤና ጠንቅ የሆኑ ምክንያቶች ሊኖሩ ስለሚችሉ አደጋውን ለመቀነስ የመቆጣጠሪያ መንገድ ማበጀት ናቸው።

<u>የማሟላት ግዴታ</u> - በዚህ ሥር በመንግስት ሊወሰዱ የሚገቡ እርምጃዎች የሚከተሉት ናቸው

* ለጤንነት አስፈላጊ ለሆኑ ነገሮች ለምሳሌ ጤናማ የሆነ አልሚ ምግብና ንፁህ የመጠጥ ውሃ፣ መሠረታዊ ንጽሕና፣ በቂ የመኖሪያ ቤት እና የኑሮ ሁኔታ ሁሉም ሰው እኩል የማግኘት መብት እንዲኖረው ማረጋገጥ፣

* የከባቢ አየር እና የሥራ ቦታ የጤና ጠንቆች እንዲሁም ሌሎች ማናቸውም ተላላፊን በሽታ በሚመለከት በቀረበ መረጃ የተደገፉ አደጋዎችን ለመከላከል እርምጃዎችን መውሰድ፣ ለዚህም ዓላማ ዓላማውን የአየር፣ የውሃ እና የአፈር ብክለትን ለመቀነስ ወይም ለማጥፋት ያደረገ ብሔራዊ ፖሊሲ መቅረጽ እና በተግባር ማዋል፣

* የሥራ ቦታ አደጋዎችንና በሽታዎችን ለመቀነስ ወጥነት ያለው ብሔራዊ ፖሊሲ መቅረጽ በተግባር መዋልና፣ በየጊዜው እንደገና ክለሳ ማድረግ፣

* የሥራ ቦታ ጥንቃቄ እንዲሁም የጤና አገልግሎትን በተመለከተ ወጥ የሆነ ብሔራዊ ፖሊሲ የማቅረብ ናቸው።

የአፍሪካ የሰብአዊና የሕዝቦች መብቶች ቻርተርም አንቀጽ 16 ላይ የጤና መብት የተረጋገጠ ሲሆን ይህንን ስምምነት ያፀደቁ መንግስታት የዜጐቻቸውን ጤና ለመጠበቅ አስፈላጊ የሆኑ እርምጃዎችን የመውሰድና ዜጐች የሕክምና አገልግሎት የማግኘታቸውን

የማረጋገጥ ግዴታ ተጥሎባቸዋል። እንዲሁም በአንቀፅ 24 ላይ ህዝቦች በአጠቃላይ አርኪ እና ለዕድገት ምቹ የሆነ አካባቢ የማግኘት መብት ያላቸው መሆኑ ተረጋግጧል።

የሕፃናት መብቶች ስምምነት አንቀጽ 24 መንግስት በአካባቢ ላይ የሚከተለውን አደጋ ከግምት ውስጥ አስገብቶ ለሕፃናት በቂ ተመጣጣኝ ምግብ እና ንፁሕ የመጠጥ ውሃ የማቅረብ ግዴታ እንዳለበት ይደነግጋል።

በሴቶች ላይ የሚደርሰውን ማንኛውንም አይነት አድሏዊ አሠራር ለማስቀረት የተደረገው አለም አቀፍ ስምምነት አንቀጽ 14 ንኡስ ቁጥር 2 /ለ/ ሴቶች በቂ የሆነ የኑሮ ደረጃ በተለይ የመኖሪያ ቤት የጽዳት አገልግሎት የኤሌክትሪክና የውሃ አቅርቦት ማግኘታቸውን የማረጋገጥ ግዴታ እንዳለበት ይደነግጋል።

የኢፌዴሪ ሕገ መንግስት አንቀጽ 41 ለኢኮኖሚ፣ ማኅበራዊና ባሕላዊ መብቶች ዕውቅና የሰጠ ሲሆን በንኡስ ቁጥር 4 ላይ መንግስት ለጤናው ሴክተር በየአመቱ እያደገ የሚሄድ በጀት የመመደብ ግዴታ እንዳለበት ደንግጓል። በህገ መንግስቱ አንቀጽ 43 ላይ ደግሞ የዜጐች ጤንነቱ በተጠበቀ የተፈጥሮ አካባቢ የመኖር መብት ተረጋግጧል።

እነዚህ ከላይ የተገለፀት መብቶች እውን ሆነው ሁሉም ዜጋ የመብቶቹ ተጠቃሚ እንዲሆኑ የማድረግ ግዴታ በዋነኝነት የመንግስት ሲሆን መንግስት ፖሊሲዎችና የተለያዩ ሕጎችን በማውጣትና ሌሎች አስፈላጊ ዕርምጃዎችን በመውሰድ መብቶቹ ለሁሉም ዜጎች እውን መሆናቸውን የማረጋገጥ ግዴታ አለበት። መንግስት ከላይ የተዘረዘሩት መብቶች ለዜጎች እውን እንዲሆኑ በህገ መንግስት ለመብቶቹ እውቅና ከመስጠት ጀምሮ የተፈጥሮ አካባቢ ጤንነትን ለመጠበቅ የተለያዩ ዕርምጃዎችን ወስዷል። በዚህ ረገድ የተከሳሽን መስሪያ ቤት ለማቋቋም የወጣው አዋጅና የዚሁ መስሪያ ቤት እንደገና በተሻለ አደረጃጀት መደራጀት፣ የአካባቢ ተዕእኖ ግምገማ አዋጅ፣ የአካባቢ ብክለት ቁጥጥር አዋጅ እና የህዝብ ጤና አጠባበቅ አዋጅ በዋነኛነት ይጠቀሳሉ።

II. **በብክለቱ ምክንያት የተጣሱ መብቶች** ፡ በወንዞቹ ላይ በደረሰው ብክለት ምክንያት በተለያዩ አለም አቀፍ፣አህጉራዊና ብሔራዊ ህጎች ጥበቃ የተሰጣቸው የተለያዩ መብቶች ላይ ጥሰት እየተፈፀመ ይገኛል፡፡

2.1. የጤና መብት፣ጤናማ በሆነ የተፈጥሮ አካባቢ የመኖር መብትና በሕይወት የመኖር መብት ላይ የተፈፀመ የመብት ጥሰት

ከላይ በተገለፁት አለም አቀፍና አህጉራዊ የሰብአዊ መብት ስምምነቶች መሠረት የእያንዳንዱ ግለሰብ ጤናማ በሆነ የተፈጥሮ አካባቢ የመኖር መብት እንዲሁም የጤና መብት ተረጋግጧል፡፡ ነገር ግን በሁለቱ ወንዞች ላይ በደረሰው ብክለት ምክንያት በኢኮኖሚ፣ ማኅበራዊና ባሕላዊ መብቶች አንቀጽ 12 በአፍሪካ የሰብአዊና የሕዝቦች መብቶች ቻርተር አንቀጽ 16 እና 24 በሕፃናት መብቶች ኮንቬንሽን አንቀጽ 24 እና በሴቶች ላይ የሚፈፀም ማንኛውም አይነት አድሏዊ አሠራር ለማስቀረት የተደረገው ስምምነት አንቀጽ 14/2//ለ/ ሥር እንዲሁም በኢፌዲሪ ሕገ መንግስት አንቀጽ 41 እና 43 ሥር ለዜጐች በተረጋገጡት በእነዚህ መብቶች ላይ ጥሰት እየተፈፀመ ይገኛል፡፡ በሁለቱ ወንዞች ላይ እየደረሰ ያለው ብክለት ሊደርስ የቻለው ደግሞ አካባቢውን ከብክለት ለመጠበቅ የወጡ ሕጐችን በመጣስ በተፈፀሙ ድርጊቶች ነው፡፡

የነዚህ ወንዞች መበከል በአካባቢው የሚኖረው ህዝብ ጤናማ በሆነ የተፈጥሮ አካባቢ የመኖር መብት፣ የጤና መብት እና በህይወት የመኖር መብት ላይ አሉታዊ ተፅእኖ እያሳደረ ይገኛል፡፡ ህብረተሠቡ በብክለቱ ምክንያት ከወንዞቹ ማግኘት ይችል የነበረውን ጥቅም ማግኘት ካለመቻሉም በላይ ለህይወቱ አስፈላጊ የሆኑ ነገሮችን ለማግኘት ወንዞቹን ጥቅም ላይ ለማዋል በሚሞክር ጊዜ የተለያየ የጤና መታወክ ደርሶበታል፡፡ ከነዚህም ውስጥ የቆዳ በሽታ፣ የአንጀት ተስቦ፣ የጨጓራ፣ የመተንፈሻ አካል እንዲሁም የነርቭ ችግር፣ የአይን ህመም እና ህመሞቹ የሚያስከትሉት የካንሰር በሽታ በዋነኝነት በጥናቱ የተለዩ ናቸው፡፡ በዚህም ምክንያት በአካባቢው የሚኖረው ህብረተሰብ ህይወቱን እስከማጣት ደርሶአል፡፡ ይህ ነው የማይባል የጤና መታወክና ሞት በተለይ በህፃናት ላይ እየደረሰ ይገኛል፡፡ የእናቶች እንዲሁም የሥነ ተዋልዶ ጤና መብት ላይም ብክለቱ ችግር እያስከተለ ይገኛል፡፡ በአካባቢው የሚኖሩ ነፍሰጡር እናቶች ለውርጃ የተጋለጡበት አጋጣሚ ቀላል አይደለም፡፡ በአጠቃላይ በህብረተሰቡ በህይወት የመኖር መብት ላይ ያነጣጠበው አደጋ ከፍተኛ ነው፡፡

2.2. በቂ የሆነ የኑሮ ደረጃ የማግኘት መብት ላይ የተፈፀመ የመብት ጥሰት

በቂ የሆነ የኑሮ ደረጃ የማግኘት መብት ከፍ ብለው በተገለፀት አለም አቀፍና አህጉራዊ የሰብአዊ መበት ስምምነቶች ከተረጋገጡት መሠረታዊ መብቶች መካከል አንዱ ነው፡፡ በዚህ መብት ሥር በቂ የሆነ ምግብ የመኖሪያ ቤት እና ልብስ የማግኘት መብቶች ተካተው እናገኛለን፡፡ ለእነዚህ መብቶች እውን መሆን አስፈላጊ ከሆኑ ነገሮች መካከል ዜጐች የሚያገኙት ገቢ አንዱና ዋነኛው ነው፡፡ ዜጐች እውቀታቸውንና ጉልበታቸውን በመጠቀም በሚያገኙት ገቢ እነዚህን መብቶች ሊያሟሉ ይችላሉ፡፡ በመሆኑም ዕውቀታቸውንና ጉልበታቸውን በተግባር በማዋል ገቢ ለማግኘት የሚያደርጉት ኢኮኖሚያዊ እንቅስቃሴ ላይ ችግር በሚፈጠር ጊዜ በቂ የሆነ የኑሮ ደረጃ የማግኘት መብታቸው ላይ ጥሰት እንደሚፈፀም ግልጽ ነው፡፡ ምክንያቱም ከኢኮኖሚያዊ እንቅስቃሴያቸው ገቢ ማግኘት ካልቻሉ ለኑሮአቸው አስፈላጊ የሆኑ መሠረታዊ ነገሮችን ሊያሟሉ አይችሉም፡፡ ችግሩ ከዚህም አልፎ በአገር ኢኮኖሚ ላይ የሚያስከትለው ጉዳት በቀላሉ ሊታይ አይገባም፡፡

ጥናቶች እንደሚያመለክቱት በብክለቱ ምክንያት ለበሽታ የተጋለጡ ግለሰቦች ከስራ ገበታቸው ይቀራሉ፡፡ በስራ ገበታቸው የሚገኙትም ቢሆን ለመስራት ያላቸው ፍላጎት አናሳ ነው፡፡ እያንዳንዱ አባወራ ለህክምና የሚያወጣው ወጪም እንዲሁ ከጊዜ ወደ ጊዜ እየጨመረ መጥቷል፡፡

የአካባቢው ነዋሪዎች የሚያረቡዋቸው እንስሳቶች ላይ እየደረስ ባለው ጤና መታወክና በተለይ በጥጆች ላይ በሚደርሰው ሞት ምክንያትም የኢኮኖሚያዊ እንቅስቃሴያቸው ላይ ይህ ነው የማይባል ጉዳት እየደረሰ ይገኛል፡፡ ከእንስሳት ይገኝ የነበረው ወተት እና የወተት ተዋፅኦ በእጅጉ እየቀነሰ የመጣ ሲሆን በእንስሳቱ ላይ የሚደረሰው የጤና መታወክ እንስሳቱን በመጠቀም የእርሻ ስራ ለማከናወን እንቅፋት ሆኗል፡፡ በእንስሳቱ የስነተዋልዶ ጤና ላይ በደረሰው ችግር ምክንያት እንስሳትን በማርባት ይገኝ የነበረውን ኢኮኖሚያዊ ጥቅም ለማግኘት አልተቻለም፡፡ ሰውነታቸውን ለማፋፋት ባለመቻሉ የደለቡ ከብቶችን ለገበያ አቅርቦ የተሻለ ገቢ ማግኘት ከማይቻልበት ደረጃ ላይ ተደርሷል፡፡ የሚያመርቷቸውን አትክልትና ፍራፍሬዎች የተበከሉ ናቸው በሚል ተጠቃሚው ህብረተሰብ ከመግዛት እተቆጠበ መሆኑም በነዋሪዎቹ ገቢ ላይ እያስከተለ የሚገኘው

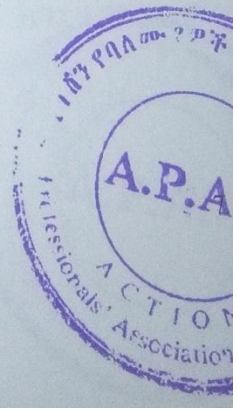
ችግር በቀላሉ የሚታይ አይደለም። በውነቱ ዙሪያ ያለው አፈር ምርታማነት ከጊዜ ወደ ጊዜ እያሽቆለቆለ ነው።

ትምህት የማግኘት መብት በራሱ መብት ከመሆኑም በላይ ዜጎች በቂ የሆነ የኑሮ ደረጃ የማግኘት መብታቸው እንዲሟላ ከፍተኛ አስተዋፅኦ የሚያደርግ መሰረታዊ መብት ነው። ትምህት የማግኘት መብት ላይ ችግር በሚፈጠር ጊዜ የዜጎች በቂ የሆነ የኑሮ ደረጃ የማግኘት መብት እንዳይሟላ እንቅፋት ይሆናል። ከጥናቶቹ ለመረዳት እንደተቻለው በብክለቱ ምክንያት በሚመጡ በሽታዎች አማካኝነት ህፃናት ከትምህርት ገበታቸው ይቀራሉ ይህም በመማር ማስተማር ሂደቱ ላይ ችግር እየፈጠረ ይገኛል።

2.3. የምግብ መብት ላይ የተፈፀመ ጥሰት

ምግብ የማግኘት መብትን እንደ አንድ የሰብአዊ መብት የተለያዩ ዓለም አቀፍ፣ አህጉራዊና ብሔራዊ ህግጋት እውቅና ሰጥተውታል። ከእነዚህም ውስጥ ዓለም አቀፍ የኢኮኖሚ፣ ማህበራዊና ባህላዊ መብቶች አንዱ ሲሆን፤ በዚሁ ኮንቬንሽን አንቀፅ 11 ላይ ምግብ የማግኘት ሰብአዊ መብት መሆኑ በግልፅ ተረጋግጧል። የተባበሩት መንግሥታት ድርጅት የኢኮኖሚ፣ ማህበራዊና ባህላዊ መብቶች ኮሚቴ ይገኝበታል። ይህ ኮሚቴ «ምግብ የማግኘት መብት» ምን ማለት እንደሆነ በሰጠው ትርጉም «በአንድ ማህበረሰብ ባህል መሠረት ተቀባይነት ያለው፣ ጎጂነት ካላቸው ንጥረ ነገሮች የፀዳ፣ በጥራትና በብዛት በመገኘት የግለሰቦችን የተመጣጠነ ውሁድ ያለው ምግብና የመመገብን ፍላጎት የሚያረካ» መሆን እንዳለበት ገልጿል። ይህ መብት በህፃናት መብቶች ኮንቬንሽን አንቀፅ 27 እንዲሁም በሴቶች ላይ የሚፈፀም ማንኛውም አይነት አድሏዊ አሠራር ለማስቀረት የተደረገው ስምምነት አንቀጽ 14/2//ለ/ የተረጋገጠ ነው።

በምግብ መብት ስር ከተካተቱት መብቶች መካከል ምግቡ ጎጂነት ካላቸው ንጥረ ነገሮች የፀዳ መሆን፤ /No adverse substance/ አንዱ ሲሆን በመንግስትም ይሁን በግለሰቦች አማካኝነት የሚቀርቡ ምግቦች ያልተበከለ፣ ያልተመረዙ፣ ያልተበረዙና በንጽህና የተያዙ መሆን አለባቸው። ነገር ግን ጥናቶች እንደሚያመለክቱ በወንዞቹ አቅራቢያ የሚኖረው



ማህበረሰብ ብክለቱ ለመስኖ በሚጠቀሙት ውሃና አፈር ላይ ባስከተለው ችግር ምክንያት ጎጂነት ካላቸው ንጥረ ነገሮች የፀዳ ምግብ አምርቶ ለመመመገብ አልቻለም።

III. አካባቢን ከብክለት ለመጠበቅ የወጡ ብሔራዊ ህጎችና የተከላሽ ግዴታዎች

የከሳሽ ድርጅት የዜጎች የኢኮኖሚና ማህበራዊ መብቶች እውን እንዲሆኑ የተለያዩ እንቅስቃሴዎችን በማድረግ ላይ ይገኛል። ስራውን የሚያከናውነው በመብት ማዕቀፍ ስር (right based approach) ሲሆን የመንግስት አካላትና ባለስልጣኖች ማድረግ የነበረባቸውንና ያላደረጉትን በመጠቆም የተለያዩ ዕርምጃዎችን በመውሰድ መብቱን እውን የማድረግ ግዴታቸውን እንዲወጡ ጥረት ያደርጋል። ከነዚህ ጥረት ከሚያደርግባቸው መንገዶች ውስጥም ግዴታቸውን ያልተወጡት የመንግስት መሰሪያ ቤቶች ግዴታቸውን እንዲወጡ በፍ/ቤት የህዝብን ጥቅም የሚመለከት ክስ (public interest litigation) በማቅረብ ግዴታቸውን እንዲወጡ የሚጠይቅበት መንገድ አንዱ ነው። ከላይ የተገለፀው የአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 አንቀፅ 11 ይህንን ስራውን እንዲያከናውን ያግዘዋል። በአካባቢ ላይ ጉዳት እያደርሱ ያሉ መንግስታዊ እና መንግስታዊ ያልሆኑ ድርጅቶች ላይ የባለስልጣን መስሪያ ቤቱ ተገቢውን ዕርምጃ በመውሰድ አካባቢው ከብክለት እንዲጠበቅ እንዲያደርግ አቤቱታውን ለባለስልጣን መስሪያ ቤቱም ያቀረበው በዚሁ የሕግ አንቀፅ መሰረት ነው።

የአካባቢ ጥበቃ ባለሥልጣን ስልጣንና ተግባር በአዋጅ ቁጥር 295/95 የተዘረዘረ ሲሆን እነዚህም

- በሕገ መንግስቱ የተደነገጉ የአካባቢ ደህንነት ዓላማዎችና በአካባቢ ፖሊሲው የተመሰረቱ መሠረታዊ መርሆዎች ከግብ መድረሳቸውን ለማረጋገጥ የሚያስችል ስራዎች ማስተባበር፣
- የስራ ፈቃድ የመስጠት፣ የመተግበር ወይም ክትትል ማድረግ
- የፊዴራል መንግስት ስልጣን የሆነባቸው ወይም ከሌላ ተሻጋሪ የአካባቢ ተጽዕኖ ሊያስከትሉ የሚችሉ ኘሮጀክቶችን የአካባቢ ተጽዕኖ ጥናት ዘገባ የመገምገም፣ ለፈቃድ ሰጪው አካል ውሳኔውን ማሳወቅ። እንደተገበኘቱም

የትግበራው ይሁንታ ሲሰጥ በተመለከቱ ግዴታዎች መሠረት ኘሮጀክቶቹ መተግበራቸውን ማረጋገጥና መቆጣጠር ናቸው

ይኸም ማለት የአካባቢ ጥበቃ ባለሥልጣን የኘሮጀክት ፈቃድ በሚሰጥበት ጊዜ የአካባቢ ተጽዕኖ ሊያስከትሉ የሚችሉ ሁኔታዎችን በማጥናት መገምገም እንዳለበት፣ ኘሮጀክቱ አካባቢው ላይ ተፅዕኖ ያሳድራል ብሎ ካመነም ፍቃድ መስጠት እንደሌለበት ይጠቁማል። በተጨማሪም የአካባቢ ጥበቃ ባለሥልጣን የአካባቢ ተፅዕኖ ጥናት ዘገባን ከገመገመ በኋላ ኘሮጀክቱ ተግባራዊ እንዲሆን የፈቀደ እንደሆነም እንደተገቢነቱ የተፈቀዱት ኘሮጀክቶች በአካባቢው ላይ ተጽዕኖ አለማድረሳቸውን ይቆጣጠራል።

ከዚህ በተጨማሪም የአካባቢ ብክለት ቁጥጥር አዋጅ 300/95 አካባቢን ከመጠበቅ አኳያ በተለይም የሰውን ጤንነትና በጐ ሁኔታ እንደዚሁም የሕያዋንን ደሕንነትና የተፈጥሮን ስነ ውበት ለማቆየትና ብክለቱን ለመከላከል ወይም ለማስወገድ ሲባል ታውጅዋል።

በዚህ አዋጅ አንቀጽ 3/2/ መሠረት የአካባቢ ባለሥልጣን ማንኛውም ሰው ሕግን በመተላለፍ ማንኛውንም በካይ ወደ አካባቢ በሚለቅ ሰው ላይ አስተዳዳራዊ ወይም ሕጋዊ እርምጃ መውሰድ ይችላል። በዚሁ አንቀጽ ንኡስ አንቀጽ 4 መሠረት የአካባቢ ባለሥልጣን በሚወስነው ሁኔታና የጊዜ ገደብ መሠረት ብክለት ያደረሰው ሰው አካባቢውን ከበካይ ማጽዳት፣ ወይም ለማጽጃ የወጣውን ወጪ መሸፈን አለበት በማለት ይደነግጋል። በተጨማሪም በጤና ወይም በአካባቢ ላይ አደጋ እንዳያስከትል ከሚያሰጋ የሥራ እንቅስቃሴ ሊመጣ የሚችል ጉዳትን ለመከላከል የአካባቢ ባለሥልጣኑ ድርጅቶችን እስከ መዝጋት ወይም ወደ ሌላ ቦታ እስከማዛወር የሚደርስ ማንኛውንም አስፈላጊ እርምጃ የመውሰድ ስልጣን አለው።

የከተማ ቆሻሻ አያያዝን አስመልክቶም ባለሥልጣኑ ከሌሎች መስሪያ ቤቶች ጋር በመተባበር የከተሞች ቆሻሻ ማስወገጃ መገልገያዎችን መገምገምና በአጥጋቢ ሁኔታ መሟላታቸውን ለማረጋገጥ አስፈላጊ እርምጃ የመውሰድ ስልጣን አለው።

ባለስልጣን መስሪያ ቤቱ ታህሳስ 17 ቀን 1998 ዓ.ም በቁጥር 1/አጥ-ጉ1/1 በተፃፈ በተሰጠ ውሳኔው ላይ የአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 ማንም ሰው ተገቢ የአካባቢ ደረጃዎችን በመተላለፍ መበከል አይችልም እንደሚል በመግለጽ ነገር ግን አዋጁ ተፈፃሚ እንዲሆን በአዋጁ በአንቀጽ 6 መሠረት ከተለያዩ ምንጮች የሚለቀቁ

A.P.A.

በክሮች ልካቸውና አይነታቸው የሚታወቁበት ደረጃ ሲኖሩ ነው። ከዚህ አኳያ የአካባቢ ጥበቃ ባለሥልጣን ጥናቶችን አድርጎ የኢንዱስትሪ ልቀት ደረጃዎች ጠቅላላ የአካባቢ ጥራት ደረጃዎችን እንዳረቀቀ በተጨማሪም ኢንዱስትሪዎች የአካባቢ ፖሊሲዎችንና ሕጐችን ለማክበር የሚያስችላቸውን የኢንዱስትሪ ብክለት መከላከያና መቆጣጠሪያ እንዳዘጋጀና ረቂቁንም ለማፀደቅ አግባብ ላለው የመንግስት አካል መላኩን አውስቷል።

የአካባቢ ጥበቃ ባለስልጣን በአንቀፅ 6 መሰረት ተፈፃሚ የሚሆን የአካባቢ ብክለት ደረጃዎችን የማውጣት በዚህም መሰረት ብክለቶችን የማስቆም ግዴታ አለበት። ሌላው በተከሳሽ የተነሳው ነጥብ በአዋጁ አንቀፅ 18 መሰረት አዋጁ ከመውጣቱ በፊት በስራ ላይ የነበሩ ተቋማት በምን መልኩ ህጉን መተግበር እንደሚችሉ የሚያሳዩ ዝርዝር ደንቦች ይወጣሉ ስለሚል አዋጁን በቀጥታ በነዚህ ተቋማት ላይ መተግበር አይቻልም የሚለው ነው። ከሳሽ ግን በአንቀፁ መሰረት የሚወጣ ደንብ የአዋጁን መንፈስ በመከተል ተግባራዊነቱን ለማጠናከር ይወጣል እንጂ ምክንያታዊ ባልሆነ መልኩ እየደረሰ ያለውን ጉዳት ቸል የሚል ይሆናል ብሎ አይገምትም። ተከሳሽ በበካይ ድርጅቶች ላይ ተገቢውን እርምጃ ለመውሰድ ድንብ እስኪወጣ መጠበቅ አያስፈልገውም።

በተጨማሪም ደንቦቹ እስኪወጡ የተለያዩ አቅም ገንቢ የሆኑ መመሪያዎችን ማዘጋጀቱን፣በሰላሳ ሶስት ነባር ኢንዱስትሪዎች የአካባቢ አዲት መስራቱን በተለይም በአቃቂ ወንዝ ላይ እየደረሰ ያለውን የብክለት ሁኔታ ለማወቅ የሚያስችል ጥናት እንደተደረገና የብክለት ምንጮችንም በተቀናጀ መልኩ ለማስወገድ የሚያስችል የትግበራ መርሀ ግብር እንዳዘጋጀ በመግለፅ ምላሽ ሰጥቷል።

ድርጅታችን ውሳኔው በወንዞቹ ላይ እየደረሰ ያለውን ብክለት እና ብክለቱ በአካባቢው ነዋሪዎች ጤንነት እንዲሁም ኢኮኖሚያዊና ማህበራዊ ሁኔታ ላይ እያስከተለ ላለው የመብት ጥሰት አፋጣኝ መፍትሔ የሚያስገኙ አይደሉም።

ስለ ከሳሽ

ጠበቃ ወንጌል አባተ

11 ግንቦ 1998

2/ለመ ጥ-አ፯-66/12

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
Federal Democratic Republic of Ethiopia
Environmental Protection Authority

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፑብሊክ
ለፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት
አዲስ አበባ

ከሳሽ፡ አክሽን የባለሙያዎች ማሕበር ለሕዝብ (አፕአፕ)
አድራሻ፡ አራዳ ክፍለ ከተማ አዲስ አበባ

ተከሳሽ፡ በኢ.ፌ.ዲ.ሪ. የአካባቢ ጥበቃ ባለሥልጣን
አድራሻ፡ የካ ክፍለ ከተማ አዲስ አበባ

ከሳሽ በቁጥር AP/ 3.APN/045/98 በ 07/07/98 ዓ.ም. በተፃፈ ማመልከቻ ላቀረበው የተሻሻለ ክስ ከተከሳሽ የቀረበ የመጀመሪያ ደረጃ መቃወሚያና መልስ

የክሱ ጭብጥ ባጭሩ

ከሳሽ ያቀረበው ክስ ባጭሩ በአዲስ አበባ ከተማ አስተዳደር ከሚገኙ የተለያዩ ድርጅቶች በሚለቀቁ በካዮች ሳቢያ በአቃቂ እና በሞጆ ወንዞች ላይ ብክለት እየደረሰ እንዳለ፣ በዚህም ምክንያት በነዋሪው ማሕበረሰብ ላይ ከፍተኛ የጤና፣ ማሕበራዊ እና ኢኮኖሚያዊ ጉዳት ማድረሱን ገልጾአል። ይህም የአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 ድንጋጌዎችን የሚጻረር በመሆኑ ከሳሽ ለተከሳሽ መ/ቤት አቤቱታ ማቅረቡን ሆኖም ግን መሥሪያ ቤቱ የሰጠው መልስ አጥጋቢ እንዳልነበረ ገልፆአል።

ከሳሽ በማጠቃለያው ላይ በጠየቀው ዳኝነትም፣

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የአካባቢ ጥበቃ ባለሥልጣን Federal Democratic Republic of Ethiopia Environmental Protection Authority

1. ተከሳሽ ሕግ ማውጣትን ጨምሮ አስፈላጊ የሆኑ ሌሎች እርምጃዎችን በመውሰድ በወንዞቹ ላይ እየደረሰ ያለውን ብክለት እንዲያስቆም እንዲሁም በወንዞቹ ላይ የሚገኘውን በካይ እንዲያጸዳ ፍ/ቤቱ ውሳኔ እንዲሰጥልን፣
2. ተከሳሽ የወሰዳቸውን እርምጃዎችና የተገኘውን ውጤት የሚከታተልና ሪፖርት የሚያቀርብ ተቆጣጣሪ እንዲሾምልን ብሏል።

ከሳሽ ድርጅት ክሴን ያስረዳልኛል ያለውን የተለያዩ ማስረጃዎች ከክሱ ጋር በማያያዝ አቅርቦአል።

<u>ከተከሳሽ የቀረበ የመጀመሪያ ደረጃ መቃወሚያ</u>

ከሳሽ ክሱን የማቅረብ መብቱን ያገኘው ከአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 አንቀጽ 11/1/ እና 11/2/ ላይ መሆኑን በክሱ ይዘት ውስጥ ገልያአል። ይሁን እንጂ ይህ የሕግ አንቀፅ የመክሰስ መብት የሚሰጠው "... በአካባቢ ላይ ጉዳት አድርሷል ወይም ጉዳት ሊያስከትል የሚችል ተግባር እየፈጸመ ነው... " በተባለ በበካይነቱ በተለየ ሰው ላይ ነው። አቤቱታውም የሚቀርበው በቅድሚያ ሥልጣኑ ለሚፈቅደው የአካባቢ ጥበቃ መ/ቤት ነው። በተሰጠው ውሳኔ ቅር የተሰኘ ወገን ደግሞ ቅሬታውን በይግባኝ ለፍርድ ቤት ያቀርባል። ስለሆነም አሁን ተከሶ የቀረበው የአካባቢ ጥበቃ መ/ቤት አቤቱታውን ለመመርመር የመጀመሪያ ደረጃ ሥልጣን የተሰጠው አስተዳደራዊ የዳኝነት ሠጪ አካል ነው ማለት ነው።

ይህ የዳኝነት ሠጪ አካል ታዲያ በካይ ካልሆነ ወይም ደግሞ በበካይነት የተጠረጠረ ካልሆነ በቀር ከሳሽ ክስ የማቅረብ መብት አይኖረውም። በሌላ አገላለጽ ከላይ በተጠቀሰውና ለከሳሽ የመክሰስ መብት እንደሰጠው ተደርጎ በቀረበው ሕግ መሠረት በተከሳሽ መ/ቤት ላይ ክስ ሊቀርብ የሚችለው መ/ቤቱ በሚያደርጋቸው ኢንዱስትሪያዊ ወይም ኢኮኖሚያዊ እንቅስቃሴዎች ሲበክል ቢገኝ፣ ወይም ደግሞ ይበክላል የሚል ሥጋት ሲኖር ብቻ ነው። ከክሱ ለመረዳት እንደሚቻለው ግን ተከሳሽ መ/ቤት የተከሰሰው በአካባቢ ላይ ጉዳት ሊያስከትል በሚችል እንቅስቃሴ ውስጥ በመሠማራቱ አይደለም። ከላይ የተቀመጠው ግልፅ ድንጋጌ እያለ፣ ይልቁንም ለከሳሹ ክስ ለማቅረብ መብት እንደሚሰጠው በመቁጠር ከሳሽ ያቀረበው ክስ ምንም አይነት የመክሰስ መብት ሳይኖረው ስለሆነ ፍ/ብቱ ክሱን ውድቅ በማድረግ በክሱ ምክንያት ያወጣነውን ወጪና ኪሳራ እንዲተካልን ወስኖ እንዲያሰናብተን በማክበር እንጠይቃለን።

ምክንያት ያወጣነውን ወጪና ኪሳራ እንዲተካልን ወሰኖ እንዲያሰናብተን በማክበር እንጠይቃለን::

ፍ/ቤቱ ይህንን መቃወሚያ ቢያልፈው ባማራጭ መልሳችንን ከዚህ እንደሚከተለው እናቀርባለን::

ከተከሳሽ የቀረበ መልስ

ከሳሽ ክሱን የማቅረብ መብት አለው ቢባል እንኳን ክሱ ሕጉን ተከትሎ የቀረበ ባለመሆኑ ውድቅ እንዲደረግ ከዚህ በታች በቀረበው መከራከሪያ መሠረት ተከሳሽ ይጠየቃል::

1. **ክሱ ተከሳሽ መ/ቤትን የሚመለከት ስላለመሆኑ**

ክሱ የፌዴራል እና የክልል አስፈፃሚ አካላት የሥልጣን ክፍፍልን ያላገናዘበ ነው:: በመሠረቱ ኢትዮጵያ የምትከተለው የፌዴራል መንግስታዊ አወቃቀርን ስለሆነ የፌዴራልና የክልል መንግስታት የየራሳቸው ሥልጣን አላቸው:: አንዱ ለሌላው ድጋፍ ለመስጠት ካልሆነ በቀር በሥራ ጉዳዮች ጣልቃ መግባትም ሆነ ለአንዱ ሥራ ሌላው ተጠያቂ መሆን አይችልም:: የአካባቢ ጉዳዮችን በማስተባበር ረገድ በአካባቢ ጥበቃ አካላት ማቋቋሚያ አዋጅ ቁጥር 295/1995 መሠረት የሥልጣን ክፍፍል የተደረገባቸው የፌዴራል እና የክልል የአካባቢ ጥበቃ መ/ቤቶች ተቋቁመዋል:: በአዋጁ አንቀጽ 6 መሠረት የፌዴራሉ የአካባቢ ጥበቃ መ/ቤት ሥልጣን አግባብ ያላቸውን የአካባቢ ፖሊሲዎች፣ ሕጎች፣ ሥልቶችና ደንቦች ማዘጋጀት፣ "... ሲፈቀዱም በሥራ ላይ መዋላቸውን... " መከታተልና መቆጣጠር ነው:: የአካባቢ ደረጃዎች በፌዴራሉ መ/ቤት ከተወሰኑ በኃላ አፈፃፀማቸውን የሚከታተሉት የየክልሉ የአካባቢ መ/ቤቶች ናቸው:: ይህንን አስመልክቶ አዋጁ በአንቀጽ 15/2/ ሥር "የክልል የአካባቢ መሥሪያ ቤቶች የፌዴራል የአካባቢ ደረጃዎች በሥራ ላይ መዋላቸውን ያረጋግጣሉ፣ እነደ አስፈላጊነቱም ከፌዴራሉ የጠበቁ ደረጃዎችን በማውጣት ሥራ ላይ ሊያውሉ ይችላሉ::" ሲል ይደነግጋል::

ክልሎች በፌዴራሉ መ/ቤት የሚዘጋጁትን ሕጎችና ደረጃዎች ሙሉ በሙሉ በመቀበል ወይም ደግሞ ከፌዴራሉ ይልቅ በማጠንከር የየራሳቸውን ደንቦችና ደረጃዎች ይወስናሉ፣ በየክልሎቻቸው መተግበሩንም ያረጋግጣሉ:: ተከሳሽ መ/ቤት ግን ይህንን ሥራ ለየክልሉ የመሥራት የሕግ ፈቃድ የለውም:: ባጭሩ ተከሳሽ ከላይ የተጠቀሱትን የፌዴራል

ደረጃዎችንና ሕጎችን ከማዘጋጀት የዘለለ ኃላፊነት የሌለው ሲሆን የሕግና ደረጃ አፈፃፀሙን የሚከታተሉት ግን የየክልሉ የአካባቢ ጥበቃ ቢሮዎች ናቸው። ስለሆነም ከላይ ክስ የማቅረብ የተረጋገጠ መብት አለው ቢባል እንኳ የቀረበው ክስ ተከሳሽ መ/ቤትን የሚመለከት ስላልሆነ ፍ/ቤቱ ክሱን ዘግቶ እንዲያሰናብተን እንጠይቃለን።

2. በዳኝነት የተጠየቅነውን በተመለከተ

2.1 የመጀመሪያው የዳኝነት ጥያቄ ተከሳሽ ሕግ ማውጣትን ጨምሮ አስፈላጊ የሆኑ ሌሎች እርምጃዎችን በመውሰድ በወንዙቹ ላይ እየደረሰ ያለውን ብክለት እንዲያስቆም የሚል ነው።

ሕግ ማውጣትን በተመለከተ፣ ከሳሽ በዳኝነት ጥያቄያቸው ላይ ተከሳሽ ሕግ አላወጣም ከማለታቸው በቀር ያልወጣው ሕግ የቱ እንደሆነ አልገለፁም። ይሁን እንጂ በኢ.ፌ.ዲ.ሪ. ሕገመንግስት ድንጋጌዎች መሠረት ሕግ የማውጣት ሥልጣን የተሰጠው ለሕዝብ ተወካዮች ምክር ቤት እንጂ እንደተከሳሽ ላሉ የአስፈፃሚ አካላት አይደለም። አስፈፃሚ አካላት ሕግ እንዲወጣ የሕግ ረቂቅ ለተገቢው አካል ከማስተላለፍ በቀር በሕግ አፀዳደቁ ሂደት ምንም አይነት ሚና የላቸውም።

ይህ እንደተጠበቀ ሆኖ የአካባቢ ጥበቃ ባለሥልጣን በሕግ አነሳሱ ሂደት በእጅጉ በመንቀሳቀስ የአካባቢ ጥበቃ አላላት ማቋቋሚያ አዋጅ (አዋጅ ቁጥር 295/1995)፣ የአካባቢ ተፅዕኖ ግምገማ አዋጅ (አዋጅ ቁጥር 299/1995)፣ የአካባቢ ብክለት ቁጥጥር አዋጅ (አዋጅ ቁጥር 300/1995) አርቅቆ፣ በሕግ አውጭ አካልም በመፅደቃቸው አሁን በተግባር ላይ እየዋሉ ይገኛሉ። አሁን ያለው ሕግ በቂ ነው አንልም። በዚህ ምክንያት ሕጎቹን ለማሟላት በተለይም ደግሞ ሕጋዊ እርምጃ ለመውሰድ እንዲቻል ብክለት ምንድን ነው? በካይ ማን ነው? የሚሉትን ጥያቄዎች መመለስ እጅግ አስፈላጊ በመሆኑና እነዚህ በሌሉበት ደግሞ ብክለት አለ ወይም ይህ ድርጅት በክሏል የሚያስብል ምንም ሕጋዊ መለኪያ ስለሌለ ክፍተቱን ለማስተካከል የአካባቢ ደረጃዎች ዝግጅት አስፈላጊ ሆኖ ተገኝቶ ነበር።

ከዚህ አኳያ ተከሳሽ የባለሥልጣኑ መሥሪያ ቤት አግባብ ካላቸው መሥሪያ ቤቶች ጋር በመመካከር ተግባራዊ ለመሆን የሚችሉ የአካባቢ ደረጃዎችን የማዘጋጀት ሃላፊነቱን በመወጣት ተገቢ ጥናቶችን አድርጎ የኢንዱስትሪ ልቀት ደረጃዎችና ጠቅላላ የአካባቢ ጥራት ደረጃዎች (Industrial Effluent Emissions Quality Standards and Ambient Environmental Quality Standards) ን አርቅቋል። ከተለያዩ መሥሪያ ቤቶች የተወጣጡ ባለሙያዎች፣ የኢንዱስትሪ ባለሃብቶችና አጠቃላዩ ህዝብ እንዲመክርበትም አስደርጓል፣

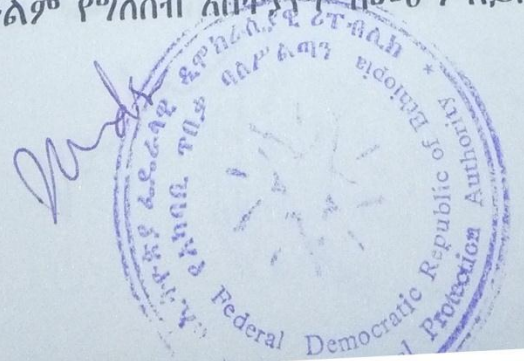
የመጨረሻው ረቂቅ ከመጽደቁ በፊት እንዲመረመርም ለሚኒስትሮች ምክር ቤት ተልኳል።

በአቃቂና በሞጆ ወንዞች ዙሪያ ያሉ ኢንዱስትሪዎችን የሚመለከት ሕግ ዝግጅትን በተመለከተ፣ በሃገራችን አብዛኞቹ ኢንዱስትሪዎች የአካባቢ ሕጎች ከመጽደቃቸው በፊት በሥራ ላይ የነበሩ ናቸው። እንደ የአካባቢ ብክለት ቁጥጥር አዋጅ ያለ አዲስ ሕግ ሲወጣ በእነዚህ ተቋማት ላይ በቀጥታ ለመተግበር የሚያስችል የሕግ ፈቃድ የለም። ቢኖር እንኳ ከጥቅሙ ይልቅ ጉዳቱ እንደሚያመዝን የታወቀ ነው። ይሁን እንጂ በአዋጁ አንቀጽ 18 መሠረት የአካባቢ ሕጎች በሃገራችን ከመውጣታቸው በፊት በሥራ ላይ የነበሩ ተቋማት በምን መልኩ ሕጉን መተግበር እንደሚችሉ የሚያሳዩ ዝርዝር ደንቦች እንደሚወጡ ደንግጓል። ተከሳሽ እነዚህ በሥራ ላይ ያሉ ኢንዱስትሪዎች የአካባቢ ፖሊሲዎችንና ሕጎችን ለማክበር የሚያስችላቸው የኢንዱስትሪ ብክለት መከላከያና መቆጣጠሪያ ደንብ አዘጋጅቷል። በእነዚህ ደንቦች ላይም ሕዝብ እንዲመክርበት ከተደረገ በሁአላ የመጨረሻው ረቂቅ ለውሳኔ ለሚኒስትሮች ምክር ቤት ተልኳል።

እንግዲህ ከላይ እንደተገለፀው የአካባቢ ጥበቃ ባለሥልጣን በሕገመንግስቱ ላይ የተቀመጡትን የአካባቢ መብቶች እንዲሁም የአካባቢ ፖሊሲውን ለመተግበር የሚያስችሉ ሁኔታዎችን አመቻችቷል፣ ይሁን እንጂ መሥሪያ ቤቱ አግባብ ያላቸውን ደረጃዎችና ሕጎች አመንጭቶ ለህዝብ ውይይት ከማብቃት፣ የአፀዳደቅ ሂደታቸውንም ከመከታተል እና ሕጎቹ ከፀደቁ በኃላ አተገባበራቸውን ከመከታተልና ከመቆጣጠር ውጪ የሕግ አውጪነት ሚና መጫወት አይችልም።

<u>ብክለት አለ ወይም የለም ለማለት የሚቻል ስላለመሆኑ</u>

ከሳሽ ለክሱ መነሻ ባደረው በአካባቢ ብክለት ቁጥጥር አዋጅ ቁጥር 300/1995 መሠረት ማንም ሰው ተገቢ የአካባቢ ደረጃዎችን በመተላለፍ መበከል እንደማይችል ተደንግጓል። ይህ ሕግ ተግባራዊ ሊሆን የሚችለው ግን በአዋጁ አንቀጽ 6 መሠረት ከተለያዩ ምንጮች የሚለቀቁ በካዮች ልካቸውና አይነታቸው የሚታወቅበት ደረጃ ወጥቶ በተግባር ላይ ሲውል ነው። እነዚህ ደረጃዎች ካሉ በርግጥም የቱኛው ተቋም ምን አይነት ብክለት እንደፈፀመ ለይቶ ለማስቀመጥና በህግ ለመጠየቅ ይቻላል። ይህ በሌለ ጊዜ ግን ብክለት አለ ወይም የለም ለማለት አይቻልም፣ በበካይነቱ የተጠረጠረ ተቋም ወይም ኢንዱስትሪ ቢኖር እንኳ ያለእነዚህ የጥራት መስፈርት መለኪያዎች በካይ ነው ልንል አንችልም። ብንልም የግለሰብ አስቀያሚ ከመሆን አይዘልም።



"አስፈላጊ የሆኑ ሌሎች እርምጃዎችን በመውሰድ በወንዞቹ ላይ እየደረሰ ያለውን ብክለት እንዲያስቆሙ" በሚል የተጠየቅነውን በተመለከተ

ከሳሽ ተከሳሹ ሌሎች እርምጃዎችን በመውሰድ ብክለቱን ያስቁም ሲሉ በጻፉት የጠ የቁት ጥያቄ ግልጽ አይደለም። "አስፈላጊ የሆኑ ሌሎች እርምጃዎች" የተጮቹ ናቸው? ከሳሽ ይህንን ግልጽ አላደረገም።

ይህ እንደተጠበቀ ሆኖ ተከሳሽ መሥሪያ ቤት ረቂቅ የአካባቢ ደረጃዎችና ደንቡ ፀድቀው በሥራ ላይ ባይውሉም የኢንዱስትሪ ብክለትን ለመቆጣጠር የተለያዩ ጥረቶችን አድርጓል፣ እያደረገም ይገኛል። ከእነዚህም መካከል ለመጥቀስ ያህል፣

- ኢንዱስትሪዎች ምርት በሚያመረቱበት ወቅት በአካባቢ ላይ የሚደርስን ብክለት ከምንጩ ለመቀነስ የሚያስችሉ አሥር መመሪያዎች ተዘጋጅተዋል።
- ኢንዱስትሪዎች ምርት በማምረት ሂደት ሊከሰት የሚችልን የአካባቢ ብክለት ከምንጩ ለመቀነስ እንዲያስችላቸው በ35 ነባር ኢንድስትሪዎች ላይ የአካባቢ አዲት ተከናውኗል። በአዲቱ ውጤት የተካተቱን የእርምት እርምጃዎች ኢንዱስትሪዎቹ ወደ ተግባር ለማሸጋገር እንዲችሉ ዘገባው ተልኮላቸዋል።
- በረቂቅ የኢንዱስትሪ ብክለት መከላከያና መቆጣጠሪያ ደንቡ ለተካተቱ የቆዳ፣ የጨርቃ ጨርቅ፣ በመጠጥ፣ የኬሚካል፣ የሲሚንቶ እና የስኳር ኢንዱስትሪዎች የአካባቢ አዲት አደራረግ ሥልጠና ለመስጠት ዝግጅቱ ተጠናቋል። ይህም ሲሆን የኢንዱስትሪዎቹ አቅም ይጐለብታል። ከወጡና ከሚወጡ ሕጐች ጋር ራሳቸውን አጣጥመው ለመራመድ ያግዛቸዋል።
- በተለያዩ የብክለት ምንጮች /ከመኖሪያ ቤት፣ ከኢንዱስትሪ፣ ከአገልግሎት መስጫ ተቋማት፣ ወዘተ../ በአቃቂ ወንዝ ላይ እያደረሰ ያለውን የብክለት ሁኔታ ለማወቅ የሚያስችል ጥናት በፌደራል አካባቢ ጥበቃ፣ በኦሮሚያ አካባቢ ጥበቃ ጽ/ቤት እና በአዲስ አበባ አካባቢ ጥበቃ ባለሥልጣን መ/ቤቶች ትብብር ነሐሴ 1997 ዓ.ም. ላይ የተዘጋጀ ሲሆን፣ የብክለት ምንጮችንም በተቀናጀ መልኩ ለማስወገድ የሚያስችል የትግበራ መረሃ ግብር ተዘጋጅቷል።

<u>ተከሳሽ በወንዞቹ ላይ የሚገኘውን በካይ እንዲያጸዳ ተብሎ የተጠየቀውን በተመለከተ</u>

ተከሳሽ ወንዙን እንዲያፀዳ የሚገደደው በየትኛው ሕግ እንደሆነ ከሳሹ አልገለፀም። መነሻ ያደረገው የአካባቢ ብክለት አዋጅ ከላይ እንደተገለፀው የማጽዳት ግዳጅን የሚጥለው በበካይ ላይ ነው። ተከሳሽ መስሪያ ቤት ደግሞ በካይ ለመሆኑ ወይም

የእቃቂ እና የሞጆ ወንዞችን የሚበክል እንቅስቃሴ ውስጥ ለመሰማራቱ የቀረበ መከራከሪያም ሆነ ማስረጃ የለም፡፡ ስለዚህ ተከሳሽ ወንዞቹን እንዲያፀዳ የቀረበው ጥያቄ የሕግ መሠረት ስለሌለው ውድቅ እንዲደረግልን እንጠይቃለን፡፡

2.2 ተከሳሽ በመቀጠል ያቀረበው የዳኝነት ጥያቄ ተከሳሽ የወሰዳቸውን እርምጃዎችና የተገኘውን ውጤት የሚከታተልና ሪፖርት የሚያቀርብ ተቆጣጣሪ እንዲሾምልን የሚሉ ናቸው፡፡

በመሠረቱ በሕግ በተቋቋመ መሥሪያ ቤት ላይ ተቆጣጣሪ ሊሾም የሚችልበትን ሕጋዊ መሠረት ከሳሹ አልጠቆሙም፡፡ የተከሳሽ መ/ቤትን ባቋቋመው በአዋጅ ቁጥር 295/2005 መሠረት ተከሳሽ ተጠሪ የሆነው ለጠቅላይ ሚኒስትሩ ቢሮ ነው፡፡ የሥራ አፈፃፀሙን በተመለከተ ደግሞ ለሕዝብ ተወካዮች ምክር ወቅታዊ ሪፖርት ያቀርባል፡፡ እንደተከሳሽ እምነት ከሳሽ የጠየቀው ተቆጣጣሪ አስቀድሞ በሃገሪቱ ሕግ መሠረት የተሰየመ ነው፡፡ ሌላ አካል እንዲሾም የሚጠይቅ ከሆነ ደግሞ ጥያቄው ተከሳሽ መ/ቤት የተቋቋመበት አዋጅ ይሻሻል የሚል ይሆናል፡፡ ይህ ከሆነ ደግሞ ጥያቄው መቅረብ የሚገባው ለዚህ ፍርድ ቤት ሳይሆን ለሕግ አውጭ አካላት ነው፡፡

ማጠቃለያ

1. ከሳሽ ያቀረበው ክስ አላግባብ ስለሆነ ፍርድ ቤቱ ባቀረብነው የመጀመሪያ ደረጃ መቃወሚያ መሠረት ብቻ ክሱን በብይን ዘግቶ እንዲያሰናብተን፣ ይህ ካልሆነ ግን በመልስነት ያቀረብነውን መከራከሪያ በመመርመር ክሱ ነባ እንዲያደርገን፣
2. ተከሳሽ ክሱን በመከታተል ያወጣውን ወጭ ሁሉ ተከሳሹ እንዲተካ እንዲሁም በክሱ ምክንያት የጎደፈው የተከሳሽ መ/ቤት መልካም ሥም እንዲስተካከልልን በማክበር እንጠይቃለን፡፡

የቀረበው መልስ በሙሉ እውነት መሆኑን ተከሳሽ ያረጋግጣል፡፡

ስለ ተከሳሽ

ወንድወሰን ሠ
የአካባቢ ፖሊሲና
መምሪያ ኃላፊ

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፑብሊክ
ለፌዴራል የመጀመሪያ ፍ/ቤት
አዲስ አበባ

ከሳሽ፡ አክሽን የባለሙያዎች ማሕበር ለሕዝብ (አፕአፕ)
አድራሻ፡ አራዳ ክፍለ ከተማ አዲስ አበባ

ተከሳሽ፡ በኢ.ፌ.ዲ.ሪ. የአካባቢ ጥበቃ ባለሥልጣን
አድራሻ፡ የካ ክፍለ ከተማ አዲስ አበባ

በፍ/ብ/ሥ/ሥ/ሕ/ቁ 223 መሠረት የቀረበ የማስረጃ ዝርዝር መግለጫ

ተከሳሽ ለቀረበበት ክስ የሚከተለውን ማስረጃ ያቀርባል፡፡

1. በከሳሽ በኩል ለቀረበብን አቤቱታ ታህሳስ 17 ቀን 1998 ዓ.ም የሰጠነው መልስ ከከሳሽ ክስ ጋር ተያይዞ የቀረበ ስለሆነ ፍ/ቤቱ እንዲመረምርልን፣
2. ተከሳሽ ያዘጋጃቸውን የኢንዱስትሪ ልቀት ደረጃዎችና ጠቅላላ የአካባቢ ጥራት ደረጃዎች፣ እንዲሁም ረቂቅ የኢንዱስትሪ ብክለት መከላከያና መቆጣጠሪያ ደንብ ለጠቅላይ ሚኒስትር ቢሮ ማቅረባችንን የሚያሳይ በቁጥር 11/ መጠ2/97 መጋቢት 20 ቀን 1997 ዓ.ም የተፃፈ 2 ገጽ ደብዳቤ ፎቶ ኮፒውን ያቀረብን ሲሆን ዋናው በእጃችን ይገኛል፡፡
3. የተከሳሽን መልስ የሚያስረዱልን የሰው ምስክሮች፣
    1. አቶ መሃመድ አሊ፣ አድራሻ አዲስ አበባ
    2. ዶ/ር አይናለም አበበ ፣ አድራሻ አዲስ አበባ
    3. አቶ መሃሪ ወንድማገኝ፣ ፣ አድራሻ አዲስ አበባ
    4. አቶ ዘርዑ ግርማይ፣ አድራሻ አዲስ አበባ

ተከሳሽ የሚያቀርበው ማስረጃ ከላይ የተዘረዘረውን ስለመሆኑ ተከሳሽ ያረጋግጣል፡፡

ስለተከሳሽ

ወንድወሰን ሥ
የአካባቢ ፖሊሲና
መምሪያ ኃላፊ

ቁጥር 6ፌ9ም.3|ህ\|ኢ.38|5|2
No.
ቀን 18|2|2000
Date

ለህገ መንግስት ጉዳዮች አጣሪ ጉባዔ
<u>አዲስ አበባ</u>

ጉዳዩ፡- <u>የሕገ መንግሥቱን ድንጋጌ መሠረት በማድረግ አስተያየት እንዲቀርብ ስለማሳሰብ</u>

በርዕሱ ለተጠቀሰው ጉዳይ መነሻ የሆነው ከኢትዮጵያ ዲሞክራሲያዊ ኃይሎች ሕብረት የቀረበው አቤቱታ ሲሆን ጥያቄው በከምባታ ሕዝብ ለክልል ምክር ቤት ሳይመረጡ የከምባታን ሕዝብ ይወክላሉ ተብለው በፌዴሬሽን ምክር ቤት አባልነት የተመረጡት አባል ተነስተው በግንቦቱ ምርጫ ሕጋዊ ውክልና ያገኙትና የክልል ም/ቤት አባል የሆኑት የከምባታ ሕዝብ ተወካይ በፌዴሬሽን ም/ቤት አባልነት እንዲመደቡ የሚል ነው።

በጉዳዩ ላይ የደ/ብ/ብ/ሕ/ክልል ምክር ቤት አስተያየት የሰጠ ሲሆን በኢፌዴሪ ሕገመንግሥት አንቀጽ 61/3/ መሠረት የክልል ም/ቤት የፌዴሬሽን ምክር ቤት አባል የሚሆነውን በቀጥታ መልምሎ ለጉባዔ አቅርቦ በማፅደቅ ብሔረሰቡ እንዲወክል ማድረግ ስለሚችልና ብምርጫ ያልተመረጠ ብሔረሰቡን መወከል አይችልም። ስለማይል የከምባታን ብሔረሰብ በመወከል የፌዴሬሽን ም/ቤት አባል እንዲሆኑ በክልሉ ሕዝብ ተወካይ ም/ቤት ጉባዔ ቀርበው መሠየማቸው ሕጋዊ መሠረት ያለው አሠራር ነው በማለት ገልጿል።

በቀረበው አቤቱታ ላይ የፌዴሬሽን ም/ቤት የሕገ መንግሥትና ክልሎች ጉዳይ ቋሚ ኮሚቴ መስከረም 28 ቀን 2000 ዓ.ም ለተደረገው የም/ቤቱ መደበኛ ስብሰባ በሕገ መንግሥቱ አንቀጽ 61/3/ የፌዴሬሽን ምክር ቤት አባላትን የክልል ም/ቤቶች በእራሳቸው ወይም በቀጥታ በሕዝብ አስመርጠው እንደሚወክሉ቎ ቢደነገግም በራሳቸው አባላትን እንዲወከሉ ያደርጋሉ ሲል ለክልል ም/ቤት አባልነት ከተመረጡት መካከል ነው ወይስ ከክልል ም/ቤት አባላት ውጪ ያሉትን መልምለው ይወክላሉ የሚለው ግልጽ ስለማይመስል ለሕገመንግስት ጉዳዮች አጣሪ ጉባዔ እንዲቀርብ የውሳኔ ሀሣብ አቅርቧል።

223322
242309

ፋክስ 242304
Fax 242308

ፖ.ሣ.ቁ. 20212/1000
P.O.Box

ምክር ቤቱም በጉዳዩ ላይ ከተወያየ በኋላ የውሳኔ ሀሳቡን በሙሉ ድምፅ በመደገፍ ጥያቄው ለአጣሪ ጉባዔው እንዲቀርብ ወስኗል።

በመሆኑም ከላይ ለመግለጽ እንደተሞከረው በሕገ መንግሥቱ አንቀጽ 61/3/ የክልል ምክር ቤቶች በራሳቸው መርጠው ለፌዴሬሽን ም/ቤት አባልነት እንዲወክል ያደርጋሉ የሚለው ድንጋጌ መነሻ ሀሳብ ምን እንደሆነ አጣሪ ጉባዔው መርምሮ ለም/ቤቱ አስተያየት እንዲያቀርብ በአዋጅ ቁጥር 251/93 ዓ.ም አንቀጽ 6 መሠረት ጥያቄውን መላካችንን እየገለፅን የአመልካቾችን አቤቱታ፣ የደቡብ ብ/ብ/ህ/ክልል መንግስት ም/ቤት የላከውን ምላሽና የቋሚ ኮሚቴውን የውሳኔ አስተያየት አባሪ አድርገን ልከናል።

ከሠላምታ ጋር

ደግፌ ቡላ ዋቅጅራ
የፌዴሬሽን ም/ቤት አፈ-ጉባኤ

<u>ግልባጭ</u>

ለሕገ መንግስትና ክልሎች ጉዳይ ቋሚ ኮሚቴ
ለፌዴሬሽን ምክር ቤት ጽ/ቤት
<u>በፌዴሬሽን ም/ቤት</u>

UNITED ETHIOPIAN DEMOCRATIC FORCES

ቀን
Date
ቁጥር
Ref.No

ለክቡር አቶ ደግፌ ቡላ
የኢፌዲሪ የፌዴሬሽን ም/ቤት አፈጉባዔ
አዲስ አበባ

ጉዳዩ፡- በፌዴሬሽን ም/ቤት የከንባታ ሕዝብ ውክልና ይመለከታል

የከንባታን ሕዝብ በመወከል በፌዴሬሽን ምክር ቤት አባልነት መመደብ ያለበት ለክልሉ ም/ቤት በሕዝብ ከተመረጡት መካከል በም/ቤቱ ውክልና ወይም በሕዝቡ ቀጥተኛ ምርጫ የስልጣን ውክልና የተሰጠው ተመራጭ መሆን እንዳለበት እናምናለን፤

ሆኖ ግን፤ በግንቦት 7/97 ምርጫ ለደቡብ ክልል ም/ቤት በከንባታ ሕዝብ ለክልል ም/ቤት አባልነት የተመረጡ የሕዝብ ተመራጮች እያሉ፤ በሕዝብ ያልተመረጡት፤ አቶ አቡቶ አኒቶ የተባሉ ግለሰብ በከንባታ ሕዝብ ስም በፌዴሬሽን ም/ቤት አባልነት መመደባቸው በሕዝቡ ዘንድ ከፍተኛ ቅሬታ እያስነሳ ያለ ጉዳይ ነው።

ስለዚህ የከንባታ ሕዝብ፤ ሕገ-መንግስታዊና የሥልጣን ምንጭነት መብቱ መጠበቅና መከበር ያለበት በመሆኑ፤ በከንባታ ሕዝብ ሳይመረጡ የከንባታን ሕዝብ ይወክላሉ ተብለው በፌደሬሽን ምክር ቤት አባልነት የተመደቡት አቶ አቡቶ አኒቶ ተነስተው፤ በግንቦቱ ምርጫ የከንባታን ሕዝብ ህጋዊ ውክልና ያገኙት አቶ አስመኮ ዮሐንስ ሂርጎ በፌዴሬሽን ምክር ቤት አባልነት እንዲመደቡ በአክብሮት እንጠይቃለን።

ከሰላምታ ጋር

በየነ ጴጥሮስ (ኮ/ር)
የኢዴኃኃ የወቅቱ ሊቀመንበር

ግልባጭ
ለደቡብ ብሔር ብሔረሰቦችና ሕዝቦች
ክልላዊ መንግስት ምክር ቤት
አዋሳ

ዋና መ/ቤት (Main Office)
24655/1000 አዲስ አበባ፤ ኢትዮጵያ
ፖ.ሳ (Tel.No.)574721 ፋክስ (Fax)251-574720
uedf addis @athioner-et

ቀን ጥቅምት 18 ቀን 2000 ዓ.ም.
መ/ቁጥር አ/ጉ/1/1/1/2000

ማስታወሻ

ለ ፡ ህገ መንግሥት ጉዳዮች አጣሪ ጉባኤ

ከ ፡ ሬጅስትራር

አመልካች፡- የፌዴሬሽን ምክር ቤት

1. <u>የጉዳዩ ጭብጥ በአጭሩ</u>

የፌዴሬሽን ምክር ቤት ጥቅምት 18 ቀን 2000 ዓ.ም. በቁጥር ፌም.3/ሀ1/አ.38/5/2 ለዚህ ጉባኤ በዓፈው ደብዳቤ የኢትዮጵያ ዲሞክራሲያዊ ኃይሎች ህብረት ባቀረበው አቤቱታ በክምባታ ህዝብ ለክልል ምክር ቤት ሳይመረጡ የክምባታን ሕዝብ ይወክላሉ ተብለው በፌዴሬሽን ም/ቤት አባልነት የተመረጡት አባል ተነስተው በማንቦቱ ምርጫ ሕጋዊ ውክልና ያግኙትና የክልል ም/ቤት አባል የሆኑት የክምባታ ሕዝብ ተወካይ በፌዴሬሽን ም/ቤት አባልነት እንዲመደብ በማለት ያቀረበውን ጥያቄ መነሻ በማድረግ አግባብነት ያለው ምላሽ ለመስጠት የህገ መንግሥቱ አንቀጽ 61/3/ የክልል ምክር ቤቶች በራሳቸው መርጠው ለፌዴሬሽን ም/ቤት አባልነት እንዲወክል ያደርጋሉ የሚለው ድንጋጌ መነሻ ሀሣብ ምን እንደሆነ የህገ መንግሥት ጉዳዮች አጣሪ ጉባኤ መርምሮ ለም/ቤቱ አስተያየት እንዲያቀርብ መስከረም 28 ቀን 2000 ዓ.ም. በተደረገው የም/ቤቱ መደበኛ ስብሰባ ውሣኔ ማሳለፉን ገልጿል።

2. <u>አስተያየት</u>

የኢትዮጵያ ዲሞክራሲያዊ ኃይሎች ህብረት በ23/9/98 በቁጥር ኢዴኃህ/ዋድሊ/281/98/06 በተጻፈ ደብዳቤ ከዚህ በላይ በጭብጡ ላይ ያቀረበውን ጥያቄ መነሻ በማድረግ የፌዴሬሽን ም/ቤት ጥያቄው ከህገ መንግሥቱ አንቀጽ 61/3/ ጋር ተያይዞ መመለስ ያለበት መሆኑን በማመን አንቀጹ ትርጉም እንዲሰጥበት ተጠይቋል።

የህገ መንግሥቱ አንቀጽ 61/3/፡-

" የፌዴሬሽን ምክር ቤት አባላት በክልል ምክር ቤቶች ይመረጣሉ፤ የክልል ምክር ቤቶች በራሳቸው ወይም በቀጥታ በህዝብ እንዲመረጡ በማድረግ የፌዴሬሽን ም/ቤት አባል እንዲወክል ያደርጋሉ። "

የሚል ሲሆን በዚህ ድንጋጌ ላይ የህገ መንግሥት አርቃቂ ኮሚሽን ያደረገውን ውይይት እና የድንጋጌውን መንፈስ ስንመለከት የፌዴሬሽን ምክር ቤት አባላት በየክልሎቹ የሚገኙ ብሔሮች ብሔረሰቦችና ህዝቦች የሚልኳቸው አባላት የሚወከሉበት ቤት እንደሆነና አባላቱን መርጦ የመላክ ኃላፊነትም በቀጥታ ለክልሉ ምክር ቤት የተሰጠ ኃላፊነት መሆኑን፣ የክልል ምክር ቤቶች በሌላ አማራጭ ማለትም የፌዴሬሽን ምክር ቤት አባል በቀጥታ በህዝብ እንዲመረጥ የማድረግ ስልጣን የተሰጣቸው እንደሆነ ማየት ይቻላል።

የክልል ም/ቤቶች በራሳቸው ወይም በቀጥታ በህዝብ እንዲመረጡ ያደርጋሉ የሚለውን ድንጋጌ ስንመለከት በተለይም የመጀመሪያው አማራጭ ማለትም የክልል ምክር ቤቶች በራሳቸው እንዲመረጡ ያደርጋሉ የሚለው ሀሣብ ሲታይ ከመካከላቸው ወይም ከም/ቤቱ ውጪ የሆነ የብሔረሰቡን ተወካይ መርጠው ለፌዴሬሽን ም/ቤት አባልነት መላክ የሚችሉ መሆኑን የሚገልጽ ሃሣብ ያለው ነው።

የኢትዮጵያ ዲሞክራሲያዊ ኃይሎች ህብረት የደቡብ ብሔር ብሔረሰቦችና ህዝቦች ክልል ለፌዴሬሽን ም/ቤት አባልነት መርጦ የላከው አባል ከምክር ቤቱ ውጭ የሆነና በግንቦት ምርጫም ያልተመረጠ ነው። ስለሆነም በምርጫ 97 በከምባታ ህዝብ የተመረጠው አቶ አስመኮ ዮሐንስ ሂርጎ በመሆኑ

ብሔረሰቡን ወክሎ ለፌዴሬሽን ም/ቤት አባልነት ሊመረጥ የሚገባው እርሱ ብቻ መሆን አለበት በማለት ያቀረቡት ጥያቄ ከህገ መንግሥቱ አንቀጽ 61/3/ አንፃር ተቀባይነት ያለው ሃሣብ አይደለም። ለክልል ም/ቤቶች የተሰጠው ስልጣንና አማራጩም አመልካቾች ባቀረቡት ሀሣብ ብቻ ታጥሮ የተገደበ አይደለም። በሌላ በኩል በክልሉ ም/ቤት ተመርጠው ለፌዴሬሽን ም/ቤት የተላኩት ግለሰብ የክንባታ ብሔር አይደሉም የሚል ጥያቄ ከብሔረሰቡ አልቀረበም። የኢትዮጵያ ዲሞክራሲያዊ ኃይሎች ህብረት የክንባታን ህዝብ ውክልና ሳያገኝ ይህን ጥያቄ ለማቅረብም ስልጣን የለውም።

በመሆኑም ከደቡብ ብ/ብ/ህ/ክልል ለፌዴሬሽን ም/ቤት አባልነት የተወከሉት አቶ አቡቶ አኒቶ በህገ መንግሥቱ አንቀጽ 61/3/ መሠረት በአግባቡ በመሆኑ ጉዳዩ ከዚህ አንፃር የሚታይ ነው የሚል አስተያየት አቅርቤያለሁ።