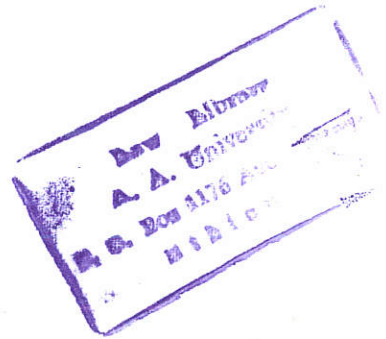


**ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
FACULTY OF LAW**

**THE ROLE OF ENVIRONMENTAL PROTECTION AUTHORITY
IN GUARANTEEING AND PROTECTING ENVIRONMENTAL
RIGHTS IN ETHIOPIA**

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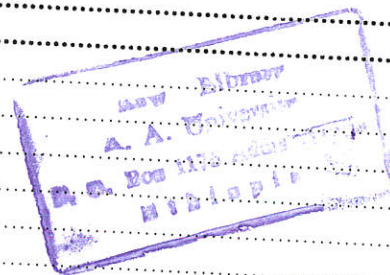
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To

EYERUSALEM SEIFU

**WHO STOOD BY ME
EVERY TIME**

DENVER, COLORADO

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Dereje Damte Argaw

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Abstract

The concept of environmental Protection and environmental rights are the recent developments in the world. It is after the 1972 Stockholm conference on human environment that the world became aware of the necessity of environmental protection and the relationship between environment and human rights. Since then significant number of instruments are developed and adopted in different times in the world to make the environment safe for the health and wellbeing of mankind.

Similarly in Ethiopia since the formation of modern state or government, there were provisions under the laws protecting the environment. Especially beginning with the regime of Emperor Menelik II, and onwards until the coming in to power of the EPRDF led government in the year 1991, there are provisions under the laws that one way or the other protect the environment. However, they are criticized as inadequate, dispersed, lacked comprehensiveness and focused on the economic advantages of the natural resources than focusing on the health and wellbeing of the society.

Taking the weakness of the previous regimes and the global development of the environmental protection efforts into considerations, the EPRDF led government enacted the FDRE Constitution in the year 1995 which guarantee and recognize environmental rights of the people both in substantive as well as procedural manner. That means, it recognize the right to clean and healthy environment as substantive right as well as the right of the people to participate in environmental decision making together with access to information and access to justice as a procedural environmental rights. These constitutionally guaranteed rights of the people are further elaborated by the EPE, the CSE and by the environmental legislations such as EIAP, EPCP and SWMP. However, the mere constitutional guarantee of the rights does not mean that the rights of the people are respected. There has to be the mechanism and institution for the implementation and the monitoring of the same. As a result, the EPA is established at the federal level to monitor the implementation of environmental laws in Ethiopia. In so doing the authority has to play number of roles which among others are playing the role of leadership in establishing strategies and priorities, in formulating practicable environmental standards, in assigning environmental inspectors, in installing sound technologies and the likes.

When we see the practical application of the roles of EPA in monitoring the implementation of environmental laws, the writer can say the authority is not effective in performing its role of monitoring the implementation of environmental laws that would protect the environmental rights of the people. That is due to external as well as internal sources of problems which need measures to be taken on the part of the government on the one hand and on the part of the authority on the other.

Abbreviations

AAEPA	Addis Ababa City Administration Environmental Protection Authority
APAP	Actions Professionals Association for the Peoples'
CEO	Competent Environmental Protection Organs
CS	Conservation Strategies
CSE	Conservation Strategies of Ethiopia
DIPPR	Draft Industrial Pollution Prevention Regulations
EC	Environmental Council
EIs	Environmental Inspectors
EP	Environmental Protection
EPA	Environmental Protection Authority
EPE	Environmental Policy of Ethiopia
EIAR	Environmental Impact Assessment Report
EISR	Environmental Impact Study Report
EIAP	Environmental Impact Assessment Proclamation
EPCP	Environmental Pollution Control Proclamation
EPORP	Environmental Protection Organs Reestablishment Proclamation
ESs	Environmental Standards
ER	Environmental Right
ERs	Environmental Rights
ELs	Environmental Laws
FDRE	Federal Democratic Republic of Ethiopia
GA	General Assembly
HPR	House of Peoples' Representatives
ICCPR	International Covenant on Civil and Political rights
ICESCR	International Covenant on Economic, social and Cultural Rights
MOA	Ministry of Agriculture
MOEDC	Ministry of Economic Development and Cooperation



MOTI	Ministry of Trade and Industry
MOWR	Ministry of Water Resources
MNRDEP	Ministry Natural Resource Development and Environmental Protection
NGOs	Non Governmental Organizations
PCP	Pollution Control Proclamation
PDRE	Peoples Democratic Republic of Ethiopia
PES	Practical Environmental Standards
PER	Procedural Environmental Right
PP	Precautionary Principle
PPP	Polluter Pays Principle
Proc. No	Proclamation Number
RAI	Right to Access to Information
RAJ	Right to Access to Justice
REAs	Regional Environmental Agencies
REACS	Regional Environmental Affairs Coordination Service
SD	Sustainable Development
SE	Sustainable Environment
SER	Substantive Environmental Rights
SRs	Substantive Rights
SRP	Source Reduction Principle
SWMP	Solid Waste Management Proclamation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNESCO	United Nations Economic, Social and Cultural Organization

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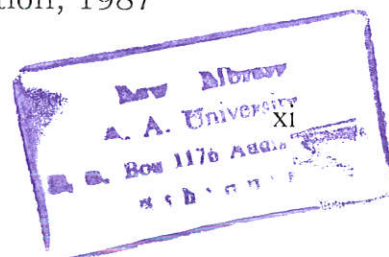
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The Revised Constitution of Ethiopia, 24th day of Tekemt, 1955

The Rio Declaration on Environment and Development, 1992

The Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998

Solid Waste Management Proclamation, Proclamation No 513/2007, **Federal Negarit Gazeta**, 13th Year No13, 12th February, 2007.

The Stockholm Declaration on Human Environment, 1972

The Universal Declaration of Human Rights, 1948

The United Nations Framework Convention on Climate Change, 1992

CHAPTER ONE

1. Introduction

Environmental protection and the rights to safe environment are a recent development in the contemporary world. In earlier days, environmental protection was not considered as an issue having a significant implication on human health, life and livelihood. Human beings were at liberty to exploit, alter or change their surrounding/environment in a form they think appropriate.

As a result, countries in the world face different challenges attributed to the misuse, mismanagement and improper utilization of natural resources such as drought, flood, global warming and other natural calamities. With the advancement of human knowledge and awareness to such environmental problems, the concern given to its protection has increased. As a result, in the 1970's and 1980's, number of international meetings regarding environment and its protection were conducted that finally lead to the adoption of significant number of international as well as regional or national environmental conventions, declarations, protocols, standards and legislations.

In most cases, the term environment is explained as it is our life support system that includes every thing we rely on during our life time such as air, water, metals, soil, rock and other living organisms which might be influenced by our behavior and that we have the opportunity to either nurture or mistreat it.¹ Here it means the totality of our life is dependant upon the favorability of the environment in general.

The notion of the development of environmental rights is based on the assertion that the environment and other fundamental rights such as the right to life, health, food and shelter are interdependent. That means failure to protect the environment can lead to failure to protect other fundamental rights which bases their existence on the protection and preservation of sound environment. The concept of environmental rights

¹ Johan de waal and et al, The Bills of Rights Handbook,(2001), p.405

encompasses three pillars. These are; the right to clean and safe environment, the right to act to protect the environment, the right to information to access to justice and to participate in environmental decision making.²

The enjoyment of environmental right requires state's commitment in guaranteeing protecting and implementing the rights. Accordingly, Ethiopia, in addition to adopting various international or regional environmental protection instruments, guarantees environmental rights under its constitution and took measures for proper and effective enforcement of the rights. For instance, it prepares the Environmental Policy, the Conservation Strategy and Action Plans together with legislations such as Environmental Pollution Proclamation, Environmental Impact Assessment Proclamation, and Solid Waste Management Proclamation, environmental impact assessment guidelines, environmental standards and regulations even if some of these require approval of the environmental council.

To monitor the implementation of these instruments in their respective area, Environmental Protection Organs are established by Proclamation No 295/2002. One of the major organs of such institutions is the Federal Democratic Republic of Ethiopia Environmental Protection Authority which mandated and obliged to monitor the implementation of the Environmental Policy, the Conservation Strategy and other legislations enacted directly for the protection of the environment and indirectly for environmental rights.

1.1 Statement of the Problem

The concept of environmental rights or environmental protection is a recent development in the global system. The same is true in Ethiopia. It is the current FDRE constitution that clearly recognizes these rights under article 44. However, providing or recognizing the rights under the constitution merely does not warrant the respect and protection of the rights. The government should take measures through its institutions to that effect. As

²Environment and Human Rights: a new approach to sustainable development. <http://www.ring-alliance.org/ring>

mentioned before, one of the major institutions established to play a great role in the guaranteeing and protection of environmental rights is the FDRE Environmental Protection Authority.

This Authority as reestablished by Proclamation No 295/2002 mandated to take measures for the protection of the environment in general or environmental rights in particular. Moreover, various legislations enacted by the House of the Peoples' Representatives authorize it to take measures for the implementation of those legislations such as the Environmental Impact Assessment Proclamation (Proc.No299/2002), and the Environmental Pollution Control Proclamation (Proc.No300/2002).

However, the capacity or the commitment of the Authority became questionable. In the first place, the mandate of the Authority vis-à-vis regional environmental protection organs is questionable. In addition, the Authority consider it self as a body established for monitoring the implementation of environmental laws of the country only on institutions licensed by federal offices. However, that is not the case under EPCP. According to the Authority, the roles of monitoring the implementation of environmental laws are left to regional environmental organs established by the same proclamation no 295/2002.

As a result, the role of the Authority in the protection of the environment in general or environmental rights in particular requires further investigation in spite of the fact that the conditions of the environment or environmental rights in Ethiopia became worse.

1.2 Objectives of the study

The objectives of this researcher are assessing the role of Environmental Protection Authority to protect and implement environmental rights in Ethiopia. As most agree, the concept of environmental rights comprise of the peoples rights to live in a clean and healthy environment, access to information and the right to full consultation and expression of views in the planning and implementation of environmental policies and developmental programmes as a whole.

In order to ensure these rights, numbers of measures are expected from the Environmental Protection Authority which is authorized to monitor and protect environmental rights or environmental laws of the country. Assessing what roles and duties are expected from the Authority in the protection, guarantee and implementation of the environment and environmental rights under the law and its practical applications are the objectives of this research.

In generalized and precise manner, the objectives of this research paper can be grouped in to two categories; i.e. general objectives and specific objectives.

1.2.1 General Objectives

The general objectives of this research are:

Assessing roles and duties expected from Environmental Protection Authority in the protection, guarantee and monitoring of the implementation of environmental rights recognized under the FDRE constitution, national legislations, international and regional environmental conventions adopted by Ethiopia.

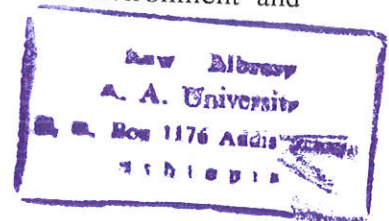
Assessing measures taken by the Authority to protect and monitor the implementation of environmental laws, policies and strategies that contribute for safe environment and environmental rights in Ethiopia.

1.2.2 Specific Objectives

The specific objectives of this research are:

Assessing and evaluating the activities of the Authority for the protection of environmental rights in Ethiopia.

Assessing challenges, in the protection of environmental rights, hinders the Authority from performing its responsibilities.



Evaluate the adequacy of the existing laws for the protection of environmental rights in Ethiopia.

Recommend the possible solutions to curb the challenges for sound implementation of environmental rights.

1.3 Research Methodology

The Method of data collection that the writer used while doing this research are using both secondary and primary resources that have direct link to the issue under discussion. Accordingly, in the first case, different publications on the subject matter under discussion are used. The other primary data collection method that is employed in this research is using laws (national and international) that recognize environmental rights in Ethiopia. Here emphasis is made on those laws that particularly recognize environmental rights such as the FDRE constitution, the conservation strategy, the environmental policy, action plans and other legislations. Moreover; international as well as regional human rights instruments and environmental conventions and standards are reviewed. Interview as method of data collection is also used to get information fro officials in EPA who is responsible for monitoring the implementation of environmental legislations in Ethiopia. In addition; a case that is decided by the Federal courts regarding environmental protection is analyzed while doing this research.

1.4 Scope of the Study

Governmental institutions are expected to play certain roles in the over all protection and implementation of environmental rights in Ethiopia. Even if the issue of environmental protection should not be left to certain specific institutions there are some governmental institutions that are particularly responsible for the protection and implementation of environmental rights. Among these, the Environmental Protection Authority at the Federal level is the major organ for the protection and implementation of environmental rights. Therefore, the scope of this research focus on the major roles expected from this

Authority in guaranteeing, protecting and implementing environmental rights on the one hand and its practical applications on the other.

1.5 Significance of the study

Like any research work, this research has its own aspirations or significances to bring about. Some of the major significances of this research would be,

- Indicating or providing what have been done regarding the protection and implementation of environmental rights on the part of the Authority.
- Providing possible means to the sound management of environment or environmental rights on the one hand or means to foster the implementation of environmental rights.
- Initiating possible research works in the area of environmental rights protection in Ethiopia.
- Indicating possible measures that have to be taken by the Authority to assure or guarantee environmental rights.
- Listing out the possible problems or limitations hampering the Authority in the over all environmental rights protection and implementation and recommend and suggest possible solutions there of.

1.6 Limitation of the study

The fact that environmental protection is a task assigned to everyone; individuals, and institutions (both governmental and non governmental), the role of each governmental institution requires a detailed and prolonged study. In addition, in country like Ethiopia, where federal forms of arrangement exist, the task of environmental protection is distributed between federal government offices and regional governments. Therefore, this research paper, as indicated in the scope, mainly focuses on the roles of the Federal Democratic Republic of Ethiopia Environmental Protection Authority. That means, its focus on the roles of others governmental institutions in Ethiopia are so minimal. The

other limitation that the writer faced while doing the research is the absence of adequate cases in courts regarding the environmental rights.

1.7 Organization of the thesis

This research is organized into five chapters. The first chapter of the paper focuses on the general introductory remarks regarding background of the problem, statement of the problem, objectives, scope, methodology and limitations of the research that highlight what the research is all about.

The second chapter provides general historical or theoretical background of environmental rights. It also focuses on defining the important concepts or terms that might be used in the research. The need and significance of environmental rights together with some controversies in environmental rights get due focus in this chapter. The third chapter of this research paper focuses on the general background of environmental protection; Environmental rights and Environmental Protection Organ in Ethiopia. Here emphasis is made on those situations in the pre-1991 periods and in the post 1991 period.

The fourth chapter of this research broadly assesses the powers, duties, responsibilities and the roles of the Environmental Protection Authority. Here it mean, focus is made on the role of the Authority in designing environmental policies and strategies, in ensuring sustainable environment, in improving public knowledge /awareness, in monitoring the implementation of the rights as well as in the rehabilitation of the natural environment.

The fifth chapter of this research focus on evaluation of the roles, remedial measures and challenges of the Authority in the over all efforts of protecting the environment and environmental rights in practice in Ethiopia. Conclusion and recommendations are also be made part of this chapter.

CHAPTER TWO

2. General Theoretical Framework Regarding Environmental Rights

The concept of Environmental Rights is a recent development in the global system. In earlier days, there were no as such environmental rights as it is understood today. The development of environmental rights is so much dependent on the development of environmental protection efforts experienced in the world. This means that we can not separate the development /history of environmental rights from that of the history of international or regional environmental protection efforts or programmes or instruments in general.

This is because; the protection of the general environment is the basis for the enjoyment of environmental rights. Therefore, here below, we will see the history of environmental protection in general.

2.1 Historical Background

In the international / global system, the history of modern environmental protection dates back to the establishment of the United Nations Organization. However, this does not mean that there were no efforts for the protection of the environment before the establishment of the United Nations. According to Philippe Sand, this periods were considered as the first period in the development of modern environmental protection regime where by bilateral treaties began in the nineteenth century which concluded with the creation of the new international organization in 1945.¹ It is during this period that peoples and nations began to understand that the process of industrialization and development required limitations on exploitation of certain natural resources (flora and fauna) and the adoption of appropriate legal instruments.²

¹ Philippe Sand, Principles of International Environmental Law (2003), p.25

² Id

However, these early attempts to develop environmental rules focused on the conservation of wildlife (fisheries, birds and seals) and, to a limited extent, on the protection of rivers and seas.³ This clearly shows that the adoptions of bilateral treaties during the time were sporadic and limited in scope. Most of the agreements were adopted to halt over exploitation of resources like fishes. Even if the scope of the agreements were so limited in specific area of concern, this early stages became a basis for the furtherance of the efforts to protect the environment especially after the establishment of the United Nations.

The second period of the efforts to protect the environment commenced with the creation of the UN and culminated with the UN Conference on Human Environment, held in Stockholm in June 1972.⁴ Even if the UN Charter does not include provisions regarding the protection of the environment, this period marked significance in the overall development of environmental protections. This is because, it was during this period that a range of international organizations with competence in environmental matters were created and legal instruments were adopted, at both in the global or regional levels, which addressed particular sources, such as oil pollution, nuclear testing, wetlands, the marine environment and its living resources, the quality of fresh waters, and the dumping of waste at sea.⁵ Even in this period, the scope of the instruments in general was limited as in that of the previous periods. What makes this period different from the previous is that, the instruments adopted in this period, relatively speaking, were broader and addressed wider area of emphasis though not in a sense that environmental protection requires now a days.

The UN Conference on Human Environment that was held at Stockholm in 1972 convened as a result of pressures from NGO's, especially in the USA.⁶ The conference came up with the adoption of the Stockholm Declaration on the Human Environment that marked the first modern attempts at general environmental international policy

³ Ibid ,p.26

⁴ Ibid,p.25

⁵ Id

⁶ P.W.Birnie and A.E.Boyle. International Law and the Environment (2002), p.38

making.⁷ What makes it the first modern attempts in environmental policy making is nothing, but the tone of the Stockholm was firmly human centered, emphasizing the dependency of Man on the Environment.⁸

At the very beginning, the 1972 Stockholm Conference held or convened as a result of apocalyptic fears that were voiced of disaster for human race seen as threatened by technology out of control, overpopulation, and profligate consumption on the one hand and reports appeared during this periods warning of crisis and paved the way for the creation of general environmental principles such as sustainability and precaution.⁹ This period can be considered important in the historical development of environmental protection activities of the global community or the UN in particular. Because, it was during this period that the UN tried to put in place a system for coordinating responses to international environmental issues, regional and global conventions adopted and it was for the first time that the production, consumption and international trade in certain products banned at the global level.¹⁰

The 1970's in general is the significant period in the history of environmental protection or environmental law. That is not without reasons. Firstly, environmental concern became international. Secondly, the interdependence of the different elements of the environment became potentially important and thirdly the limit of our scientific knowledge became apparent.¹¹ In these regards, the Stockholm Conference is considered as a watershed in international relations and placed the issue of the protection of the biosphere on the official agenda of international policy and law.¹² Among the main agendas of the conference during the deliberation were;¹³

- *Planning and management of Human settlements for environmental quality;*
- *Environmental Aspects of Natural Resources Management;*

⁷ John Alder and David Wilklnson. Environmental Law and Ethics (1999), p.15

⁸ Id

⁹ Id

¹⁰ Supra note 1, p.26

¹¹ Supra note 7, p.16

¹² H.V.Jadhav and S.H.Purohit. Global warning and Environmental Law (2007), p.19

¹³ Id

- *Identification and control of pollutants and nuisances of broad international significances;*
- *Educational, Information, Social and Cultural Aspects of environmental issues;*
- *Development and Environment; and*
- *International organizational implications of action proposals.*

After the deliberation by attending states, the 1972 Stockholm Conference resulted in four major initiatives at normative, institutional, programmatic and financial levels, which provide the driving force for the development of environmental affairs in the UN during the decades and beyond.¹⁴ The first initiative was the adoption of the declaration of principles, intended to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. The second was the establishment of a new institution within the UN; the United Nations Environmental Programme/UNEP/, the third was the adoption of an Action plan for the development of environmental policy, to be administered by the UNEP, and the fourth was the institution, by voluntary contributions, of an environmental fund.¹⁵

In the same year, the General Assembly of the UN adopted its resolution 2995/XXVII/ that enunciated the General Principles of Cooperation between the States in the field of Environment.¹⁶ Different conventions on different issues at the global level such as convention on the prevention of maritime pollution by dumping wastes Control of polychlorinated Biphenyls, on Trans-frontier pollution and the likes adopted.¹⁷

However, through out this period, there were no clear understandings as to what environmental rights or the rights to a healthy environment consists of. It was in 1992, at Rio de Janeiro conference on Environment and Development, that a new paradigm shifts

¹⁴ P.W.Birmie and A.E.Boyle, supra note 6, pp 38-39

¹⁵ Ibid, p.36

¹⁶ Hisashi Owada 'International Law and the International court of Justice: Inaugural Lecture at Fellowship Programme on International and Comparative International Law.' P.6,

www.jak.ppke.hu/hir/ias/200634sz/,

¹⁷ Id

in the law and policy on environment at the international level came about.¹⁸ That is because, it was at this particular conference that the issue of environment for first time put into the perspective of the sustainability of development, based on the general recognition of an inevitable link between the preservation of environment and the promotion of development.¹⁹

Moreover; the Rio conference on Environment and Development became significant in a sense that it recognizes the relationship between environment and development by stating that 'Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.'²⁰ This marks the period as significant in the overall developmental process of the protection of environment in general or environmental rights in particular. Amongst the most common points of discussions during the Rio summit, protection of atmosphere, protection of land resources, conservation of biological diversity, protection of fresh water resources, protection of marine life, environmentally sound management to avoid hazards of toxic chemicals and improvement of the quality of life of the man were some of the issues that took the lead.²¹

The ultimate outcome of the summit makes it important in the development of environmental protection. Accordingly, the conference resulted with the adoption of a soft law; the Rio Declaration, Forest Principles and Agenda 21, as well as binding instruments such as Convention on Climate Change and Convention on Biological Diversity.²²

However, these are not the only developments in the field of environmental protection. Even if it is the declaration, in 1994, the draft declaration of principles on human rights and environment was enacted. This draft declaration was prepared taking in to account most important human right instruments such as the UN Charter, Universal Declarations

¹⁸ Ibid, p.7

¹⁹ Id

²⁰ Principle 1, The RIO Declaration on Environment and Development (1992)

²¹ Supra Note 12, p.22-23

²² Id, p.23

of Human Rights, the International Covenant on Economic, Social and Cultural rights on the one hand and the achievements of the Stockholm Declaration, the World Charter for Nature, the Rio Declaration on Environment and Development and the likes on the other.²³

The relationship between environmental protection and fundamental rights became clear to most states in the world. Nevertheless, they couldn't come to terms to adopt the binding instruments for the recognition of the protection of environmental rights. What makes this declaration important is its recognition that;

*All people have the right to secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.*²⁴

This draft Declaration stipulates the rights of all persons to an environment Adequate to meet equitably the needs of present generations that does not impair the rights of future generation,²⁵ the rights of all persons to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well being or sustainable development.²⁶

Though it is a non-binding legal instrument, the 1994 draft declaration of principles on human rights and the environment played a significant role in determining the relationship between environment and, environmental protection and human rights. As a result, it can be considered as one of the major achievements in the history of environmental rights.

Following this declaration, the international community gathered in Johannesburg, South Africa from 26 August to September 2002 and adopted the draft political declaration, the

²³ Preamble , 1st and 2nd paragraphs ,The Draft Declaration of Principles on Human Rights and the Environment, 1994

²⁴ Article 2 ,Ibid

²⁵ Article 4, Ibid

²⁶ Article 5, Ibid

Johannesburg Declaration on Sustainable Development. This was one of the major summits in the history of environmental protection. The declaration deals with the sustainability of developmental activities in general. Paragraph 17 of the declaration, for instance, emphasizes the indivisibility of human dignity and resolved through decision on targets, timetables and partnerships to speedily increase access to basic requirements such as clean water, sanitation, energy, health care, food security and the protection of biodiversity.²⁷ This shows the concern given to environmental rights became the agenda of the day.

2.2 Definitions of Important Concepts

Even if modern environmental protection system dates back to the 1972 Stockholm Declaration, some concepts or terms related to environmental protection does not have a clear and precise meanings until recently. Therefore, in this subtopic we will try to see the definitions related issues in the environmental protection.

2.2.1 The Term 'Environment' and 'Environmental Rights'

The term 'Environment' is defined in the field of environment more or less in a similar manner. One of such definitions for instance defines it as 'environment is the sum of all external influences and conditions affecting the life and development of organisms or ecological community.'²⁸

Similarly, Encyclopedia of Sustainable Development defines the term as:

*The environment is our life support system. It includes everything that we rely on during our life time such as air, water, metals, soil, rock and other living organisms.*²⁹

As it can clearly seen from the literal meanings of the above definitions, the difference between the two is that the first definition is forwarded taking in to consideration the

²⁷ Paragraph 17, The Johannesburg Declaration on Sustainable Development, 2002

²⁸ Environment, <http://www.step.abag.ca.gov/reports/soe/soegloss>

²⁹ Environment, Encyclopedia of Sustainable Development. <http://www.ace.mmu.ac.uk/esd/environment>

environmental influences against organisms or ecological community which encompasses living and non living things in the natural surroundings where as the latter focuses on every thing that are necessary for human beings excluding animals or any other natural ecosystem.

According to certain scholars, the term environment, as it is usually defined in legislations, became open ended term to include the natural media of land, air and water. It sometimes includes flora and fauna, the interaction between the natural media and living things and the cultural heritages of the built environment.³⁰ What so ever, the definitions of the term 'environment' might be, the most important point that has to be understood is ,there is no as such a universally accepted and legally recognized definition for the term in the one hand and as Philippe Cullet puts it, on a factual level, it has already become apparent that preservation, conservation and restoration of the environment are a necessary and integral part of the enjoyment of inter-alia the right to health, to food and to life including a decent quality of life.³¹

As there is no single definition for the term 'environment', the same is true for the concept of environmental rights. In the international system, it is not only the definition or the concept of environmental rights but also the existence of it is not a forgone conclusion.³² This means that, the issue of legal recognition of environmental rights is most complicated. At the very beginning questions like do the existing legal instruments recognize what is called 'environmental rights'? Or question like, is there a general right to the environment or are environmental rights recognized merely as derivatives of other existed rights? are not yet clearly settled.

However, there are different approaches to answer the above unsettled questions. The first approach sees the rights to the environment in and of itself.³³ This means that, the rights to environment is a right that can stand by itself. It could be an individual or group

³⁰ See supra note 7,p.8

³¹ Philippe Cullet, Definition of environmental rights in a Human Rights Context.(2008), p. 1

³² Loretta A Feris, and Dire Tladi, Environmental Rights. P. 249, www.chr.up.ac.za/center_publications/socio/book/chapter

³³ Ibid, p.250

rights or both that may benefit the present generations or future generations or both.³⁴ Nevertheless, this approach does not find much support under international law.³⁵

The other approach advocated by most scholars does not recognize specific environmental rights like that of the first approach. It emphasizes the potentials for protecting the environment under existing rights, such as the right to life, health and dignity.³⁶ This approach, as Loretta and Dire stated, involves the reinterpretation of existing rights to give effect to environmental rights.³⁷

Unlike the above approaches to environmental right, the third approach involves the use of procedural rights, such as access to information, the rights to public participation and access to justice.³⁸ This approach is said to be the key to environmental rights than the other two approaches. However, none of these approaches define the term 'environmental right' or what it comprises of and what the term entails about. Nevertheless, the right to healthy environment explained requires a healthy human habitat, including clean water, air, and soil that are free from toxins or hazards that threaten human health.³⁹ Like any human rights, the right to a healthy environment imposes obligations to respect, obligation to protect and obligation to fulfill against the government or the state parties to international agreements.⁴⁰

The above explanation of the rights to healthy environment does not explain what exactly mean environmental right all about rather explores what are fertile grounds to enjoy environmental rights. The term 'environmental right' could be worded in a different ways. One example showing as to how it could be worded differently is the definition forwarded from anthropocentric view and from eco-centric point of view. The former consider human health and well being, not the environment, for its own sake where as the

³⁴ Id

³⁵ Ibid, p.251

³⁶ Id

³⁷ Id

³⁸ Id

³⁹ The Right to Healthy Environment, <http://cesr.org/publications>.

⁴⁰ Id, the obligation to respect requires governments to refrain from interfering directly or indirectly with the enjoyment of the right to a healthy environment, the obligation to protect requires governments to prevent third parties from interfering in the enjoyment of the rights and the obligation to fulfill requires governments to realize the right to a healthy environment.

latter worded it more as a 'right of nature' rather than a 'right to nature.'⁴¹ Likewise the concept of ER can be defined from the perspectives of its substantive ness or procedural ness. What really substantive feature or procedural feature of environmental rights are points of contention among scholars in the field of environmental protection.

2.2.1.1 Substantive Environmental Rights

As we know, substantive rights/SRs/ is basic rights affording individuals the power to possess or do certain things.⁴² It establishes principles create and define rights, and set limitations under which the society is governed. It also allows individuals to exercise given rights despite the fact that the government may not desire them too.⁴³

When we come to the definition of the substantive environmental rights /SER/, the recognition of this right is still fraught with controversy in some quarters as it brings a number of new and challenging elements to the human right theory.⁴⁴ Most scholars in the field of environmental law question the existence of environmental rights /ERs/. They argues that there can be no SR to environment because the quality of the environment can not be defined universally a prior, the norm is to imprecise and the claim is not enforceable.⁴⁵

However, most scholars agreed on the existence of procedural environmental rights and gave weight to it than SR which they question its existence. But, one can raise questions as to how PER exist with out the existence of SER. Though there is no consensus among scholars to the existence and definition of ER, 'the right to adequate environment or ER is firmly attached to the right to life...'⁴⁶ This shows that failure to protect general

⁴¹ Christina Simeone, 'The Necessity and possibilities of constitutional Environmental Rights' (2008), <http://repository.upenn.edu/mes-capstones>

⁴² Ibid, p.4

⁴³ Id

⁴⁴ See supra note 30, p.4

⁴⁵ Ibid, p.7

⁴⁶ Eckard Rehbiinder and Demetris Loperena, Legal Protection of Environmental Rights: the Role and Experience of the International Court of Environmental Arbitration and Conciliation. <http://iospress.metapress.com/index/>

environment might lead to the violation of the right to life and other fundamental rights like the right to health, food and the likes.

According to Philippe Cullet, the recognition of a SER or ER in general requires to take at least two conditions in to consideration. These are;

*...first it should take into account the need to preserve the very existence of life on earth necessary for human kind's survival and as a second step, ensure that the conditions of life provided to humans are conducive to a decent quality of life.*⁴⁷

However, one should always remember that the holders of a rights to environment, especially that of SER, can neither claim a given state of the environment since this has never existed in human history nor a local environment similar to other places in the world as the unequal distribution of resources does not allow for the existence of equal environmental conditions every where.⁴⁸ Nevertheless, proponents for a SR to environment argue that such a right would provide more effective protection than the PER which opt for short term affluence rather than long term environmental protection.⁴⁹

2.2.1.2 Procedural Environmental Rights /PER/

Procedural Environmental Rights /PER/ is a very broad concept that most environmental lawyers accept as the right to environment.⁵⁰ This is to mean that PER is vital to ensure the right to healthy environment most of the time, PER, considered as a right that consists of three main pillars of rights such as; access to information, the right to participation in decision making in environmental issues and access to justice when a certain harm is inflicted against the free enjoyment of ER.

⁴⁷ Supra note 31 p.4

⁴⁸ Id

⁴⁹ Ayesha Dias "Human Right, Environment and Development: with special emphasis on Corporate Accountability" Human Development Report. (2000), P.3

⁵⁰ Supra note 46

According to Ayesha Dias, PER consists of a range of procedural rights that includes the right to information, the right to receive prior notice of environmental risks, the right to participate in decision making in environmental issues at both the domestic and international levels, the right to EIA, the right to local remedies including standing to initiate public interest litigation and the right to effective remedies where environmental damages is caused.⁵¹

Whatever the nature of ER might be; substantive, procedural or both, the most important point we should know is that 'effective environmental rights must include duties, and procedural and substantive rights. Additional environmental rights should offer injunctive relief and mechanisms to collect damages from infringing parties.'⁵² However, when we talk of PER, we are talking about the three most important derivative rights; the right to information, the right to participation and access to justice which we discussed here below one after the other.

2.2.1.2.1 Access to Information

The availability of information on activities having environmental impacts is a necessary preliminary to the application of control or the protection of individual rights.⁵³ It is only when individuals or group of people gets the right and accurate information that helps them participate or protect the environment or they can enjoy their rights properly. When we talk about access to information, we need to notice that it is of two types; Active and Passive. The active type of access to information concerns the right of the public to receive information and the obligation of the authorities to collect and disseminate information of public interests with out the need for a specific request.⁵⁴ Whereas, the passive type of access to information, concerns about the right of the public to seek information from the public authorities to provide information in response to the

⁵¹ Supra Note 49

⁵² Supra Note 41, P.4

⁵³ John D Leeson, Environmental Law. (1995), p. 15

⁵⁴ The United Nations Economic Commission for Europe, The Aarhus Convention: An Implementation Guide. (2000), p.6

request.⁵⁵ From these two types of access to information rights, we can analyze that individuals or any body can seek or get information that helps to exercise ER.

Access to information about the environment is now a recognized right especially in Europe with the adoption of the Aarhus Convention.⁵⁶ The basis of the right is that the public authorities, especially those responsible for managing environmental issues, quality of life, public health and the likes may have a lot of information about the environment that the public should know. Therefore, when we talk of access to information about the environment, we are talking about the free access right individuals or anybody who are in need of the information have with out justifying the reasons for the request of the information.⁵⁷

The challenge for this right might be the inability of the public authorities to have and provide all the information requested on the environment. What is expected from them is to make accessible the information they have to the public by any appropriate means when the public or any one demands so.

2.2.1.2.2 The Right to Public Participation /RPP/

This is another important right of the public to participate in environmental decision making that might directly or indirectly have an influence on their environmental rights. The RPP relies upon the Right to Access to Information/RAI/ and the right to access to justice/RAJ/ for its effectiveness.⁵⁸ The RAI helps individuals or the public to take party in an informed manner and the RAJ ensure that participation happens in reality and not just on paper.⁵⁹

The RPP can be manifested at least in to three ways. The first part concerns participation by the public that may be affected by or is otherwise interested in decision making on a specific activities. The second situation concerns the participation of the public in development plans, programmes and policies relating to the environment and the third

⁵⁵ Id

⁵⁶ Access to Information, [http:// portal.health.fgov.bc.ca/portal/page](http://portal.health.fgov.bc.ca/portal/page)

⁵⁷ Id

⁵⁸ Id

⁵⁹ Id

situation concerns about the participation of the public in the preparation of laws, rules and legally binding norms.⁶⁰ These situations of the RPP in the decision making process especially in decisions that affects the environment is not a one time event rather it requires the continuous participation of the public from the planning to the implementation and monitoring of activities.

2.2.1.2.3 The Right to Access to Justice /RAJ/

The RAJ is one of the most important PER where by individuals, the public or any interested party can claim the violation of environmental law under formally established judicial organs. These could be ordinary courts or specialized courts. This right enforces both the information and the public participation rights in the domestic legal system.⁶¹ This means that, the RAJ may be exercised where the individuals or the public denied of information regarding the environment or when they denied off their participation rights in decision making especially in decisions that affect their life or when they feel the environmental law of the country is violated.

2.2.2 The term/concept of Sustainable Environment or Development

The concepts of sustainable environment or development as easily understand is a combination of two words; 'Sustainable' and 'environment' or 'development.' The term 'sustainable' or 'sustainability' sees human activities as part of and dependent upon the natural world or environment. It is about meeting the basic needs and wants⁶² that requires making decisions that recognize the connection between actions and effects in the environmental, economy and society. It is very much about what kinds of legacy we want to leave for our children and grand children.⁶³ The term 'environment' or; development' is about the limited resources that we (both present and future generations) share.⁶⁴

⁶⁰ Id

⁶¹ Id

⁶² Sustainable Development Commission ,<http://www.sd.comission.org.uk/index>

⁶³ Id

⁶⁴ Id

The concept of sustainable environment /SE/ or development /SD/ means different things to different people , but most frequently prefer to use the definition that ‘sustainable development is development that meets the need of the present without compromising the ability of the future generations to meet their own needs’⁶⁵This definition of SD is said to be the guiding principles that recognizes the interdependence of environmental, social and economic systems and promotes equality and justice through peoples empowerment and global citizenship.⁶⁶

However, the concept of SD does not only focus on the enjoyment of natural resources without affecting the need of the future generations. It means, as we know ,environment includes both renewable as well as non renewable resources so that when we say SD , that means talking about development that takes place in a way that allow renewable resources to re-accrue.⁶⁷Or the concept of SE or SD should thus be explained in such a way that it will be able to sustain human, plant and animal life over the longest possible periods.⁶⁸

In a generalized explanation, SD is maintaining a delicate balance between the human need to improve life styles and feeling of well being on the one hand, and preserving natural resources and ecosystems, on which we and future generations depend.⁶⁹That ultimately mean about sustainable human development which places people at the center of all development activities by which all human beings lead, secure and creative lives that in turn directing towards the promotion of human dignity and the recognition of all human rights; economic, social, cultural, civil and political.⁷⁰

⁶⁵ This definition is adopted by the Brundtland Report, ‘Our Common Future’, made by the World Commission on Environment and Development in, 1987

⁶⁶ Supra note 29

⁶⁷ Johan de Waal and et al. The Bill of Rights Handbook.(2001), p.405

⁶⁸ Id

⁶⁹ Sustainable Development Features Definitions.<http://www.gdre.org/sustdev/definitions.html>

⁷⁰ Supra note 49,p.2

2.3 The Need or Significance of Environmental Protection and Environmental Rights

So far in this paper, we have seen the theoretical background of environmental protection efforts and issues related with the protection of environmental rights. In this sub topic emphasis is made on the need of its protection. As we discussed earlier environment is 'the sum total of all the external forces, influences and conditions, which affect the life, nature, behavior and growth, development and maturation of living organisms.'⁷¹ What we understand from such definitions is that environment is the basis of our life or the life of living things in general. The protection of environment is also basis on this truth. We protect the environment in general and the intrinsic value of nature in particular for the mere reason that it provides us with a number of advantages.⁷² First and fore most we protect the environment because it is a basis to ensure peace and stability and above all, the life sustaining system indefinitely.⁷³ What we understand from this explanation is that environment is a basis of life on earth and it is only when we are able to protect it from any harm that we can survive. This means that, protecting the environment is a necessity for human since it is a source of food, development or existence in general.

Environment provides us a number of benefits which among others includes;⁷⁴

- *It sustains life on earth.*
- *It saves life from the hostile environment of outer space.*
- *It absorbs most of the cosmic rays from outer space and a major portion of the electromagnetic radiation from the sun.*
- *Protect humanity from extinction and the likes.*

The need to protect the general environment or environmental rights is so much dependent upon the benefits environment can provide us in the one hand and the challenges that human beings face as a result of the devastating effects or consequences emanated as a result of misuse, mismanagement, uncontrolled activities and utilization of

⁷¹ Overview of the State of Environment, pnuma.org/deramb_ing/ethiopia.doc

⁷² EPA, Background Information on Drought and Desertification in Ethiopia. (1988), p.38

⁷³ Id

⁷⁴ Environmental science: Definition, Scope and Improvement.
www.newagepublishers.com/samplechapter/001281.pdf

natural recourses. That makes the protection of the environment and environmental rights necessary since the failure or ignorance might lead to devastating result or consequences to the extent of loosing survival of life on earth.

2.4 Controversies against Environmental Rights

The fact that issues of environmental protection or environmental rights is not a forgone topic of discussion; it is characterized by controversies among scholars. At the very beginning, as we have seen in the previous sub topics, the existence of what is called environmental rights is a point of contention among scholars. Some strongly argue that as there is no environmental right whereas the others stand on the contrary. It is not only the existence or otherwise of the rights that is contentious among scholars, but also its substantive ness or procedural ness or both of the rights, too.

Moreover, some scholars argued that ER can best be handled and protected by the existing human rights instruments without the need to adopt a specialized environmental protection instruments. The application of SD is also an area of disagreement among scholars. That is why, John Alder and David Wilkinson states that;

At one end of the spectrum sustainable development is recognized as an empty platitude intended to provide a formula acceptable to most ethical and political point of view. At the other extreme sustainable development is regarded as a useful policy guided although no one believes that the concept is capable of being directly applied in law.⁷⁵

In related conditions, the type of sustainability that we shall adopt became an area of disagreement among scholars in the field of environment. Accordingly some recommended the 'strong' sustainability approach which advocates that human beings should leave future generations the same environmental resources as we ourselves

⁷⁵ Supra note 7, p.127

inherited which is totally impossible due to the non renewable nature of resources.⁷⁶Where as , others on the contrary argues for the 'weak' sustainability approach that dictates about distributive justice between generations that require each generation to pass on to the next generation an equivalent or better total stock of overall resources including infrastructure, knowledge and technological capacity than it inherited.⁷⁷

Extremists on the other hand argued that human beings can do what they believe or like to do including degrading the natural environment provided that they substitute man made capital or leave a fund to an equivalent value so that the total level of consumption remain the same.⁷⁸All these sorts of things indicate that environmental protection or environmental rights is full of controversies among scholars and international communities at large that might be settled in future. Some other issues of controversies are also selected to discuss in this sub topics in detail below. These are;

2.4.1 Individual Vs Group Rights

Another controversy in the field of environmental law is the nature of environmental rights as an individual right or common or shared or group rights. In this regard, the right to healthy environment is difficult to categorize as an individual or group right specifically. That is why; Cullet expressed his opinion as;

*...we can not and should not attempt to categorize this new right as, either a civil or political, or economic, social and cultural rights, or a solidarity rights because it transcends the distinctions and embodies elements found in each of the three categories.*⁷⁹

The reason for Cullet to argue for the difficulty to the categorization of the rights to healthy environment or ER purely as individual or group is nothing but in the first place, ER requires states to refrain from activities harmful to the environment, and to adopt and enforce policies promoting conservation and improvement of the quality of the

⁷⁶Id

⁷⁷ Id

⁷⁸ Id

⁷⁹ Supra note 31,p.2

environment and secondly, it appears according to him, on several counts the right is not purely individual right since one may single out the right of future generations whose interest must be taken in to account but whose individual members can not be identified.⁸⁰

Another scholar in the area of environmental rights categorizes ER in to two types; one the right to a good environment and the other, the right to use the environment.⁸¹ The first nature of ER; the right to good environment, is common /shared rights that its legal subject is human being as a whole, including present and future generations. Where as , the latter, the right to use the environment is mainly the right to engaged in activities resulting to property such as , land use rights, fishing rights and hunting rights which are individual rights.

An important point the writer wants to emphasize here is not the controversies against ER, its nature or characteristics rather to the benefits that human can get as a result of the protection of ER. Because , the vanishing categorizations of human rights into individual or group rights (civil and political, social, economic and cultural rights or solidarity rights) leads us to reject any hierarchy in theory so far as all rights we include as human rights are fundamental rights, of which none can be held intrinsically superior given their pervasive interdependence.⁸²

2.4.2 The issues of Representation/ Locus standi

As we have seen earlier, the basic tenets ER are the sustainability of each and every activities of the government, or that of any body for that matter. This means that, whenever we use natural resources, we should think of both the present and the future generations not to be affected by the activities or measures employed. The controversy here is, who is going to represent the future generations against their claims against the activities of the present generations? Because, in the first place, the future generations is

⁸⁰ . Id

⁸¹ Zhou Xunfang, A trend to strengthen common /shared rights and limit individual rights: an overview to Environmental rights in Europe, [http:// www.rjel.whu.edu.cn / news.asp? Sort = 2](http://www.rjel.whu.edu.cn/news.asp?Sort=2)

⁸² Supra note 31,p.2

none existent in the present time in an identified manner⁸³ and in the second place the future generations do not have a legal standing to claim the violations of environmental laws.⁸⁴

This controversy leads to the question for which the protection is given. That means whether ER should be an eco-centric or anthropocentric.⁸⁵ The eco-centric approach focus on the natural environment as it has an intrinsic value which entails its existence regardless of the interest of human beings.⁸⁶ According to this approach human beings have no rights to reduce the natural resources except to satisfy their basic needs. It focuses on more of rightness than that of rights as the case in an anthropocentric approach.⁸⁷ If we focus on an eco-centric approach focus to protect the environment, we can protect the life of the future generations unlike that of the anthropocentric which gives emphasis to the present generations at least in theory.

2.5 International Legal Framework for the Protection of Environment and Environmental Rights

The international system or the global community has developed a number of non binding instruments in the form of declarations as well as binding instruments that directly or indirectly protect or promote ER, SD and Human rights in general. These instruments can be assessed classifying them in to those instruments that are adopted to protect human rights in general and those instruments that are specifically adopted to protect the environment and related rights among which ER is the one.

After the establishment of the UN, different human rights instruments are enacted or adopted by the international communities as a result of lessons taken from the devastating World War II. One of these instruments is the UDHR adopted in 1948. Even if the

⁸³ Id

⁸⁴ Supra note, 32 P.253

⁸⁵ An eco centric approach of environmental protection emphasizes on the protection of the general environment from harm or the damage where by all living and non living things may be benefited. An anthropocentric approach focus only on the benefits of human where by it ignores nature since human are the only focus.

⁸⁶ Loretta Feris, Constitutional Environmental Rights: An unutilized Resource.

http://www.chr.up.ac.za/center_publications/socio/book/chapter

⁸⁷ Id

UDHR does not clearly provide for ER as the term coined to day, it consists of some provisions that are similar with the present day's ER. For instances, the UDHR, provides that;

*Every one as a member of the society, has the right to social security and is entitled to realization, through national effort and in international cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.*⁸⁸

This provision of the UDHR requires the state to ensure economic, social and cultural rights(ER is the one) for the dignity of human beings. The term 'rights indispensable for dignity' and the 'free development of his personality' encompass ER since it is important to that effect.

The declaration has also called every one's right to just and favorable conditions work⁸⁹ and every one's right to standard of living adequate for the health and well being of himself and his family, including food, clothing, housing and medical care and necessary social services.⁹⁰ These rights indicate that even if the term ER is not included in the declaration, provisions having features of ER are part of the declaration.

In similar manner, the 1966 ICCPR and ICESCR are also recognized some rights having the nature of ER. One of such provision provides the right of every one to the enjoyment of just and favorable, safe and healthy conditions of work.⁹¹ In similar manner the ICESCR imposes obligation up on state parties to the covenant to recognize the right of every one to an adequate standard of living including adequate food, clothing and housing, to continuous improvement of living conditions.⁹²

⁸⁸ Article 22, UDHR

⁸⁹ Ibid, Article 23

⁹⁰ Ibid, Article 25/1

⁹¹ Article 7, ICESCR

⁹² Ibid, Article 11

Other international human rights instrument such as Convention on the Rights of the Child recognizes the rights to adequate condition of life to the child more or less in a similar manner. However, most of such conventions do not recognize what the right to healthy environment or ER as it is framed to day. These kinds of provisions in international human rights instruments indicate that as to how safe working conditions of life is important as fundamental rights that have a direct link to the environment.

Although international human rights instruments consist of such kinds of rights, they are criticized as inadequate to protect environmental rights. Some says they are totally ignorant of ER since the concern given to the environment during the time was not significant.

The most important instrument in the development of modern environmental protection is the 1972 Stockholm Declaration of the UN conference on Human Environment.⁹³ This is because, it is in this conference that the international community became well informed that Man is both creature and modular of his environment, which gives him physical sustenance and afford him the opportunity for intellectual, moral, social and spiritual growth in the one hand and the natural and man made aspect of man's environment are essential to his well being and the enjoyment of basic human rights even the right of life itself.⁹⁴

According to this declaration, the protection and implementation of human environment is the major issue which affects the well being of people and economic development which is the urgent desire of the world.⁹⁵ That is why, the declaration recognizes that 'Man has the fundamental rights to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being'⁹⁶ more over, and it calls for,

⁹³ The 1972 Stockholm Declaration on Human Environment marks the First modern attempt at international environmental policy making that was convened by the United Nations General Assembly in response to growing realization of the limited nature of earth resources, from 5 to 16 June 1972, at Stockholm.

⁹⁴ Preamble, 1st paragraph of The Stockholm Declaration, 1972

⁹⁵ Ibid, Paragraph 2

⁹⁶ Principle 1, The Stockholm Declaration, 1972

*The natural resource of the earth, including the air, water, land, flora and fauna especially representative samples of natural ecosystem, must be safeguarded for the benefits of present and future generations through careful planning or management, as appropriate.*⁹⁷

These provisions, not exhaustive, of the declaration indicates that as to how the right o adequate condition of life, (one of which is the right to a healthy environment) is considered important and related to the fundamental human rights provisions such as the right to life. The problem of the declaration is its non binding nature that simply calls states to adopt or to take measures appropriate to their pleasure. However, we can consider the declaration as a turning point in the development of environmental protection. As a matter of fact it recognizes the relationship between environment and human rights for the first time.

In addition to the Stockholm Declaration, the 1992 Rio Declaration on Environment and Development formulated an important aspect of the relationship between environment and development whereby human beings considered as the center concerns for sustainable development by which they are entitled to a healthy and productive life in harmony with nature.⁹⁸The declaration recognizes that developmental activities should be sustainable in a way benefiting both the present and future generations stating that ‘the right to development must be fulfilled so as to equitably meet developmental and environmental needs of the present and future generations’⁹⁹It further stipulates that, in order to achieve SD, environmental protection shall constitute an integral part of the development process and can not be considered in isolation from it.¹⁰⁰

Distinguished from the Stockholm declaration, this declaration formulated the relationship between development, environment and human rights more or less in procedural terms. This means that, it recognizes that environmental issues are best

⁹⁷ Ibid, principle 2

⁹⁸ Principle 1, The Rio Declaration, 1992

⁹⁹ Ibid , principle 3

¹⁰⁰ Ibid ,Principle 4

handled with the participation of all concerned citizens, at every level, in decision making, having appropriate access to information held by the public authorities and through effective judicial or administrative proceedings, including redress and remedy.¹⁰¹ These make the Rio Declaration different from its predecessor, the Stockholm Declaration. The other important international instrument in the protection of ER is the 1994 draft declaration of principles on human rights and the environment. This declaration tries to link human rights and environment in a way that 'human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible'.¹⁰² It further stipulates that ;

*All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights including, civil, cultural, economic, political and social rights are universal, interdependent and indivisible.*¹⁰³

As one easily understand from the provisions of the declaration, it tries to equate ER with that of the existing human rights recognized by the UDHR, ICCPR, ICESCR and other international Human rights instruments or it tries to call about other binding environmental instruments which the world is lacking for long. The declaration, in addition to recognizing ER, imposes obligations to respect and ensure the rights to secure, healthy and ecologically sound environment through adopting administrative and other measures necessary to effectively implement the rights recognized under the declaration.¹⁰⁴

The measures, among others, as stated in article 22 of the draft declaration includes;

- *Collection and dissemination of information concerning the environment;*
- *Prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;*

¹⁰¹ Ibid, principle 10

¹⁰² Part I, Paragraph 1, The Draft Principles on Human Rights and the Environment. 1994

¹⁰³ Ibid, paragraph 2

¹⁰⁴ Part IV, Paragraph 22

- *Public participation in environmental decision making;*
- *Effective administrative and judicial remedies and redress for environmental harm and the threat of such harm;*
- *Monitoring, management and equitable sharing of natural resources;*
- *Measures to reduce wasteful process of production and patterns of consumption;*
- *Measures aimed at ensuring that transnational corporation, whenever they operate, carry out their duties of environmental protection, SD, and respect for human rights; and*
- *Measures that aimed at ensuring the international organizations and agencies to which they belong observe the rights and duties in the declaration.*

In similar manner, the Johannesburg Declaration on Sustainable Development¹⁰⁵ is another important document in the environmental rights protection. The declaration emphasize on global cooperation to achieve SD where by 'the protection of the environment, and social and economic development are fundamental to sustainable development.'¹⁰⁶ Most importantly, the declaration welcomes the summits' focus on the indivisibility of human dignity and resolved through decision on targets, timetables and partnership to speedily increase access to basic requirements such as clean water, sanitation, energy, health care, food security and the protection of bio-diversity.¹⁰⁷

The declarations discussed above are mere declarations that have no force of binding nature. They simply call countries in the world to adopt in their domestic laws, basic principles of elements of the declarations in order to protect the environment in general which ultimately protects the ER .However, they lack binding natures, they contributed a lot in influencing the global environmental regimes as well as constitutions or domestic legal regimes of different countries.

¹⁰⁵ This is a draft political declaration submitted by the president of the summit at Johannesburg, South Africa, from 26 August to 4 September 2002, which calls about Sustainable Development.

¹⁰⁶ Paragraph 8, the Johannesburg Declaration on Sustainable Development, 2002

¹⁰⁷ Ibid, paragraph 17

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In addition to these declarations a number of international conventions are adopted at different times in the world having a binding force among states parties to each particular conventions which one way or the other contribute to the protection of the environment and ER. Some of such conventions are highlighted below in order to show as to how they recognized ER.

The United Nations Framework Convention on Climate Change/UNFCCC/, 1992, for instance acknowledge the promotion and cooperation in education, training and public awareness related to climate change and encourages the widest participation of the people in combating climate change.¹⁰⁸

In more elaborated ways, the convention while stating the obligations or commitments of parties under article (4) (1) (i) provide that the parties shall:

- (a) promote and facilitate at the national and as appropriate, sub regional and regional levels, and in accordance with national laws and regulations within their respective capacities;*
 - (i) the development and implementation of educational and public awareness programmes on climate change and its effects*
 - (ii) public access to information on climate change and its effects;*
 - (iii) public participation in addressing climate change and its effects and developed adequate response; and*
 - (iv) Training of scientific, technical and managerial personnel.*

The convention on Biological Diversity is another binding international convention that recognizes the protection of biological diversity as a basis of human dignity or life. The convention when stating the reason for its adoption, it provides that 'the awareness of the

¹⁰⁸ Article 4/1/I, The UNFCCC

general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technological and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures.¹⁰⁹

The convention further stipulates that;

*...conservation and sustainable use of biological diversity is a critical importance for meeting the food, health, and other needs of the growing world population, for which purposes access to and sharing of both genetic resources and technologies are essential.*¹¹⁰



Moreover, under the provisions 'Public education and Awareness' it obliged the state parties to promote and encourage understanding of the importance and measures required for conservation of biological diversity.¹¹¹ Similarly it further requires the states to introduce appropriate procedures requiring EIA of its proposed projects that are likely to have a significant adverse effects on biological diversity, where appropriate, allows for the public participation in such procedures.¹¹²

Similarly, the Rotterdam Convention on Prior Informed Consent Procedure for certain hazardous Chemicals and pesticides in international trade, 1998, also consists of provisions imposing duties on state parties to the convention to take measures, as may be necessary, to establish and strengthen their national infrastructure and institution for the effective implementation of the convention which may include the adoption or amendment of national legislation or administrative measures.¹¹³

The measures to be taken by state parties extends to the public access to information on chemical handling and accident management and alternatives for human health and the environment¹¹⁴ or the adoption of a more stringent protective measures of human health

¹⁰⁹ Ibid, Preamble , paragraph 20

¹¹⁰ Ibid, Article 13/a

¹¹¹ Ibid, Article 14/1/a

¹¹² Article 15/1, The Rotterdam convention on prior Informed Consent procedure for certain hazardous chemicals and pesticides in International Trade, 1998

¹¹³ Ibid, Article 15/2

¹¹⁴ Ibid, Article 15/4

and the environment than what the convention calls for.¹¹⁵ Therefore, these kinds of international as well as regional environmental protection instruments that recognize the protection of the environment are the necessary conditions for the respect and protection of environmental rights or the dignity of human beings which can be considered as a source of environmental rights in the international arena.

2.6 Major Principles behind Environmental Protection or Environmental rights

With the development of international, regional or domestic laws governing the issues of environmental protection, various principles for the better application of the protection efforts have been developed at different times. Some of these principles are selected to be discussed here.

2.6.1 The Source Reduction Principle /SRP/

The SRP is one of the major principles accepted in the international environmental law. The major idea of this principle is advocating a mechanism of waste prevention by reducing the source of waste. More importantly it includes many actions that can reduce the overall amount or toxicity of waste created.¹¹⁶ In other words, it can be considered as a principle advocating the strategy of an individual manufacturer, business, or other entities to eliminate or reduce the amount or toxicities of materials consumed, often reducing costs and other resources at the same time.¹¹⁷

The primary objective of SRP is the identification and characterization of problems to determine if safe use is a possibility or if safer alternatives will better fit in the system.¹¹⁸ Therefore, the SRP can contribute a lot in the protection of environment by reducing the source of wastes or toxicities which affects the environment or the well being of the human.

¹¹⁵ See, Source Reduction at, <http://epa.gov/epawaste/index-htm>

¹¹⁶ See, Source Reduction at, [Wikipedia, the free encyclopedia](#).

¹¹⁷ Id

¹¹⁸ UNESCO, *The Precautionary Principle: World Commission on Ethics of Scientific Knowledge and Technology*. (2005), [www.unece.org /env/](http://www.unece.org/env/)

2.6.2 The Precautionary Principle /PP/

The early stages of national and international environmental policies can be characterized by a curative model towards our natural environment. As a result, with increased environmental impacts of growing population and industrialization, the environment was no longer able to cure itself. The emergence of increasingly unpredictable, uncertain, and unquantifiable but possibly catastrophic risk has confronted societies which pushed mankind to protect itself and the environment against uncertain risk of its action.¹¹⁹

It is now common to find assertions that environmental policy should be based on the PP.¹²⁰ The PP can be described as;

*... precautions should be taken to protect human health and the environment even in the absence of clear evidence of harm and/ or casual linkage with some activities or proposed activities, and despite the indisputable cost of taking such a conservative approach.*¹²¹

Over the past decades, the PP has become an underlying rationale for a large and increasing number of international treaties and declaration.¹²² And it has been described as a statement of common sense applied by decision marks in appropriate circumstances where by it directed towards the prevention of serious or irreversible harm to the environment in situation of scientific uncertainty.¹²³ These make it an important principle in the protection of environment or ER.

¹¹⁹ See supra note 7, p.149, the emergence of the PP has marked a shift from post damage control (civil liability as a curative tool) to the level of a pre-damage control (anticipatory measures of risk).

¹²⁰ Id

¹²¹ Supra note 115

¹²² Supra note 7,p.149

¹²³ Department for Environment, Food and Rural Affairs. Integrated Pollution Prevention and Control: practical Guide. 4th ed.(2005) p.9, <http://defra.gov.uk/env/ppc>

2.6.3 The Integrated Pollution Prevention and Control Principle /IPPCP/

The IPPCP is another major principle developed in the protection of the environment. The principle applies an integrated environmental approach to the regulation of certain industrial activities.¹²⁴ This means that emissions to air, water (including discharges to sewer) and land, plus a range of other environmental effects, must be considered in a way to prevent or control pollution.

The IPPCP principle requires the regulators to set permit conditions so as to achieve a high level of protection for the environment as a whole¹²⁵ which ultimately prevent emissions and wastes production and where that is not practicable, reduce them to acceptable levels. The aim of IPPCP is to control impacts of installations, prevent emissions and waste production and where that is not possible or practical, and reduce them to acceptable levels.¹²⁶ Therefore, by this mechanism the environment can be protected from the any activities that can damage it and affects health or life of human beings.

2.6.4 The Polluter pays Principle /PPP/

The PPP is one of the most important principles developed and adopted by many international, regional or domestic legal instruments as a means to protect damages against the environment. The PPP, as a broad statement of principle appears to be just and valid, however; what the term means in its practical application is not clear.¹²⁷ The implication of this principle seems that the person polluting or causing the pollution should pay the cost of that pollution¹²⁸, or in other words, it requires that the costs of pollution be borne by those who cause it.

¹²⁴ Id

¹²⁵ Integrated Pollution Prevention and Control: Entee Guidance Note. <http://defra.gov.uk/env/ppc>

¹²⁶ Supra note 53, p.35

¹²⁷ Id

¹²⁸ Polluter Pays Principle. Encyclopedia of earth. http://www.eoearth.org/article/polluter_pays_principle

This principle is a generally recognized or widely acknowledged principle of international environmental law that is explicitly mentioned or implicitly referred to in a number of multilateral environmental agreements such as the Rio Declaration and the Kyoto Protocol.

Now a days, the PPP, has been extended to include accidental pollutions, beyond the control of the polluter and the costs to clean the pollution up.¹²⁹ This is coined as a strong/ extended polluter pays principle.

Therefore, these Principles discussed above are some of the major generally recognized principles in international, regional or domestic legal regimes in the field of environment that can protect the general environment and the ER of the people.

¹²⁹ Id

CHAPTER THREE

3. Background of Environmental Protection, Environmental Rights and Environmental Protection Organs in Ethiopia

Even if it was not strictly in a sense of modern environmental protection, the concern given to environmental protection is not a recent experience in Ethiopia. Early in Ethiopian history, governments stipulated laws for the preservation and protection of the environment, particularly forest resources. However; the laws or efforts to protect the environment during those time was not adequate enough to protect the health and wellbeing of humans. The efforts or experiences to protect the environment at different times in Ethiopia, especially from the time of Menelik II and onwards are highlighted below classifying them into two broad categories; the pre-1991 period and the post 1991 period.

3.1 Environmental Protection in the Pre-1991 periods

Since or prior to the establishment of modern government in Ethiopia, there were efforts to protect the natural resources, especially to that of forests in Ethiopia. In the early history of the country, the laws written since the 15th century have provisions with environmental implications.¹ For example, the Fetha Negest (the law of the kings) prohibited the emission of smoke from lower place to higher place.²

In addition to such provisions in the Fetha Negest, peoples had traditions of forest conservation in the country.³ These traditions can be expressed by two elements: royal forestry or forestry managed by powerful monarchs and forestry established and/or protected by religious institutions.⁴ The forests during the time were protected or managed as the property of the kings both for environmental purposes and to serve as source of fuel wood and timber for the royal house holds.⁵ Such kinds of forestry protection and management were most familiar during emperor Menelik.

¹ EPA .State of Environmental Report.(2003),p.121

² Id

³ Dessalegn Rahmato, Environmental Change and State policy in Ethiopia: Lesson from past experience.(2001),p.12, www.repository.forcedmigration.org/show.metadata.ssp

⁴ Id

⁵ Id

One of the most important public concerns for the management and protection of the environment came as a result the growing fuel wood crisis during Menelik regime at the time both the emperor and public officials were convinced of the need for state protection of the country's forests and forest resources.⁶As a result, among the first ministries established in Ethiopia during the period of Menelik, the Ministry of Agriculture was given a strong environmental role primarily due to the recognition that the loss of environmental resources will have far reaching consequences.⁷ The major responsibilities of the Ministry were three fold; promoting good farming practices and increased agricultural and livestock production, disaster monitoring and prevention and environmental protection.⁸

Even if, the rational for the protection and regulation was both economical and environmental, the Ministry of Agriculture during the regime of Menelik was also able to control timber cutting and the utilization of forests. Moreover, it would encourage tree planting by rewarding those individuals who planted many trees on their land.⁹ Therefore, the concern given to environmental protection during the Menelik's period was a good indication that forestry and natural resource protection has/had a long history in Ethiopia. However; the understanding during the time for the protection and management of natural resources was not basically for the protection of environment or not because of danger or harm on the natural environment that can damage the wellbeing or life of both the present and future generations as the world does today, rather, more on economical purpose; as a source of income and manifestations of status or wealth.

Later on, during the emperor Haile Selassie regime, especially in 1955, when the Revised Constitution of the Empire of Ethiopia promulgated, the concern given for the protection and management of natural resources enhanced as compared to the emperor Menelik's regime. This is because; the 1955 revised constitution provides a constitutional guarantee for the protection of Environmental resources in Ethiopia.

⁶ Ibid,p.14

⁷ Id

⁸ Ibid,p.14-15

⁹ Ibid,p.15

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⁶ Ibid,p.14

⁷ Id

⁸ Ibid,p.14-15

⁹ Ibid,p.15

The 1955 Revised constitution made 'the natural resources of, and in the sub-soil of the empire, including those beneath its waters, state domain.'¹⁰ This shows that, natural resource in general have got due emphasis by putting them under the control of the state. The natural resources in the waters, forests, land, air, lakes, rivers and ports of the empire are recognized as a sacred trust for the benefit of present and succeeding generations of Ethiopia.¹¹

More importantly, the same constitution reaffirms that the conservation of natural resources is essential for the preservation of the empire.¹² Here, the constitution clearly address that, the failure for the protection of the environment can be a danger for the preservation or continuity of the country. Damages in the environment, unless properly managed and controlled, would bring about damages in the existence of life on earth and that in turn could made the existence of the state meaningless. That is why; the constitution lays an obligation against the Imperial Ethiopian government to take all such measures as may be necessary and proper, for the conservation of natural resources.¹³

In addition, the constitution sets limitations against the exploitations of natural resources that any natural resource exploitation made by natural or juridical persons, shall not be exercised in violation of the principles of conservation established by Imperial law.¹⁴ As we can understand from such limitations, the constitution puts restriction because overexploitation or unmanaged natural resource utilization by itself is potentially dangerous to the well being of natural environment as well as life in general. Therefore, environmental protection during the Haile Sellasie regime had the constitutional guarantee which manifested that there were provisions in the laws of Ethiopia even before the UN General Assembly had its environmental meetings at Stockholm or Rio de Janeiro.

Such constitutional provisions are backed by different provisions of the law in the civil code as well as in the penal code having effects in the environmental protection

¹⁰ Article 130(a), The Revised Constitution of the Empire of Ethiopia ,1955

¹¹ Ibid, Article 130(b)

¹² Id

¹³ Id

¹⁴ Ibid, Article 130(c)

but more of related with individuals' property rights. However; various legislation such as the protection of state forest Regulations No. 344/1968, Exploitation to state forest Regulations No. 345/1968 and management of protective state Forest Regulations No. 347/1968 are among the most important legislations during the time for the protection of forests.

With the coming into power of the Dergue regime, the protection of environment continued, more or less, in a similar manner as that of the predecessor. The 1987 PDRE constitution consists of some provisions on the protection of environment. The constitution lays a duty against the state to ensure that the ecological balance is maintained and, by ensuring the conservation and development of natural resources.¹⁵ The same constitution particularly obliged the state to guarantee the utilization of water, forests and wild life for the benefits of the working people.¹⁶

In addition to determining the utilization of natural resources; water, forest and wild life, the state, according to the constitution shall ensure that human settlement patterns correspond to the distribution of natural resources which might create favorable conditions for development.¹⁷ These obligations under the PDRE Constitution are characterized by their common features of setting a duty against the state. However, that is not the end of the constitution. It also laid a duty against Ethiopians which may be read as.

*Ethiopians have the duty to protect and conserve nature and natural resources, especially to develop forests and to protect and care for soil and water resources.*¹⁸

In this regard, the constitution of 1987, seems unique than the 1955 in that; the former lays a duty or an obligation against Ethiopians for the protection of environment in general. Nevertheless, the protection of the environment during the Dergue regime did not show a significant change than that of the previous except that it is characterized by the development or expansion of national parks whereby animals, especially those that are wild are protected. These kinds of activities during the time were emphasized on the protection of forests and wild life conservations mainly

¹⁵Article 10(1) The PDRE Constitution, 1987

¹⁶ Ibid

¹⁷ Ibid, Article 10(2)

¹⁸ Ibid, Article 55(3)

because of their economic advantages rather than from the point of views of environmental protection or environmental rights.

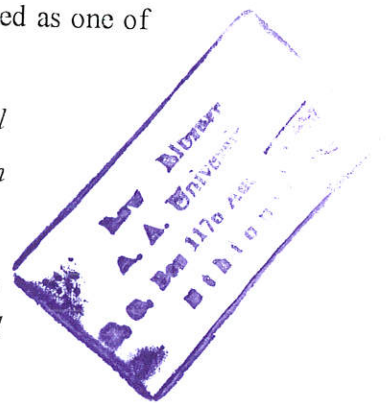
In general, the pre- 1991 period efforts of environmental protection are characterized by common features that, they were dispersed and lacked comprehensiveness and were inadequate to ensure the wellbeing of the environment.¹⁹ Moreover; these laws were enacted only for the purpose of protecting specific natural resources. As a result, sectoral organizations did not give much attention to environmental issues outside those natural resources for which they are mandated.²⁰

3.2 Environmental protection in the post 1991 period

The post 1991 period has shown much change or development in the protection of Environment in Ethiopia. In the pre -1991 periods, as we have seen previously, there was no autonomous institution responsible for the protection and management of environmental resources. The institutions during the previous periods were more of sectoral that focused on specific areas. For instance it was the Ministry of Agriculture which was responsible for the protection of forest resources in Ethiopia.

In this period, especially prior to the establishment of environmental protection organs or Authority, It was the Ministry of Natural Resources Development and Environmental Protection that is established by proclamation No. 41/1993 responsible for the protection of environment in general. According to this proclamation, the Ministry of Natural Resources and Environmental Protection is established as one of the executive organs which, among other things responsible to:²¹

- *formulate policies and strategies regarding the country's natural resources development and environmental protection and upon approval, follow up and supervise their implementation,*
- *Prepare and submit draft laws concerning the development, protection and utilization of the country's water, forest and wild*



¹⁹ See supra note 1, p.121

²⁰ Id

²¹ Article 11(1),11(2),11(9),11(10),11(12),Proclamation No. 41/1993

- life resources; and upon approval follow up and supervise their enforcement;*
- *prescribe in consultation with the appropriate organs, the quality standards for waters to be used for various purposes as well as treatments standards for sewages; and follow up and supervise the implementation of same;*
 - *Issue and follow up and supervise the implementation of directives to ensure the proper protection, development, utilization and administrations of the country's forest and wild life resources,*
 - *Promote and provide the necessary assistance for the development of forests,*

From these provisions, we can understand the Ministry was endowed with significant responsibilities for the protection and utilization of natural resources in general. However; it was not the sole actor in the environmental protection activities. As explained about the role of other Ministries in the environmental protection stated that;

Even if the level of involvement of different Ministries varies, the Ministry of Agriculture, the Ministry of Mines and Energy, the Ministry of planning and economic Development, the Ministry of Education, the Relief and Rehabilitation commission, the Ethiopian mapping Authority, the Ethiopian Science and technology commission and organs of regional governments were took part in the management and protection of natural resources and environment in their respective areas.²²

These early efforts to the protection of the environment in the post -1991 period, especially during the Transitional Government of Ethiopia, is ceased to exist by the establishment or the adoption of the 1995 FDRE constitution. The 1995 FDRE constitution together with further enactments for the establishment of Environmental Protection Authority/EPA/, the conservation strategy of Ethiopia /CSE/, the environmental policy of Ethiopia /EPE/ and other legislations are major developments

²² EPA, Background Information on Drought and Desertification in Ethiopia.(1988),p.38

in the environmental protection activities in Ethiopia. What specifically each instrument provides about environmental protection is a point to be discussed below.

3.2.1 Environmental Protection and Environmental Rights under the FDRE Constitution

The 1995 FDRE constitution is the supreme law of the land²³ which recognized environmental rights as a fundamental rights which makes it unique than the constitutions of Ethiopia that it had in its history. As the type of the government is a federal form of government, ²⁴the constitution provides or classifying the power relating to natural resources into power of Federal government organ and in to the states. Accordingly, one of the power of the Federal Government as provided under the constitution is to enact laws for the utilization and conservation of land and natural resources²⁵ where as the states are empowered to administer land and other natural resources in accordance with Federal laws.²⁶ In these constitutional provisions, there is no direct or expressed mention of environmental protection as the jurisdiction of either to the federal government or to the regions. What is provided under the FDRE Constitution is the power to enact laws for the utilization and administration of natural resources to the federal government and the management of the same to the regional states. Therefore, it is a power of federal government to enact laws for the protection, utilization and conservation for natural resources where as the states are merely endowed with the administration power with the laws enacted by the federal government. In additions to assigning powers relating to natural resources to Federal government and to states, the constitution clearly recognizes all persons right to clean and healthy environment²⁷ under chapter three of the constitution, a section declaring the fundamental rights and freedoms.²⁸

²³ Article 9(1), The FDRE Constitution, 1995

²⁴ Ibid, Article 1 and 2, jointly reading shows that the form of government is federal that comprises of members of the federations called regions.

²⁵ Ibid, Article 55/5

²⁶ Ibid, Article 25/2/d

²⁷ Ibid, Article 44/1

²⁸ This section of the constitution, deals with fundamental rights. Those rights under this section, as stated in Article 13/1, imposes a duty and responsibility against each level of government both at federal or regional set ups to respect and enforce chapter three of the constitution and it also requires strict amendment procedures under article 105/1 of the FRDE constitution. These shows serious consideration is given to environmental rights, as one of the fundamental rights, in Ethiopia.

Moreover, the constitutional provision providing the right to development states that,²⁹

- *The peoples of Ethiopia as a whole, and each Nation, Nationality and people in Ethiopia in particular have the right to improved living standards and to sustainable development,*
- *Nationals have the right to participate in national development and, in particular to be consulted with respect to policies and projects affecting their community.*

These are not the only provisions providing environmental protection or rights in the constitution. Under chapter ten; a section dedicated to stipulate national policy principles & objectives, proclaims environmental objectives of the country as:³⁰

- *Government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment.*
- *The design and implementation of programmes and projects of development shall not damage or destroy the environment.*
- *People have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them.*
- *Government and citizens shall have the duty to protect the environment*

The constitutional recognition of environmental rights under the FDRE constitution in the chapter dealing with Fundamental Rights and Freedoms along with other precious rights of an individual exhibits the country's deep concern for the environment.³¹ The recognition of ER under the FDRE constitution can be expressed in the form of both substantive and procedural environmental rights. This means that the recognition of the clean and healthy environment under article 44/1 of the constitution can be considered as a substantive environmental rights where as the other provisions mentioned above and in the constitution recognizes the peoples right to access to

²⁹ Article 43/1 and 2, The FDRE Constitution

³⁰ Ibid, Article 92

³¹ Kusahal Vibhute, 'Environmental Policy and Law of Ethiopia : a policy Perspective' *JEL*. 22:1.(2008), P.78

information, access to justice and the right to participation that are expressions of procedural environmental rights.³²

The most important point has to be made here relating to the recognition of ER under the FDRE constitution, especially to article 43 and 44, is when one recalls the provisions of article 13 and 105 of the constitution. The former imposes on the Federal and the state legislative, executive and judicial organs 'the responsibility and duty to respect and enforce the Fundamental Rights which article 105 mandates that article 43 and 44 and the rights guaranteed there under, being fundamental Rights, can be amended only when (i) all the state councils, by a majority vote; (ii) the House of Peoples' Representatives, by a two third majority vote, and (iii) the house of Federation, by a two – third majority vote, approve the proposed change (s).³³

Therefore, the FDRE constitution has shown change or development in recognizing ER (the rights to clean & healthy environment, the right to access to justice, access to information and public participation) as a fundamental right requiring the strict procedure to amend the provisions. This makes it different than the previous constitutions regarding environmental rights.

3.2.2 Environmental Policy of Ethiopia (EPE, 1997)

The next step after the promulgation of the 1995 FDRE constitution in the post 1991 periods of Ethiopia was the preparation of the EPE, 1997. The preparation of EPE can be considered as the second stage in the protection of ER in Ethiopia, especially in the post 1991 period, taking the constitution as the primary stages as it recognizes the right to clean and healthy environment as one of the fundamental rights.

The primary need in preparing national environmental policy was aiming at determining the objectives which should be used in order to ensure the respect for environmental imperatives, by taking into account the prevailing economic, social

³² The right to the clean and healthy environment is substantive because it assures what each individual rights is where as the right to participation, access to information and access to justice are procedural mechanisms as to how the people/individual exercise their rights to the clean and healthy environment.

³³ Supra note 31

and cultural situations of the country.³⁴ And, it was in this context that the policy was prepared with a view to further amplifying the constitutional provisions on environmental protection.³⁵

The 1997 EPE while stating the need for a policy on natural resources and the Environment, it provides as the government established a macro-economic policy and strategy framework in addition to formulating sectoral development policies and strategies. However; there was no comprehensive formulation of cross – sectoral and sectoral issues in to policy framework on natural resources and the environment that is why the Environmental Policy of Ethiopia is formulated.³⁶The EPE states that improving and enhancing the health and quality of life of all Ethiopians in the one hand and promoting sustainable social and economic development through sound management and use of natural, human and cultural resources and environment in a way benefiting both the present and future generations on the other is goal of the policy.³⁷One can easily understand from this goal of the policy, the environmental rights have got considerations in the formulation of the policy since it says the health and quality of life of all Ethiopians is its primary objectives. In order to effectively implement the policy, it has comprises of a number of specific policy objectives to be met. Some of these specific policy objectives focus on prevention of pollution, conservation of natural resources, empowerment and participation of the people, raising public awareness and understanding of the essential linkages between environment and development.

These over all policy goals and specific policy objectives jointly elaborate the position of the state in ensuring the constitutionally guaranteed environmental rights, the right to clean and healthy environment. The most important point that we shall remember here is that monitoring the implementation of the EPE lies mainly on the EPA.

According to the policy, there are a number of key guiding principles that will shaped all subsequent policy, strategy and programme formation and their implementation.

³⁴ The Conservation Strategy of Ethiopia Project, <http://tedc.undp/experiences/vol3/conservation>

³⁵ Id

³⁶ Paragraph 1.4, The EPE.1997

³⁷ Ibid, paragraph 2.1

The guiding principles of the policy are various in number (19) provided under the policy because the sectoral and cross-sectoral policies³⁸ and environmental elements of other macro policies shall be checked against these principles to ensure consistency.³⁹ Some of these guiding principles states , everyone's right to clean and healthy environment, the sustainability of developmental activities, power of the community to make their own decisions on matters affecting their interests, increase awareness and understanding as well as integration of implementation of sectoral and cross-sectoral policies and strategies.

These guiding principles and other paragraphs of the policy ensure the protection of the environment and environmental rights through participation, awareness and access to information of the public at large especially on matters that affect the clean and healthy environment.⁴⁰ The very important point that one has to understand regarding the EPE is that the policy is sought to guide all environmental related activities which are undertaken or must be undertaken by the EPA and other sectors.⁴¹ This means that the EPA is responsible for the changing in to practice of the policy in the country.

3.2.3 Conservation Strategies of Ethiopia (CSE, 1997)

The CSE is one of the most important documents in the environmental protection effort of the Federal Ethiopia. The CSE report is prepared in 5 volumes each addressing specific areas of considerations.⁴² It was launched in 1989 aimed, at as its

³⁸ The EPE consists of ten sectoral and cross sectoral environmental policies of each. The sectoral environmental policies are (ten in number) are Soil Husbandry and Sustainable Agriculture, Forest, Woodland, and Tree resources, Genetic, Species and Biodiversity, Water Resource, Energy Resource, Mineral Resource, Human Settlement, Urban Environment and Environmental Health, Control of Materials and Pollution from Industrial Waste, Atmospheric Pollution and Climate Change, Cultural and Natural Heritage. The cross sectoral policies deals with issues of Community Participation and the Environment, Tenure and Access to land and Natural Resources, Land use plan, Social and Gender issues, Environmental Economics, and Environmental Information System, Environmental Research and Environmental Impact Assessment and Environmental Education and Awareness.

³⁹ Paragraph 2.3. The EPE, 1997

⁴⁰ See, the right to development under article 43 of the FDRE constitution

⁴¹ Paragraph 38, The CSE, VOL.III.1997

⁴² The CES consists of 5 volumes. Volume I establishes the setting by evaluating the state of the natural resources, the environment and development in Ethiopia. Vol. II presents a policy and strategy framework aimed at ensuring a sustainable use and management of natural resources. Vol. III deals with institutional questions. Vol. IV identifies mainly short term and medium term actions that should be taken to implement the strategies. Where as, the last volume V gives a listing of projects to be implemented.

name suggests, to study the natural resources, environmental imperatives and development demand in the country and to harmonize them.⁴³ The harmonization process was to be activities through the formulation of an appropriate environmental policy, which was translated into action through the development of laws and the setting of standards on the one hand, and through the development of action plans and their implementation on the other, as well as through environmental education and awareness rising.⁴⁴

The CSE documents are another land mark exercise intimated by the government and accepted by the Council of Ministers in 1997 as a blue print for sustainable development in Ethiopia.⁴⁵ This is because, the documents, particularly volume II, III, and IV, are consists of the detailed strategies and action plans as well as the institutional arrangements required for the implementation of the EPE.⁴⁶ In addition, the documents includes a baseline information on the potential natural resources, identifies the environmental challenges of the country policy gaps, intervention areas and also investment requirements to address the said environmental problems in the short and long term.⁴⁷ This indicates that the CSE takes a holistic view of natural, human made and cultural resources, and their uses and abuse.⁴⁸ It also seeks to integrate, into coherent whole existing and future governmental planning in all sectors that impinge on the environment, including agricultural, forestry, wildlife, fisheries, soils, water, minerals, energy, urban planning and cultural heritage conservation.⁴⁹

The principles, guidelines and strategies set out in these documents are expected to provide Ethiopia with an adequate umbrella strategic framework for the effective management of the environment, following which all sectoral and cross-sectoral specific polices need to be reviewed or newly developed.⁵⁰

⁴³ Supra Note 34,p.84

⁴⁴ Ibid

⁴⁵ Girma Hailu. Environmental Law: Ethiopia.(2000),p. 29, www.dundee.ac.uk/cepmlp/journal/html.

⁴⁶ EPA'Evaluation of Measures taken to combat Desertification' In National Action Programme to combat desertification, VOL. II, (1998),P. 84

⁴⁷ Supra note 46

⁴⁸ Supra note 44.p.88

⁴⁹ Ibid

⁵⁰ Supra note 47.p.51

As far as the institutional arrangement and set up for the implementation of the CSE is concerned, the third (Volume III) of the CSE deals with the first prerequisite, for the implementation and creation of an appropriate institutional framework. In this regard, the CSE under paragraph 10 recognize that the EPA is established by proclamation No. 9/1995 with its power and responsibilities in the protection of the environment. It further states that the rights and obligations of the ex-Ministry of Natural Resources Development and Environmental Protection are transferred to the Ministry of Agriculture, as a relating directly to forestry and wildlife; the Environmental Protection Authority, as relating directly to environmental protection; the Ministry of Water Resources, as relating to water resources and methodology.⁵¹

To be more specific, the CSE under the section dealing with monitoring, evaluation and policy review system in place which covers the entire cross-sectoral and sectoral areas covered by the EPE.⁵² To monitor the impact of EPE on natural resources and the environment and to adopt and modify it as necessary, one of the guiding principle states that the EPA carries the overall monitoring of the policy implementation and is responsible for proposing modifications, in consultation with mandated line ministries and / or the opinion of stakeholder, communities and groups.⁵³

When we see the CSE, especially section dealing with the mandates of the Federal executive organs, it states that a large number of governmental ministries and agencies can play a range of activities in many sectoral and cross-sectoral areas. One of such governmental institution is the EPA, which is mandated with the activities of environmental monitoring and protection, preparing policy and legislations with different governmental bodies.⁵⁴

Therefore, the CSE is one of the most important documents providing the priority areas, problems and the institutional set up or arrangement for the betterment of the environment or for the implementation of the EPE.

⁵¹Paragraph 10. The CSE, VOL.III,

⁵² Paragraph 2.7, p.51

⁵³ Ibid, paragraph 20/c

⁵⁴ Ibid, Paragraph 39

3.2.4 Institutional and Legislative Measures

The constitutionally guaranteed environmental rights; the right to clean and healthy environmental and other related rights of the people in Ethiopia, have to be supported by a formally established institution which is responsible for the protection or the implementation of the rights. The EPE and the CSE, both documents, provide the institutional framework, responsibilities and mandates with the policies direction and the strategies to that effect. As both documents recognize, there are different sectoral and cross-sectoral policies and strategies for the protection of the environment. The overall coordination of sectoral and cross-sectoral programs of the CSE shall be the responsibility of the Environmental Protection Authority.⁵⁵ It is this Authority that has to carry the overall monitoring of the policy implementation and is responsible for proposing modifications, of course, in consultation with mandated governmental bodies.⁵⁶ Prior to the preparation of the EPE and the CSE, especially during the pre 1991 period, there were problems of institutional framework for the protection of the environment.

3.2.4.1 Establishment of Environmental Protection Authority as a Major Organ to Protect the Environment and Environmental Rights

The establishment of a separate institution for the protection of the environment and environmental rights in Ethiopia is a recent practice. Prior to the establishment of the EPA, as a federal office for the protection of environment, there was an institution called the Ministry of Natural Resources Development and Environmental Protection /MNRDEP/ which exercised the environmental protection activities.

According to the proclamation for the establishment of MNRDEP or the proclamation that define power and duties of the central and regional executive organs of transitional Government of Ethiopia, the Ministry was responsible among others things to:⁵⁷

⁵⁵ Ibid, paragraph 38

⁵⁶ Paragraph 5.3/c, *The EPE*, 1997

⁵⁷ Article 11, Proclamation No 41/1993

- *Prepare, formulate, implementation and follow up policies, strategies and laws in area of natural resources conservation.*
- *Encourage the expansion of forestry development and providing necessary support*
- *Preparing as well as follow up and supervising the implementation legislation, in the area of forests and wild life protection.*
- *Incorporation with national/regional self- governments, designating and demarcating national parks, protected hunting areas and protected forests...*

However; the concern given to environmental protection was weak, the institutional set up was not that much organized and the laws were inadequate focusing on few areas of management and conservation of natural Resources especially on forest resources. These kinds of institutional set up ceased to exist with the transitional government of Ethiopia and replaced by the establishment of an independent environmental Authority since August 1995.⁵⁸

The reasons behind the establishment of Environmental protection Authority is not clear since the proclamation does not have adequately express the reasons. The only statement under the preamble expresses the reason as simple as because it is necessary to establish EPA.⁵⁹ Nevertheless, a writer on the role of policy and legislation to alleviate urban environmental problems express the reasons for the establishment of the EPA, as during the time were lack of coordination and integrative institutional mechanisms, the existence of overlaps and duplication of works, sectoral nature of the environmental legislation and inability to enforce legislations because of predominantly management oriented nature of legislations.⁶⁰

According to the establishment proclamation No 9/1995, the Authority is established as an organ of federal government of Ethiopia⁶¹ which is accountable to the Council of

⁵⁸Supra note 22

⁵⁹ Preambular, paragraph 1, Proclamation No. 9/1995

⁶⁰ Dessalegn Mesfin 'The role of policy and Legislation to Alleviate Urban Environmental Problems' {Un published },p.130-31

⁶¹ Article 3/1, Proclamation No.9/1995

Ministers,⁶² and has the objective to ensure that all matters pertaining to the country's social and economic development activities are carried out in a manner that will protect the welfare of human beings as well as sustainably protect, develop and utilize the resource bases on which they depend for survival.⁶³

It has also the power and duties to effectively protect the environment which among others include:⁶⁴

- *To prepare environmental protection policy and laws and up on approval follow up their implementation.*
- *To prepare directives and systems necessary for evaluating the impacts of social and economical development projects on the environment and follow up and supervise their implementation.*
- *To prepare standards that help in the protection of soil, water and air as well as the biological systems they support, and follow up their implementation.*
- *To follow up the implementation of international treaties on environmental protection which the country is a party.*

As far as the organization of the Authority is concerned, it has an Environmental Council /EC/, the General Manager and the Deputy General Manager together with the necessary Staffs.⁶⁵ However, this organizational structure stayed for 7 years until it was reestablished by proclamation No 295/2002.

As stated in this proclamation, the purpose of the re-establishment is nothing but.

Assigning responsibilities to separate organization for environmental development and management activities on the one hand, and environmental protection, regulations and monitoring on the other is instrumental for sustainable use of environmental

⁶² Ibid, Article 3/2

⁶³ Ibid, Article 5

⁶⁴ Ibid, Article 6

⁶⁵ Ibid Article 7

resource, there by avoiding possible conflicts of interest and duplication of efforts⁶⁶.

And

It has become necessary to establish a system that fosters coordinated but differentiated responsibilities among environmental protection agencies at federal and regional level.⁶⁷

These reasons are given for the environmental protection Organs⁶⁸ establishment as a whole. As compared with the Proclamation No 9/1995, the reestablishment proclamation, Proclamation No 295/2002 establishes Environmental protection organs both at federal and regional levels. When we see the proclamation as a whole, there is no as such a significant differences with that of the EPA Establishment proclamation No 9/1995 regarding the provisions concerning EPA. To mention some of the changes in the re-establishment proclamation, it made the authority accountable to the prime Minister⁶⁹ unlike that of the proclamation No 9/1995 which made the accountability of the Authority to the Council of Ministers.⁷⁰ The re-establishment proclamation has also extends the power and duties of the authority as compared with the Proclamation No 9/1995.

The most important change incorporated in the reestablishment proclamation is the provisions dealing about the power of the EC. In this regards; the EC, according to proclamation to establish EPA No 9/1995, had powers to 'deliberate upon policy matters concerning environmental protection and submit its recommendation there⁷¹ on the one hand, and to evaluate and approve directives and standards issued by the Authority⁷² As we can see from these provisions, the power of the EC was not clear for whom it shall make the recommendations. However; the reestablishment

⁶⁶ Preamble, paragraph I, Proclamation No. 295/2002

⁶⁷ Ibid ,paragraph 1

⁶⁸ Since the proclamation is promulgated to reestablish environmental protection Organs, the reasons in the preamble for its establishment is not only appropriate to EPA but also to the regional environmental protection organs.

⁶⁹ Article 3/2, Proclamation No. 295/2002

⁷⁰ Article 3/4 , Proclamation No. 9/1995

⁷¹ Ibid, Article 10/1

⁷² Ibid, Article 10/2

proclamation clearly stipulates that the recommendations shall be made to the government. The full article reads as:⁷³

The council shall

- i. *review proposed environmental policies, strategies, and laws, and issue recommendations to the government;*
- ii. *Based on report submitted to it by the Authority, evaluate and provide appropriate advice on the implementation of the environmental policy of Ethiopia,*
- iii. *Review and approve directives, guidelines prepared by the Authority.*

The other important point mention has to be made regarding the EC is its composition. In the previous proclamation, the members of the EC were by and large ministers from different governmental executive bodies of Federal offices.⁷⁴ But, the composition of the members expands by the re-establishment proclamation. It made non governmental organizations members of the council.⁷⁵

Therefore, the EPA together with the EC is the major institutional framework for the monitoring and protection of the environmental laws in Ethiopia.

3.2.4.2 Major Legislations to the Protection of the Environment and ERs

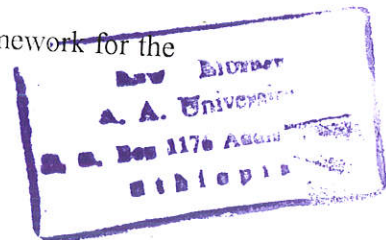
The FDRE constitution is the major legal, instrument that recognizes the right to clean and healthy environment in Ethiopia. Pursuant to this constitution, the EPE, the CSE and other documents are prepared or adopted. In addition, Ethiopia became member of many international environmental protection instruments and ratified them by the federal legislative body (HPR).⁷⁶ All these legal frameworks can be categorized into three broad categories, the constitution and the EPE, legislations enacted by the HPR and international instruments adopted by the HPR.

⁷³ Article 9/1-3, Proclamation No. 295/2002, It is clear from the reading of this article that the EC shall submit its recommendation to the government.

⁷⁴ The members of EC in the proclamation by and large ministers from the MOA, MOTI, MOWR, MOME and MOEDC

⁷⁵ Article 8, proclamation 295/2002

⁷⁶ Among those international conventions ratified by Ethiopia, the following few can be mentioned, these are, United Nation convention to combat desertification (pro. No. 81/1997), the Basel convention on the control of trans-boundary movement of hazardous waste (proc. No. 192/2000). The Rotterdam convention on prior informed consent (proc. no 278/2002 Stockholm convention, etc.



The first categories of legislative framework are discussed in the previous sub- topics. Here in this section the next two categories of legislations will be highlighted.

3.2.4.2.1 Legislations Enacted by the House of People's Representatives

The HPR, a federal legislative body enacted a number of legislations for the protection of the environment in general or to give effect to the constitutional rights of the people to the clean and healthy environment. These legislations are the Environmental Impact Assessment proclamation No.299/2002, the Environmental Pollution Control Proclamation No.300/2002 and Solid Waste Management Proclamation No.513/2007 each of these proclamations are enacted to give effect to the constitutionally recognized environmental rights. What each of these proclamations consists about the protection of the environment is a point to be discussed here:

3.2.4.2.1.1 The Environmental Impact Assessment proclamation

The EIA proclamation is one of the most important legislative measures taken for the effective implementation of the constitutionally recognized or guaranteed right to clean and healthy environment. It is proclaimed on the 3rd of December 2002. As stated in its preamble, the 'EIA is used to predict and manage the environmental effects which a proposed activity as a result of its design sitting, construction, operation, or an ongoing one as a result of its modification or termination, entails and thus helps to bring about intended development'.⁷⁷ This shows that the EIA is one of the major precautionary approach for the protection and implementation of environmental rights.

The EIA of possible impacts on the environment is not a requirement expected from the private project owner only rather it extends to the public instruments too.⁷⁸ It is required because it provides an effective means of harmonizing and integrating environmental, economic, cultural and social considerations in to a decision making

⁷⁷Preamble, paragraph 1, Proclamation No. 295/2002

⁷⁸ Ibid, and Article 2/10 jointly reading

process in a manner that promotes sustainable development.⁷⁹ More importantly, the implementation of environmental rights and objectives enshrined in the constitutions would be fostered by the prediction and management of likely adverse environmental impacts of proposed projects.⁸⁰

According to this proclamation, no person shall commence implementation of any project that requires EIA without the authorization from EPA, where by the projects requiring EIA are subject to be determined by the Authority.⁸¹

In order to implement this obligation, the proclamation imposes a duty against any licensing agency, prior to issuing an investment permit or a trade or an operating license for any project, to ensure that the Authority has authorized its implementation.⁸² However, it is not every proposed project that needs to submit EIA reports. A proponent may not be required to submit EIAS report where the Authority believes that the possible impacts of the project are insignificant⁸³ in the one hand and where the Authority do not require EIA for projects not likely to have negative impacts⁸⁴ on the other.

As far as the obligation to submit EIA report is concerned, the proclamation provides the duty of a proponent under article 7. Accordingly, the proponent of a certain project shall undertake the EIA; identify the likely adverse impacts of the project, means of prevention or containment to the Authority.⁸⁵ What should be consisted in the report is also prescribed under the proclamation. Here in this proclamation, the Authority is expected to exercise the review of the EIA report and monitor the implementation of those projects licensed by the Federal agency.⁸⁶

What makes the proclamation important in the protection of environmental rights is its recognition to the participation of the public to a solicit comments on it.⁸⁷ These

⁷⁹ Ibid, paragraph 2

⁸⁰ Ibid, paragraph 3

⁸¹ Ibid, Article 3/1

⁸² Ibid, Article 3/3

⁸³ Ibid, Article 5/2/a

⁸⁴ Ibid

⁸⁵ Ibid, Article 7/1

⁸⁶ Ibid, Article 8

⁸⁷ Ibid, Article 15

sorts of things made the proclamation important for the protection of environmental rights.

3.2.4.2.1.2 The Pollution Control Proclamation /PCP/

The PCP is another important legislation in the protection of environmental rights in the post 1991 period in Ethiopia. The proclamation is enacted and became effective on the same date with that of the EIA proclamation; 3rd Dec. 2002. As stated in this proclamation, 'some social and economic development endeavors may inflict environmental harm.'⁸⁸ Protecting such environmental harm is one of the rationales for the promulgation of the PCP. The other reasons for its promulgation is it is believed appropriate to eliminate or, when possible, to mitigate pollution and undesirable consequence of social and economic development activities.⁸⁹The proclamation plays a significant role in the protection of the environment from any harm either by eliminating or mitigating pollution and undesirable consequence of social and economic development activities.

The proclamation can be used as a means to protect the environment from any harm either by eliminating or mitigating pollutions which intern facilitate the right to clean and healthy environment of the people if properly implemented. The main theme of the proclamation is protecting the environment form pollution through prohibiting any person from polluting or causes any person to pollute the environment.⁹⁰Here, what is more significant is the environmental standards that shall be formulated by the authority. This is because, without the formulation of practicable environmental standards, no one can prohibit or regulate the discharge of any effluents or pollutants into the environment beyond the allowable limits.

The other important point incorporated under this proclamation is the assignment of environmental inspectors by the authority which have the power to ensure compliance with the environmental standards.⁹¹The role of these inspectors is vital for the effective implementation of the pollution protection proclamation. The right to

⁸⁸ Preamble, paragraph 1 ,Proclamation No. 300/2002

⁸⁹ Ibid, paragraph 3

⁹⁰ Ibid, Article 3/1

⁹¹ Ibid, Article 7

standing stated under article 11 of the PCP is another achievement of the proclamation in which any interested person with out a need to show vested interest, have the right to lodge a complaint at the authority against any person allegedly causing actual or potential damage to the environment.⁹²

In all those points mentioned, the proclamation can be considered as important legislative measures in the protection of environmental rights in Ethiopia.

3.2.4.2.1.3 Solid Waste Management Proclamation

The other legislative measure taken by the HPR regarding the protection of the environment is the enactment of the SWMP on the 12th days of February 2007. The objective of the proclamation is 'enhance at all levels capacities to prevent the possible adverse impacts while creating economically and socially beneficial assets out of solid waste.'⁹³In so doing, the proclamation consists of provisions imposing as to what is/are expected from urban Administration, solid waste management planning inter- regional movement of solid wastes and the likes. What is important relating to this proclamation is that knowing it as one of the legislative measures taken in the post 1991 period in Ethiopia.

In general, the legislative measures regarding environmental protection in Ethiopia are not only those mentioned above. Ethiopia in the post 1991 periods adopted different international environmental conventions ⁹⁴as per article 9/4 of the FDRE constitution in the one hand and the Authority it self drafted different guidelines for EIA and prepare standards for controlling pollution even if they are subjects to the approval of the EC.

⁹² Ibid, Article 11

⁹³ Article 3, Proclamation No. 513/2007

⁹⁴ Supra note 77

CHAPTER FOUR

4. Power, Duties, Responsibilities and Roles of Environmental Protection Authority

Environmental protection and environmental rights are fundamental issues that have a legal or constitutional protection in Ethiopia. So far in this paper, we have seen as to what place environmental protection has in Ethiopia based on legal as well as institutional frameworks. Environmental protection and the right associated with it (ER) require enforcement mechanisms and supervising institution to achieve their goals or objectives. Otherwise, the mere constitutional recognition of the rights contributes nothing or remains a lip service unless it is supported or implemented by enforcement mechanisms.

In order to change the constitutional rights into practice, further enactment of detailed laws and establishment of institutions that guarantee the rights under the constitution are necessary. In this regard, as we have seen earlier, a number of legislations and institutional measures have been taken in Ethiopia. One of such institutions established for the protection and monitoring of environment is the EPA. What powers, duties and responsibilities are mandated to this organ are the issues that are discussed below.

4.1 Power, Duties and Responsibilities of the EPA

The EPA is one of the major institutions in the over all protection of the environment as well as in the monitoring of the implementation of environmental laws and rights in Ethiopia. The objectives of the authority is to formulate policies, strategies, laws and standards, which foster social and economic development in a manner that enhance the welfare of humans and the safety of the environment sustainable, and to spearhead in ensuring the effectiveness of the process of their implementation.¹ What we understand from these objectives of the authority is that it can play number of roles in the protection and monitoring of the implementation of environmental policies,

¹ Article 5, Proclamation No. 295/2002

strategies and laws of the country. That is because, its objectives basically are to formulate policies, laws and standards that can contribute social and economic development which balanced the welfare of human with that of the safety of the environment. Even if these objectives can be achieved with the cooperation of other governmental as well as non governmental institutions, the roles of the authority are framed in a way that the authority should play leadership or spearhead. Having power to frame environmental policies, laws and standards, if properly implemented, shows the authority's power to determine the environmental legal regimes that one way the other determine environmental rights of citizens. In order to change the objectives of the authority in to practice, various laws of the country such as, environmental protection proclamations, regulations and international agreements which Ethiopia is a party and made an integral part of the law of the land² provides power and responsibilities of the authority.

For instance, the environmental protection organs reestablishment proclamation while stating the power and duties of the EPA, it provides the Authority shall have the powers and duties to;³

- *Coordinate measures to ensure that the environmental objectives provided under the constitution and the basic principles set out in the environmental policy of Ethiopia are realized.*
- *Prepare, review and update, or as necessary, cause the preparation of environmental policies strategies and laws in consultation with the competent agencies, other concerned organs and the public at large and upon approval, monitor and enforce their implementation;*
- *Liaise with competent agencies in the field of environmental protection and rehabilitation and support them in capacity development,*

² Ibid, Article 9/4 since international agreements that Ethiopia is a party have their own obligations, the authority shall enforce them that are related to environmental protections.

³ Article 6/1-4, Article 6/7 and 9, Article 6/16, 17 and 19, Respectively Proclamation No. 295/2002

- *Establish system for environmental impact assessment of public and private projects, as well as social and economic development policies, strategies, laws, and programs;*
- *In consultation with the competent agencies, set environmental standards and ensure compliance with those standards;*
- *In accordance with the provisions of the relevant laws, enter any land, premise or any other place that falls under the Federal jurisdiction, inspect any thing and take samples and deemed necessary with a view to discharging its duty and ascertaining compliance with environmental protection requirements;*
- *Prepare and avail to the government as well as the public a periodic report on the state of the environment of the country.*
- *Promote and provide non-formal environmental education programs.*
- *Prepare directives to implement environmental protection laws and, up on approval, ensure their implementations, - -*

Those mentioned powers and responsibilities of the EPA are not exhaustive. The total number of sub- articles provided power and duties of the EPA are 26 in number. In addition to those powers and duties under the re-establishment proclamation there are also a number of duties and responsibilities under various proclamations and regulations enacted for the protection of the environment.

One of such proclamations, Proclamation No 299/2002, EIA proclamation, impose duties and responsibilities of the EPA, which among others consist of setting or issuing directives that prescribe the requirements of experts who prepare the environmental impact study report /EISR/ of a project proponent.⁴ As the proclamation stipulates, the EISR of the proponent shall contain sufficient information to enable the Authority or relevant regional environmental agency to determine under what conditions the project shall proceed.⁵ Accordingly, the EISR shall contain as a minimum, description of:⁶

⁴ Article 7/2, Proclamation No. 299/2002

⁵ Ibid, Article8/1

⁶ Ibid,Article8/2/a-i

- *the nature of the project, including the technology and processes to be used;*
- *the content and amount of pollutant that will be released during implementation as a well as during operation;*
- *source and amount of energy required for operation;*
- *information of likely trans-regional impacts;*
- *characteristics and duration of all the estimated direct or indirect, positive or negative impacts,*
- *measures proposed to eliminate, minimize, or mitigate negative impacts;*
- *contingency plan, in case of accident; and*
- *Procedures of self auditing and monitoring during implementation and operation.*

These details of information to be included in the EISR require professional or experts knowledge in the environmental area. That is why the proclamation provides the authority to determine the requirements of such professionals or experts who may prepare EISR for the proponents.

The other duties and responsibility of the authority under this proclamation is review of EISR. Once the EISR of a project proponent is submitted to the Authority or the regional environmental Agency, the next issue or task is reviewing the EISR. In so doing, the authority is expected to decide the approval or otherwise of the implementation of the project⁷ within 15 working days by taking into consideration any public comment and expert opinions.⁸ In such case, especially when the authority approves the implementation of the project, it might be decided the implementation of the project without conditions when it is convinced that the implementation of the project will not cause any negative impacts or it may decide the implementation of the project with conditions that must be fulfilled in advance or in the implementation process in order to eliminate, cease or reduce adverse impacts.⁹ Allowing the

⁷ Ibid, Article 9/2/a

⁸ Ibid, Article 9/2/b

⁹ Ibid, Article 12/1

implementation of the project with/without conditions by itself is not enough for the implementation of EIA. It requires monitoring of its implementation whether or not the project is implemented in environmentally sound manner. In relation to this, the proclamation imposes a duty or responsibility against the EPA or relevant REAs to monitor the implementation of an authorized project, whether or not it complied with all the expected commitments, or conditionality during authorization¹⁰.

Moreover; the proclamation imposes a duty and responsibility on the Authority to make any EISR accessible to the public to solicit comments on it¹¹. That is due to the right of the public to participate in environmental decision-making which directly or indirectly affects their environmental rights. It is the responsibility of the Authority to ensure that the comments made by the public and in particular by the communities likely to be affected by the implementation of a project are incorporated into the EISR as well as in its evaluation.¹²

More importantly, the Authority is responsible to issue directives necessary for the effective implementation of the proclamation.¹³ Unless and otherwise the proclamation is supported or backed by detailed regulations or directives, it will become difficult to effectively implement what has been included in the proclamation in generalized form.

In a similar manner; the EPCP, Proclamation No 300/2002 consists of provisions stipulating duties and responsibilities expected from the authority for its effective implementation. As stated in this proclamation "no person shall pollute or cause any other person to pollute the environment by violating the relevant environmental standards."¹⁴ As one easily understand from this provision, there has to be what is called ES set or formulated by the relevant body; EPA. That seems why, the proclamation under article 6/1 provide the duty of the authority to formulate

¹⁰ Ibid, Article 15/1

¹¹ Ibid, Article 15/2

¹² Ibid, Article 20

¹³ Article 3/1, Proclamation No. 300/202

¹⁴ The ESs that has to be established by the authority shall include as per article 6 of the proclamation no 300/2002, standards for the discharge of effluents in to water bodies and sewage systems Air quality standards ,standards for the type and amount of substances that can be applied to the soil, standards for noise and waste management standards.

practicable environmental standards (PES) based on scientific and environmental principles.

Once the ES is established by the authority the next issue seems to be the enforcement of the standards. In this case, the proclamation mandated the authority to assign what are called environmental inspectors who shall ensure the compliance with ES and related requirements.¹⁵ Environmental Inspectors are a group of persons who shall be assigned by the EPA to monitor the compliance of the ES and the proclamation as well.¹⁶

What we observe from these proclamations is that the power, duties and responsibilities of the authority are not only that mentioned under article 6 of Proclamation No.295/2002. In addition to that, different environmental proclamations such as EIAP and EPCP and other environmental proclamations, international agreements and instruments have provisions regarding duties and responsibilities of the Authority.

4.2 The Role of the Authority in Protecting and Ensuring Environmental Rights

Those powers, duties and responsibilities of the EPA can be categorized into different roles expected from it to play in the overall implementation of Environmental policies and CSE and other environmental legislations in Ethiopia. In order to protect the general environment and ensure the rights of the people to a clean and healthy environment much is expected from the authority. The following few but major roles of the authority can be mentioned and evaluated.

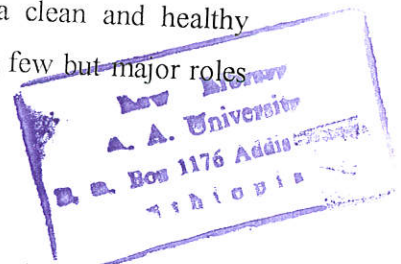
4.2.1 Playing the Role of Leadership

As the major environmental protection organ, EPA has to play a leadership role in variety of activities for the implementation of policies, laws and strategies formulated to protect the environment. These roles of the authority emanate from the re-establishment proclamation which stipulates the authority to play a spearhead¹⁷ role in

¹⁵Ibid, Article 7/1

¹⁶ See, Article 8/1 and 8/2 of Proclamation No. 300/2002

¹⁷ Supra note 1, Article 5



the effective implementation of policies, laws and standards designed for the protection of the environment that ultimately enhances the welfare of humans. These leadership roles of the Authority can be further elaborated by taking the following few instances;

4.2.1.1 Establishing Strategies and Priorities

Establishing environmental policies, strategies and priorities is the major activity of the authority in its leadership role. The re-establishment proclamation while providing the power and duties of the authority, it stipulates that one of the duty or responsibility of the authority is to prepare, review and updates environmental policies, strategies and laws in consultation with other competent agencies.¹⁸ In this regard, the authority together with different competent agencies especially in cooperation with the MOEDC established or prepared the EPE and the CSE in 1997. According to these documents, the over all EPE is divided in to sectoral and cross-sectoral environmental policies. Even if more than a decade passed since the preparation of the policy and the conservation strategies, no review and updates made till to date even if environmental issues are very dynamic and sensitive that requires immediate review and follow up. However, in Ethiopia once the policy and the strategies were prepared; there is no such a review or updates of the policy performed.

Even if the preparation of EPE and conservation strategies of Ethiopia took a long time for approval, the formulation of these documents can be considered a great achievement of the authority or the country since it has provided the policy directions and the prioritized area of concern of the country with sectoral and cross-sectoral institutional dimensions.

4.2.1.2 Formulating Practicable Environmental Standards

In order for the authority to control the discharges or effluents or noises released in to the environment by individuals, private or governmental institutions respect the ES, there has to be a clear standard that set the allowed or permitted limits of such pollutants. The EPCP obliged the authority to set such practicable environmental

¹⁸Ibid ,Article 6/2

standards based on scientific and environmental principles.¹⁹ This is another duty of the authority that can be categorized in to its leadership role. Unless the authority formulate the minimum or maximum threshold values of discharges, effluents or noises in the environment, the protection of the general environment or ER of the people became impossible.

As a result, the authority formulated in the year 2003 such environmental standards for the monitoring of the wastes produced and released from industries. However, the standards lacks a force of law (binding) character as a result of the power of the EC to review and approved, guidelines, directives and ES prepared by the Authority.²⁰ It was not the power of the EC that became obstacle for the implementation of the standards rather the failure of the EC to meet every six month to discharge its activities, as the law requires²¹ because of unknown reasons. This makes the efforts of the authority to monitor the wastes and effluents produced or released from the factories or industries weak or meaningless as a matter of fact the standards prepared by the authority could not be practical waiting the approval of the EC since their formulation in the year 2003.

4.2.1.3 Assigning Environmental Inspectors

The EPCP of Ethiopia under article 7 stipulates the authority's role to assign Environmental inspectors. The main task of these EIs is ensuring compliance, with environmental standards.²² As mentioned earlier, the formulation of PES is a basis for the Functioning of these forces; EIs. Once the ES are formulated and approved by the respective body, the next role of authority is assigning what is called EIs who is mandated to ensure the compliance of the standards.

In this regard, there is no as such what is called EIs in the EPA. This task force is tentatively formed when the situation so requires from various departments of the authority in the form of ad hoc committee in addition to their formal job.²³ The provision under the proclamation seems the EIs shall be established in permanent

¹⁹ Ibid, Article 6/1

²⁰ Supra note 1, Article 9/3

²¹ Even if the law under article 10/2 of proclamation no 299/2002 require the EC to hold meeting at least once every six months, it had so far meet only at once since October 2002

²² Article 8/1/a, Proclamation No. 300/202

²³ Interview, Ato Meskir Tesfaye Air pollution control team leader at EPA,

basis to ensure the compliance of the ES. However; there is no permanent 'entity' or a form of committee established in EPA. This makes the task of the EIs situation dependent or conditional rather than being a day to day activity of the authority.

4.2.1.4 Installing sound Technology

The other leadership role of the authority is installing sound technologies that can be used in the day to day activities of factories, industries or individuals as the case may be. Of course, the role of installing sound technology may be performed by sectoral environmental agencies. However; the EPA as a major Environmental protection organ shall play its leadership role by introducing sound technology in the household, production or industrial sector. This is because; outdated or backward technologies might have contributed a lot negatively in the sound environmental management.

This role of the authority is so much dependent on its incentives giving role by which the authority may provide verification for importation of new equipments or methods that enable the prevention or minimizing of pollution in to an existing undertaking.²⁴ This means that the authority shall identify sound technologies that can be used by existing undertaking in order to minimize or stop/cease the dangerous or harmful wastes that pollute the environment in general. Or it shall, in consultation with other sectoral institutions identify sound technology for the protection of the environmental.

In this regards, there are technologies introduced by Ministry of Mines and Energy and Ministry of Agriculture and Rural Developments that can be seen at the household level in order to the people protect from economical spending which latter on contributed for the conservation or protection of natural resources such as forests. However; as far as EPA is concerned, there is no as such technologies adopted or innovated for sound management of environmental resources in general. There is no as such a developed incentive or punitive mechanisms for the adoption or innovation of sound technologies or the use or implementation of traditional or backward technologies respectively.

²⁴The EPCP, proclamation no 300/2002, under article 10 stipulates that the EPA might introduced incentives for the introduction or adoption of sound technology.

4.2.2 Improving Cooperation and Coordination at Every Level

The EPE or the CSE classified the policy direction of the country into sectoral and cross-sectoral areas that have to be coordinated or the institution implementing the policies shall be coordinated in order to achieve a favorable environment or guarantee constitutionally recognized ERs. The over all coordination of sectoral and cross-sectoral environmental programmes is one of the major role expected from the authority. As far as the issues of cooperation and coordination are concerned, one may raise a question between whom these shall be made. As one can easily understand that the cooperation and coordination shall be made between the federal Environmental Protection Authority/EPA/, other sectoral governmental institutions at federal or regional levels and among REAs. Such coordination and cooperation is recognized by the CSE which provides that EPA will be the coordinating Agency for the Federal policy on Natural Resources and the Environment.²⁵ In addition, the re-establishment proclamation has also stipulates the EPA shall set environmental standards, take part in negotiations; formulate environmental policies in consultation with the competent agencies.²⁶ In order the authority performs its duties and responsibilities efficiently, coordination and cooperation between the EPA and other sectoral and cross-sectoral institutions is necessary.

Moreover, the authority is duty bound to provide advice and support to regions regarding the management and protection of the environment.²⁷ However; when we see the practice, the coordination and cooperation among the EPA and other sectoral as well as regional environmental agencies is loose or weak. When the Director General of the EPA explained the relationship between the EPA and other sectoral and cross sectoral as well as REAs, he states the writer that the relationship is good and explained by mutual support and benefits with all the limitations both had.²⁸

However; when we see the current position of regional environmental agencies, most are not in strong positions as they were few years back.²⁹ The maximum Number of

²⁵ Paragraph 2.7, the CSE. VOL.III

²⁶ Article 6/7-9,proclamation no 295/2002

²⁷ Ibid, Article 6/21

²⁸ Interview, Dr.Tewolde Berhan Gebere Egziabher, Director General, Environmental Protection Authority

²⁹ Ibid

staffs most have is 1 or 2 persons and most are organized within some other offices as a department or section.³⁰ In addition there is no such reporting mechanisms that they have to submit to EPA.³¹ The cooperation is based on willingness of the regions partly because of their autonomy.³² This shows that the coordination or cooperation expected from these organs does not have a strong legal bondage. What has been done is because of mutual interest or need of support.

According to Regional Coordination Department Head at EPA, the relationship between EPA and Regional Environmental Agencies is more of contractual rather than legal.³³ Regional Agencies may request financial support for a proposed environmental protection activity or projects and the EPA finds a financial support (fund) from donors and distributes it to REAs by signing a contract as to how the fund shall be spent for the proposed environmental protection project.³⁴ This shows the relation between EPA and REAs is weak since it is based on contract. The same is true regarding EPA and other sectoral institutions at federal level.

4.2.3 Participating the Communities in Designing and Implementation of Programmes

Public participation in developmental activities is one of the major features of environmental right. The participation could be at the early or design stage or through out the implementation of the program. Here, greater emphasis might be given to the participation of local communities that may directly be affected by the implementation of the project.

The FDRE constitution under its provision explaining about environmental objectives states people have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly.³⁵ In addition the same constitution under article 43/2 recognizes the right of nationals to participate in national development and, in particular, to be consulted

³⁰ Interview, Ato Tesfaye Ayele Yimam, Head Regional Environmental Protection Service, EPA

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Article 92/3, the FDRE Constitution, 1995

with respect to policies and projects affecting their communities. The constitutional guarantee of ERs of the people is further supported by subsequent legislations enacted by the HPR.

Accordingly the EIA proclamation, under article 9/2 and article 15/1 and 2 provided the public rights to participate in the preparation or decision of proposed projects. One of the criteria that the EPA or REAs have to ensure in EIAR is the incorporation of the comment made by the public and in particular by the communities likely to be affected by the implementation of the project.³⁶ However, when we see the practical application of such a right, the task of incorporating public opinion in EISR is that of the proponents. What the Authority actually does is whether or not there is a statement in the EISR indicating that the public have forwarded their opinion as to the implementation of the proposed projects.³⁷ Whether the statement in the EISR is true or not is not a subject reviewed by the authority.³⁸ In addition, making the public participate in environmental matters require an informed society or community as to the nature of the proposed projects and as to the multitude effects that may be resulted from its implementation. Most of the time, the public forwarded their opinion mainly because of its economical advantages; source of income, value of the place and the likes because they are not fully informed of the likely effects of the proposed projects.³⁹ These make the issue of awareness or information of the public a necessity but the public lacks adequate information so that the opinion they forwarded by and large tilted towards the implementation of the proposed project. In relation to this, the authority has to make sure that the opinion of the public is true and based on adequate information but, that is not a case in practice.

When we see, the EPCP, under article 19, duty to provide information or the right to access to information, is formulated as it is the right of the Authority or relevant environmental protection Agencies. That means, it is the authority or REAs that have a right to access to information rather than the public.⁴⁰ Of course, this duty against any person, engaged in activities that can be governed by the proclamation, to provide

³⁶ Article 15/2, Proclamation No. 299/2002

³⁷ Interview, Ato Solomon Kebede, Head EIA Department, EPA

³⁸ Ibid

³⁹ Supra note 24

⁴⁰ See, Article 19, Proclamation No. 300/2002

information to the authority is necessary partly to the benefits of the Authority to discharge its monitoring activities and partly because to make it accessible to the public.

The practical reality shows that the people do not have access to relevant or adequate information due to different reasons. Lack of such adequate information may deny them chance of participating in any developmental activities that might affect the environment or their right to clean and healthy environment. As one can easily understand, developmental activities may be exercised by a private individual, business organizations or public institutions. Citizens or peoples shall participate in each and every level of activities in order to protect their rights. However, such rights (participation) in design and implementation of developmental programmes is still a myth in Ethiopia.

4.2.4 Ensuring the Sustainable Use of Natural Resources and Sustainable Development

It is clear that uncontrolled or unmanaged utilization of natural resources may create imbalances of the natural ecosystem which ultimately affects the health and the wellbeing of human. The overall purpose and goal of the FDRE constitution, the EPE, the CSE and other international as well as domestic laws enacted to protect the environment in Ethiopia is attaining sustainable development.

The EPE when prescribing the key guiding principles of the overall EP of Ethiopia, it provides that the development, use and management of renewable resources shall be based on sustainability⁴¹ and the use of non-renewable resources shall be minimized and where possible their availability extended.⁴² This means that sustainable social and economic development would require that use of exhaustible natural resources and environmental degradations are appropriately offset.⁴³ Ensuring the sustainable use of natural resources and sustainable development is one of the major roles expected from EPA as a result of the constitutional as well as EP of the country. Every

⁴¹ Paragraph 2.3/c-d, the EPE, 1997

⁴² Ibid

⁴³ The World Bank, World Bank Environment Paper, No. 12, p.ix

developmental activity performed by the government or private organization unless sustainably exercised can create disasters of the natural environment. This task is basically achieved by performing EIA monitoring.

4.2.5 Promoting Public Awareness

Promoting or providing environmental education and awareness is one of the necessary requirements for the protection of the environment. It is an informed or an aware society or communities that can play a significant role in the monitoring and protection of the environment. That is to say, an informed society may not damage its environment in the one hand and may also protect its environment from any activities that can harm it. In this regard, the EPA as well as REAs or sectoral institutions shall inform or provide subsequent awareness activities to the society on issues that hamper the status of the environment and options or solutions to rectify it.

The EPA as prescribed under its re-establishment proclamation shall promote and provide non – formal environmental education programs to the public at large.⁴⁴ The EPE and the CSE have also provided environmental education and awareness as an important cross-sectoral environmental policies direction of the Federal Ethiopia. In respect of this, the EPE clearly stipulates, among others, the following policies direction as basic tools:⁴⁵

- *To target the public, particularly those involved in public and private sector activities that have significant environmental impacts, for environmental education and awareness programmes;*
- *To formulate environmental awareness programmes in such a way as to make them address specific environmental problems of particular localities in creating and promoting environmental awareness in view of the physical problems of access and communication in Ethiopia;*

⁴⁴ Article 6/17, Proclamation No. 299/2002

⁴⁵ Paragraph 4.10/b,c the EPE, 1997

In order to the EPA able to discharge its environmental education and awareness activities, it has a department called, 'Environmental Education Department'. According to the Head of the Department, the authority has been providing environmental awareness and education to different sections of the society at different time by its own initiative and with the cooperation of donor organizations and NGOs working in the environmental areas.⁴⁶ As to whom the focused group of the awareness or environmental education programmes concerned, the same person replied the writer that by and large, focus groups in the awareness and environmental educations were regional environmental agencies workers, owner or (representatives of the same) of industries, factories, and governmental officials and different stakeholders.⁴⁷

As to the delivery of the programme to the public is concerned, He replied, this task is /has been performed by regional environmental agencies which are close to the public and mandated by the law.⁴⁸ The issues of focused discussions according to him were more of issues of environmental policies, international as well as domestic legal regimes, as to what expected from the governmental institutions and different stakeholders in the overall protection and conservation or management of the environment.⁴⁹ Whether such awareness or environmental education programmes are adequate or not is concerned, he replied as there is change of awareness of the public and efforts have to be strengthened and coordinated.⁵⁰ For him REAs have to do the awareness and environmental education tasks to the communities in their respective regions.

However, the writer viewed such tasks of the public awareness and education shall be promoted and provided by both institutions. The task of EPA as the practice shows focuses mainly on giving awareness to governmental officials who are supposed to implement the environmental policies and laws of the country and to those factory or industry owners who are expected to respect the environmental policies and laws as well. Nevertheless, the environmental awareness and education delivered to the general public is weak. This is partly due to the focus of the EPA on governmental

⁴⁶ Interview, Ato Gebre Selassie G/Amelak, Head Environmental Education Department, EPA

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

officials and few factory or industrial owners and partly due to weak organizational status of regional environmental agencies. As a result, the writer can say the awareness of the public to environmental issues and matters is not that much good.

4.2.6 Providing an Enabling Environment for the Enjoyment of ERs

In order to the public enjoy or exercise their environmental rights, there has to be an enabling environment or favorable grounds established and maintained. Unless such grounds exist, mere constitutional guarantee of the rights means nothing. When we say 'enabling environments' it means environment that helps the people to know about its right, and able to enforce through institutional remedies (both administrative and legal) when the harm inflicted against their rights. In other words, enabling environment in the case of environmental rights means that the people access to information, the right of the public to participate in environmental decision making and access to justice when the situation requires. So providing such enabling environment by and large is a duty expected from the government. However, the EPA has also such duties, as mentioned earlier, to formulate practicable ES, assigning environmental Inspectors, providing the necessary and adequate information, and ensuring the public participation at every level of environmental decision makings.

CHAPTER FIVE

5. Evaluations of the Roles, Remedial Measure and Challenges of the Authority in the Protection of ERs in Ethiopia

So far in this paper, we have seen what major roles are expected from the authority to protect, ensure and guarantee ER of citizens or people's at large in the one hand and the practical measures taken by the authority on the other. In order to protect, ensure and guarantee ERs much is expected from the EPA in enforcing the constitutionally granted ERs, which are further elaborated by the EPE, CSE and other proclamations enacted for effective implementation of the rights. Whether the authority duly performed its roles or tasks in the protection and guarantee of ERs or not is the issues that are evaluated in this chapter.

5.1 The Role of EPA in Protecting and Monitoring the Implementation of Environmental Laws and ERs in Practice

The EPA as the major institution established for the protection and monitoring of environmental activities, much is expected, such as designing environmental policies and strategies, ensuring sustainable development, improving public awareness, conserving the natural environment, rehabilitating the environment and monitoring the implementation of environmental policies and laws of the country. These roles of the authority basically emanate from the FDRE constitution that stipulated organs of state, officials' duty to ensure observance of the constitution¹ and the responsibility and duty of all organs of the government to respect and enforce the provisions dealing with fundamental rights and freedoms.² This means that the FDRE constitution guarantees ERs of all persons to a clean and healthy environment,³ the right to improved living standards and to sustainable development,⁴ the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their communities.⁵ Organs of state (one of which is EPA) duty to ensure observance of the constitution (its provisions)

¹ Article 9/2, the FDRE Constitution, 1995

² Ibid, Article 13/1

³ Ibid, Article 44/1

⁴ Ibid, Article 43/1

⁵ Ibid, Article 43/2

means it has the role to guarantee the ERs, under the constitution. These roles or duty of the authority, as mentioned earlier further elaborated by EIAP, EPCP, SWMP and other regulations in addition to the EPE, CSE and international agreements for the protection of Environment.

In all these instruments, the authority is expected to discharge a number of duties and roles for the respect and protection of ERs; the right to a clean and health of environment, and other pertinent rights associated with it such as access to information, the right to participation in environmental decisions making and the likes. The practical implementation evaluation of the roles of the authority is discussed here below one after the other.

5.1.1 Designing Environmental Policies and Strategies

Designing or preparing, reviewing and update, or as necessary, cause the preparation of EPs and strategies is a task of the authority that has to be performed in consultation with competent agencies, and the concerned organs and the public at large⁶however; subject to approval by the Council of Ministers. When we see the practical implementation of these roles of the authority, the preparation of EP and CS in Ethiopia has endured the test of time and has gone through changes of two governments and subsequent changes of governmental structure.⁷The policy making phase encompass broad ranging discussion and full debate at federal and regional levels in order to arrive at a consensus. The process was launched by the government in May 1989 at a conference held in Addis Ababa.⁸ The conference was followed by the creation of task forces and regional workshops and deeper analysis of the issue raised.⁹ As a result, the EP and CS of Ethiopia formulated and approved by the council of Ministers of the FDRE on April, 2, 1997.¹⁰ According to the EPE and CSE, a plan of prioritized actions within the framework of

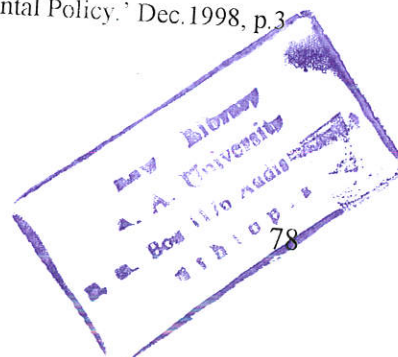
⁶ Article 6/2, Proclamation No. 295/2002

⁷ EAP, 'Institutional Responsibilities for the Implementation of the Environmental Policy.' Dec. 1998, p.3 (un published), EPA Library

⁸ Ibid

⁹ Ibid

¹⁰ Ibid



sectoral and cross-sectoral programmes, as number of components having a broad division and prioritized actions have been formulated and categorized into immediate priorities, medium term priorities and long term priorities.¹¹

When we see the roles of the authority to design environmental policies and strategies, we can say that it is a task completed some years back even if it took more than a decade until it's approved. Though the preparation or design of EP and CS of Ethiopia finalized, that does not mean that the tasks or role of the authority is finalized. The implementations of the policy have to be monitored and made subject to review or some modifications. In this regard, there is no review or modifications made by the authority since the approval of the EPE and CSE. That is not because the review or modification is unnecessary rather because of weak consideration or ignorance of the authority to the issue.

5.1.2 Ensuring Sustainable Development

The environmental resources utilization and Developmental activities need to be balanced and practiced in a way that do not harm or damage the safety of life. The issue of SD is about balancing the interest of both the present and future generations in using the natural resources in an equitable manner. The issue of sustainable development as mentioned earlier is a constitutionally guaranteed rights of the people.¹² It has also got consideration by subsequent legislations followed by the EPE. The EIAP and the EPCP are the most important instruments for practicing sustainable development in Ethiopia. When we see the practical implementation or enforcement of these proclamations, we can not say that they are well enforced. For instance; EIAP Prohibits the implementation of any project before it gets approval of the authority for its EISR.¹³ Any licensing agencies are also

¹¹ According to the CSE, immediate priorities are those activities which are deemed for immediate implementation and which can be accomplished with in a period of two years. Medium term priorities are those actions which can be started immediately or may be dependant on the completion of specific immediate action, and which can be completed with in a period of five years. Long term priorities are actions which require the completion of immediate and or medium term actions and which will take a period of more than five years to complete.

¹² Supra note 4

¹³ Article 3/1, Proclamation No. 299/2002

obliged to ensure before the implementation of the project, authorization of the same.¹⁴ Whether this has been done properly or not is concerned, the Principal Environmental Impact Specialist at EPA, respond to the writer that as there is some change in requesting the approval of EISR of project proponents.¹⁵ According to him, that does not mean that every licensing agency does the same; since there are some governmental agencies that do not require such approval of the EIAR.¹⁶ As to what measures does the authority took against such agencies is concerned, we will examine it under the administrative measures part latter.

As far as the role of the authority to the effective implementation of the EIAR is concerned, it has prepared a number of EIA guidelines for evaluating the EISR of proposed projects. However, such guidelines are waiting the approval of the EC as per article 9/3 of Environmental Organs Reestablishment Proclamation /EOREP/ No. 295/2002. However, the EIA Department Head at EPA, while explaining the writer as to the practicability of the guidelines, he responded as there were various guidelines prepared by the authority for the evaluation of environmental impact assessment study report / EIASR/ which they have been using as the case may be without waiting the approval of EC.¹⁷

Whenever the authority evaluates the EISR of a proposed project, most of the times, it grants approval to the implementation by setting a conditionality to be fulfilled before the commencement of a proposed project or in the process of the project. Whether or not such conditionality is respected, shall be evaluated through follow up or monitoring measures to be taken by the authority. However, according to the Head of EIA department, there was/is no such a mechanism implemented by the authority till now.¹⁸ As a result, providing conditions to be fulfilled by the project proponent or owner became useless due to failure of the authority in that regard.

¹⁴ Ibid, Article 3/3

¹⁵ Interview, Yonas Tekele Mechael,, Principal EIA Specialist, EPA

¹⁶ Ibid

¹⁷ Interview, Solomon Kebede, Head EIA Department, EPA

¹⁸ Ibid

In the EPCP, one of the tools to ensure the sustainability of developmental activities is to cease when possible or to mitigate the possible environmental pollutants that are discharged, released into the environment. In order the authority control or monitor such pollutants and ensure industries or factories respect the law, there has to be environmental standards formulated by the authority as per article 6/1/a-e and there has to be assigned EI to ensure the compliance with ES and related requirements.¹⁹ These two requirements are fundamental in the proclamation because without an established ES and body to regulate its compliance, no measures can be taken to protect the environment.

The role of the authority to prepare the ES, in practice, is similar with that of environmental guidelines under EIAP. That means, even if the authority established ES, it stayed long awaiting the approval of EC. As a result, according to Air Pollutions Control Team Leader at EPA, the authority could not enforce the established standards for long.²⁰ This problem seems solved as the result of the approval of ES by EC on its first meeting so far it had.²¹ As far as, the assignment of EIs, is concerned, the same person replied the writer as there is no assigned committee or entity in the authority to monitor the respect or otherwise of ES. What is practiced in EPA regarding EIs is concerned, he responded the writer that when situation requires, a form of 'ad hoc' committee from different department within the authority established and come up with recommended solutions. The solutions recommended most of the time is a kind of compromise between the pollutants to take corrective measures due to lack of an approved environmental standards.²²

Therefore, ensuring sustainability of the environment or development roles of the authority, the writer might say, are hampered by weak performance or implementation of environmental policies, strategies and laws by the EPA.

¹⁹Article 8/1/a , Proclamation No. 300/2002

²⁰Interview, Meskir Tesfaye, Air Pollution Control Team Leader. EPA

²¹Ibid

²²Ibid

5.1.3 In Creating /Improving Public Awareness

The effective implementation and monitoring of EPs, CSs, and other environmental legislations , standards and guidelines requires making the public aware or improve the awareness they had on environmental protection, management, the rights associated with it and the possible measures to be taken when their rights is/are challenged. As mentioned in the previous chapter it is an informed and well aware society or community that can contribute a lot in the protection of the environment. That is why environmental awareness and education has got a great place in the environmental policy of Ethiopia. The environmental awareness or education programmes shall target, particularly those involved in public and private sector activities that have significant environmental impacts, for environmental education and awareness programmes.²³

When we see the practical implementation of creating/improving public awareness programmes provided by the EPA, a number of activities have been, according to the head of environmental education department, delivered by the authority with its own initiatives or by the initiatives of other governmental or non-Governmental organizations.²⁴ For him, such awareness programmes brought about some change in the public even if they are not adequately provided.

As far as the issues of whom their target group is/are concerned, according to him, it is governmental organizations, leading officials, private individuals who own industries or factories and regional environmental agencies or their delegates are attended on environmental education and awareness most of the time. Providing such educational awareness to governmental officials or governmental institutions(both at federal and regional levels) might have importance as a matter of facts the policy implementing sections should be aware as to what the environmental laws, procedures and methods for the protection or rehabilitations are there. With all its advantages, such emphasis on governmental institutions and officials solely can not bring about the awareness of the general public. As far as awareness programme to the general public is concerned, the

²³Paragraph 4.10/b, The EPE, 1997

²⁴ Interview, Gebre Selassie G/Amlak. Head Environmental Education Department. EPA

authority responded as the activity shall be formulated and provided by regional environmental agencies and other non governmental organizations which are closed to the general public or which are working on environmental protection activities.²⁵

However, as the major environmental protection organ, EPA shall provide environmental education and awareness to the public since it is mandated or obliged to ensure the implementation of EP, CS and other international agreements to which Ethiopia is a party. The awareness or environmental education should not, in the writers' opinion, focus mostly on governmental agencies, their officials, REAs and few industrial owners. Whatever the roles of REAs and NGOs are, the authority should provide awareness to the public at large.

5.1.4 Conserving and Rehabilitating the Environment

Conservation of Natural resources and Rehabilitation of affected areas are the other pillars for protection of the environment. These are helpful and basic to maintain the balance of the eco-system and life supporting activities. When one say ERs of the people, it is not restricted to the right to clean and healthy environment only, rather extends to the right to benefit from the fruits of the natural environment which would be provided as a result of conservation and rehabilitation.

The CSE explains the necessity of conservation, by stating: 'When we conserve something, therefore, we must use it or keep it in such a way that is obvious to every body that it is being kept because it will be of better use in the future.'²⁶ This shows that the conservation of natural resources is an important tool for protecting the ERs of the people. The same is true for activities of rehabilitation of affected areas. In order to achieve the objectives of conservation and rehabilitation, the participation of the people is per-requisite. Unless the society or communities made part of the conservation or rehabilitation activities, implementing /performing the conservation or rehabilitation

²⁵ Ibid

²⁶ Paragraph 4, The CSE, Vol.I, 1997

activity would be done through coercion that ultimately became ineffective as a result of lack of support from the community.²⁷

The Role of the EPA in the conservation and rehabilitation programmes is more of coordinating, providing capacity building programmes, and monitoring the implementation of the same.²⁸ According to the Director General of the EPA, these activities have been performed by different sectoral and cross –sectoral governmental institution which are supposed to implement the activities. According to him, a number of conservational and rehabilitation activities have been performed at different places of the country which among others include, maintaining and protecting national parks, sanctuaries, game reserves.²⁹ He further explained the writer that the conservation activities are of two types; *in-situ conservation and ex-situ conservations*. To him the former conservations activities that has participate the local communities are effective and exemplary citing the achievements of soil and water conservation practices of Konso and Gidole people in SNNPRS, the Oromo of Hararge and the Ahmara in northern Showa.³⁰

As to the effectiveness of the conservation and rehabilitation programmes is concerned, the Director General replied that in areas where by conservation (in-situ or ex-situ) and rehabilitation activities performed, it is encouraging and effective even if the activities are challenged by economic capacities and lack of skilled man power which is also problems to other sector of the country.³¹ However; with the help of donors and supporting agencies, different sectoral institutions performed and have been performing various conservational measures such as identification of biological resources, National Biodiversity strategy and action plan project, conservation and sustainable use of medical pollutants of Ethiopia and conservation and sustainable use of Biodiversity in the Rift Valley lakes.³²

²⁷ Ibid, Paragraph 1.6.1

²⁸ Article 6/3, Proclamation no 299/2002

²⁹ Interview, Tewolde Berhan Gebere Egziabher ,Director General, EPA

³⁰ Ibid

³¹ Ibid

³² Ibid

All in all, the role of the authority is much of providing support in building capacity of sectoral institutions and REAs that are engaged in conservational as well as rehabilitation activities, the Director General replied the writer that as the authority provided the necessary support with the request of the competent agencies.

5.2 Challenges of ERs and Remedies for Its Violation

Even if the existence of environmental right; both substantive and procedural, has been debatable among scholars in the field of environmental protection that is not the issue in the Federal Ethiopia. That is to mean, the FDRE constitution under Article 44 recognizes environmental rights of the people; the right to clean and healthy environment and the right of the public to participate in any developmental decision making that might affect their life. In order to ensure such constitutional rights of the people, as we have seen earlier, various measures have been taken ranging from formulating the EPE and CSE to the enactments of various proclamation, regulations and institutional measures.

The EPA is one of the major institutions in the protection and monitoring the implementation or enforcement of environmental policies and laws in Ethiopia. In the previous sub topic, we have seen as to what roles are expected from the authority and as to what the practice look like. Protecting, guaranteeing and enforcing environmental laws in Ethiopia are faced various challenges from different corners. Among the various challenges and obstacles faced by the EPA in ensuring and monitoring the implementation of environmental laws and environmental rights, only few, but the majors are selected to be discussed here below.

5.2.1 Challenges of EPA in Ensuring and monitoring the implementation of EPs, Laws and ERs

The role of EPA to ensure, monitor the implementation of environmental laws and ERs in Ethiopia is not an easy task. It requires favorable conditions to discharge each and every roles, duties and responsibilities of the authority and at the same time requires proper implementation of the same. However; the authority faces challenges of various sources: external to the authority and internal sources.

5.2.1.1 External Sources of Problem

Among the various challenges or problems faced by the authority that hamper it from discharging its duties and roles, external problem; problems attributed to law are crucial. This means that, first and foremost, even if the constitution clearly stipulates that enacting laws for the utilization and conservation of land and other natural resources under the power and function of the federal government on the one hand and even if it provides the administration of land and other natural resource in accordance with Federal laws to power and function of states;³³ It does not clearly demarcated as to where the issue of environmental protection lies. That is because; enacting laws on or administration of land and other natural resources does not mean that it governs every issues of environmental protection. One may cite the constitutional provision that provides all powers not given expressly to the Federal government alone, or concurrently to the Federal government and the state are reserved to the states.³⁴ However; in the writers view, the issues of powers of Environmental protection, whether Federal or regional is not as such clear. This unclear demarcation further complicated by other Proclamations too. The EPOEP, proclamation No 295/2002, while stipulating the power of the EPA, it states that where projects are subject to federal licensing, execution, supervision or where they are likely to entail inter – regional impacts, the EPA can review EIAR of such projects and regulate the implementation of the same.³⁵ The contrary reading of this provision might lead that where the licensing of the project is subject to states, it is the power of REAs to review the implementation of projects. Of course, this is also elaborated by the EIAP, on the section dealing about jurisdiction.

However; the EPCP, does not have such a provisions dealing about the jurisdiction of the Federal EPA and that of REAs. As a result, it had been a problem to EPA whether to enforce the proclamation in industries licensed by regional licensing offices.³⁶ In this regard, one can say the power of EPA is only restricted to industries licensed by federal

³³ Supra note 1, Article 51/5 and 52/2/d

³⁴ Ibid, Article 52/1

³⁵ Supra note 28, Article 6/5

³⁶ Supra note 20

offices by analogizing it with that of the jurisdiction under EIAP and taking notice of some phrases under EPCP like, the authority or relevant regional environmental agencies.

Such gap under the EPCP; failure to put the demarcation of jurisdiction of the EPA and REAs seems attempted to be rectified by the draft Industrial Pollution Prevention Regulations /DIPCR/, which reads,³⁷

- *it shall be the duty of the Authority to implement these Regulations if it is the mandate of the federal government to grant a license to the factory.*
- *It shall be the duty of the regional competent environmental organs to implement these regulations if it is the mandate of the Regional government to grant a license to the factory.*

Such kind of setting the jurisdiction in the regulations, in the writers' opinion is wrong. Because, the regulation completely provides a new provision that contradicts with the proclamation, became void.

If regional states are allowed only to administer land and any natural resources by the federal law and if they are allowed only to formulate rigorous environmental standards than that of the federal government as prescribed under article 6/4 of EPCP, questions may be raised as to how/why the city Administration of Addis Ababa enacted its own legislations on similar matters addressed by the EIAP and EPCP at Federal level.³⁸ This shows the unclearness of borders of Federal government and regional states on matters of environmental protection.

The legal problem is not only that explained above. When one sees the powers and duties of the EPA under proclamation No. 295/2002, one can easily understand that, those enumerated, by and large, do not grant sufficient power to the authority. This means that

³⁷ Article 16/1,2, The Draft Industrial Pollution Prevention Regulation.

³⁸ The City Administration of Addis Ababa enacted its own EIA and EPC Regulations no 21/2006 and 25/2007 (Addis Negari Gazeta) on the same matters governed by the Federal EIAP and EPCP. This shows that the jurisdiction of Federal and Regional Administration is a little bit blurred. What the City administration can do for that matter is to formulate rigorous environmental standards only.

when we see the power and duties under Article 6 of EPOEP, we can find phrases like 'coordinate', 'take measure', 'liaise with competent agencies', 'establish a system', prescribing the power and duties of the authority. However, most of these phrases or provisions do not grant power to the authority to take measures when failure or non observance of environmental laws manifested. Even if the authority may take some administrative measures under EIAP and EPCP, what will happen when other issues damaging the environment but not governed by either or both proclamations occur? This indicates in the writer's opinion that the power granted to the authority is weak; makes it unable to take measures by it self.

The other legal problems that hamper the authority from discharging what is expected from it are contradictions among the environmental proclamations especially with that of provisions stipulating the power of the EC and with that of power of the EPA to issue directives and guidelines in the EIAP and the EPCP respectively. Accordingly, the EPCP under Article 9/3 proclaims review and approval of directives, guidelines and ESs as the responsibility of the EC. Where as, the EIAP under Article 8/3 stipulated that the authority shall issue guidelines that determine the elements necessary to prepare as well as evaluate an EISR and it also proclaims that the authority may issue directives necessary for the implementation of the proclamation.³⁹ Similarly the EPCP under Article 6 stipulates that the authority shall in consultation with competent agencies, formulate practicable ES. These proclamations having the same status or hierarchy, dealing with similar topic is a problem. The EPOEP requires the approval of any directives, guidelines and ES by the council where as the EPA is mandated to issue directives by the EIAP. As a result, the guidelines, and ESs formulated by the authority awaits the approval for long, at least for 5 years. However, in the writer's opinion, the authority should have to use the guidelines without waiting for the approval of the EC since the two proclamations are equal in status, the latter shall prevail over the former in case of contradictions as the general interpretation maxim/ principle of law dictates

³⁹ Supra note 13, Article 20,

The other external problem of the authority is related with the issue of cooperation and coordination among the EPA and sectoral governmental agencies and with that of the REAs. As far as the coordination and cooperation of the EPA and sectoral governmental agencies especially those responsible for licensing , providing trade and work permit, according to the head of EIA department, in earlier days, such licensing agencies were not cooperative as a result of poor awareness as to what expected from them. However, this is not currently a problem that much even if it is not totally cured.⁴⁰ There are some governmental institutions that still resist requesting project owners the approval of EISR.⁴¹

As far as the cooperation and coordination of EPA and REAs is concerned, the head of the RECAS at EPA, explained the writer that the coordination and cooperation among the EPA and REAs is deteriorating from time to time rather than being strengthened.⁴² This is mainly because of the place/status of REAs in their respective regions by which most are changed from bureaus to departments and sections having one or two staffs.⁴³ Even if some form of coordination and cooperation is established with REAs that can not be durable or tenable as a result of change of position of persons who were leading a particular section, department or bureau.⁴⁴

Generally, the cooperation and coordination among and between the EPA and other Federal or regional bureaus is weak. That is due to lack of a strong legal bondage that forces such organs mandatory reporting to the authority and partially due to the autonomous status of regional states. However, the writer strongly resists this view of autonomous regions because environmental issues and rights are recognized constitutional rights by which every section of the government should respect and ensure its protection.

⁴⁰ Supra note 17

⁴¹ Ibid

⁴² Interview, Tesfaye Ayele Yimam, Head Regional Environmental Coordination Service, EPA

⁴³ Ibid

⁴⁴ Ibid

5.2.1.2 Internal Problems or Challenges

In addition to those challenges, external to the authority, some other challenges that can be attributed to internal or organizational might be mentioned hampering the roles, duties and responsibility of the EPA in the protection, guaranteeing and implementation of environmental policies, strategies and laws of the country. In this regard, economic constraints can be mentioned as the most decisive. According to the General Director of the EPA, economic constraints are one of the major challenges of the authority limiting it from performing various activities in the protection of the environment.⁴⁵ As a result, the authority remained, for instance, with inadequate laboratory infrastructure for environmental monitoring.⁴⁶ For the time being, the authority is using the laboratories and expertise from AA-EPA which is relatively in a better position than that of the federal EPA.⁴⁷ The economic constraint of EPA is further manifested by the inability of the authority to perform 'environmental audit', and monitoring of the implementation of conditionally approved projects even if the non performance is coupled with lack of skilled man power too.⁴⁸

The other internal problem or challenges of the authority is lack of skilled man power.⁴⁹ The current status of various departments of the authority attests this fact. For instance, one of the most important and decisive department in the EPA is the department of EIA. Out of six positions in the department the total numbers of staffs who are currently serving are two: the department head and the principal EIA specialist.⁵⁰ Discharging what expected from the department, evaluation for approval or otherwise of EISR and monitoring of conditional implementation is become challenging.⁵¹ The same is true for the Environmental Pollution Control Department, Regional Environmental Coordination Affairs Service, Legal Department, laboratory and Department of Environmental

⁴⁵ Supra note 29

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Supra note 15 and 17

⁵¹ Ibid

Education. Each department has currently one to two staffs out of five to six staffs. Therefore, lack of skilled man power and workers became challenging to the authority to perform all the activities expected from it.

The other internal constraint or challenge of the authority is related to commitment to ensure or enforce environmental policies and laws in Ethiopia. In this regard, even if the authority preformed various activities especially in formulating, preparing environmental guidelines, environmental standards and other state of the environment report ,the writer can say that the authority lacks commitment in ensuring and implementing what has been formulated by itself. Of course, the weak performance of environmental policy and laws in Ethiopia partly fall under external challenges to the authority. When the writer says the authority lacks commitment, it means that it has become ignorant or reluctant in:

- assigning EIs who can watch dog the compliance of ES, on permanently basis even if the ESs were waiting the approval of EC to have a force of law;
- formulating the requirements of experts who shall prepare EISR for the project owner;
- providing environmental education and awareness to the public at large;
- maintaining strong relations and cooperation among sectoral and REAs;
- building its capacity both in fulfilling the infrastructures as well as its human resources; such as laboratory and skilled man power ;
- encouraging and supporting environmental researches;
- providing the necessary information to the public even if the authority says that every one can request and get any information at the hand of the authority and it is publishing the state of country's environmental reports, the so called 'the state of environmental reports' and 'Ethiopia environmental out looks' non- of these instruments are found in local language including the official language of the Federal government. So that, I can say, the focus of the environmental reports is not the people's access to information right rather to other purposes. Similar trends have been followed in formulating environmental guidelines and standards.

- establishing incentives mechanisms for the adoption or introduction of sound technologies in the production and industrial sectors;
- taking corrective measures against any body (governmental or private) in case where they engaged in harmful activities to the environment;

5.2.2 Remedies for the Violation of ERs in Ethiopia

The ERs of the people, as mentioned earlier is a constitutionally recognized right in Ethiopia. The right encompasses living in a clean and healthy environment, participation of the people especially of those that are directly affected by the implementation of developmental programmes and access to justice when the right is violated.

The environmental laws of Ethiopia, especially those EIAP and EPCP provide some remedial measures that can be taken by the authority in cases where the violations of these laws are made. The general remedies for the violations of environmental rights can be either of these two natures, administrative remedies and judicial remedies.

5.2.2.1 Administrative Remedies /Measures

Administrative remedies for the violation of environmental laws of Ethiopia are one of the tools to ensure or monitor the implementation of environmental laws of the country that one way or the other foster the protection ERs of the people. Some of such administration measures recognized under environmental laws of Ethiopia and their practical application are evaluated here below.

5.2.2.1.1 Taking Corrective Measures

Whenever the evaluation or reviews of EISR is made by the authority, the result of the administrative decision can be either of the approval of the study, or the disapproval or refusal of the implementation of the study or authorization of the implementation of the project with conditions to be fulfilled in advance or through implementation.⁵² Moreover,

⁵² Supra note 13, Article 9/2/a-c

the authority might order the revision or redone of the approved EISR when an unforeseen facts of serious implication is realized.⁵³

When we see the practical implementation of these administrative measures, according to the Principal EIA Specialists at the EPA, the authority has been evaluating EISR for proposed projects, and the approval by and large, is allowed on conditional basis however no review is done whether the conditions has been meet by the proponent or not.⁵⁴ Moreover, the implementation of EIA is challenged by some licensing governmental institutions by providing work or trade license without requiring an approved EIAR from the authority.⁵⁵

This indicates that the corrective measure that has been taken by the authority in the review of EIAR is putting conditions however, the authority fails to monitor whether the conditions are respected. This is due to constraints in the authority such as lack of skilled man power and budget.

Regarding the measures taken by the authority refusing the implementation of the proposed project is concerned, the head of EIA department replied as there is no measures taken as a result of the capacity of the department (lack of skilled man power) and that is why they prefer the implementation of the proposed projects on conditional basis.⁵⁶ This shows that the administrative measures to approve or refuse a proposed project have been performed with limitation so that it does not serve its purpose.

The EPCP has also similar provisions, allowing the authority to take corrective measures for the effective implementation of the objective of the proclamation, making the country free from any form of pollution if possible or mitigating the pollution in the country. One of the provisions providing administrative remedies is the provision dealing about the power and role of EIs. Accordingly, the EIs that have to be assigned by the authority shall

⁵³ Ibid, Article 11

⁵⁴ Supra note 15

⁵⁵ Supra note, 15

⁵⁶ Supra note 17

have the power to ensure compliance with ESs and related requirements.⁵⁷ When a person contravenes any of the provision of the proclamation or any other relevant law, the inspectors shall specify the measures or corrective measures to be taken to remedy the contravention within a given period of time.⁵⁸ This measure may extend to order the immediate cessation of the activity.

However, the practical implementation of such administrative measures can be said non-existent at all. That is because, the authority does not establish EIs in permanently basis in the one hand and the ESs having stayed long awaiting the approval of the EC.

5.2.2.1.2 Making the Pollutant Clean the Environment

The other administrative measures that the authority can take against any person who causes any pollution to the environment is requiring the person to clean up or pays the cost of cleaning up the polluted environment in such a manner and within such a period determined by the authority.⁵⁹ This administrative measure is a kind of internationally recognized environmental principle called ‘polluter pays principle’; let the polluter clean the environment up. In this regard, the practical application of such administrative measure by the authority is not performed or practiced till now.⁶⁰ It is not because of no pollution has occurred in the country rather because of lack of the environmental standards having a force of law.⁶¹

Even if pollutions, of various types, are rampant especially in cities where relatively highly concentrated industries and vehicles exist, no measures have been taken against those who pollute or cause to pollute the environment. As a result, the people’s right to a clean and healthy environment or ERs in general remains violated.

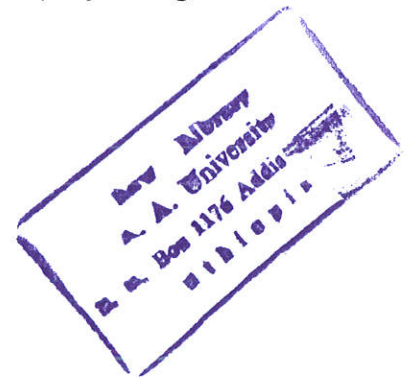
⁵⁷ Supra note 19, Article 8/1

⁵⁸ Ibid, Article 8/2

⁵⁹ Ibid, Article 3/4

⁶⁰ Supra note 20

⁶¹ Ibid



5.2.2.1.3 Closure or Relocation Enterprises Polluting the Environment

Closure or relocation of enterprises polluting the environment is one of the administrative measures to protect the environment from serious harm that could affect the ERs of the people. That seems why the EPCP stipulated that when any activity poses a risk to human health or to the environment, the authority shall take measures up to the closure or relocation of any enterprises to protect the harm.⁶² In doing so, even if, there are industries or enterprises polluting the environment in a way harming the health as well as the well being of the society or the environment at large, no measures have been taken by the authority till now.⁶³ The reason according to the Director General of the EPA is most of such kinds of industries can be transformed from backward and outdated manufacturing technologies to the modern and sound technologies within some specified grace period which will be determined by law in the near future; with the promulgation of the draft Industrial Pollution Control Regulation.⁶⁴

This shows/indicates that no measures have been taken by the authority to relocate or close the enterprises even if they remain polluting the environment in a way harming the health and life of the society in their respective localities.

5.2.2.1.4 Right to Standing /Public Complaints Mechanism

One of the major 'achievements' of the EPCP is providing a provision dealing with the right of standing or public complaint mechanisms against any harm on the environment.⁶⁵ The proclamation provides any person, without a need to show any vested interest, for the right to lodge a complaint at the authority against, any person allegedly causing actual or potential damage to the environment.⁶⁶ And it also provides the authority render decision within 30 days for the complaint lodged to it.⁶⁷

⁶² Supra note 19, Article 3/5

⁶³ Supra note 19

⁶⁴ Supra note 29

⁶⁵ Supra note 19, Article 11

⁶⁶ Ibid, Article 11/1

⁶⁷ Ibid, Article 11/2

The draft Industrial Pollution Prevention Regulations under Article 11 provides public compliant mechanisms in order to facilitate this mechanism under the proclamation in detail. Accordingly, it obliged the competent environmental organs to prepare mechanism to respond to complaints concerning pollutions.⁶⁸ This draft regulation extends a one month period to notify the decision of CEO (one of which is the EPA) to 90 days.⁶⁹ In addition, it further provides a period of 30 days in order to any person dissatisfied by measures taken by CEO to submit a grievance notice to the head of the CEO in writing.⁷⁰ It is after exhaustion of a total of 120 days, that a person dissatisfied with the decision of the CEO, can lodge a compliant in a court of law within 60 days following the date of the decision.⁷¹

When we compare the provision under the EPCP, Article 11 and the provision under the DIPPR; Article 11, we can notice of the following contradictions;

- The DIPPR extends the maximum time period for the authority to notify its decision on the compliant, which is 30 days in the proclamation, where as the regulation extends it to 90 days.
- The proclamation allows the complainant to take the case when dissatisfied with the decision within 60 days from the date the decision is given or the deadline for decision has elapsed. Whereas, the regulation requires an additional grievance notice to be submitted to the head of the CEO in writing within 30 days of the issuance of the decision.
- The DIPPR allows a compliant to lodge in a court of law within 60 days following the date of the decision if not satisfied with the decision of CEO.

Even if such contradictions can be compromised by the rule of legal interpretation; the provision under the proclamation out weighs that are provided under the regulation due to their hierarchy, the incorporation of a prolonged procedure under the regulation is incorrect. Even if the period under the proclamation is not enough, the right way of doing or extending the period or the procedure is amending the proclamation.

⁶⁸ Supra note 37, Article 11/1

⁶⁹ Ibid, Article 11/2

⁷⁰ Ibid, Article 11/3

⁷¹ Ibid, Article 11/4

The application of public complaint mechanism in practice in EPA is not that much encouraging. First and for most, there is no a separate department or section to receive complaints.⁷² According to Air Pollution Control Team Leader, the flow or number of complaint lodging to the authority is few in number. That is due to lack of awareness of the society regarding the procedure.⁷³ The response of the authority when such complaint is lodged to it, to investigate the complaint with a tentative, a kind of 'ad hoc' committee from different departments of EPA, and come up with the possible solution to be followed by the polluters.⁷⁴ So far, we can not take any measures against those who resist performing what is recommended by the authority as a result of lack of approved ESs.⁷⁵ However, most industries against which a compliant is made respect what is recommended by the authority.⁷⁶

5.2.2.2 Judicial Remedies

So far in the previous sub topics, we have seen the administrative remedies available under the environmental laws, proclamations visa a vise their practical implementations in Ethiopia. Those administrative remedies are not adequate in order to protect the environment or the heath and wellbeing of the people that can be affected as a result of harmful activities. Therefore, various judicial remedies, having civil and criminal liabilities are available in Ethiopia.

The FDRE constitution guarantee access to justice right of every one which read as, 'every one has the right to bring a justice able matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.'⁷⁷ The constitution further expressed this right may also be sought by any association

⁷² Supra note 20

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Supra note 19, Article 11/2

representing the collective or individual interest of its members or by any group or person who is member of, or represents a group with similar interests.⁷⁸

All in all, the judicial remedies available for the violation of ER can be categorized into civil and criminal remedies.

5.2.2.2.1 Civil Liabilities for the Violation of ERs

As mentioned earlier, one of the major achievements that can be considered as a civil remedy is the issue of right to standing under Article 11 of EPCP. The right to standing may be used to lodge a complaint in order to get administrative measure or it may also be used to lodge a complaint to the court of law when a complaint is dissatisfied with the decision of the authority within 60 days from the date of the decision or the deadline for decision has elapsed.⁷⁹

In this regard, a practical example can be mentioned the case brought before a court in Action for professionals' Association (APAP) Vs EPA under (civil File No. 64902, at Federal First Instance court, decided on Tikemt 21, 1999 (E.C). the case was brought before the FFIC, after the plaintiff has submitted its complaint as per Article 11 of EPCP to the authority and dissatisfied by the response to the authority. Accordingly, APAP requested a relief from the court to order, EAP to take administrative and legal measures against those industries which pollute the Akaki and Modjo rivers, to direct EPA to clean the allegedly polluted rivers and to institute inspectors to ensure that the EPA takes the necessary measures. The EPA, as a defendant raises a preliminary objection that the right of standing under Article 11/2 shall not be a ground to sue the authority since it does not engage in activities polluting the environment. The court decides on the preliminary objection in favor of the EPA and makes the authority free from the relief requested by the APAP.

⁷⁸ Ibid, Article 37/2/a,b

⁷⁹ Supra note 19,Article 11/2

The APAP also took the case to Federal High Court objecting the decision of the lower level courts. (At civil Appeal file No. 51052) the court after deciding to hear the case, it rendered its decision on Sene 05/2000 E.C saying that the decision of lower court has no error of law or fact. The APAP took the case to Federal Supreme Court; Cassation bench, arguing that the decision rendered by the lower courts has error of law. However, the court under civil appeal cassation file No 39779 rendered the case inadmissible on Hidar 24, 2001E.C by saying the decisions of the lower court has no error of law.⁸⁰The decisions of the courts at every level might force us to raise question as to who is responsible for the protection of the environment or environmental rights. In the writer's opinion, the EPA shall take measures against those who pollute the Akaki and Mojo rivers.

In addition to this civil remedy available in the EPCP, any person who is victim of the activity of any other person can claim compensation as per the provisions of civil code dealing with extra contractual liability. The civil code under this section, stipulate the grounds for extra- contractual liability; offense/fault, strict-liability and vicarious liability.⁸¹ According to the civil code, 'whosoever, causes damage to another by an offence, shall make it good.'⁸²Even if the offences may result from an intentional act or in mere negligence or from an act or failure to act.⁸³

Accordingly, the code further stipulates that 'a person commits on offence where he infringes any specific and explicit provision of a law, decree or administrative regulations.'⁸⁴ From these provisions, one can say that the violations of environmental protection instruments, proclamations, regulations and guidelines or standards can make the violators liable to compensate the victim.

⁸⁰ See the attachments of decisions rendered by federal courts at each level, the Federal First instant court, the Federal High Court and the Federal Supreme court.

⁸¹ Article 2027, the Civil Code of Ethiopia, 1960

⁸² Ibid, Article 2028

⁸³ Ibid, Article 2029/1,2

⁸⁴ Ibid, Article 2035

Similarly, a person can be responsible strictly for the damage inflicted against bodily harm, as a result of dangerous activities one may be engaged in.⁸⁵ However, the ultimate result of these violations, as a civil liability is compensating with an equivalent or equal amount of money with that of the damage inflicted on the victim.⁸⁶ The problem in such case in the writer's opinion is problem of substantially proofing the damage in terms of money. That means, one may claim the expenses he spent to medication for the health but impossible to proof the damage against the environment that might cause health problems or any other discomfort in the future.

5.2.2.2 Criminal liability for the violation of ELs

Criminal liability for the violations of ELs in Ethiopia is one of the mechanisms to ensure the respect or implementation of ERs in general. Accordingly, the EIAP, EPCP and the criminal code of Ethiopia consist of provisions dealing about offence and penalties for the violation of ELs in Ethiopia.

The EIAP for instance, provides that any person who violates the provisions of the proclamation or any other relevant law or directives commit an offence and shall be liable without prejudice to the provisions of the penal code.⁸⁷ Accordingly, the proclamation prescribe that any person who implement projects without the authorization from the authority or relevant REAs or makes false presentations in an EISR shall be liable to not less than fifty thousand birr and not more than one hundred thousand birr.⁸⁸ In case where an offence committed by a juridical person, in addition to whatever penalties it may be meted with, the manager who failed to exercise due diligence shall also be liable to a fine not less than five thousand birr and not more than ten thousand birr.⁸⁹

Moreover, the criminal code also made the act contrary to environmental impact assessment such as, when projects require the authorization of the competent authority but implemented them without authorization, or making false statement concerning such

⁸⁵ Ibid, Article 2067 and 2069

⁸⁶ Ibid, Article 2090 and Article 2091

⁸⁷ Supra note 6, Article 18/1

⁸⁸ Ibid, Article 18/2

⁸⁹ Ibid, Article 18/4

assessment is punishable with simple imprisonment not exceeding one year.⁹⁰ Similar provisions have been found in the EPCP penalizing violations of the proclamation and relevant law as a result of discharging pollutants in the environment.⁹¹

Even if the law under operation allows criminal liability to be taken against any body who violates the environmental protection law, regulations, standards and criminal law of the country, no record is found in EPA as to measures taken against the violators in the court of law. ⁹²These shows, the implementation of ELs in Ethiopia is poor in this respect. It is not because, there is no act of violations of the ELs, rather the position of the authority; awareness shall prevail over criminalizing the violators.⁹³

However, in the writer's opinion, without disregarding the advantages of environmental education or awareness, the authority shall institute a complaint against the violators of environmental laws of the country since it can also facilitate the task of awareness though making people notice of the measures taken against the violators or by deterring them from getting involved in similar activities.

5.3 Conclusion and Recommendations

The concept of ERs and environmental protection is one of the controversial issues in the world. The controversies regarding ERs emanate from questioning the very existence of the rights itself, its substantive or procedural nature, its individual and group character and the likes.

Even if the international system has come up with the adoptions of various human rights instruments especially after the establishment of the UN Organization, most of these instruments adopted by the GA did not clearly recognize the ERs as a basic or fundamental rights of the human being.

⁹⁰ Article 521, The Criminal Code of Ethiopia, 2005

⁹¹ Article 12, Proclamation No. 300/2002

⁹² Supra note 20

⁹³ Ibid

It is during the 1972 Stockholm conference on human environment that the global community tried to formulate a declaration that addressed the issues of environmental protection and human rights. Then after number of binding as well as non binding international, regional and domestic environmental protection instruments adopted in the world. However, most of these instruments did not recognize ERs as basic or fundamental rights rather they call for the adoption of binding environmental rights protection mechanisms. As a result a significant number of instruments were adopted in different times in the world for the protection of the general environment that indirectly may have a significant role in the protection of ERs.

At the domestic level, various countries recognized the ERs of citizens under their constitutions and established mechanisms for the protection of the same. Likewise, in Ethiopia the concern given to the protection of the environment or natural resources dates back to the 15th century. That means, the 15th century Fetha Negast had provisions for the protection of the environment or natural resources.

Even if various efforts were made to protect the natural environment in different regimes in Ethiopia none of them could effectively protect the environment or the environmental rights of the people. Those early efforts to protect the natural environment or resources were characterized as they were dispersed and lacked comprehensiveness, mainly focused on the economical advantages of the natural resources than focusing on the well being or health of the society and there was no autonomous institution responsible for the protection and management of the environment.

It was after the EPRDF lead government came to power in 1991 that various environmental protection mechanisms were put in place in Ethiopia in order to protect environmental rights of the people. In this regard, the FDRE Constitution guarantees ERs of the people under article 44 of the constitution and the rights of the people to take part in developmental or environmental decision making under Article 43 and 92. These constitutionally guaranteed ERs of the people is further propagated by the EPE, the CSE,

and various proclamations such as EIAP and EPCP as well as international instruments adopted by Ethiopia.

Taking into considerations the lessons of the weakness of the previous efforts the government established the EPA as a major federal executive organ for the protection and monitoring of environmental activities in Ethiopia. The EPA as a major environmental protection or monitoring organ at federal level, a number of activities, duties and roles are expected from it for the effective implementation of the environmental laws in the country as well as guaranteeing the ERs in Ethiopia. The FDRE Constitution imposes a duty against any or all federal and states legislative, executive and judicial organs at all levels the responsibility and duty to respect and enforce the rights in Chapter three of the constitution, one of which is the provision dealing with ERs. Here it means, the EPA as an executive body shall respect and ensure or enforce the ERs. Moreover, the reestablishment proclamation, the EPE, the CSE and other EIA and EPCP impose duties against the EPA that help the protection and guarantee of ERs in Ethiopia. Among the various roles expected from the authority, the major ones are; protecting and ensuring the ERs, playing the role of leadership; establishing the strategies and standards, assigning EIs, installing sound technology, improving cooperation and coordination, participating the communities in decision making systems, promoting public awareness and environmental education and creating favorable environment by ensuring the sustainable use of the natural resources.

As we have seen the practical applications of the roles, duties and responsibilities of the EPA to guarantee, protect and implement ERs, we can conclude that the authority could not effectively discharge what are expected from it to that effect, guaranteeing and protecting the ERs. That means the constitutionally guaranteed ERs of the people, the right to access to information, the right of the public to participate in environmental decision making and access to justice are not fully respected since the people is still leave in polluted environment. The reasons for such condition are partly attributed to the internal problems of the authority and partly to external matters.

Among the external challenges that the EPA faces while discharging its roles and duties are problems attributed to law is the major. That means, even if the FDRE Constitution stipulated that enacting laws for the utilization and conservation of land and natural resources under the jurisdiction of the federal government and the management of the same in accordance with the federal laws to the Regions, the constitution fails to demarcate where the jurisdiction of environmental protection shall lie. This means, as we understand easily, enacting laws for the utilization and the conservations of natural resources or managing the same in accordance with the federal laws does not necessarily mean the protection of the environment as a whole since environmental protection can include the human factor/culture of the society in addition to natural resources. As a result of lack of clear constitutional demarcations regarding environmental protection, the EPA does not monitor REAs due to their autonomous status in their respective regions.

The other challenge that can be categorized into the legal aspect problem is the power of the EPA enumerated in the reestablishment proclamation no 295/2002 regarding jurisdictions. Accordingly, the proclamation states that where projects are subject to the federal licensing, execution or supervision or where they are likely entail interstate impacts, the EPA is mandated to review, and approve the EISR of the project proponents. However the same proclamation or the EPCP does not provide the jurisdiction in similar manner regarding the control of environmental pollution. As a result, the EPA does not take measures against pollutants licensed by regional states whatever the nature of the pollution might be. What has been done by the Council of Ministers regarding such gaps in the law is rectifying it by providing provisions in the draft industrial pollution control regulation which is wrong in the writers opinion since the regulation deals with a new issue on which the proclamation is silent.

The other similar problems that hamper the EPA from discharging its roles , duties and responsibilities in the protection and guaranteeing of ERs are, the ways as to how the power and functions of the authority is framed in the reestablishment proclamation, contradictions between the EPCP and the draft industrial pollution control proclamation and lack of cooperation and coordination among the EPA and REAs as well as other

sectoral environmental institutions both at federal and regional levels. When we see the powers of the EPA, most of the provisions under the reestablishment proclamation do not grant adequate power to the authority to take measures against the violator of environmental laws or provisions, standards and regulation. Like wise when we see the cooperation and coordination among competent agencies, we can say that it is so weak and lack legal bondages.

The other challenges and problems faced by the EPA having internal characters are the issue of lack of economical capacity, lack of skilled manpower, inadequate infrastructure such as laboratories and lack of commitments can be mentioned as the majors. As a result of both internal and external challenges and problems the authority can not effectively protect and guarantee the ERs of the people. The overall failure of the authority in the implementation of environmental policies, conservation strategies, laws, international agreements as well as environmental standards can be explained by:

- Contradictions or Conflicts of laws that the constitution fails to demarcate the issue of environmental protection clearly to the jurisdiction of either to the federal or to regional states.
- Lack of adequate environmental awareness at all levels; at the federal, regional and societal levels regarding environmental protection and ERs.
- Lack of commitments of the authority in monitoring the implementation of conditional or an approved EIAR, in assigning environmental inspectors on permanently basis, in providing incentives and punitive measures for the dissemination of sound or best technologies and practices in the developmental activities as well as activities harming the natural environment.
- Failure of the EC to meet regularly and review or approve what are prepared or formulated by the authority as a guidelines for the evaluation of EISR of proposed projects as well a the ESs for the effective implementations and monitoring of the same of the EIAP and EPCP.
- The weak or non establishment of environmental units that has to monitor the compliance of environmental laws within the institutions. Only few institutions

at federal level have established such environmental units however there is no developed requirements for the unities.

- Weak linkage or bondage among the EPA and the REAs as well as other sectoral institutions both at federal and regional levels which one way or the other engaged in environmental protection activities.
- Weak or unstable environmental agencies or institutions at regional levels.
- Failure of the authority to maintain its workers and fill vacant positions in the authority.
- Limitations in accessing environmental information and weak public participation in environmental decisions making.
- In abilities to determine the exact amount of damages suffered by the victims as result of violation of environmental laws or standards of the country.
- Non-establishment of complaint receiving section within the authority.
- Failure of the authority to determine the requirements of experts who shall prepare the EISR of the project proponents.

Therefore, in order to make the ERs of the people respected, protected and guaranteed, much is expected from the government, the authority, the society and other institutions at federal and regional levels as a matter of fact that the issue of environmental protection should not be the task of a single institution. As a result, the writer would like to recommend the following points to protect, guarantee and implement the ERs of the people in effective manner. These are,

1. Recommendations to the Government,

- In order to the authority protect and monitor the constitutionally guaranteed ERs ,the government should clearly stipulate, in black and white ,as to whose jurisdiction is the protection and monitoring the implementation of environmental rights lies, federal or regional.
- In addition the government should assist the tasks of the authority by removing contradictions in laws and by paying the necessary attention to the protection of environment
- The EC should also discharge its role on timely basis in approving the guidelines and standards formulated by the authority which can be used to

monitor the compliance or otherwise of environmental laws in the country or the power given to the EC to approve ES and guidelines prepared by the authority should be left to the authority for the effective implementations of environmental laws.

- The government should set the legal bond to the cooperation and coordination between the EPA, REAs as well as other institutions in spite of the fact that the issue of environmental protection can not be left to a single institution. As a result, the task of the REAs and other institutions should be subject to the watchdog activities of the EPA otherwise letting them autonomous in environmental matters could lead to a devastating results in country like Ethiopia where there is no strong regional environmental office to monitor the activities harmful to the environment or to the health and wellbeing of mankind.
- The government should extend the power of the EPA to take measures against the violators of environmental laws since the power under the reestablishment proclamation are not adequate and framed in a weak manner which made the authority incapable to take measures against the violators of environmental laws.
- In order to protect the ERs of the people, the government should establish a system or law as when ,how, and what kinds of information should be accessible to the people, active or passive information, regarding the environment and as to how and when they can participate in environmental decision making.
- In addition to the administrative complaint mechanisms in environmental matters, an institution like ombudsman should have power to take cases of environmental law violations before the administrative agencies or to the ordinary courts by representing the interests of the public at large since the public might be reluctant, ignorant or unaware of their rights or the devastating nature of the violations. In addition it would be better for the government to establish specialized environmental courts to see cases of environmental nature.

2. Recommendations to the Authority

In addition to what are recommended to the government, the EPA as a major environmental protection organ should take the following points into consideration in order to discharge its roles to guarantee and protect environmental rights. These are:

- First and foremost, the protection of environmental rights requires informed members of society who are concerned about their rights. Unless the society is equipped with the necessary, accurate, sufficient and adequate information, they can not play their part in the protection activities. So that the authority should provide environmental education and awareness to the general public with appropriate mechanisms like using Mass Medias regarding their rights.
- The EPA should review or update the existing environmental policies, strategies, action plans and make recommendations on time for the adjustments of the same for effective implementations and to avoid contradictions and confusions.
- The EPA should be devoted in monitoring the implementation of the EPE, the CSE and other legislations by providing the necessary establishment expected from it such as putting the necessary requirements for the environmental units, for those experts who shall prepare the EISR of the project owners, assigning of EIs in addition to fulfilling the necessary infrastructure and skilled man powers
- The EPA should provide the necessary environmental awareness and education and information to the public in the language the society can understand and shall be accessible in appropriate mechanisms
- The EPA should introduce incentives and punitive measures against those who introduces the sound technologies and engaged in activities harmful to the environment respectively.
- There has to be a separate section within the authority to receive complaint and decide the issue brought before it.
- It should be equipped with the necessary skilled manpower as well as the infrastructures for the effective implementations of the environmental laws.

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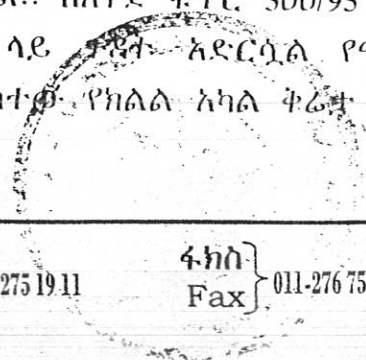
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በ30 ቀናት ውስጥ ውሳኔ መስጠት እንዳለበት በዚህ ጊዜ ውስጥ ውሳኔ ካልሰጠ ወይም በውሳኔው ላይ ቅሬታ ካለ አመልካቹ ወገን ለፍ/ቤት ክስ ማቅረብ እንደሚችል ተደንግጓል። ሁለቱን ንዑስ አንቀጾች አጣምረን ስናይ የምንረዳው አመልካቹ ወገን በክስ አድርጎልላል ባለው ወገን ላይ ባለስልጣን ተገቢውን ውሳኔ ካልሰጠላት ያንኑ በክስ ያለውን ወገን በፍ/ቤት ለመጠየቅ የሚችልበትን ሁኔታ ለመመቻቸት የተቀመጠ አንቀጽ እንጂ በክስ በተባለው ወገን ላይ ለቀረበለት ቅሬታ ምላሽ ያልሰጠውን ወይም ተገቢ ውሳኔ ያልሰጠውን ባለስልጣን ለመክሰስ የተቀመጠ አንቀጽ አይደለም።

ስለሆነም ከግሽ ይህ አንቀጽ በተከሰቱ ላይ ክስ ለማቅረብ መብት ይሰጠናል ቢልም ፍ/ቤቱ ይህ አንቀጽ ለከፍተኛ ይህን ዓይነቱን መብት የማይሰጥ ሆኖ ስላገኘው የተከሰቱን ተቃውሞ ለመቀበል ክሱን ውደቅ አድርጎታል።

ወጪና ኪሳራ ግራ ቀጥ ይቻቻል ተብሎ መዘገቡ ተዘግቷል።

የዳኛ ፊርማ: ስመኝ ሸራራው

ሃ.ታ
 ማ





በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፌዴራል ከፍተኛ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC
OF ETHIOPIA
FEDERAL HIGH COURT



ቁጥር No. _____

ቀን 10/11/2000 ዓ.ም.

Date 200 _____

አዲስ አበባ /Addis Ababa

ገጽ 06

የመ/ቁ. 11052

ቀን 2000 ዓ.ም.

ዳኛ :- ሊገሰት ለገሰት

ይገባኝ ባይ/ዎች/ :- ከገሰት ለገሰት ግንባታ ማህበረ-ሰብ - ወንጌል ካሳ

መልስ ሰጭ/ዎች/ :- የገሰት ለገሰት ግንባታ ማህበረ-ሰብ - ወንጌል ካሳ

መዝገቡ የተቀጠረው የግራ ቀኝን ክርክር መርምሮ ፍርድ ስመስጠት ሲሆን በዚህ መሠረት ፍ/ቤቱ መዝገቡን መርምሮ ተከታዩን ፍርድ ሰጥቷል።

ፍርድ

ፍርድ ቤቱ የቀረበውን የይገባኝ ቅሬታ መርምሮ መልስ ሰጭ/ዎችን/ የሚያስቀርብ ሆኖ በማገኘቱ መልስ ሰጭ/ዎችን/ በመጥራት ግራ ቀኝን ስኬታዊነት ሰጥቷል። ከዚህ በኋላም የግራ ቀኝን ክርክር የሥር ፍ/ቤት ከሰጠው ውሳኔና ከሕግ ጋር በማገናዘብ መርምሯል።

እንደመረመረውም የሥር ፍ/ቤት በፍ/ብ/መ/ቁ. 64903 ወንጌል ካሳ ቀን 1999 ዓ.ም. የሰጠው ውሳኔ የሚነቀፍበት የሕግም ይሁን የፍሬ ነገር ግደረት ያላገኘን ስለሆነ ይገባኝን ባለመቀበል ይህንኑ 1993 በፍ/ብ/ሕግ ሥ/ሥ/ቁጥር 348/1/ መሠረት ስጽገኗል።

በዚህ ፍርድ ቤት ክርክር ሲደረግ በመልስ ሰጭ/ዎች/ ላይ የደረሰ ኪሣራ ካስ ዝርዝርን የማቅረብ መብት ተጠብቋል።

ትእዛዝ

የሥር ፍ/ቤት ውሳኔ የፀና ስለሆነ ይህም እንዲታወቅ ለሥር ፍ/ቤት እንዲገለጽበት ታዟል። በመዝገቡ ላይ የሥር ፍ/ቤት ውሳኔ ሳይፈፀም ታገዶ ለገሰት ለገሰት የሕግ ትእዛዝ ካስ በዚህ ትእዛዝ ተነስቷል። ይዳፍ።

መዝገቡ ተዘግቷል። ወደ መዝገብ ቤት ይመለስ።

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የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ጥበቃ ሚኒስቴር

የሰ/መ/ቁ. 39779

ጉዳይ 24 ቀን 2001 ዓ.ም.

- ዳኞች:- 1. አቶ ተገኔ ጌታነህ
- 2. አቶ መስፍን አቁበዮናሰ
- 3. አቶ አብዱራሂም አህመድ

አመልካች:- አክሽን የባለሙያዎች ማኅበር - ነገረ ፈጅ አቶ ወንጌል አባተ

መልስ ሰጪ:- የኢት. ፌዴራላዊ ዲሞክራሲያዊ የአካባቢ ጥበቃ ባለስልጣን

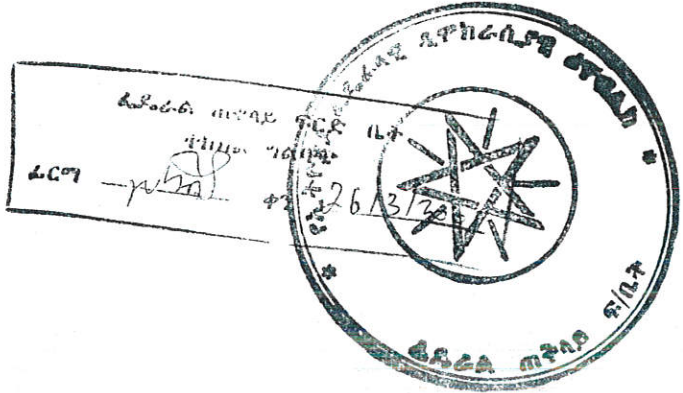
ለዚህ ችሎት ነሐሴ 02 ቀን 2000 ዓ.ም. በተፃፈ አቤቱታ በፌዴራል ከፍተኛ ፍ/ቤት _____ ችሎት በመ/ቁ. 57052 በሰኔ 05 ቀን 2000 ዓ.ም. የተሰጠው ውሳኔ መሠረታዊ የህግ ስህተት አለበት በማለት ጉዳዩ ለሰበር እንዲታይ ማመልከቻ ቀርቧል። አንድ መዝገብ ለሰበር ችሎት ሊቀርብ የሚችለው ቅሬታ የቀረበበት ውሳኔ መሠረታዊ የሕግ ስህተት የተገኘበት እንደሆነ ብቻ መሆኑን ዓዋጅ ቁ 25/1998 አንቀጽ 22/1 ይደነግጋል። በዚህ መሠረት ችሎቱ አቤቱታውን መነሻ በማድረግ የሕግ ስህተት ተፈጽሞባቸዋል የተባሉትን ውሳኔዎች አግባብ ካለው ሕግ እና በየፍርድ ቤቱ ከተደረጉ ክርክሮች ጋር መርምሮአል።

ት ዕ ዛ ዝ

በቀረበው ጉዳይ መሠረታዊ የሕግ ስህተት ተሰርቷል ለማለት አልተቻለም በመሆኑም መዝገቡ ለሰበር ችሎት አይቀረብም ብለናል። ይፃፍ።

የማይነበብ የሦስት ዳኞች ፊርማ አለበት።

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17. Offences and Penalties

The offence and penalty provisions of the Criminal Code on environmental pollution shall apply for the enforcement of these Regulations.

19. Effective Date

These Regulations shall come into force as of the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, ----day of ----, 2008.

MELES ZENAWI

**PRIME MINISTER OF THE FEDERAL DEMOCRATIC REPUBLIC OF
ETHIOPIA**

5.5.4 The Daft Industrial Pollution Control Regulations

Industrial Pollution Prevention Regulations

These Regulations are issued by the Council of Ministers pursuant to Article 5 of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No.4/1995 and Article 20 of the Environmental Pollution Control Proclamation No.300/2002.

1. Short Title

These Regulations may be cited as the “Industrial Pollution Prevention Regulations No.../2008”

2. Definition

In these Regulations:

1. “Competent licensing agency” means the Ministry of Trade and Industry or a regional bureau of trade and industry, as the case may be;
2. “Competent environmental organ” means any federal or regional environmental protection agency;
3. “Person” includes any natural and any juridical person.
4. “Authority” means the Environmental Protection Authority established pursuant to Proclamation No. 295/2002;
5. “Existing Factory” means a factory that operated or a project that applied to obtain license to build a factory before or on the date of entry into force of these Regulations;

3. The owner or legal representative of any factory who wishes to challenge the appropriateness of the order issued pursuant to sub article 2 of this Article may, within 30 days, submit a written complaint to that effect to the competent environmental organ.
4. The competent environmental organ shall, within 30 days, issue its decision on the complaint submitted to it in accordance with sub article 3 of this Article.

7. Suspension or Cancellation of a license

1. The competent environmental organ shall decide to suspend or cancel the license of a factory whenever it finds out that the conditions of the license set in accordance with these Regulations have not been complied with.
2. The competent environmental organ shall, despite the factory's observance of the requirements set under the provisions of these Regulations, decide to suspend or cancel a license if it has reason to believe that the continuation in operation of the factory will entail serious pollution.
3. The competent environmental organ shall, when it decides to suspend or cancel the license in line with sub articles 1 and 2 of this Article, notify the competent licensing agency its reason and the time when it shall be implemented. The licensing agency shall ensure the enforcement of the decision accordingly.

3. Scope of Application

The provisions of these Regulations shall apply to a factory which is in an industrial sector listed in a directive issued under these Regulations or has been notified by the competent environmental organ, until it ceases to operate or until such additional time as has been determined by the competent environmental organ has passed after it ceases to operate.

4. General Obligations

1. A factory subject to these Regulations shall prevent or, if that is not possible, shall minimize the generation of every pollutant to an amount not exceeding the limit set by the relevant environmental standard and dispose of it in an environmentally sound manner.
2. Any factory has the obligation to handle equipment, inputs and products in a manner that prevents damage to the environment and to human and animal health.
3. If any factory loses a dangerous pollutant, input or product it shall immediately notify the competent environmental organ.
4. Even if the industrial sector of a factory is not listed in a directive issued pursuant to Article 3 of these Regulations, the competent environmental organ may require it to take appropriate measures in order to eliminate any risk that might emanate from its operation.

15. Existing factories

1. An existing factory that is in an industrial sector included in a directive that emanates from these Regulations shall, within a maximum of 5 years, fully comply with the provisions of these Regulations.
2. Every existing factory that is in an industrial sector subject to these regulations shall, with a view to complying with these Regulations, undertake environmental audit, and prepare and implement an environmental management plan.
3. The competent environmental organ shall, if it is not possible to avoid the adverse impacts likely to emanate from the operation of the factory within the time limit specified in sub article 1 of this Article, take any measure it deems appropriate to avoid the adverse impacts. The decision may include either the relocation or closure of the factory.

16. Jurisdiction

1. It shall be the duty of the Authority to implement these Regulations if it is the mandate of the federal government to grant a license to the factory.
2. It shall be the duty of the regional competent environmental organ to implement these Regulations if it is the mandate of the regional government to grant a license to the factory.

5. The competent environmental organ shall issue a written order to a factory that it believes will entail substantial damage by transgressing the limit set by the environmental standard to take measures to remove the risk.

5. Licensing

The competent licensing agency can grant a license to a factory only upon receipt of a written statement from the competent environmental organ to the effect that the effluent is not a pollutant or will not exceed the limit set under the relevant environmental standard and is thus permitted to release it into the environment.

6. Varying Licensing Requirements

1. The competent environmental organ may order a variation of the conditions of a license that has been granted whenever;
 - a. the factory introduces change in its operational technique or undertakes an expansion,
 - b. the factory does not commence its operations within the set time limit,
 - c. an unforeseen fact of serious implication is realized.

2. Any order issued pursuant to sub article 1 of this Article shall state the reason for the issuance of the order and the time limit within which it shall be implemented.

4. Any factory that wishes to challenge the appropriateness of the decision issued pursuant to Sub article 3 of this Article may, within 30 days of its knowledge of the decision, submit a written complaint to the competent environmental organ.
5. Within 30 working days from the date of receipt of any challenge submitted to it according to sub article 4 of this Article, the competent environmental organ shall amend, cancel or uphold the decision that it had passed.

8. Incentive

1. Any equipment or spare-parts thereof destined to prevent the generation of a pollutant or to treat a pollutant shall be exempted from all taxes.
2. The incentive granted pursuant to sub article 1 of this Article shall not limit the enjoyment of rights provided in other laws.

9. Emergency Response System

1. Any factory subject to these Regulations shall prepare and implement an emergency response system.
2. The emergency response system prepared pursuant to sub article 1 of this Article shall be notified to the competent environmental organ by the factory.

10. Monitoring of Environmental Safety

1. A factory subject to these Regulations shall assign professionals that are in charge of ensuring compliance with these Regulations.
2. The competent environmental organ may, if it deems it necessary, apply the provision of sub article 1 of this Article even if the industrial sector of the factory is not listed in a directive issued pursuant to Article 3 of these Regulations.

11. Public Complaints

1. The competent environmental organ shall prepare a mechanism to respond to complaints concerning pollution.
2. The competent environmental organ to which a complaint on pollution has been submitted shall investigate the case and take measures and notify to the complainant within 90 days.
3. Any person dissatisfied by the measure taken in accordance with sub article 2 of this Article may submit a grievance notice to the head of the competent environmental organ in writing within 30 days of the issuance of the decision. The head of the competent environmental organ shall issue his decision within 30 days following the receipt of the grievance notice.
4. The complainant may, if not satisfied by the decision issued according to sub article 3 of this Article, lodge a complaint in a court of law within 60 days following the date of the decision.

13. Information on Pollution Management

1. Any factory subject to these Regulations shall keep written information describing the equipment and input it has used, the product it has produced, the pollutant it has generated, and the disposal mechanisms it has used to dispose of the pollutant and other related matters.
2. Every factory shall submit to the competent environmental organ an annual report describing how it is complying with the provisions of these Regulations.
3. The Authority shall issue a report on the amount, source, movement and disposal of pollutants in Ethiopia at least every five years.

14. Access to information

1. Any person has the right to request and obtain information on pollution from any factory or from the competent environmental organ without the need to demonstrate a vested interest on the matter,
2. The information requested pursuant to sub article 1 of this Article shall be made available within two months even if only partially because it is in the process of being collected or collated.
3. A person dissatisfied because no response has been given or is not satisfied by the response given has a right to submit a grievance notice to the competent environmental organ, and may then take the case to a court of law if he is still not satisfied.

Declaration

I, hereby, declare that this thesis is my original work and has not been presented for a degree in any other university and all the relevant sources of materials used for the thesis have been duly acknowledged.

Name: Dereje Damte

Signature: 

Date of Submission: _____

Confirmation

The thesis has been submitted for examination with my approval as a university advisor.

Name: Mekete Bekele (Assistant Professor)

Signature: _____

Date: _____