THE LIBERALIZATION OF STANDING REQUIREMENTS AND THE BROADENING OF GROUNDS OF JUDICIAL REVIEW IN ENVIRONMENTAL MATTERS IN ETHIOPIA

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Abstract

Administrative agencies, including environmental agencies, need wide discretionary powers in order to realize their purposes efficiently and effectively. However, conferring such discretionary powers to the administrative body may lead to abuse of power, unless the law provides mechanisms to control such abuse or failure to carry out regulatory responsibilities. In environmental cases, abuse of power and failure to exercise regulatory power may go unchallenged despite the ''diffused interest'' that citizens can invoke to initiate judicial proceedings. It thus, becomes important to revisit the issue of standing with respect to the rights of citizens to bring court actions against violators of environmental laws and regulations as well as challenging the regulatory decisions. The liberalization of standing requirements and providing a broad legal basis for judicial review actions will be crucial measures in ensuring the effectiveness of environmental regulations especially in holding the relevant regulators accountable for their decisions in the manner that promotes administrative justice. The present article seeks to examine the adequacy of the legal framework put in place for the liberalization of standing to initiate judicial review to promote administrative justice in environmental matters in Ethiopia.

Key words: Liberalization, standing, public Interest Litigation, judicial review, administrative justice

INTRODUCTION

Environmental agencies are among the administrative agencies that are vested with the three powers of the government, viz., executive, rule-making and adjudicatory. Although administrative agencies need wide power and discretion in order to realize their purposes efficiently and effectively[1], conferring such a wide range of powers to a single regulatory body may lead to abuse of power.[2] There may be instances where regulatory agencies fail to perform their statutory obligations.[3] To guard against such instances, it becomes imperative that the necessary controlling mechanisms to address the possible administrative inaction and the disuse and abuse their statutory powers are put in place.

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[1]Merhatibeb Teklemedhn (2010), '*Administrative Power of the Federal Environmental Protection Authority in the Protection of the Environment: The Law and the practice*', MA thesis, AAU, College of Development Studies, Institute of Environment and Development (Unpublished), p. 27.

[2]Yidnekachew Ayele (2014), '*Parliamentary Control of Administrative Agencies in Ethiopia: The Challenges and Implications for Administrative Justice and Good Governance*', in Ethiopian and Wider African Perspectives on Human Rights and Good governance (ed. Wolfgang Benedek, Christian Pippan, Taddesse Kassa Woldesadik and Solomon Abay Yimer), p. 63.

[3] James R. May (2003), '*Now More than Ever: Trends in Environmental Citizen Suits*', Widener L. Rev., Vol. 10, p. 30

Therefore, in addition to the role that the legislature may play in controlling administrative agencies,[4] there should be a mechanism whereby their actions or inactions can be reviewed and subject to the supervisory jurisdiction of courts (i.e. judicial review) in the way that do not affect the principle of separation of power, while promoting administrative justice.[5] Especially in environmental cases where everyone has a ‘‘diffused interest’’ in the protection of the environment, the law needs to confer a broad right of action on any citizen to bring a court case not only against the polluter but also against the regulators for their failure to perform statutory functions. Such rules providing a liberalized standing rights and a broad judicial review possibility of administrative decisions in environmental cases in return play an important role in ensuring that the command and control regimes are properly regulated and the relevant regulators are made accountable for their decisions in the manner that promotes administrative justice.[6]

The article is thus aimed to examine how far the issues of standing and judicial review rights have been relaxed in Ethiopia in the manner that led to Public Interest Litigation (PIL) and promotes administrative justice in environmental cases. To this effect, the article employed analytical and comparative approaches where the relevant

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4 For more information on parliamentary control of Administrative Agencies, see generally Yidnekachew, supra note 2, pp. 61-72.

5 Wolf S. et al (2002), Principles of Environmental Law, 3rd ed., Cavendish Publishing Limited, London, pp. 11-12.

6 David Sive (1995), ‘Environmental Standing’, Nat. Resources and Env’t. J., Vol. 10, p. 51.

legal and policy documents are examined along with court cases and other countries' experiences.[7]

The first section presents the role of having a broad environmental standing in promoting administrative justice and thereby enhance environmental protection. It also presents the experience of other countries to show how the issue of broad standing in environmental cases is a widely accepted phenomenon. Section two examines whether a broad basis for judicial review of environmental related administrative decisions have been recognized under Ethiopian environmental laws in the manner that promotes administrative justice, focusing on the two major environmental laws of the Country viz. the Environmental Pollution Control (EPC) and Environmental Impact Assessment (EIA) Proclamations, after providing a general overview as to the power of courts to review administrative decisions in Ethiopia. Section three examines whether the issue of citizen standing in environmental proceedings have a constitutional or legal bases in Ethiopia. To this effect, it analyzed the relevant provisions of the FDRE Constitution and the EPC Proclamation, where the later expressly recognized citizen standing right to sue the polluter(s), saving the associated gaps therein.[8] Section four examines the unfinished business of liberalization of environmental standing in Ethiopia. It tried to identify the

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[7] Given the common law origin and subsequent developments of the concepts of 'standing' and 'judicial review' in general and in environmental context in particular, the writer opts to focus on the experiences of common law countries, believing that such countries are known by their liberalization of citizen standing and a broad basis for judicial review of administrative decisions in environmental cases, where countries like Ethiopia can take important lessons.

[8] Environmental Pollution Control Proclamation (Proclamation No. 300/2002, Fed. Neg.Gazetta 9th Year, No. 12) (Hereinafter, EPC Proc.), Art 11.

gaps and the under researched issues of citizen standing in environmental proceedings in Ethiopia, by taking into consideration similar developments in other jurisdictions with a view to take lessons there from. It also examines whether the law provides favorable conditions to effectively promote Public Interest Litigation (PIL) in environmental cases. Section five examines whether citizens have a standing to challenge the constitutionality of environmental laws in Ethiopia, focusing on those secondary legislations that could be enacted by environmental protection organs. Finally, the article offers a concluding remark.

1.CITIZEN'S ACTION AND LIBERALIZATION OF STANDING IN ENVIRONMENTAL PROCEEDINGS

The concept of citizen's action or PIL is one which presumes that citizens generally should be able to bring a court case or judicial review actions in the public interest without the need to show any individual harm over and above that of the general community.[9] Thus, such litigation is a legal action initiated in a court of law by any person, without the need to show any vested interest, for the enforcement of the public or general interest in which the public as a class has a pecuniary or other interest by which the legal rights or liabilities are affected.[10]

9 Wolf et al, supra note 5, p. 392.

10 Black's Law Dictionary, 1990 (7th edit.).

PIL has ‘‘a vital role in the civil justice system in that it could achieve those objectives which could hardly be achieved through conventional private litigation’’.[11] This is especially true in enforcing collective or diffused rights or interests like that of environmental right.[12] By doing so, PIL offers a ladder to justice to disadvantaged sections of society who are either unaware of their right or lack capacity to approach the courts to exercise their right. PIL could also contribute to good governance by keeping the government accountable.[13] However, relaxation of rules of standing is an extremely important aspect of PIL and makes us each other’s keeper.[14]

Given the fact that a healthy/clean/safe environment is a common good that benefit large number of people, and victims of the violation of environmental rights are often too disadvantaged to be able to take court cases by themselves or to have due legal representation, allowing PIL in environmental cases is quite important to ensure the right of citizens to access to justice. This will also create the opportunity where the environmental regulatory regimes are properly regulated through public participation, which in turn enhance the transparency and accountability of the process.[15]

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11 Surya Deva (2009), ‘Public Interest Litigation in India: A Critical Review’, Civil Justice Quarterly, Vol. 28, Issue 1, p. 19.

12 Id, p.20

13 Id, pp. 19 & 24.

14 Rose Mwebaza et al (2009), ‘Environmental Crime in Ethiopia, Situational Report’, Institute for Security Studies, p. 10.

15 Sisay Alemahu (2012), ‘Action Professionals Association for the People Vs. the Ethiopian Environmental Protection Authority: A Torchbearer or a Lost Opportunity?’, in Essay on Environmental Rights, Ethiopian Human Rights Law Series, AAU, School of Law (ed. Girmachew Alemu), p.70.

Laws on standing vary from country to country and even among the different jurisdictions of the same country, ranging from stricter standing requirement to liberalized one.[16] Despite the existence of many scholars who supported an extended or liberalized environmental standing, there are also some who argued for stricter standing requirements. Critics of increased standing argued that providing a relaxed standing will inundate the court system with frivolous lawsuits and also threatened the separation of power.[17]Actually, standing as a doctrine is a basic safeguard for the separation of powers, ensuring that courts do not decide cases that should be addressed by the legislative branch or through political processes and thereby serves as a gatekeeper to any citizen suit against a regulatory agency.[18] However, old-fashioned and overly strict standing

[16] For instance, in India environmental standing is more liberalized than USA where in the latter the issue is subject to the three standing test, termed *Lujan test*: 1) injury in fact- the plaintiff must claim a personal injury; 2) Causation- the injury must be fairly traceable to the allegedly wrongful conduct of the defendant; and 3) Redressability- the court must be able to redress the injury. In addition to the above standing test, the court rarely used “zone of interest” standard, a prohibition against filing suits for generalized grievances, or bringing a claim on behalf of a third party (See David S., *supra note* 6, p. 53.). Within America, there are also states that have more stringent standing requirement than the federal one. See generally Daniel W. (2006), ‘*Impediments to Environmental Justice: The inequities of the Maryland Standing Doctrine*’, University of Maryland Law Journal of Race, Religion, Gender and Class, 6 UMDRRGC 491.

17 See generally Antonin Scalia (1983), ‘The Doctrine of Standing as an Essential Element of the Separation of Powers’, 17 SUFFOLK U. L. REV. 881.

18 Daniel W., supra note 16, p. 491. Here it seems that the issue of ‘separation of power’ only works in relation to ‘justiciability’ rather than ‘standing’. However, it should be noted that ‘standing’ is among the five major ‘justiciabiliy doctrines’ developed through prudent judicial determination in the United States, along with the other four doctrines viz. prohibition of advisory opinion, ripeness, mootness and the political question doctrine. See Erwin Chemerinky (2005), Constitutional Law (2nd ed.), p. 30. See also Yemane Kassa (2015), ‘Dealing with Justiciability: in Defense of Judicial Power in Ethiopia’, Mekelle University Law Journal, Vol. 3, No. 1, p. 47).

requirements ensure that the gates to the courthouse remain locked to many individuals who would have standing and thereby become a significant barrier to environmental justice.[19] In this regard, Dejene for example noted that limiting environmental standing only to ''a person whose interest is (to be) affected by a given action or in action may be an impediment to effective protection of the environment.''[20]

Furthermore, it is argued that conferring a broad right of action on any citizen to secure judicial review of administrative decisions in environmental matters is an important tool to ensure that agencies properly enforce the statutes under which they operate. By doing so, the citizen suit provision greatly expand the ability of environmental advocates to challenge actions threatening the environment and thereby promotes both administrative justice and enforcement of environmental laws.[21]

The experience of certain countries also reveals that the issue of environmental standing has been recognized in its broader sense. For instance, in Australia; the New South Wales and Queens land jurisdictions have largely ''open standing'' for judicial review and enforcement of most environmental law matters.[22] In USA, the Clean Air Act of 1970, the Clean Water Act of 1972, the Endangered species Act of 1973, Compensation and Liability Act of 1980 and other subsequent environmental acts

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19 Felicity Millner (2011), 'Access to Environmental Justice', Deakin Law Review, Vol. 16, No. 1, p. 197.

20 Dejene G. (2013), 'Remedies for Environmental Wrong-doing in Ethiopia', Mekele University Law Journal, vol. 2, p. 18.

21 Steven Ferry (2004), 'Environmental Law: Examples and Explanations', 3rd Edition, ASPEN Publishers, New York, p. 228.

22 Felicity M., supra note 19, p.197.

included citizen friendly judicial review requirements[23] although some questioned the constitutionality of such citizen suit provisions by arguing that they are against the constitutional ''case and controversy'' requirement of standing.[24] The Water Act also allows for the recovery of costs, including attorneys' fees, as an important incentive to pursue citizen suits.[25]

India is also known by its ''judicial activism'' in developing unique environmental jurisprudence. In India, the judiciary liberalized the concept of *locus standi* under environmental PIL and thereby empowered the people to approach the judiciary when the public environmental interest is harmed by either the action of the state, organization or individual.[26] Here, in addition to substantial modification of *locus standi* in environmental cases, the traditional restrictive procedural laws have themselves been substantially relaxed in PIL.[27] Moreover, countries like South Africa, Kenya, Denmark and England have liberalized environmental standing with different degrees. From the

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23 David S., supra note 6, p. 53. See also Daniel W., supra note 16, p. 493.

24 Id, p. 55.

25 Id, p. 51. Here, the Supreme Court interpreted the Art III ''case and controversy'' requirement, and make it subject to three testing (i.e. Julian standing test); 1) Injury in fact, 2) Causation, and 3) Redressability.

26 Surya D., supra note 11, p. 21.

27 Venugopal, K.K. (2000), 'Access to Justice: The Indian Experience', Hein Online - 57 Guild Practitioners 195, pp. 195-196.

aforementioned country experiences, the issue of broad environmental standing seems a widely accepted phenomenon.[28]

In summary, it should be noted that liberalizing standing right in environmental proceeding could serve as an important vehicle to translate diffused environmental interests into action, particularly during the inaction of regulatory organs.[29] Moreover, some argued that extended standing in environmental litigation allows the use of private resources to enforce environmental laws.[30]

Notwithstanding the benefits of liberalized standing for the promotion of environmental protection, it is however important to provide a mechanism that prevent the misuse or abuse of the standing right against the reputation or good will of a given industry or person, and thereby discourage frivolous lawsuits. In this regard, the law for example may provide the requirement of good faith (*bona fide*) to initiate PIL. Accordingly, the person instituting the court case in the name of PIL may be required to support his claim that the petition was brought in the 'public interest', by showing

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28 Dejene G. (2013), supra note 20, p.18-19. Moreover, the writer believes that the current worldwide proliferation of environmental concerns and the efforts to address such trans-boundary environmental problems (for example, the problem of global warming) can be effective when countries are willing to adopt liberalized environmental standing.

29 Id, pp.15-16.

30 See Duard Barnard (1995), 'Environmental Law for All: A Practical Guide for the Bossiness Community, the Planning Professions, Environmentalist and Lawyers', Impact Books Inc, Pretoria, p. 15; Han Somsen (1996), 'Protecting the European Environment: Enforcing EC Environmental Law', Blackstone Printing Ltd, UK, p. 152. See also Steven F., supra note 21, p. 228.

sufficient actual or potential 'public injury' that could justify the claim.[31] However, the law need to define what kinds of interests could be construed as 'public interest', when the environmental related interest is at issue.[32]

2.CHALLENGING REGULATORY DECISIONS OF ENVIRONMENTAL AUTHORITIES IN ETHIOPIA: A JUDICIAL REVIEW ACTION

2.1. THE POWER OF COURTS TO REVIEW ADMINISTRATIVE DECISIONS IN ETHIOPIA: AN OVERVIEW

With a view to lay a background for subsequent discussions on the issue of judicial review in environmental matters, it is generally important to examine whether Ethiopian courts have the power to review administrative decisions and exercising the same in the manner that promotes administrative justice.

In Ethiopia, the concept of 'justiciability'[33] is actually not clear and raises series of issues. Given the lack of clarity of the Constitutional provisions on the issue coupled

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31Tsegai Berhane and Merhatibeb Teklemedhin (2009), 'Environmental Law, Teaching Material', Prepared Under the Sponsorship of the Justice and Legal System Research Institute, p. 127.

32 In this regard, the writer believes that the claim brought in the interest of protecting human health (current or/and future generation), biological diversity or in general the environment shall be considered as brought in the interest of 'public interest', so that to show actual or potential 'public injury'.

33 The concept of 'justiciability' is the cornerstone of judicial review, for it only a justiciable matter that can be subjected to judicial review (See I. Ellis John, 'Essential Administrative Law', (2nd ed., 2001), p. 9). Thus, generally, although its origin and scope may vary from country to country, justiciability can be

with the absence of an administrative procedure law to be referred in this regard, it is difficult to confidently argue that Ethiopian courts have an inherent power to review administrative decisions. Moreover, it is not easy to identify the instances that a given administrative decision may be excluded from the judicial scrutiny, since there are no clear guiding rules or factors used to determine the issue of justiciability.[34]

Art 37(1) of the FDRE Constitution[35] for example only provides 'justiciability' as one limit on judicial functions, without providing which matters are justiciable and which are not, and who determines the issue.[36] This lack of clarity coupled with the legislative

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considered as a doctrine which imposes a limit on judicial power to entertain cases (See Yemane, supra note 18, p. 49).

34 At this juncture, Dejene for example notes; in Ethiopia, it is not common to review administrative decisions by courts. This is so for two reasons. First, there is no clear legal framework authorizing courts to do so. Thus, courts lack clear mandate to review administrative decisions. Second, although there were opportunities to do so, some laws unfortunately failed to recognize courts' role to review administrative actions or inactions. In the end, he concluded that, the absence of administrative procedure law in the country plays great role in the absence of judicial review of administrative actions (See Dejene Girma (2014), 'Can Ethiopian Courts Make/Shape Environmental Policies? An Essay', Jimma University Journal of Law, Vol. 6, p. 131).

35 Art 37(1) of the 'Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995 (hereinafter the FDRE Constitution) state that '[e]veryone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power' [emphasis added].

36 Although as the Minutes of the then Constitutional Assembly shows, the term 'justiciable matter' has been inserted in Art 37(1) on the reason that there must be some administrative matters that may not be seen by 'judicial bodes', the Assembly failed to address which kinds of administrative matters are non – justiciable and who can determine them (See Minute of the Constitutional Assembly of the Transitional Government of Ethiopia, Vol. 5, December 01/4/1994, discussion of the Assembly on Art 37(1)) Moreover,

and cassation Bench's consistent support to the finality of administrative decisions would enable the executive to aggrandize its power space on the expense of the power of the judiciary. In this regard, in Ethiopia, there are significant numbers of 'ouster legislations' that provide 'finality clauses' and thereby divest judicial powers partially or totally, while denying the inherent power of the regular courts to review administrative decisions.[37] Moreover, in different instances, the Council of Constitutional Inquiry (CCI)[38] and Cassation Bench's decisions[39] have confirmed the finality clauses of such legislations,

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it is not clear that which organs of the government are legitimate to exercise judicial functions under the constitution, and whether the exercise of judicial power by 'other competent organ other than courts' make claims non-justiciable (See Yemane K., supra note 18 , pp. 51 & 52).

37 Id, p. 45 & 56. Here, such ouster legislations provide a 'finality clause' to the decisions of a given tribunal, the Board administering the agency or even to the decision given by an individual director, as the case may be. Moreover, such legislations divest judicial power partially or totally, while providing a finality clause with respect to the question of law, fact or both, or with respect to certain identified matters against which the aggrieved party cannot institute a judicial review action. In this regard, see for example, Urban Lands Lease Holding Proc. No. 721/2011, Art 29(3); Expropriation of Land Holding for Public Purposes and Payment of Compensation Proc. No. 455/2005, Art 11(4) ; Administration of Employees of the Ethiopian Revenue and Customs Authority Council of Ministers Regulation No. 155/2008, Art 37; the Ethiopian Social Security Agency Re-Establishment Proc. No. 495/2006, Art 11(5); Charities and Societies Proc. No. 621, Art 104(2); Trade Competition and Consumers Protection Proc. No. 813/2013, Art 39(2); Civil Servant Proc. No. 515, Art 76(2); and the Privatization of Public Enterprises Proc. No. 146, Art 28(2).

38 See for example, 'Ashenafi Amare et al vs. the Ethiopian Revenue and Customs Authority', the Council of Constitutional Inquiry, File No. 101/2009.

39 See for example,; Tsige Atnafu vs. Balambaras Wube Shibeshi ('Decisions of the Federal Supreme Court Cassation Division', CFN 14554, Vol. 3, Tahisas 20, 1998 EC., p.81) ; Renting House Agency vs Lielt Tegegnewerk et al (CFN 16195, Vol. 4, Miazia 11, 1999, p. 106); Ethiopian Privatization

arguing that it is up to the legislature to decide the issue of justifiability, as if granting or denying judicial jurisdictions in Ethiopia is at the mercy of the legislature.

At this juncture, however, the writer believes that the Constitution neither limited the power of the judiciary with respect to reviewing administrative decisions (decisions of *other bodies with judicial power* as well as decisions by any other ordinary institutions), nor allowed the legislature to strip courts' jurisdiction by enacting ouster legislations or allowing the same to be enacted by the executive organs (by the council of ministers or a specified agency in the form of regulation or directives respectively) ,while giving a '*blank cheque*' where the later can fill whatever they want, including '*finality clauses*' that oust courts' power to review regulatory decisions.

Indeed, depending upon the type of legal system adopted, certain limitations may be imposed on the power of the judiciary, where the power of the ordinary courts to entertain certain category of cases and controversies may be constrained by national constitutions or parliamentary made laws as the case may be.[40] However, when we examine the FDRE Constitution in this regard, there is no apparent provision that strip

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and public Enterprise Supervising Agency vs. Heirs of Nur Beza Terega (CFN 23608, Vol. 5, Hidar 3, 2000); Kotebe Teacher's College vs Binyam Alemayehu (CFN 26480, Vol. 5, Tikimt 14, 2000, p. 372); Renting House Agency vs Heirs of Bekele W/Mariam, Megabit 18, 2000, p.110); Zebida Musa vs. Asha Yusuf et al (CFN 30631, Vol. 6, Hidar 10, 2000, p. 107); Southern Region Hawasssa City Municipality vs. Hawassa DebreMihret St. Gebriel Church (CFN 46220, Vol. 10, Tir 18, 2002, p. 260); Tizazu Argaw vs. Benshangul Gumuze Regional State (CFN 63417, Vol. 12, Hamle 15, 2003, p. 464); Shei Ashrak Seid vs. Butajira City No. 2 Kebele Administration (CFN 63627, Vol. 12, Hamle 14, 2003, p. 467); Heirs of Mehamed Hussen vs. Government House Agency (CFN 37964, Vol. 12, Tir 27, 2003, p. 476); and Welday Zeru et al vs. the Ethiopian Revenue and Customs Authority (CFN 51790, Vol.12, Ginbot 16, 2003, p. 482).

40 Yemane K., supra note 18, pp. 43-44.

courts' judicial power to review 'regulatory decisions' passed by administrative agencies or their officials (given while exercising their ordinary decision making powers), nor the decisions of 'tribunals' (given while exercising their judicial functions). Similarly, one cannot find an express constitutional provision that allows the Ethiopian legislature to limit the powers of courts recognized under the Constitution. Here, it should be noted that although the legislature (the House of Peoples Representatives-HoPR) is the highest organ of government in Ethiopia as per Art 50(3) of the Constitution, its supremacy is not absolute; rather it is subject to the supremacy of the Constitution as provided under Art 9(1) of the same Constitution.[41] This means the HoPR cannot deny the constitutionally guaranteed powers of the judiciary.

Although the FDRE Constitution is not clear as to what matters are non-justiciable so that they cannot be seen by 'judicial bodies', it should be noted that, at least in the meaning of Art 37(1) of the Constitution, the term 'justiciable matter' is used to refer both the '*court of law*' and '*other competent body with judicial power*'. This means, if the subject matter in question is not justiciable before ordinary courts, it is also non–justiciable for '*other competent body with judicial power*', for what they are exercising is judicial power in the meanings of the Constitution.[42] Here, although it is not clear as to what the phrase 'a*ny other competent body with judicial power*' refers to under Art 37(1) of the Constitution, it seemed that the phrase is referring to those 'administrative tribunals' established with a '*quasi-judicial'* power and thereby allowed to see and decide

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41 Id, pp. 45 & 55. In the existence of an explicit Constitutional provision for the 'supremacy of the Constitution', the declaration that the HoP is the 'highest organ of the government' in Ethiopia could not be construed as if the Constitution provides the equivalent of the principle of 'parliamentary supremacy'.

42 Id, p. 45.

specifically identified categories of disputes.[43] This means, such bodies other than courts (i.e., administrative tribunals which are exercising 'judicial functions' like courts) and their respective decisions are different from other ordinary institutions (administered by a director or a board) and their regulatory decisions (given by individual officials, directors, disciplinary committee or the Board, as the case may be), since the latter are not considered as 'other body with judicial power' and thereby exercising 'judicial functions' in the meanings of Art 37(1) and Art 78(4) of the Constitution.

Thus, if we say that the issue of 'justifiability' under Art 37(1) of the Constitution applies to both courts and administrative tribunals, the subject matters regarded justiciable and thus can be decided by such other 'competent judicial bodies', shall be justiciable for regular courts and thus amenable for judicial review.[44] This is because, Art 79(1) of the Constitution bestows all 'judicial powers' primarily to courts, stating that

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43 For example, such 'tribunals' having a judicial power other than courts, may include tax appeal commission, labour tribunal, civil servant Administration tribunal, social Security Appeal Tribunal, and Urban Land Clearing and Compensation Appeal Tribunals as empowered under the respective laws to entertain the identified category of disputes. Here, it should be noted that although such kinds of tribunals may not be established for each and every category of disputes, such tribunals are often serve as an internal appeal forum where the person aggrieved by the decision of the concerned administrative agency can bring an appeal with a view to exhaust the existing administrative remedies. However, this does not mean that the decisions given by such tribunals are not amenable for judicial review. I believe that, what is required from the person to institute a judicial review action in regular courts in such cases is only to exhaust the existing administrative remedies.

44 At this juncture, Yemane also noted that ''… judicial powers given to other institutions other than ordinary courts are necessarily justiciable matters. If not, the institutions are not exercising judicial power and are not institutions which are referred to under Art 78(4) and 37(1) of the Constitution [.]''. He further noted that, the institutions that are stipulated under Art 37 of the Constitution are those which are established to exercise judicial function, not any administrative institutions (See Yemane Kassa, supra note 18, p. 61).

''[J]*udicial powers, both at Federal and State levels, are vested in the courts*''. And these 'judicial powers' of courts obviously includes the power to review the decisions given by such administrative tribunals, where the dissatisfied person can bring a judicial review action before regular courts, after exhausting the administrative remedies thereto, provided that they are justiciable. Accordingly, one can argue that the mere fact of exercising judicial power by some 'other competent judicial body' shall not divest courts' power to review administrative tribunal's decisions, particularly where such organs do not employ legally prescribed procedures while deciding matters.[45]

However, the question may still arise regarding the reviewability of administrative decisions passed by such ordinary government bodies, without having the power to exercise 'judicial functions' like '*other competent judicial body*' did in the meanings of Art 37(1) and 78(4) of the Constitution. In this regard, the writer argue that although the decision is given by such administrative organs, which do not have a judicial power like tribunals, such a decision shall be subjected to review by ordinary courts, provided that they are justiciable.

The justiciability or otherwise of such administrative decisions however, shall not be determined by the legislature. Unlike the system of parliamentary supremacy, in countries where constitutional supremacy is firmly established over the supremacy of the parliament like the case of Ethiopia, it is hardly sound to think that the supreme legislature (the HoPR in our case), which is subject to the constitutional limit, will have the power to grant or deny the constitutionally mandated powers of the other branches.[46]

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45 See FDRE Constitution, supra note 35, Art 37(1), Art 78(4) and Art 79(1) cumulatively.

46 Id, Art 9(1), which provides the 'supremacy of the Constitution'.

Rather, the constitutional power of courts prescribed under Art 79(1) of the FDRE Constitution, could have been acceptably limited by the same document or other laws which are clearly authorized by same.[47] But in this regard, one cannot find an express constitutional provision that allows the Ethiopian legislature to limit the powers of courts recognized under the Constitution, making the legislature's move in this regard unconstitutional.[48]

Therefore, it is safe to argue that except those powers expressly given to the House of Federation (HoF) under the Constitution or those that may be determined unjusticiable by the HoF, for example on the ground of political question[49] or redressability,[50] all matters shall be considered justiciable as a rule and thus amenable for judicial review, irrespective of the existence of ouster legislations.

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47 In this regard, for example courts cannot exercise power when such power is expressly given to other organs under the Constitution, as the case of the power given to the HoF in our case (See FDRE Constitution, supra note 36, Art 48, 62(1) & (3), 83 and 84).

48 Yemane K., supra note 18, p. 45 &52

49 Actually, it is difficult to determine what involves 'political questions/issues' requiring political decisions, in the Ethiopian context. Nevertheless, 'prerogative powers' of the executive such as those relating to war or defense, security, treaty agreements, granting mercy, awarding honors, the dissolution of parliament and the appointment of ministers involving political questions and complex policy issues are often considered non- justiciable in other jurisdictions, which can also be true in Ethiopia on the basis of the principle of separation of power (Id, pp. 48&50).

50 In this regard, although the issue is debatable 'Directive Principles of State Policies (DPSPs)' or 'Directive Principles', which are stipulated under chapter ten of our Constitution in the name of 'National Policy Principles and Objectives' that mainly flow from recognizing economic, social and cultural rights (ESCRs), may be considered non-justiciable in the Ethiopian context, on the ground of redressability, saving those ESCRs which are justiciable because they are categorized under 'Fundamental Rights and

In conclusion, given the current pattern of divesting judicial power from courts to review administrative decisions, it has been argued that the concept of justiciability is applied contrary to the aspiration and sprit of the Constitution, where the concept has been used as a tool to strip judicial powers from courts thereby leaving individuals with no judicial remedy at the time when their rights are violated by administrative agencies.[51]

2.2. JUDICIAL REMEDY AGAINST ADMINISTRATIVE DECISIONS OF ENVIRONMENTAL AUTHORITIES IN ETHIOPIA

Administrative bodies play a great role in the enforcement of environmental regulations. One of the roles they can play is by taking different administrative measures during non-compliance instances.[52] To this effect, in different legal systems

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Freedoms' (See Chapter three and ten of the FDRE Constitution, supra note 36). For more on the issue, see generally Sisay Alemu (2008), 'The Constitutional Protection of Economic and Social Rights in the Federal Democratic Republic of Ethiopia', Journal of Ethiopian Law, Vol.22(2), pp.141-142; Abdi Jibril Ali and Kwadwo Appiagyei-Atua (2013), 'Justiciability of Directives Principles of State Policy in Africa: The Experiences of Ethiopia and Ghana', Ethiopian Journal of Human Rights, Vol. 1, p. 4, 31-40; and I. E. Koch (2009), 'Human Rights as Indivisible Rights: The Protection of Socio-Economic Demands under the European Convention on Human Rights', Martinus Nijhoff Publishers, p. 324.

51 Yemane K., supra note 18, pp. 42&67.

52 Dejene G. (2013), supra note 20, p. 9.

environmental regulatory organs are empowered to take necessary administrative measures in order to bring violators of environmental regulations into the right track of compliance.[53]

Likewise, in Ethiopia different environmental laws provide for administrative measures that can be imposed by the concerned environmental protection organs (EPOs). For instance, the EPC Proclamation empowers the then Federal Environmental Protection Authority (EPA), the present Ministry of Environment, Forest and Climate Change (hereinafter the Ministry)[54] and the Relevant Regional Environmental Agency (REA) to take the necessary administrative or legal actions.[55] Accordingly, the EPOs for example can require the installation of sound technology, order to clean up or pay the costs of cleaning up of polluted environment, or seek the closure or relocation of an enterprise that is causing environmental problem.[56] The environmental inspectors are also empowered to take certain measures to remedy the contraventions while performing their investigative functions.[57]

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53 Michael G. Faure, and Gunter Hein (2005), 'Criminal enforcement of Environmental Law in European Union', Kluwer Law International, The Hague, pp. 17 and 49. See also Wolf S. et al (2002), supra note 3, p. 10.

54 Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment Proclamation), Proclamation No. 916/2015, Neg. Gazeta, 22nd Year, No. 12), Art 30 (hereinafter Proc. No. 916/2015).

55 The EPC Proclamation, supra note 8, Art 3(2).

56 Id, Arts 3(3)(4) & (5).

57 Id, Art 8(2) & (3).

Similarly, the EIA Proclamation empowers the EPOs, after evaluating an Environmental Impact Study Report (EISR),[58] to approve, refuse or allow with certain conditions the implementations of a development project.[59] Such EPOs are also empowered to monitor the implementation of an authorized project with a view to evaluate its compliance with the conditions and obligations imposed on the proponent during authorization. And depending upon the results of such monitoring, they may take rectification measures, or seek the suspension or cancellation of authorizations or permits given to the implementation of the project.[60]

Due to the above discussed regulatory actions that could be imposed by EPOs, the rights of individuals (i.e. the alleged polluters or the proponents) may be affected, or any private person or public group may be unhappy with such regulatory action (or inaction) or decision. As the experiences of other countries reveal, the interested party (who is dissatisfied by such regulatory measures) or any private persons or public groups (who are unhappy with the regulatory action, inaction or decision) may challenge such regulatory decisions, by means of an application to have the relevant decision judicially

58 However, it should be noted that the Federal EPA's power to review EISRs had been delegated to sectoral institutions (Ministries). So currently, each Ministry has a power to review EISRs of investment projects fail in their arena. (See FEPA (2009). "Letters of delegation of the power to review EIA to sectoral institutions", Addis Ababa, Ethiopia ,14/11/2009). Moreover, the recent Proclamation No. 916/2005 does not explicitly give to review EISRs to the current Ministry of Environment, Forest and Climate Change (See Proc. No. 916/2015, supra note 54, Art 30).

59 The Environmental Impact Assessment Proclamation (Proclamation No. 229/2002, Neg.Gazeta, 9th Year, No. 11) (hereinafter EIA Proclamation), Art 9(2) and Art 10(3).

60 Id, Art 12.

reviewed.[61] But this can be better enforced and thereby promotes administrative justice, when there is a clear legal basis providing a broad opportunity for 'judicial review' actions to enable the aggrieved person, or any other private person or public group to challenge regulatory action (or inaction) or decision.

In this regard, in some jurisdictions, for example in England, decisions taken by the pollution control authorities are amenable to judicial review, not necessarily upon the application of the person dissatisfied by a particular decision, but also by any private persons or public interest groups who are unhappy with the regulatory action or inaction. Accordingly, in such countries, besides the directly aggrieved party, any person may challenge a wide range of regulatory decisions without the need to show vested interest, by means of an application to the courts to have the relevant decisions to be reviewed.[62] Moreover, in the event that a regulators exercises its discretion not to prosecute a person who has breached environmental laws, 'any person' who disagrees with this decision may exercise the right (provided the right is not excluded by the relevant statute) to mount a 'private prosecution' to bring the alleged offender to account before the criminal courts.[63] Through the above two mechanisms, such countries enable the private person to 'police' the activities of public regulators (regulatory action/inaction or decision).

In order for a private person to effectively police the decisions of the regulators in this regard, such countries also provide a mechanism where such persons have access to regulatory records, especially those relating to breaches of environmental law and

61 Wolf S. et al, supra note 5, p. 389.

62 Id, p. 392. In England, actually, this is not unique to environmental cases. Anybody can bring judicial review proceedings in other areas too as long as they can meet the costs.

63 Id, p. 389.

pollution licenses (i.e., applications for licenses, the conditions attached to licenses, the monitoring of polluting emissions to confirm that licenses are complied with, etc.)[64]

While magnifying its importance in ensuring administrative justice, many scholars also argued in favor of judicial review against regulatory decisions in environmental cases. Moreover, the existence of judicial review is advocated in light of its consistency with the underpinning principles of administrative law viz. separation of power, rule of law, due process of law and judicial independence.[65]

The following sub sections, briefly examines whether Ethiopian environmental laws (focusing on the two major environmental laws of the country viz. the EPC and EIA Proclamations) provide a clear basis for judicial review action by any person or at least by the interested aggrieved party (in this case, the proponent, the polluter or any other person whose interest is or to be affected by the regulatory action, inaction or decision),challenging the decisions taken by the competent environmental agencies.

A.JUDICIAL REMEDY UNDER THE EPC PROCLAMATION

64 Ibid.

65 Tigist Assefa (2010), ''Judicial Review of Administrative Actions: A Comparative Analysis'', LLM Thesis, AAU, Law School (unpublished), pp. 8-13.

As mentioned above, the competent EPOs (i.e. the Ministry or Regional environmental agencies found at different levels) are empowered to take different administrative measures under EPC Proclamation. However, the Proclamation is silent as to whether such administrative measures are subject to judicial review even upon the application of the aggrieved person (the polluter), except with respect to the measures taken by the environmental inspectors, where the aggrieved person can institute a court case after exhausting the administrative remedy given by the head of the concerned environmental protection agency.[66] In this regard, with a view to ensuring effective compliance with environmental standards[67] an Environmental Inspectors (EIs) are armed with vast investigatory powers: entry in to premises without prior notice or court order, examination, investigation, inspection, measurement, testing, recording, photography, sampling and seizing any equipment or any other object which is believed to have been used in the commission of an offence.[68] Depending upon the results of his investigation, the EI has a power to order the taking of corrective measures, which may range up to the immediate cessation of the activity, as the case may be.[69] It is for such kinds of administrative measures that the Proclamation provides a judicial remedy for the aggrieved party.

Art 9 of the EPC Proclamation states: ''*any person* dissatisfied with any of the *measures taken by the inspector* may appeal to the Head of the Authority or the relevant

66 The EPC Proclamation, supra note 8, Art 9.

67 Id, Art 6.

68 Id, Art 8(1)

69 Id, Art 8(2) and (3)

regional environmental agency…''.[70] And, after exhausting this administrative remedy to be given by the Head of the relevant EPO, the dissatisfied person can further ''institute *a court case* within thirty days from the date on which the decision was given or the deadline for decision has elapsed.''[71] However, here it is important to examine whether the term 'any person' under Art 9 of the Proclamation refers only to those dissatisfied persons having a vested interest in the measures (the extent or adequacy of the measures) taken by the EI, or is it referring to 'any person' or 'public group', who are unhappy with the inspector's action (or inaction) or measures (or the adequacy of the measures).

In this regard, I argue that since the provision is dealing about 'right to appeal' rather than 'right to standing', the term 'any person' here is referred only to those persons whose interests may be affected by the decisions of the environmental inspector. At this juncture, the alleged polluter, who is dissatisfied by the inspector's decision, can be the one who can appeal to the Head first and then institute a court case, challenging the

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70 Id, Art 9 (1). However, in this regard the Proclamation is silent about the way in which the Head is expected to handle the grievance at his hand, for example it is not clear whether the aggrieved person will have the opportunity to be heard or not. Given the absence of Administrative Procedural act in Ethiopia coupled with the absence of a provision that authorized the regulatory organs to enact a Directive on the subject, an aggrieved person might apprehend that the institutional bias might go in favor of the Environmental inspector, an appointee of the 'Head'. And this may in return erode the aggrieved person's confidence in the decision making process (See Khushal Vibhute (2008), 'Environmental Policy and Law of Ethiopia: A Policy Perspective', Journal of Ethiopian Law, Vo. XXII No. 1, p. 97.

71 Id, Art 9(2). But here, it is important to note that the proclamation does not provide the time limit or the dead line with in which the head of the relevant environmental protection agency shall give decision. And this may hinder the aggrieved party to get timely decision and unable to know when does the head is failed to give decision.

appropriateness or the extent of the measures taken by the inspector or the Head, as the case may be. Moreover, such persons could be those who are dissatisfied by any of the measures taken by the inspector, challenging either the inaction of the inspector (or the head at the appeal level) who have turned a blind eye to the polluting activities in question or on the ground of the inadequacy of the measures while seeking more serious measure to be taken against the polluter and the polluting activities. Therefore, Art 9 of the Proclamation is intended to provide a judicial review possibility by way of appeal and only upon the application of the 'interested' dissatisfied persons. It does not provide a mechanism where any person, without showing vested interest, can challenge a range of regulatory decisions, by means of an application to the courts to have the relevant decision judicially reviewed.[72]

Moreover, the Provision (Art 9 of the Proclamation) provides a limited right even with respect to the rights of such dissatisfied interested persons to institute a court case, by limiting the measures against which such a court case can be instituted by way of appeal, only to those measures taken by the EI. Accordingly, since Art 9 of the Proclamation is dealt in relation with the measures taken by the EI, one may argue that the legislature wants to keep other decisions of the regulatory organs pertaining to the

72 Therefore, as will be discussed later, except the chance that any person or a public group can institute a court action against the polluter as per Art 11 of the EPC Proclamation, citizens would not have a judicial review standing and thereby institute a court case against the regulators for their actions or inactions. For example, they can neither challenge the failure of the inspector to take measures at all nor the inadequacy of the measures taken thereof, without showing a vested interest to that effect. Moreover, they cannot challenge the granting of permit or licenses by the relevant EPOs (the Ministry or regional environmental agencies) as per Art 4(1) (3) & (4) of the EPC Proclamation, with respect to the management of hazardous waste, chemical and radioactive substances.

control of pollution beyond the judicial purview.[73] In this regard, for example the EPC Proclamation does not clearly allow a polluter to seek judicial review of:(1) any administrative or legal measures taken against him by the environmental regulatory organs, (2) its order to install a sound technology for reducing or avoiding generation of waste and to employ methods of recycling of waste, (3) its order to clean up or to pay the cost of cleaning up of the polluted environment, and (4) order to close or relocate his enterprise if it is posing threat to the human health or to the environment.[74]

The absence of a clear rule under the Proclamation for judicial review rights coupled with the cassation decision that oust the inherent power of courts to review administrative decisions, arguing that courts in Ethiopia do not have an inherent judicial power, rather their power emanates from law,[75] would make the judicial reviewability of such

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73 See Art 9(2) of the EPC Proc., supra note 8. In this regard, see for example, the administrative measures to be taken by the relevant EPO in accordance with Art 3(2)(3)(4) & (5) of the EPC Proc. which do not necessarily presuppose such measures to be taken by the inspector as per Art 8 of the Proclamation.

74 Khushal V., supra note 70, p. 99.

75 See Heirs of Nur BezaTerega vs. the Ethiopian Privatization and Public Enterprises Supervisory Agency ('Decisions of the Federal Supreme Court Cassation Division', CFN 23608, Vol. 5, Hidar 3, 2000 EC.). However, in the instant case the enabling legislation establishing the Agency in question provides a 'finality clause' for the Agency's decisions. But the question may still arise as to whether Ethiopian courts have an inherent power to review administrative decisions in the condition where the parent legislation is silent about the issue of reviewability.

regulatory measures subject to doubt, in the manner that affects administrative justice and denies the constitutionally guaranteed right to access justice in environmental matters.[76]

Therefore, it is safe to argue that the EPC Proclamation neither provides a clear rule for judicial review of regulatory decisions by the aggrieved person nor allows any person or public group to challenge the same (regulatory action or inaction), by means of an application to the courts to have the relevant decision judicially reviewed for the sake of public interest, which may in return encourage environmental agencies to act arbitrary without fear of judicial review, in the manner that erode administrative justice in environmental matters and thereby allow the pollution problems to be continued.

B. **JUDICIAL REMEDY UNDER THE EIA PROCLAMATION**

The EIA Proclamation, as mentioned earlier, empowers the EPOs to take various types of administrative measures. The Proclamation, however, provides a grievance procedure where 'any person' dissatisfied with the authorization or monitoring or any decision of the relevant EPO regarding the project, may submit a 'grievance notice' to the concerned head of the EPO (currently to the Environment, Forest and Climate Change Minister office or the head of the particular department thereto, or the head of the relevant regional environmental agency, as the case may be).[77] Moreover, the Proclamation provides a mechanism where 'any proponent', who wishes to challenge the appropriateness of the time frame set for the validity of the approved EISR during its authorization, may submit an application to that effect to the relevant EPO, where the latter shall (unless special circumstance so dictate) decide whether to extend the validity

76 The FDRE Constitution, supra note 35, Art 37(1).

77 The EIA Proc., supra note 59, Art 17.

of the report or to order the revision or the redoing of the EIA, within 30 days from the receipt of the application.[78]

However, unlike the EPC Proclamation (which allows the aggrieved persons to challenge the measures taken by the environmental inspector, at least by way of appeal)[79], the EIA Proclamation is totally silent about the issue of judicial review, where either the aggrieved proponent or 'any person' dissatisfied with any decision of the environmental agency regarding the project (including the authorization or monitoring) may institute a court case to have the relevant decision judicially reviewed, which again may affect the promotion of administrative justice in environmental matters and the constitutionally guaranteed rights of such persons to access to justice (the right to get judicial remedy).[80]

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78 Id, Art 10.

79 The EPC Proc., supra note 8, Art 9.

80 The EIA Proc., supra note 59, Art 10 & 17. Here, it should be noted that unlike Art 10 of the EIA Proclamation which used the term 'any proponent', Art 17 of the same Proclamation which provides a 'grievance procedure' used the term 'any person' dissatisfied by any regulatory decisions regarding the project, including the decisions on authorization or monitoring. However, although from the outset the term 'any person' under Art 17seems to refer 'any person' per se (who does not have any vested interest on the regulatory decisions concerning the project), I believe that the Provision used the term 'any person' only to imply those persons whose interests may be affected by the decision in question (i.e., those having a vested interest). And such persons who may be dissatisfied by the regulatory decisions under Art 17 could be either the proponent himself (for example, challenging the denial of authorization, the extent of conditions attached with authorization or the order given with respect to the revision or redoing of EIA) or any other person or group of persons whose interests could be affected due to the authorization of the project or due to the inadequacy of the conditions attached during its authorization, showing even the need to have a

Moreover, as will be discussed later, the EIA Proclamation neither provides citizen standing right (i.e., procedural standing) to sue the proponent who failed to conduct EIA, nor a standing to challenge the regulatory decision regarding the project, for example challenging the granting of authorization to such projects whose future implementation would largely affect the interest of the community or/and the environment in general.

In this regard, the absence of a clear provision in the EIA Proclamation that at least allows the proponent to challenge the decision given regarding the project in question may leave a room for two conflicting views. In one hand, given the fact that the two proclamations (i.e. EPC and EIA Proclamations) are enacted by the HPR in the same year consecutively, it may be argued that the failure of the legislature to include the issue of judicial review under the EIA Proclamation reveals the intent of the legislature to give finality to the decisions of EPOs and thereby keep such decisions away from judicial scrutiny.[81]

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vested interest to submit such grievance notice. However, the Proclamation is silent about the judicial review rights of the aggrieved persons (the proponent or other interested person/s whose interest could be affected due to the commencement or operation of the proposed project) against the regulatory decisions, after exhausting the remedies obtained under the 'grievance notice'. Therefore, public spirited citizens (who cannot even submit a grievance notice to the head of the agency as per Art 17), for stronger reason, cannot institute a court case against the regulatory decisions under the EIA Proclamation, for example challenging the granting of authorization of the project by the relevant EPO.

81 Khushal V., supra note 70, p. 99. Actually, given the technicality of certain matters, for example regarding the review results of a given EISR or the conditions of authorization, one may argue that excluding the regulatory decisions given on such matters from judicial purview seems logical. However, I believe that the exclusion shall not be extended to all decisions which do not involve technical matters and in the manner that affects administrative justice.

On the other hand, one may argue that expecting an explicit stipulation of judicial remedy under each and every special law for judicial review of regulatory decisions means making the principle of judicial review an exception rather than the rule, which is contrary to the contemporary administrative law principle.[82] Therefore, the mere absence of an explicit provision for judicial redress against the final decision of the environmental agency in the EIA Proclamation may not necessarily give finality to such administrative decisions. Since the Proclamation cannot take away the Constitutional right of access to justice recognized under Art 37 of the FDRE Constitution, it shall not be expected to have an explicit provision for the possibility of judicial review action and thereby challenge the regulator's decisions regarding the project, at least by the proponent or any potentially affected person who are dissatisfied by the regulatory decisions given regarding the authorization or monitoring of the project.[83]

Even if due to the existing political reality (that aimed to broaden the powers of the executive) one may be forced to tolerate jurisdiction stripping legislations that clearly provide 'ouster clauses' or 'finality clauses', ordinary courts shall have an inherent power to review administrative decisions (provided that they are justiciable and exhaust the existing administrative remedies) at least in the condition where the parent legislation is

82 Louis L. Jaffe (1965), 'Judicial Control of Administrative Action', (Little Brown and Company Boston, Toronto), p. 325.

83 Khushal V., supra note 70, p. 99.

silent about the reviewability or otherwise of the decision, like the case of EIA Proclamation.[84]

Nevertheless, given the current pattern of divesting judicial powers in Ethiopia coupled with the subsequent Cassation Bench's support to the finality of administrative decisions in the expense of stripping court's jurisdiction, the absence of a clear provision for judicial review of regulatory decisions under our environmental laws would cast doubt as to the justifiability or otherwise of such decisions given by environmental

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84 In this regard, the cassation decision given in the case of Zenebech Temesgen vs. Government House Agency have such kind of implication, in the manner that allows the aggrieved person to bring a judicial review action against the regulatory decision after exhausting the existing administrative remedies thereof, provided that the relevant parent legislation empowering the agency in question does not provide a 'finality clause' that divest judicial powers in this regard. However, it seems that the Bench, in the instant decision, has intended to limit the scope of its reasoning only with respect to those administrative agencies exercising judicial functions and thereby considered as a 'body with judicial power'. Here, in reaching to such a conclusion that the instant Agency is exercising a 'judicial power', the Bench used the stipulations made to that effect under parent legislation empowering the Agency, which inter alia provides the legal procedures to be followed by the Agency in deciding cases (for example, with respect to the production and hearing of evidence), while considering its decision as enforceable court's decision, although the instant Agency may not be considered as 'tribunal' per se (See Zenebech Temesgen vs. Government House Agency, 'Decisions of the Federal Supreme Court Cassation Division', CFN 48316, Vol. 12, Tikimt 4, 2003 EC., p. 444). Therefore, one may argue that Ethiopian courts have an inherent review power at least with respect to such administrative decisions given by bodies exercising 'judicial functions' (i.e., 'tribunals' or agencies whose parent legislation required them to follow legal procedures and thereby considered the decision thereof as court's decisions), provided that the parent legislation is silent as to the reviewability of their decisions. However, as to whether a similar reasoning shall be extended with respect to agencies which gave decisions without exercising judicial functions, the issue seems argumentative (i.e., in the condition where the parent legislations neither allows judicial review action nor prohibits the same, for example by providing 'finality clause', like the case the EIA Proclamation).

agencies. And only the regulators can benefit out of such doubt or ambiguity, while giving them a wide leeway where they may act arbitrarily without fear of judicial review.

However, it should be noted that even under the current trend of stripping court's jurisdiction through providing finality clauses or passing a binding cassation decisions thereof, such finality clauses or decisions shall not be construed as precluding the Federal Supreme Court Cassation Bench's power to review the final decisions of administrative agencies on the ground of 'fundamental error of law', provided that the decisions are final.[85] Accordingly, had the EIA proclamation provide a finality clause, the environmental agency would have been subjected to review by Cassation Bench due to the failure of the agency to observe legally stipulated procedural requirements.[86]

In conclusion, the absence of clear recognition of judicial review actions by aggrieved persons in particular and citizen standing in general under the above discussed environmental laws of Ethiopia coupled with the current trend of divesting court's jurisdiction through Cassation Bench's decisions, would cumulatively encourage environmental regulators to aggrandize their power space and thereby act arbitrarily without fear of judicial review actions (either from the aggrieved person or public spirited

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85 At this juncture, in the case of Ethiopian Privatization Agency Vs Heirs of Ato NurBeza Terega, the HoF remand the case to the Cassation Bench to decide on the error of law, arguing that 'if the decision of the administrative agency is final and binding under the finality clause of the enabling legislation, disallowing the aggrieved party not to bring his application to the Cassation Division would be tantamount to denying his right to access to justice (Art 80(3)(a) cum Art 37 of the Constitution) (See Ethiopian Privatization Agency Vs Heirs of Ato NurBeza Terega, supra note 75). Therefore, even if such 'ouster legislations' may have the effect of precluding the power of ordinary appellate courts to review administrative decisions, the ouster legislations providing finality to such decisions shall not be construed as it divest the Cassation Bench's power to review the final decisions of administrative agencies on the ground of 'fundamental error of law'.

86 EIA Proc., supra note 59, Art 9(1) and Art 15.

individuals or groups). And this in return would affect the task of protecting the environment from degradation or pollution while promoting administrative abuses to flourish in environmental regulation scheme.

3.PIL IN ENVIRONMENTAL MATTERS IN ETHIOPIA: THE BASES OF CITIZEN STANDING

As a rule only a person whose interest is affected by a given action or inaction can seek relief from the responsible once.[87] To this effect, the Ethiopian Civil Procedure Code for instance allows only a person who has a vested interest to bring a suit.[88] However, as mentioned earlier, adopting a liberalized standing and thereby allowing PIL is necessary for the effective realization of collective or diffused rights, like environmental rights, for which individual litigation is neither practicable nor an efficient method.[89] As a result, different countries recognized broad standing in environmental cases. South Africa for instance, covered the issue of standing in its Constitution,[90] showing the country's big attention towards environmental protection while allowing PIL in environmental matters.

When we come to the Ethiopian legal system, the FDRE Constitution does not have a clear provision on the issue of liberalization of standing. Nevertheless, the Constitution

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87 C.M. Abraham (1999), 'Environmental Jurisprudence in India', Kluwer Law Internationa1', The Hague, London and Boston, p.29.

88 The Civil Procedure Code, Decree No. 52 of 1965, Neg. Gazeta Extraordinary, 25th Year No. 3, Addis Ababa, 8th October 1965, Art 33(2) (Ethiopian Civil Procedure Code).

89 Surya D., supra note 11, pp. 19-20.

90 Dejene G., supra note 20, p.18.

provide substantive[91] and procedural environmental rights,[92] the general right to access to justice,[93] and also put a duty on government as well as citizens to protect the environment.[94] On the bases of these provisions, some argued that although the Constitution does not contain clear provision on the issue of environmental standing, the explicit recognition of environmental right under the Constitution coupled with the provision imposing a duty on citizens to protect the environment tantamount to recognizing a broad standing right in environmental proceedings, asserting that such a duty cannot be enforced meaningfully under restricted standing. Accordingly, they argued that the door is open for PIL.[95] Moreover, by reading Art 37(2) (b) in tandem with Art 44 of the Constitution and other documents calling for effective access to administrative and court proceeding (for example, the Environmental Policy of Ethiopia[96] and the Rio Declaration[97]), one may argue that Ethiopian has recognized PIL in environmental matters.[98] At this juncture, some argue that the constitutionally guaranteed

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91 The FDRE Constitution, supra note 35, Art 44. It recognized the right to live in a clean and healthy environment. Moreover, it recognized the right to commensurate monetary or alternative means of compensation including relocation with adequate state assistance if the person's livelihood has been adversely affected as a result of state program.

92 Id, see for example Art 43(2) & Art 92(3) which recognize the right to public participation

93 Id, Art 37.

94 Id, Art 13(1) Cum Art 92(4).

95 Dejene G., supra note 20, p. 20.

96 See Environmental Policy of Ethiopia (1997), Sec. 2.2 (h).

97 See Rio Declaration on Environment and Development (1992), Principle10, to which Ethiopia is a party.

98 Nevertheless, since the issue whether Art 37(2)(b) of the Constitution indeed covers PIL or not is not clear, one may also argue that the Provision is intended to reiterate the possibility of bringing 'class action'

'*right of access to justice*' can be construed to allow a broad standing right in environmental cases for the effective enforcement of constitutionally recognized environmental rights as a diffused right, although it is not specifically designed for it.[99] However, interpreting the provisions of the Constitution in the manner that expands the *locus standi* in environmental litigations required strong ''judicial activism''.[100]

When we come to Environmental specific legislations of Ethiopia, the ''right to standing'' is only recognized under the EPC Proclamation that stipulates;

> *1.Any person shall have, without the need to show any vested interest, the right to lodge a complaint at the authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment.*
> *2.When the Authority or regional environmental agency fails to give a decision within thirty days or when the person who has lodged the complaint is dissatisfied with the*

(which is already allowed under Art 38 of the Civil Procedure Code of Ethiopia) and 'representative action' rather than PIL. In the case of class action, a person representing a group (upon their consent) must be a member of that group and shall have the same interest in a suit, reiterating the need to show vested interest for class action. While in the case of representative suit, the person brings such a suit in the name of the group and under his representative capacity, simply with a view to protect the 'diffused interest', for example environmental interests of the public. This means, a person bringing a representative action neither required to bring such an action in his own name, nor to show his personal interest or membership in the group unlike class action. Whereas unlike the above two (class action standing and representative standing), which required vested interest any way, citizen standing allows any person to bring an action for public interest in his own name without the need to show any vested interest and representative capacity. For more information, with respect to the difference between class action standing, representative standing and Citizen standing see generally Clark D. Cunningham (1987), 'Public Interest Litigation in India Supreme Court: A study in the Light of American Experience', Journal of the Indian Law Institute, Vol. 29, No.4, pp. 502-504.

99 Erin Daly (2012), 'Constitutional Protection for Environmental Rights: The Benefits of Environmental Process', International Journal of Peace Studies, Vol. 17, No.2, P. 73. In this regard, Ginther argued that access to justice in environmental matters required at least four elements. 1) the legal rights of citizens and other persons to live in a clean and healthy environment under national and international legal system, 2) those legal rights must be recognized by the grant of standing to institute proceedings at the national level, 3) legal and administrative bodies must be established at the national level to allow proceedings to be brought, and 4) access to such bodies should not be subject to inappropriate barriers such as prohibitive costs and cumbersome rules (See Konrad Ginther (1995), 'Sustainable Development and Good Governance', (Martinus Nijhoff Publishers, 1995), p. 197).

100 Dejene G. (2013), supra note 20, p. 20.

> *decision, he may institute a court case with in sixty days from the date the decision was given or the deadline for decision has elapsed.*[101]

From the above provision, one can deduce the following elements. First, the provision does not create any difference among the identity of persons who could have a standing right. Accordingly, ''any person'' (whether physical person or artificial person, national or foreigner) has a standing to lodge a complaint at the relevant EPOs, although there are some writers who argued that ''it is not clear whether this right extends to foreigners.''[102] But, such a person is required to show a sufficient public injury (actual or potential) to support the claim that the petition was brought in the 'public interest', although he should not demonstrate injury to himself.

Second, the person shall first bring his complaint at the relevant environmental protection organ before instituting a direct legal action in court. That means, such a person will not have standing to institute a court case directly without giving the chance for the EPOs to perform their statutory obligations. In other words, the provision proposes to grant public interest groups or individuals a '*secondary right*' of standing. Only in cases where the public authorities do not act at all, or not properly, do alert

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101 The EPC Proc., supra note 8, Art 11. However, it should be noted that the issue of liberalization of standing is also further reiterated in the Prevention of Industrial Pollution Regulation under the heading 'public complaints' in relation with industrial pollution (See Art 10 of Prevention of Industrial Pollution Council of Ministers Regulation No. 159/2008, Fed. Neg. Gazeta, 1st Year No. 14, Addis Ababa 7th January, 2009) (hereinafter PIP Reg.). But, as will be discussed subsequently, one can notice some variation between the provision of the Proclamation and Regulation. For example, unlike Art 11 of the EPC Proclamation, Art 10 of the Regulation (which is expected to provide more clarification of the issue) does not clearly provide the possibility where the person dissatisfied by the administrative measures can institute a court action against the person allegedly causing actual or potential pollution to the environment.

102 For instance, whether or not persons on the other side of the border can bring a court action before Ethiopian courts because they are feeling the negative impacts of an activity taking place on Ethiopian soil (See Dejene G. (2014), supra note 34, p. 129).

citizens or public interest groups have the right to take legal action before the court of law. Alert citizens or public interest groups thus must respect the '*waiting period*' of thirty days during which the environmental authorities have the exclusive right to take action and decide on the necessity and extent of restoration measures.[103]

Third, regarding the issue ''who can be sued'', the provision allows the public spirited individuals or groups to sue only the polluter. It is silent as to whether the environmental protection organs can be sued due to their inaction or failure to perform their statutory obligations or functions.[104]

Four, the person shall establish the fact that the alleged polluter's activity is causing 'actual' or '*potential*' damage. Here, as one can understand from the term '*potential damage*', a citizen-plaintiff is not necessarily required to show ''*injury in fact*'' or current

103 Here, it should be noted that, unlike Art 11(2) of the EPC Proclamation, which provides a thirty days 'waiting period' to exhaust administrative remedies and institute a court case, Art 10 of the prevention of Industrial Pollution Regulation provides a lengthy 'waiting period' (which may range up to 120 days in the aggregate) under the two stages of complaining procedures. However, it does not clearly stipulate a room for judicial remedy after the expiry of the stipulated waiting periods. But, although Art 10 of the Regulation principally deals about 'public complaints' procedures rather than 'right to standing', the provision shall not be construed as if it precludes the right of a dissatisfied complaint to institute a court case against the actual or potential polluter as per Art 11 of the EPC Proclamation, after the expiry of the 'waiting periods'. Nevertheless, the different complaining procedures and waiting periods adopted under the proclamation and the Regulation thereof may lead to confusion as to which procedures could apply while exercising 'right to standing'.

104 At this juncture, however some argued that there is a possibility of joining the EPOs (which failed to perform their statutory functions either by allowing polluting activity to be carried out or by their failure to prevent the pollutant/s from continuing) and the polluter/s under the rule of 'joinder of defendants'' (See Tsegai Berhane and Merhatibeb Teklemedhn, supra note 31, at 132-133).However, the writer of this article does not agree with the above argument. In the condition where the law grant 'any person' the right to sue only the polluter/s, but not the regulators, one cannot think about joining the two under the rule of 'joinder of defendants' by the mere fact that common question of law or fact would arise. At this juncture, in the APAP case, the Federal First Instance Court decided that the article (Art 11 of the EPC Proc.) does not grant any person the right to sue regulators, limiting the scope of the standing right to bring a court case in environmental matters only against the polluter rather than the regulators (See Action Professionals' Association for the People vs. Environmental Protection Authority, reported by Wondwossen Sintayehu, (Federal EPA) as part of PIL Report (available online): Report on the Public Interest Litigation Case instituted at the Federal First Instant Court of Ethiopia).

injury on the environment or human health in order to secure a standing under the provision, excluding the necessity for the normal injury in fact standing allegation.

Five, it is enough for the person to show actual or potential damage to the ‘‘environment per se’’. This means, the alleged damage shall not necessarily relate with human beings, showing the fact that the legislature has designed the standing right provision of the EPC Proclamation while taking an ‘*eco-centric view*’ in mind.

In addition to Art 11 of the EPC Proclamation, the issue of liberalization of standing has further reiterated under Art 10 of the Prevention of Industrial Pollution Regulation under the heading ‘public complaints’, which required the competent environmental organ to ‘‘*prepare a mechanism to respond to any person who complains concerning pollution without requiring him to prove vested interest.*’’[105] However, the focus and content of the two provisions as well as the scope of the standing right recognized therein seems different. Firstly, it seemed that Art 11 of the EPC Proclamation focused on the issue of ‘standing’ rather than providing ‘public complaints procedures’. This can be understood from the headings of the two provisions (which used the term ‘*right to standing*’ and ‘*public complaints*’ respectively)[106] as well as from the failure of the Regulation to explicitly recognize the standing right of the complaint to institute a court case after the expiry of the waiting periods, within which the competent EPO is expected

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105 The PIP Reg., supra note 101, Art 10(1).

106 See the headings of Art 11 of the EPC Proc., supra note 8, and Art 10 of PIP Reg., supra note 101.

to take measures to rectify the alleged pollution or the head give decision on complaint notice brought by 'any person' dissatisfied by the measures taken, as the case may be.[107]

Secondly, the person bringing a complaint under the Proclamation is required to identify the person allegedly causing actual or potential damage to the environment.[108] However, under the Regulation, such a person is not required to identify the identity of the alleged polluter; rather what is expected from him is just to bring the concern of 'pollution' into the attention of the competent EPO, by which the latter is required to investigate the case and take the necessary measures.[109]

Therefore, the writer argue that according to the Regulation, any person can bring a public complaint without the need to identify the polluter as far as he able to show the

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107 Id, Art 10(2)(3) of the PIP Reg., supra note 101, and Art 11(2) of the EPC Proc., supra note 8. Here, as mentioned in note 103, the Regulation provides a lengthy waiting period compared to the 30-day period of the Proclamation. Moreover, unlike the Proclamation, the Regulation does not provide the possible remedy the complaint may have at the time when the competent EPO or the head failed to take the necessary measure or decisions within the specified deadlines. Furthermore, according to Art 11(2) of the Proclamation it seems that it is only the person who has lodged the original complaint that can institute a court case later on. That means, other dissatisfied persons other than the original complainant cannot bring a court case if the later person failed to bring such action by what so ever reasons (either satisfied by the decision, loss of interest to bring the issue to the next step or due to some other factors hindering him to make a further proceeding). This would force the other alert citizens to re- start the public compliant procedure, which in return allows extra time within which the damaging activities to be continued in the expense of the public interest, although it does not have the effect of estoppel. However, the Regulation seems to allow other persons other than the original complainant to submit at least a complain notice to the head of the competent EPO (See Art 10(3) of the Regulation which used the term 'any person').

108 The EPC Proc., supra note 8, Art 11(1).

109 The PIP Reg., supra note 101, Art 10(1)(2).

concern of 'pollution', which is hazardous or potentially hazardous to human health or the environment.[110] In this regard, however it should be noted that the actual or potential 'pollution' incidents may occur due to other reasons or events (natural or some other unknown reasons) other than acts of the polluter. Thus, in the instances where it become difficult to identify the identity of the actual polluter or the cause of the pollution, the competent EPOs shall take the necessary measures to restore or rehabilitate the polluted environment in collaboration with other government bodies.[111] This means, unlike the Proclamation, the Regulation creates a room where any person can bring a complaint concerning pollution with a view to alarm the EPOs and thereby make them to be more responsive towards their environmental protection responsibilities. This may be the reason why the Regulation provides the opportunity for the complainant to challenge the

110 Regarding the definition of 'pollution' see Art 2(12) and Art 2(6) of the EPC Proc. (supra note 8) and PIP Reg. (supra note 101) respectively. Here, it should be noted that Art 10 of the PIP Regulation works during 'pollution' incidents (as defined under the law). While, I believe that Art 11 of the EPC Proclamation does not required 'pollution' incidents in the strict meaning of the law. Rather, it is enough to show just actual or potential 'damage' to the environment. Because, the term 'environmental damage' does not necessarily imply 'environmental pollution'. Therefore, in this regard, one can say that the EPC Proclamation provides a wider scope of standing compared to the PIP Regulation.

111 See for example Art 30(1) of Proc. No. 916/2015 (supra note 54) for the different responsibilities of the Ministry of Environment, Forest and Climate change in the protection of the environment. Moreover, regarding the objective, power and duties of the then Federal EPA, see the Environmental Protection Organs Establishment Proclamation No. 295/2002, FED. Neg. Gazeta, 9th Year, No. 7, Art 5 & 6 (hereinafter the EPO Establishment Proc.).

decisions of the EPO or administrative inaction before the head of the competent organ.[112]

However, like that of the Proclamation, the Regulation does not provide a room for judicial review, where the complainant dissatisfied by the decision of the head can further institute a court action against the competent environmental protection organs who failed to take actions(with respect to the restoration or rehabilitation of the polluted environment) as part of their statutory function. Therefore, although the Regulation seemed to provide a wider room for public complaints by allowing any person without the need to identify the actual or potential polluter, it repeat the same mistake of the Proclamation by failing to provide the possibility where public- spirited individuals can institute a court action against administrative inaction, making the scope of application of the environmental standing right to be limited only with respect to an action against the polluter rather than the regulator.[113]

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112 The PIP Reg., supra note 101, Art 10(3).

113 With respect to the failure of the PIP Regulation to provide a clear basis for judicial review actions, one can imagine two reasons, showing the persistent interest of the HoPR as well as the council of ministers in making the regulator's inactions (administrative inertia to perform statutory functions) beyond the purview of judicial scrutiny. Firstly, although Art 11 of the EPC Proclamation does not clearly prohibit actions against the regulator, it does not clearly allow citizens to bring an action against the regulators for their failure to enforce the law. Thus, one can say that the PIP Regulation, as the implementer of the Proclamation, chooses to follow the path of the latter with a view not to challenge the intention of the parent legislature (the parliament). Moreover, the need to limit the standing right in this regard may be emanated from the believe that it is not the time to allow citizens to challenge the failure of the regulators with respect to enforcing environmental laws, by taking into consideration the institutional capacity (financial, material and human) constraints of the federal and regional environmental protection organs. Accordingly, one can say that both the Proclamation and Regulation want to give a lee-way for the regulators with in which they can decide the level of the measures or the subjects thereof on case by case

Saving the existing gaps, nevertheless, the above citizen standing provisions at least provide the opportunity for public interest groups and individuals to fill the gaps that could be created by the inaction or abuse of the environmental protection organs, which may turn blind eyes to anti- environmental activities. By doing so, private individuals can serve as an alarm by making environmental protection organs to be more responsive to the issue of environmental protection.[114] Here, the idea is ''the citizen steps into the shoes of the environmental protection organs to enforce environmental standards against

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basis, by taking into account the investment needs of the country or their existing enforcement capacity/potential. Secondly, since citizens may lodge complaint concerning pollution under the PIP Regulation, which are not necessarily related with the activities of the polluter, such EPOs would be legally bound to conduct restoration or rehabilitation activities to ensure the constitutional guaranteed rights of the citizens to live in clean and healthy environment, which sometimes become beyond their capacity. Owing to this fact, the Regulation may want to limit the scope of the standing right of citizens only up to submitting a 'complain notice' to the head of the competent agency, where the head can decide the case on case by case basis. The reason that the Regulation opt this mechanism may also be on the reason that such environmental problems cannot be redressed by the mere court order. Moreover, the attitude of the general public that the government or its organs cannot be sued (as saying goes the sky cannot be tilled, nor can the government, Negus-the King, be sued) may be worth mentioning here. Nevertheless, the writer of this article believes that the above possible reasons cannot be a valid justification for administrative inertia, abuse or inactions. This is because the government is responsible to create the enabling environment or favorable conditions for such environmental protection organs whereby they can effectively perform their statutory functions. And extending the scope of liberalization of standing in this respect would have its own role in accelerating the efforts of the government to enhance the capacity of the environmental protection organs and thereby enable them to perform their statutory functions with better enforcement capacity.

114 Khushal V., supra note 70, p. 96.

polluting industries'' and thereby consolidate the fight against environmental degradation.[115]

4.THE UNFINISHED BUSINESS OF CITIZEN STANDING IN ETHIOPIA

Thanks to Art 11 of the EPC Proclamation, any one has at least a secondary right of standing to bring a court suit against the alleged polluter who is causing actual or potential damage to the environment. Despite the recognition of standing right, there is unfinished business in the further liberalization of standing requirements for the effective involvement of the public in environmental proceedings via PIL. The scope of the standing right recognized under the EPC Proclamation is limited which in return narrows the scope of remedies that could otherwise be sought by citizens. Moreover, given the absence of relaxed procedural requirements designed for PIL, citizen standing rights may be curtailed by the procedural hurdles of traditional litigation as discussed below.

A.THE ISSUE OF PROCEDURAL STANDING

The issue of procedural standing arises during the non-observance of procedural requirements of the law and procedural environmental rights of the people either by the owner of the project or a government agency in its decision making process. In different jurisdictions, the right to access to environmental information and the right to be consulted and participate in environmental decision making are recognized as procedural

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115 James Krueger et al (2012), 'Environmental Permitting in Ethiopia: No Restraint on 'Unstoppable Growth?', Haramaya Law Review, Vol.1, Issue.1, p. 93.

environmental rights.[116] In this regard, the environmental impact assessment process is one of the areas where the observance of the right to public participation and access to information is required.[117]

At this juncture, the question is whether citizens have a standing to challenge the non-observance of such procedural requirements and bring a court suit against the proponent or a government agency who failed to comply with such requirements. In this regard, although procedural standing claims are often denied by courts in USA due to the 'injury in fact' requirement of standing, the disregard of procedural requirements by the defendant confer standing as far as a concrete interest of the citizen plaintiff has been impaired by the failure to comply with procedures.[118] And even if the contour of procedural standing remained ambiguous in different states, a plaintiff at least could assert procedural standing under an environmental review statute when an agency failed

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116 Erin Daly, supra note 99, p.72. See also Felicity M., supra note 19, p. 194. At this juncture, there is also an international Convention Viz. 'Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (1998), (Aarhus Convention)', although Ethiopia is not a party to this Convention.

117 William A. Tilleman (1995), 'Public Participation in the Environmental Impact Assessment Process: A Comparative Study of Impact Assessment in Canada, the United States and the European Community', Columbia Journal of Transnational Law, Vol. 33, p.344.

118 David S., supra note 6, p. 57. On the issue of procedural standing see generally Stewart A. Yerton (2010), 'Procedural Standing and Hawaii Super ferry Decision: How a Suffer , a Paddler, and Orchid Farmer Aligned Hawaii's Standing Doctrine with Federal Principles', Asian-Pacific Law Journal, Vol. 12, Issue 1, pp. 331-369.

to produce an environmental assessment or environmental impact statement as the statute required.[119]

In Ethiopia, as mentioned earlier, the EPC Proclamation recognizes citizen standing to seek remedies for environmental wrongdoings from the alleged polluter only when there are actual or potential harms to the environment.[120] This means, citizens have no standing right to institute PIL ''against those persons who have violated environmental regulations but whose behaviors have not caused harm or are not likely to cause harm.''[121] For instance, if a proponent fails to engage the public in EIA process,[122] his failure amounts to environmental wrong doing. But the mere failure to engage the public in the EIA process may not cause actual or potential damage to the environment in the meaning of Art 11(1) of the EPC Proclamation, so that PIL cannot be instituted based on the aforementioned article.[123]

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119 Brandford C. Mank (2009), 'Standing and Future Generations: Does Massachusetts V. EPA Open Standing for Generations to Come?', Colum.J. Envtl. L., Vol. 34, p.37.

120 The EPC Proclamation, supra note 8, Art 11(1).

121 Dejene G. (2013), supra note 20, p. 23.

122 The EIA Proclamation, supra note 59, Art 15(2). It impliedly required the proponent to engage the public in particular the communities likely to be affected by the project. See also the FDRE Constitution; supra note 36, Art 92 (3).

123 Dejene G., supra note 20, pp. 23-24

But the question may arise as to whether citizens have a standing to sue the proponent who is totally failed to conduct EIA while the project is the one that needs EIA.[124] Since regulatory organs need the support of the public to effectively discharge their duties, any public spirited person may inform the Authority the instances of violation of environmental regulations by the project owner. Based on the information received, the concerned EPO may move to check the alleged violation and finally take the appropriate administrative decision regarding the project in question. It is here the issue of Art 17 of the EIA Proclamation comes to the fore: The Article states ''[A]ny person dissatisfied with the authorization or monitoring or any decision of the Authority or the relevant regional environmental agency regarding the project may submit a *grievance notice*…''.

From the outset the usage of the term 'any person' under this article seems to imply any person as stipulated in the case of Art 11(1) of the EPC Proclamation. But the closer reading of the provision reveals that the term 'any person' refers to the proponent and other persons who are likely to be affected by the implementation of the project. Thus, one can argue that only persons, who have a vested interest, can submit such a grievance notice to the head of the concerned EPO under Art 17 of the EIA Proclamation. Moreover, it should be noted that even if such interested persons can submit the grievance notice to the head of the agency, as mentioned earlier, the EIA Proclamation does not provide a judicial remedy against the decision of the head.

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124 The EIA Proclamation, supra note 59, Art 3(1) cum Art 5. See also, FEPAE. (2008), 'A directive issued to determine projects subject to environmental impact assessment (Directive No. 1/2008)' which provides 21 projects that needs EIA.

Therefore, the question whether any person without showing a vested interest can lodge a complaint to the concerned EPO under Art 11 of the EPC Proclamation and thereby institute a court suit against the proponent who failed to conduct EIA shall be examined in tandem with Art 17 of the EIA Proclamation. The message of the cumulative reading of the two provisions (i.e. Art 17 of the EIA Proclamation and Art 11 of the EPC Proclamation) seem to confirm that even persons with vested interest would not have a standing to bring a judicial review action against the decisions of the EPO given on the issue of EIA concerning the project in question. Thus, particularly given the current pattern of divesting the inherent power of courts to review administrative decisions (as confirmed by the decisions of the Cassation Division and CCI, mentioned earlier), it is safe to argue that the chance that such administrative decisions, taken by environmental regulatory bodies under the EIA Proclamation, may be regarded unjusticiable and thus not subject to judicial review seems wide. Accordingly, one may argue that neither '*any person*' nor persons with a vested interest will have a procedural standing under Art 11 of the EPC Proclamation.

Moreover, since EPC Proclamation is designed to govern the issue of environmental pollution rather than procedural mechanisms like EIA, it is difficult to invoke the citizen standing provision of the EPC Proclamation to challenge actual or potential environmental damages with respect to EIA related violations. At this juncture, it should also be noted that the issue of procedural standing may raise the issue of ripeness.[125] This is because the failure of the proponent to conduct EIA does not necessarily bring actual or potential damage to the environment in the meaning of Art 11 of the EPC

125 David S., supra note 6, p. 55. At this juncture, a case is said to be ripe or ready for review if there is controversy that is more than merely anticipated (See Rosemary O'Leary (2010), 'Environmental Policy in Courts', in Environmental Policy: New Directions for the Twenty –First century (Norman J. Vig and Michael E. Kraft (editors), 7th ed., CQ press, Washington D.C.) p. 129.

Proclamation. Similarly, observing EIA requirements does not mean that the proponent's project may not cause environmental damage. Therefore, in the absence of any polluting activity by the proponent that cause damage or more likely to cause damage to the environment, the citizen's action may be rendered unripe in the meaning of Art 11 of the EPC Proclamation.[126]

Although the failure to conduct EIA may be construed as causing 'potential damage' to the environment, the standing under Art 11 of the EPC Proclamation required the identification of some action of the alleged polluter causing actual or potential damage to the environment, other than the failure of the proponent to observe procedural requirements (like the obligations to conduct EIA or engage the public in the process of EIA). Therefore, unless a similar citizen suit provision is included in the EIA Proclamation, citizens cannot use Art 11 of the EPC Proclamation to invoke procedural standing and thereby demand the proponent to conduct EIA or engage the public in the process of EIA. Although the judiciary can still interpret Art 11 of the EPC Proclamation in the manner that includes procedural standing, expecting the Ethiopian judiciary to come up with such kind of 'judicial activism' seems a long time dream, as partly revealed in the APAP vs. EPA case.[127]

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126 At this juncture, however Dejene noted that, ''if ripeness means presence of some harm, it may be late to prevent certain environmental problems'' (See Dejene G. (2014), supra note 34, p. 130).

127 See the Cassation Decision given in the case between APAP and the then EPA, where the Federal Supreme Court Cassation Division ruled that citizens do not have standing to sue EPA and can only proceed against the polluter, showing one instance of the lack of 'judicial activism' in our courts with respect to cases involving environmental matters (See APAP vs. EPA, Federal Supreme Court Cassation Division, File number 39779, decision of 3 December 2008).

Similarly, citizens have no standing right to sue the environmental protection organs or any licensing agency due to their failure to observe procedural requirements. For instance, the EIA Proclamation required any licensing agency, prior to issuing an investment permit or a trade or an operating license for any project, to ensure that the Authority or the relevant regional environmental agency has authorized its implementation.[128] Moreover, the Proclamation required the concerned environmental protection organs to make any EISR accessible to the public and solicit comments on it.[129] However, there is no legal authorization where 'any person', without showing vested interest, can challenge the non –consideration or observance of EIA related authorization by the licensing agency and the denial of information and participation by the EPO respectively. Therefore, given the difficulty of proving vested interest, the absence of citizen standing provision under the EIA Proclamation would have the effect of restricting the right of citizens to confront environmental decision makers,[130] which in return paved the way for administrative injustice to flourish in environmental matters.

In conclusion, although recognizing citizen standing under EPC Proclamation is a good starter to facilitate corrective actions, the standing right should also be extended to EIA Proclamation, whereby preventive actions are required for the protection of the environment, while providing the requirement of EIA. In this regard, it should also be note that the preventive measures certainly serve the purpose better than corrective measures in the task of environmental protection. Thus, in addition to the EPC

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128 The EIA Proclamation, supra note 59, Art 3(3).

129 Id, Art 15(1).

130 Yenehun Birelie (2012), 'The Right to Public Participation in Environmental Decision Making in Ethiopia: Gaps and Challenges', in Essay on Environmental Rights, Ethiopian Human Right Law Series, AAU, School of Law (ed. Girmachew Alemu), Vol. IV., p. 46.

Proclamation, the EIA law needs to incorporate citizen suit provision that enables any public spirited individual or group to challenge the proponent and any government agency for their failures to observe the requirement of EIA.

B.STANDING TO SUE ENVIRONMENTAL AUTHORITIES: A WRIT OF MANDAMUS

In Anglo- American legal system a remedy of mandamus is available in respect of the exercise of public power or public law matters.[131] A writ of mandamus is an order from the court which compels the performance of a public duty or the exercise of a discretion according to law by a public official, agency or tribunal.[132] In USA the citizen-plaintiff may apply for the common law writ of mandamus as far as he/she is able to scale, or avoid, the threshold barriers of standing and sovereign immunity.[133] For instance, a citizen may wish to force federal environmental officials to enforce federal water pollution control standards and thereby compel administrators to act in accordance with legislative intent. At this juncture, such a public-minded plaintiff seeks administrative action on behalf of all citizens, not merely damages for himself.[134] Similarly, in England any ‘‘person aggrieved’’ by a statutory nuisance has the right to complain to the

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131 Wolf S. et al, supra note 5, p. 392.

132 Queens land Public Interest Law Clearing House Incorporated (2005), ‘Standing in Public Interest Cases: A guide’, P. 6.

133 Howard W. Brill (1983), ‘Federal Officials: Case Studies in Mandamus, Actions, "In the Nature of Mandamus and Mandatory Injunctions, Akron Law Review, Vol. 16, No. 33, p. 340.

134 Id, p. 339.

magistrates' court in order to obtain a court order to bring the nuisance to an end.[135] And the word ''person aggrieved'' is often not subjected to a restrictive interpretation so that the door is open for citizen action against the local authority responsible for controlling statutory nuisances.[136] From the above discussion, one can understand how mandamus action could enable citizens to challenge administrative inertia and thereby seek an order compelling pollution control authorities to perform their statutory obligations.

However, in Ethiopia citizens have no standing to apply for a court order requiring the environmental protection authorities to carry out their statutory obligations.[137] In this regard, the then EPA; the present Ministry of Environment, Forest and Climate Change; and its regional counterparts are vested with a range of regulatory powers including rule making, investigative and decision making or adjudicative (i.e. the power to take administrative measures) powers.[138] Particularly, the Ministry or the relevant REA ''may''[139] take an *administrative or legal measure*[140] against a person who, in violation

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135 Wolf S., et al, supra note 5, p. 289.

136 Ibid.

137 Dejene G. (2013), supra note 20, p. 24.

138 The EPOs Environmental Proc., supra note 111, Art 6. See also the EPC Proc., supra note 8, Art 3.

139 Here, the term ''may'' under Art 3(2) of the EPC Proclamation implies the authorities have a discretion in taking administrative and legal actions. However, in other jurisdiction, for instance in England, the discretion of regulatory organs is subject to judicial review. For example, in England the regulator's discretion regarding a decision not to prosecute a polluter is subject to the supervisory jurisdiction of the courts. Accordingly, individuals and pressure groups have access to the courts in circumstances where they wish to challenge the way in which the pollution control authorities have, or have not, exercised their discretion properly. See Wolf S. et al, supra note 5, pp.11 & 392.

of law, releases any pollutant to the environment.[141] But, if the Ministry or REAs failed to carry out their obligations[142] to take the necessary administrative measures against the polluter, citizens cannot use courts to compel them to take actions.[143] This has been confirmed in the case APAP vs. EPA where the Federal Supreme Court Cassation Division ruled that citizens do not have standing to sue EPA and can only proceed against the polluter.[144] However, some argued that the failure of the EPA to discharge its duties should render it an indirect polluter and, as a result, it can be sued for pollution under Art 11(2) of the EPC Proclamation.[145]

But it is clear that citizen suit provision in the EPC Proclamation is initially designed for the purpose of facilitating citizen *complaints* to the EPA against polluters. And given

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140 Here, the term ''legal action'' refers to all non-administrative actions which include causing prosecution to take place if the environmental wrong doing that has occurred constitutes a crime. See Dejene G. (2013), supra note 20, p. 11.

141 The EPC Proc., supra note 8, Art 3(2).

142 In spite of the vast regulatory power, the supervisory body could delay; miss deadlines, convert mandatory standards to discretionary ones, create loopholes, water down strict statutes in the regulatory process, or simply refuse to use their enforcement powers when faced with blatant violations. See Campbell-Mohn, Breen and Frutel (1993) 'Environmental Law from Resource to Recovery', West Publishing Co., Minnesota, p. 34.

143 James Krueger et al, supra note 115, p. 95.

144 APAP Vs EPA, Federal Supreme Court Cassation Division, File number 39779, decision of 3 December 2008.

145 Sisay Alemahu, supra note 15, p. 79. See also Khushal V., supra note 70, p. 95 and Dejene G. (2013), supra note 20, p. 24.

the existing political environment, it is unlikely that the legislature intended to open the door to litigation against EPA.[146] Thus, when the Ministry or the regional environmental protection agencies, as the case may be, delays or failed to enact the necessary standards,[147]or does not take enforcement actions, or fails to conduct adequate inspections or monitoring, then citizens have no standing to bring court suit against such supervisory bodies.[148] Therefore, to promote administrative accountability in the task of environmental regulations in Ethiopia, the environmental standing needs to be further liberalized.

C. ACCESS TO INFORMATION FOR EFFECTIVE PIL

One of the requisites for individuals and pressure groups to take action is that they are equipped with necessary information. Since most environmental violations involve the carrying out of unauthorized activities, the public needs to have access to information to ascertain whether the activity is authorized or not and, if it is authorized ,whether all of the conditions attached to the authorization are being compiled with.[149] Thus, before an act that endangers the environment is challenged, the petitioner must have the full facts of

146 James Krueger et al, supra note 115, p. 94.

147 See the EPC Proc., supra note 8, Art 6 where the then EPA is mandated to formulate practicable environmental standards. At this juncture, it should be noted that regional environmental agencies can pass their own standards; provided that they are more stringent than the federal environmental standards. See EPOs Establishment Proc., supra note 111, Art 15(2).

148 PIP Re., supra note 101, Art 10 (3). See also James Krueger et al, supra note 115, p. 95.

149 Wolf S. et al, supra note 5, pp. 390 & 396.

the violation lest his public interest case be dismissed. That is why access to environmental information is said to be critical in PIL.[150]

To enable citizen plaintiff to identify the firms that are committing offences for instance in England public registers are required to provide information about polluting activities to the public. Saving exceptional circumstances, firms are not also allowed to exclude information simply on the ground that it would be detrimental to their image.[151] Moreover, in different countries pollution control authorities are obliged by law to solicit and disclose the necessary information to the individual intending to institute a case against a polluter.[152]

However, in Ethiopia only EPOs have access to environmental information.[153] And individuals do not have any legal authority to demand information from the polluter or from the concerned EPO. In any case citizens cannot force the Ministry or regional environmental agencies to gather the necessary information and make it public.[154] Thus, in the absence of the necessary information, ‘‘a complaint is bound to loss his case which

150 Rose Mwebaza (2003), ‘Access to Information, Public Participation and Justice in Environmental Decision Making in Uganda’, East Afr. J. Peace & Hum. Rts, Vol.9, p. 38.

151 Wolf S., et al, supra note 5, p. 390.

152 Khushal V., supra note 70, p. 96.

153 The EPC Proc., supra note 8, Art 19.

154 James Krueger et al, supra note 115, p. 95.

turns out the right of standing of Art 11 to be non-existence''.[155] As a solution, therefore the law must bestow citizens with a right to access environmental protection organ's records or a right to get information directly from the polluting industry.[156]

D. RELAXATION OF PROCEDURAL REQUIREMENTS: THE COST OF LITIGATION

Effective public interest litigation required a bundle of procedural flexibility. Traditional procedures should not be a hurdle to bring citizen suits in environmental matters.[157] The financial cost of commencing action and producing admissible scientific evidences are often problems in environmental public interest cases.[158]

In USA in a variety of areas including environmental, securities and civil rights law, there are fee-shifting statutes that entitle private citizens to recover their full attorney fees and disbursements in cases in which they have ultimately succeed either in court or by way of settlement.[159] For instance, the Clean Air Act allows for the recovery of costs, including attorneys' fees, as an important incentive to pursue citizen suits.[160]

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155 Khushal V., supra note 70, p. 96.

156 James Krueger et al, supra note 115, pp. 94 & 96.

157 J Cassels (1989), 'Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?', American Journal of Comparative Law, p. 498

158 Wolf S. et al, supra note 5, pp. 391.

159 Chris Tollesfson (2011), 'Costs in Public Interest Litigation Revisited, the Advocates' Quarterly, Vol. 39, p. 200.

160 David S., supra note 6, p.51.

In Kenya, a prospective citizen-plaintiff is exempted from paying a filing/court fee or any further fee on the petition where the petition relates to PIL, is brought to advance legitimate public interest, will contribute to a proper understanding of the law, and is not aimed at giving the plaintiff a personal gain.[161]

However, in Ethiopia there is no such system which either exempted court fee for environmental PIL or provides a recovery of costs. Moreover, under the EPC Proclamation which provides ''standing right'', there is no explicit provision for compensating the citizen initiating the suit, who incurs the costs of litigation and pollution studies.[162] Under the traditional litigation, no statement of claim shall be admitted except after payment of the prescribed court fee.[163] Although the Civil Procedure Code of Ethiopia provides provisions for ''suits by Paupers''[164], such provisions are unlikely to be applied for PIL. This is a shortcoming of the law because it might prevent poor people from coming forward.

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161 J Preston et al (2013), 'Environmental Public Interest Litigation: Conditions for Success', paper presented to the International Symposium Towards an Effective Guarantee of the Green Access: Japan's Achievements and Critical Points from a Global Perspective 30-31 March 2013, Awaji Island, Japan

162 James Krueger et al, supra note 114, pp. 93-94.

163 The Civil Procedure Code of Ethiopia, supra note 88, Art 215(1).

164 Id, Art 467-479.

5.CITIZEN STANDING TO CHALLENGE THE CONSTITUTIONALITY OF ENVIRONMENTAL 'LEGISLATIONS'

The rights and obligations of the EPA[165] are currently transferred to the Ministry of Environment, Forest and Climate Change.[166] Accordingly, as successor of EPA the Ministry is empowered *inter alia* to issue environmental standards and other directives in addition to its power and duties to formulate or initiate the formulation of environmental policies and laws.[167] Now the question is whether citizens have a standing to challenge the constitutionality of such subsidiary environmental laws enacted by the Ministry[168] and Regional Environmental Protection Agencies as administrative bodies of the government. This leads to the questions that which organ is empowered to interpret the Constitution and who can bring the applications thereof. For instance in some countries

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[165] EPOs Establishment Proc., *supra note* 111, Art 6. The Provision illustrates the administrative powers of the ten EPA which includes the rule making and investigative powers.

[166] See Proclamation No. 803/2013, Art 2(6) which transferred the rights and obligations of EPA to the Ministry of Environment and Forest. See also Proclamation No. 916/2015, *supra note* 54 (which comes after the aforementioned Proclamation and re- named the ''Ministry'' as the Ministry of Environment, Forest and Climate Change), Art 30.

[167] At this juncture, the EPOs Establishment Proclamation also empowered Regional Environmental Protection Agencies to issue their own Environmental Standards, but not less stringent than the federal once (See EPOs Establishment Proc., supra note 111, Art 15(2)).

168 Here it is important to note that the Draft Federal Administrative Procedure Proclamation considered ''Ministry'' as an administrative agency. Thus, the Ministry of Environment, Forest and Climate Change can be considered as an administrative Agency. See 'Federal Administrative Draft Procedure Proclamation', Ministry of Justice, 2004. See also Yidnekachew Ayele, supra note 2, p. 64.

like India, the Supreme court has a power to review legislative enactments and decisions of administrative organs with a view to ensure that other branches of government are confined to the limits drawn upon their powers by the Constitution.[169]

In Ethiopia, the power of interpreting the Constitution is entrusted to the House of Federation (HoF), where the constitutional disputes are submitted to it by the Council of Constitutional Inquiry (CCI) for a final decision.[170] Although the issue whether regular courts have a power to interpret the Constitution or decide the constitutionality of legislations is subject to debate in the academic discourse,[171] the writer of this article

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169 Susman, Susan D. (1994), 'Distant voices in the Courts of India: Transformation of standing in Public Interest Litigation', Wisconsin International Law Journal, Vol. 13, p.58

170 The FDRE Constitution, supra note 35, Art 62(1), Art 83(1) and Art 84(2).

171 There are divergent lines of arguments with respect to the role of the courts in the interpretation of the Constitution or to decide on the constitutionality of legislations. Particularly, different writers found it difficult to determine where the role of the court ends and that of the other institutions (especially the council of Constitutional Inquiry and the House of Federation) begins. The general clauses of the Constitution that empower the HoF to ''interpret the Constitution and to decide constitutional disputes'' seems the main reason for the existing clashing arguments made in this regard, because the Constitution is silent on the exact contours of such vague clauses. In this regard, Assefa Fisseha, for example state that the Constitution does not seem to wipe out the role of the judiciary completely mainly arguing on the Amharic version of Art 84(2) of the Constitution (which state that Be Federalu Mengistim Hone Be Kilil Hig Awchi Akalat Ye Miwotu Higoch, connoting Proclamations rather than Regulations and Directives). According, he argued that other subordinate legislations (i.e. administrative acts and decisions of public bodies) other than proclamations (which are enacted by the HoPR and States Councils) could be questioned for their constitutionality as well as for their conformity with the enactment of parliament, by the regular judiciary (See Asefa Fiseha (2007), 'Constitutional Adjudication in Ethiopia: Exploring the experience of the House of Federation', Mizan Law Review, Vol. 1, No. 1, pp. 15-17). There are also writers who argued

believes that where the constitutionality of any Federal or State law is contested, the issue needs to be finally decided by the HoF.[172] With respect to administrative acts, this means whenever the constitutionality of a given legislation or public instrument enacted by an administrative organ is at issue, it shall be decided by the HoF rather than courts.

Moreover, in such cases the litigant is not expected to exhaust any administrative or judicial remedies, since there is no remedy available before administrative organs and

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differently or support the above position, while based on different reasoning. The arguments manly lie on the issue as to what constitute the term 'constitutional dispute' or 'constitutional interpretation' under the Constitution? Is it the same as a ruling on the constitutionality of laws or does it only refer to the expounding of the provisions of the constitution or both?. For example, Yonatan argued in the manner that totally excludes courts from the business of constitutional interpretation on both aspects. While some argued that courts have the power to expound the provisions of the Constitution through interpretation except the act of invalidating legislations for their unconstitutionality. For more on the issue, see generally D.A. Donovan (2002), 'Leveling the Playing Field: the Judiciary Duty to protect and Enforce the Constitutional Rights of Accused persons Unrepresented by Council'', Ethiopian Law Review, Vol. 1(1), p. 31; Yonatan Tesfaye (2008), 'Whose Power Is It Anyway: The Courts and Constitutional Interpretation in Ethiopia', Journal of Ethiopian Law, Vol. XXII No. 1, July, 2008, pp.128-136; Tsegaye Regassa (2000), 'Constitutional and the Human Rights Norms in Ethiopia', in Faculty of Law/Civil Service College (ed), Proceeding of the Symposium on the Role of the Courts in the Enforcement of the Constitution, p. 116; and Assefa Fiseha (2000), ''Constitutional Interpretation: the respective role of courts and the House of Federation'', in Faculty of Law/Civil Service College (ed), Proceedings of the Symposium on the Role of the Courts in the Enforcement of the Constitution, pp. 133-114.

172 Nevertheless, owing to the responsibility of courts to enforce the Constitution, which in return required interpretation, the Constitution shall be construed as it allows courts to determine the scope and application of the constitutional rights to the operative facts of the case. Otherwise, prohibiting courts to apply such constitutional provisions to the case at hand via interpretation would make their duty with respect to enforcing the constitutional rights (e.g. environmental rights) meaningless [FDRE Constitution, Supra note 35, Art 10(2) & 13(2)].

regular courts on the issue of constitutionality.[173] Courts are even obliged to transfer the issue involving constitutional disputes to the HoF.[174] As a result, any person can directly take his case to the HoF if he proves the fact that he is an 'interested party' in the meaning of Art 84(2) of the FDRE Constitution. However, the question is what an ''interested party'' implies under the above constitutional provision.[175]

Actually, it is obvious that such interested parties are those who have a ''vested interest'' and affected by the application of such unconstitutional legislations issued by administrative agencies. Therefore, seeking constitutional interpretation of a given ''law''[176] by the person who has no vested interest would raise the issue of ''ripeness''; to use the language used in the case of judicial review. So unless the case is brought by a company or an individual proponent who are affected by such unconstitutional legislations enacted by the environmental protection organs or any other government

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173 Tsegai Berhani and Merhatibeb Teklenmedhin, supra note 31, pp. 134-135

174 The FDRE Constitution, supra note 35, Art 84(3). See also Federal Court Proclamation, Proc. No. 25/96, Art 6 (3).

175 For a discussion on the term 'interested party' see Abebe Mulat (1999), ''Who is the Interested Party to Initiate a Challenge to the Constitutionality of Laws in Ethiopia'', The Law Student Bulletin, Vol. 1, pp. 9-12.

176 Here, the writer used the term 'law' to refer directives, guidelines, manuals, standards or any other public instruments that could be formulated by administrative bodies. But, it is important to note that the laws made by the HoPR and the Council of Ministers and their regional counterparts may also be unconstitutional, so that amenable to be reviewed by the HoF.

organ under active disputes, it is difficult to argue that citizens have a standing to challenge the constitutionality of such laws.

However, the phrase ''interested party'' under Art 84(2) of the Constitution may be construed to have a different meaning in relation to the environment where everyone has a diffused interest. At this juncture, it is important to note that the EIA Proclamation required any organ or government which initiates a ''public instrument'' which are likely to entail significant environmental impact to be subjected to Strategic Environmental Assessment.[177] The purpose of such requirement is to ensure that the laws enacted by government organs not to have a significant adverse impact on the environment and thereby violates the constitutionally guaranteed rights of the citizens to live in a clean and healthy environment.[178] But the question is what if the enactment of such instruments by administrative organs (e.g. environmental protection agencies or investment agency) paved the way for environmental pollution and thereby affects the right to live in a clean and healthy environment. Can anyone challenge the constitutionality of such laws?

In this regard, it is important to read Articles 83 and 84 in tandem with Articles 44(1) and 92 (4) of the Constitution, and Art 11 of the EPC Proclamation. When we read the above legal provisions together, they imply that everyone has the right to live in a clean and healthy environment, and with the duty to protect the environment. So, everyone is presumed to have ''vested interest'' when damage is done to the environment due to the unconstitutional acts of administrative organs. Accordingly, one may argue that any alert citizen or public interest group can directly take his/its case to the HoF and thereby challenge the constitutionality of environmental laws enacted by administrative organs. However, in the absence of clearly stipulated citizen standing clause in relation to

177 The EIA Proc., supra note 59, Art 13.

178 The FDRE Constitution, supra note 35, Art 44.

challenging the constitutionality of environmental laws, it would be difficult to convince the Council of Constitutional Inquiry and the HoF to accept such applications.

CONCLUDING REMARK

This article is aimed to examine the adequacy of the legal framework put in place for the liberalization of standing requirements and judicial review remedies in the manner that promote PIL and administrative justice in environmental matters in Ethiopia. Actually, in environmental proceeding, one of the reasons for the liberalization of standing stems from the need to check the abuse of environmental authorities and thereby promote administrative justice, while enforcing environmental laws under citizen suits. Therefore, in environmental cases where everyone has a ''diffused interest'' in the protection of the environment, providing a broad legal basis to 'citizen standing' (to sue polluters as well as environmental regulators without the need to show any vested interest) and judicial review actions (against administrative inertia or abuse of environmental agencies) is important for the better enforcement of environmental laws, while promoting administrative justice in environmental decision making process.

In this regard, however, the article reveals a number of lacunas with respect to liberalization of standing and judicial review rights in environmental matters. In Ethiopia, although the task of liberalizing environmental standing has been started by bestowing any person a 'secondary rights' of standing to bring a court case against the polluter, the issue of standing is yet to be liberalized to the required degree in the manner that promotes PIL and thereby ensure administrative justice in environmental matters. The absence of clear provisions for citizen suits with respect to procedural standing, to sue regulators for their inactions or to challenge regulatory decisions, and to challenge the constitutionality of environmental legislations may reveal the restricted nature of standing rights in environmental matters in Ethiopia.

Moreover, given the lack of clear stipulations for the possibility of judicial review actions in our major environmental laws (by aggrieved person or by any citizen) coupled with the existing trend of the Cassation Bench's blessing to those legislations providing 'ouster clauses' or 'finality clauses' for administrative decisions, the chance of making administrative justice to flourish in environmental matters seems closed.

Given the above legal lacunas and uncertainties, therefore, it is important to revisit and further liberalized the issue of citizen standing, and the right of private individual or pressure groups to challenge administrative action (or inaction) or decisions in the manner that promotes PIL and administrative justice in environmental matters. Until such a time comes, however, the judiciary should at least adopt liberal interpretation of existing environmental laws in the way that promote citizen suit and thereby ensure administrative justice.