

Welcome to Environmental Law

Teaching-learning Discourse

Chapter 1: Introduction to Environmental Law

I. Defining the concept environment

 Can the concept environment has Legal definition?

 Is it possible to define and determine the scope of definition of the concept environment?

 Why it is important to define the concept environment?

 The term ***environment***: derived from an ancient French word '*environ*' – which means 'surrounding' or 'to encircle'.

 **Broader definition:** the aggregate of **natural, social and cultural conditions** that influence the life of persons.

 **Geographical definition:** environment can refer to **a limited/specific area** or encompass the **entire planet**, including the atmosphere and stratosphere... ********

Defining the concept Environment is not an easy task.

For that most treaties, declarations, codes of conduct, guidelines, etc. **don't define the concept directly.**

Different instruments and scholars define environment differently for different purposes.

1. The Declaration of the 1972 Stockholm Conference on the Human Environment (UNCHE) used the phrase ... 'man's environment' that encompass natural and man-made (components) essential for his (man's) well-being and enjoyment of (his) basic human rights.
2. The 1992 Rio Declaration on Environment and Development doesn't define what environment is.
 - It stipulates that *human beings are entitled to a healthy and productive life in harmony with nature*.

The Rio Declaration on used the terms such as:

- **(human) Environmental needs,**
- **Environmental protection (for sake of human needs),**
and
- **Environmental degradation**

... but without defining it or stating what it consists of.

3. The World Commission on Environment and Development (WCED):

... “the environment is where we live” (the entire?).

4. The Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment: environment includes:-

- (1) **Natural resources** both abiotic and biotic, such as air, water, soil, fauna and flora and
- (2) the **interaction** between the same factors;
- (3) **property** which forms part of the *cultural heritage*; (**man made aspects**) and
- (4) the **characteristic aspects** of the landscape (geographical/topographical variations).

Does Ethiopian legal regimes defines the concept ‘environment’?

5. [Ethiopian] Environmental Protection Organs Establishment (Proc. No. 295/2002)

- *The totality of all materials whether in their natural state or modified or changed by human, their external spaces and interactions which affected their quality or quantity and the welfare of human or other living beings, including but not restricted to, land, atmosphere, weather and climate, water, living things, sound, odor, taste, social factors, and aesthetics.*

Famous saying: *Environment is ‘a term that everyone understands and no one is able to define’.*

Significance of defining?

- ☞ to **delineate the scope** of the subject,
- ☞ to **determine the applicable legal rules**, and
- ☞ to **establish the extent of liability** in case of environmental damage.

? How do you appreciate approached towards defining the concept environment?

(Points from mandatory reading I (Marie-Louise Larsson: Legal Definitions of the Environment and of Environmental Damage))

- *Steady growth of environmental problems: 1960s, 70s, 80s ... contemporary*
- *Awareness ... all human activities have had and having certain negative effects on the environment.*

Definition ...

- *Broader sense: environment is defined as including water, air, soil, flora and fauna. **E.g. Salts' categorical definition:** natural, man-made and human environments.*
- *Geographical definition (based on environmental concerns): can be global, regional and local ...*

II. Development of Environmental Law

Basic questions:

- ➔ Is there a distinct body of law called (national or international) environmental law?
- ➔ In other words, is 'environmental law' a self-sustained discipline?
- ➔ Can we make a distinction between environmental regimes/laws as national or international?
- ➔ When was environmental law making began (and nationally or internationally)?
- ➔ And who are the actors in environmental law making?
- ➔ Is the current environmental regime sufficient to protect the environment/nature?

? Why and how environmental law has emerged (trace of evolutionary pathway)? What were factors that gave rise to environmental law?

Highlights:-

- ✓ The traditional legal order of the environment (worldwide) was essentially a *laissez-faire system* oriented toward the unfettered freedom of states to use environmental resources for development and sustenance needs
- ✓ **Enactment of laws** - legal regimes that protect the environment - represents a **limitation of the traditional *laissez-faire tradition*.**

1. The problem-awareness premise: Emergence of environmental problems:-

... An enhanced awareness that the global environment is fragile, global environmental problems are immense, and human activities are damaging the environment at an accelerated pace ...

2. The cause - awareness premise

... Emergence of extensive and series environmental problems of serious impact (which have international dimension) were caused to the environment by human action as the result of laissez-faire system of environmental order.

E.g. atmospheric pollution, marine pollution, global warming and ozone depletion, the danger of nuclear and other extra-hazardous substances which threatened sustenance of life.

.... The **various pollutions has caused effects like** climate change, desertification, and threats to biodiversity, hazardous waste, and dwindling fish stocks ...

3. the solution premise: a need for global concerted effort to tackle environmental problems

- ... a growing realization that **without concerted national, regional and international action** the planet will **continue to suffer further** environmental degradation ...
- **Global public concern about environmental issues was awakened with the understanding that Environmental problems which have international dimension cannot be resolved by individual states. The awareness has necessitated co-operation among states: both the polluting and the polluted.**

Another problem despite the awareness:

- The problem (fragility) of *balancing between economic development (by sovereign states) and environmental protection* (which require international cooperation).
- *How to keep in balance the two is therefore a thorny issues necessitating for instruments of balancing???*

Grasps:

- ✎ There have been emerged ‘a set of legal principles and norms regarding the environment, such that one can arguably describe it as a body of law’
- ✎ **International environmental law** is ‘a relatively new addition to the corpus of international law.

III. But for what/whose interest to protect the environment? What are the different perspective views?

... **three stages...**(1) **Anthropocentric perspective** (2) **Integration and Inter-generational perspective** and (3) **Non-anthropocentric (eco-centric) perspective**

A. Anthropocentric perspective/understanding (until late 19th century) – laws were based on humankind's immediate self-interest and aimed at maximizing nature's resources for human exploitation.

- Accordingly, **first environmental laws were enacted to protect human health** from environmental contamination.

- E.g.

- ☞ 1st c AD - **Rome Senate** was passed legislation to protect the city's supply of clean water for drinking and bathing.

- ☞ 14th c, **England** prohibited both the burning of coal in London and the disposal of waste into waterways for sake of human health.

- ☞ **During Industrial Revolution (in 19th c), British** passed regulations to reduce the deleterious effects of coal burning and chemical manufacture on public health and the environment.

- ☞ **Prior to the 20th c**, there were few multilateral or bilateral environmental agreements which were primarily focused on:

- ✓ boundary waters,

- ✓ navigation, and

- ✓ fishing rights along shared waterways and

- **ignored pollution and other ecological issues.**

- ☞ In the **early 20th c**, conventions to protect commercially valuable species were reached:
- ✓ The **Convention for the Protection of Birds Useful to Agriculture (1902)**, signed by 12 European governments;
 - ✓ The **Convention for the Preservation and Protection of Fur Seals (1911)**, concluded by the United States, Japan, Russia, and the United Kingdom; and
 - ✓ The **Convention for the Protection of Migratory Birds (1916)**, adopted by the United States and the United Kingdom (on behalf of Canada) and later extended to Mexico in 1936.

B. The Integration and Intergenerational perspective (1970s)

- ✓ At the stage international community were aware that **environmental problems are complex**; increased **environmental instruments worldwide**.
- ✓ The concern for **both environmental utility to human being** and for **sake of the environment it-self** was outshined.

C. Contemporary perspective - a “non-anthropocentric paradigm” - nature’s own right paradigm (Eco-centric)

- ✓ **Primary concern: ecological survival** rather than satisfying human needs.
- ✓ Beginning in the 1960s **environmentalism became an important political and intellectual agenda**.
- ✓ **Movement in the West were started to address the increasing environmental problems**.
- ✓ **E.g. USA and Japan** against indiscriminate release of industrial chemicals.

- **The United Nations Conference on the Human Environment (1972)**, established the **United Nations Environment Program (UNEP)** as the **world's principal international environmental organization.**
- The **London Convention on the Prevention of Pollution by Dumping of Wastes or Other Matter (1972)**
- The **Convention on International Trade in Endangered Species (1973)**
- the **1992 UNFCCC** (Global Warming Convention)
- The **Vienna Convention for the Protection of the Ozone Layer (1985)**
- **The Convention on Nuclear Safety (1994)**
- **The Stockholm Conference** has accelerated enactment of legal environmental protection standards in European countries.

✋ In summary, the Evolution of the Development of International Environmental Law can be divided in 4 distinct periods. (Mandatory Reading 2 (1): Mellese Damtew - Reading Materials on International Environmental Law (The Land Ethic), p26-48.)

✉ 1st Period (19th C – 1945)

✉ 2nd Period (1945 – 1972)

✉ 3rd Period (1972 - 1992)

✉ 4th Period (Post Rio): Characterized as a period of integration.

✉ *What are the peculiar features of all the four periods?*

National Environmental Law: Ethiopian case

(Read the history of environmental law development in Ethiopia)

➤ **National environmental law of any country** consists of **various provisions** from domestic legal system that concerns with environment:

- ❖ environmental protection,
- ❖ Natural resources use and sustainable development,
- ❖ environmental rehabilitation, etc...)

..... which have emerged over various periods.

Ethiopia: evolutionary path

- Emergence of environmental concerns in Ethiopia is largely associated with the 1974-84 drought.
- the drought was believed was caused by agricultural degradation due to environmental mismanagement.
- But routine environmental management goes back but in a fragmented manner.
- E.g. establishment of national parks....
- Some say enactment of environmental laws in Ethiopia is influenced by international environmental concerns? Is that the case?

Focus: current environmental law regime ...

- *Relevant provisions of the **FDRE constitution**,*
- *the **National Environmental Policy of Ethiopia**,*
- ***Core specific environmental laws:***
 - ✓ ***Environmental Protection Organs Establishment Proclamation No. 295/002,***
 - ✓ ***Environmental Impact Assessment Proclamation No. 299/2002,***
 - ✓ ***Environmental Pollution Control Proclamation No.300/2002.....***
 - ✓ ***Directive No. 2/2008***

Other relevant laws such as:

- **Plant Breeders' Right Proclamation No. 481/2006,**
- **Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006,**
- **Biosafety Proclamation No.655./2009,**
- **Ethiopian Water Resources Management Proclamation No. 97/2000,**
- **Investment Proclamation No. 280/2005 (as amended), etc...**
- ***Specific implementation laws such as: Directive 2/2008***
- ***various specific and relevant regional laws on environmental protection, natural resource utilization ...***

Mandatory Reading III: *Mulugeta Getu, The Ethiopian Environmental Regime V. International Standards: Policy, Legal and Institutional Frameworks*

Main Grasp:-

- 👉 **Current:** there is **international consensus** about need to **protect the planet** from environmental degradation.
- 👉 **Common environmental problems confronting the international community:** *climate change, desertification, threats to biodiversity, hazardous waste etc. ...*
- 👉 **Consequence:** **emergence of environmental legal norms** have become **increasingly internationalized** and **sophisticated ...**

1. International: two major factors behind emergence of IEL:

A. increased awareness about global env'tal problems

B. a need for concerted action against these problems.

2. National level: most jurisdictions now have environmental protection regimes: policies, laws, government departments, and independent agencies and public interest groups dedicated to environmental protection.

Three stage of development (by orientation - purpose)

- **1st stage (late 19th century):** laws were based on humankind's immediate self-interest and aimed at maximizing nature's resources in view of their exploitation.
- **2nd stage of development (1970s):** an intergenerational dimension of environmental instruments appeared to make the regime more complex.
- **The contemporary (third phase):** brought a shift to a “non-anthropocentric paradigm and nature's own right,” where the primary concern is ecological survival rather than human development or aspirations.

- Highlight on **Philippe Sands** evolutionary category of international environmental law into four distinct periods (by major achievements of environmental law making) – refer to mandatory reading II (1): *Mellese Damtew, Reading Materials on International Environmental Law* (The Land Ethic), p26-48
- summary of major international environmental events and agreements from 1900 to 2002;
- Outline of the **Nature and purpose** of International Environmental ‘law’: Policies and Principles
- Main **principles** of IEL (introduction)
- **Ethiopian Environmental Laws and Institutional Frameworks**

- **Characterization of Ethiopian environment**
- **Urban environment:** unplanned and unmanaged industrialization and urbanization, very high population, high density of housing and unplanned settlement, crowded market centers, poor infrastructure, and contamination from industrial effluents.
- **Rural environment:** environmental problems - serious land degradation, loss of soil fertility, water pollution, air pollution etc.
- **Specific Characterization:**
 - ✓ land,
 - ✓ water and sanitation and toxic substance,
 - ✓ air, forest, wetland,
 - ✓ natural and cultural heritages ...

Legal regime: the constitution, Environmental Policy, Environmental Laws, Institutional Frameworks, Plan for Accelerated and Sustainable Development to End Poverty ..

What He Concludes?

Levels of Environmental Law?

- ***Environmental law*** exists at many levels and is only partly constituted by international ***declarations, conventions, and treaties.***
- The bulk of environmental laws are:
 - ***statutory***—encompassed in the enactments of ***legislative bodies*** and
 - ***regulatory***— generated ***by agencies*** charged by governments with the protection of the environment.
- ***The Role of International and National Laws in the Protection of the Environment***

What role?

- The role of the law in protecting the environment is ***not fundamentally different in both international and national law. Among the these roles are:***

1. Provides mechanisms and procedures for:

- *negotiating the necessary rules and standards,*
- *settling disputes, and*
- *supervising implementation and compliance with treaties and customary rules.*

2. Concerned with

- *regulating environmental problems,*
- *setting common standards and objectives for prevention or mitigation of harm, and*
- *providing a flexible rule-making process that allows for easy and regular amendment in the light of technological developments and advances in scientific and other knowledge.*

3. Provides rules of reinstatement of or compensation for environmental damage.

Does the Existing Environmental Law Adequately Protect the Environment??

- This is a **question of effectiveness** of environmental regimes in terms of:
- **solving the problems** for which 'environmental regime' has emerged;
- **achievement of goals** set out in the constitutive [environmental] instrument;
- **altering pattern of human behavior** regarding environment - human relationship);
- **enhancing compliance** with environmental rules and agreements [by sovereign states and transnational companies] etc. ...

NB. The effectiveness of different regulatory and enforcement techniques of environmental regimes are largely determined by the nature of the problem.

Foundations of Environmental Law: who, when and how began?

- ***Religious Traditions: how?***
- ***Traditional Communities: how?***

The Sources and the Law Making Process of Environmental Law

A. The Sources of Environmental Law (which source: formal, material or literal?)

Environmental law: largely contained in:-

- ***written texts (who have wrote those texts?),***
- ***common law principles and***
- ***emerging customary international law and***
- ***Various legislations by national governments (of civil and criminal aspects) and***
- ***decided case – precedents ... [Ogoni](#), Ogiek and endorses and ‘APPAP’***

A. Sources of National Environmental Law (NEL):

- **The constitution** – basic policy directions and human right basis;
- **Environmental legislations** – details on rights and duties of citizens and government agencies; enforcement mechanism and remedies in case of trespass...
- **Administrative Regulations:** rule-making, standard-setting and enforcement ...
- **Industry Standards and Codes of Conduct:** growing regime of guidelines of varies kind.

B. Source of International Environmental Law (IEL)

- **International vs national environmental regimes???**

Two doctrines have developed on nature of state responsibility for international environmental mandate and responsibility:

1. Monism:-

- States that there is a **unified body** of environmental rules,
- Accordingly, IEL is the most complete expression of unified law that which is hierarchically superior to other [national] law.

2. Dualism:-

- ☞ Dictates for separate environmental legal orders (IEL and NEL),
- ☞ looks to each jurisdiction to determine the sources of law and their hierarchy.

Chapter Two:

The Environmental Law Making Process: National and International Perspective

A. IEL Making Process (who are/is IEL maker?)

✎ There is no international legislature, comparable to national parliament to make IEL.

✎ but there are **generally accepted sources** from which international law derives, and

✎ **a variety of international processes** through which new international law is made or existing law changed.

IEL Making Process (who are/is IEL maker?)

✋ Much of international environmental law is **the product of an essentially legislative process involving the interplay of:**

- ✋ international organizations,
- ✋ conferences, diplomacy,
- ✋ codification and progressive development, and
- ✋ international courts, and
- ✋ interplay of treaties,
- ✋ non-binding declarations or resolutions, and
- ✋ customary international law.

2. NEL making processes: Ethiopian case?

👉 **national parliament** under power to legislate laws including those relevant to the environment.

👉 Depending on **sate structure**, **Regional State Councils** **may be** endowed with the same power.

👉 **what is Ethiopian case seems like?**

Mandatory reading IV: *Mark Drumbl*, **Actors and Law-Making in International Environmental Law**

Basic questions:

- ✎ Compare and contrast environmental law making at national and international levels. **Who is the law maker?** (who are the main actors?)
- ✎ what is the seemingly **implication** of nature of international law making on the **effectiveness of their enforcement**, if any so called?

Grasps From Mandatory Reading II (2): Mark Drumbl, Actors And Law-making In International Environmental Law

Key Thought Provoking Issues?

☞ **IEL as a System of International Law?** A Strikingly Diverse Number of Actors Create IEL Through Strikingly Diverse Processes of Law Making. (*What Does This Mean?*)

☞ The Dynamism of Actors and Law-making in EIL Contributes to Similar Developments In International Law generally.

👉 **Under traditional** (basic principles of public international law) ... **IEL actors were limited** primarily States and Followed By International Organizations (those who have **international legal personality**)

👉 **Recent Development:** Multiple Actors: NGO, Networked Communities of Experts, and Administrative Secretariats of Treaty Org's ...

👉 **Process and consents:** how consensus can be reached? **Major international conferences** of states serve important social constructivist functions in setting norms and building consensus.

Do you agree on the following points?

- **What is the effect of diversification** (expansion) of number of actors?

.... **merely diversified the sources** of international environmental law or 'enriched' (complicated/simplified) the process by which it is made

Sources of international law include:-

- ☞ treaties?
- ☞ Custom?
- ☞ general principles of law, and
- ☞ – in a subsidiary sense – judicial decisions and the writings of eminent publicist ...

➤ Effect of nature of IEL much of international environmental law is informally generated by **‘soft law’ - setting norms and defining agendas (dynamics element) for formal law-making processes.**

But multiplicity of IEL makers/actors necessary? What is the merit or demerit if any?

(+) expand scope of legitimacy. But how?

(-) give rise to inter-institutional competition (on areas of shared or concurrent governance) – which otherwise need consensus? contradictory jurisprudence and rule-making?

Chapter Three:

Nature of Environmental Problems & Damages

Nature of environmental problem

- **Fact:** the entire nature is interlinked, interdependent and interlocked (like sense of organs?) ...
- ☞ keeping balance of natural cycle ...
- ☞ Uninterrupted functioning of natural system
- ☞ dynamic interrelationship between the living form and physical environment.
- ☞ instance of p **Pollution to Environment: as International, Regional and National Concern**

The Rationale for the Protection of the Environment

- ☞ **... large scale damage to env't particularly due to expansion d industries ...**
- ☞ **... a need to limit on power of sovereign sates: how about and extent of use of environmental resources ..**
- **Nature of Environmental Damages: Problems in Defining**
- **Damages Forming New and Additional Category of Damage to the Environment ... pecuniary, healthy, aesthetics, past, present, future,,,,**

Chapter Four:

Fundamental principles of environmental law

- ❑ What are *principle in general*?
- ❑ what are significances of principles?
- ❑ What is the legal status of principles?
- ❑ What is r/p b/n principles vs. laws?
- ❑ What are environmental principles?

Nature of principles ...

- ❑ **General principles** constitute both the **backbone** of the body of specific laws.
- ❑ Used to *govern subject matters that are not covered by specific laws* (when there is legal gap).
- ❑ **e.g.** when a case has logged to court which is not have specific law to pass the judgment but court is under legal obligation to decide – make justice ...

❑ Two distinct classes of general principles

- 1. General principles of international law:** inferred by **induction and generalization** from conventional and customary rule of international law and
 - 2. Specific principles:** particular branch of int'l law: e.g. **principles of law of sea, of humanitarian law**, of law of state responsibility, **environmental law** etc. ...principles can offer insight
- **Env'tal law principles: help to understand the foundation purpose behind environmental law ...**

- ❑ **Environmental principles operates on premises behind emergence of env'tal laws.**
- ❑ **Some principles have already emerged** and had the status of customary international law while others are **still emerging ...**
- ❑ **there is no specifically fixed number of principles ...**
- ❑ **Some principles are overlapping** rendering classification and distinction blurred at certain points.
- ❑ **This makes their interpretation and application diverse and subjective.**

The **key environmental** principles, includes ...

1. Prevention principle
2. Precaution principle
3. Polluter Pays principle
4. The Integration Principle
5. Principle of Env'tal Justice and Equity
6. Principle of Public Participation
7. Principle of Obligation of States Not to Cause trans-boundary damage.
8. Principle of States' Obligations to Cooperate, to Inform and to Consult With Other States (principle of cooperation in good faith)
9. Principle of Shared Natural Resources, Common Property and Common Heritage of Man Kind?
10. The Principle of Sustainable Development ... WHAT ELSE.....?

1. Prevention principle

- it is about prevent env'tal problem at source before they occur.
also called **Golden Rule of env'tal protection**
- *ecological* and
- *economic* reasons Why and how?
- **Instanced of irreversible damages** – where it is Impossible to remedy/restore env'tal injury once it has occurred.
- Or **unbearable cost** of restoration ...
- ? But is it possible to prevent all harms from occurring in reality?**
- *In case it seems imposable to prevent occurrence of environmental problems, Prevention principle may mean making problems 'as small as practically possible'*

How to prevent?

- *prior assessment of environmental harm*
- Subjecting operation business to (via licensing) to **certain specific conditions** and attaching liability to violation of the conditions;
- *Setting Emission limits* and
- *Setting product/process standards,*
- *Ordering use of best available techniques (BAT) ...*
- *What is legal status of prevention principle?*
- *Is there have been decisions in which the prevention principle is applied?*

2. Precaution 'principle'

- Is an emerging principles
- It dictates for taking of maximum care with respect to environmental matters – dictating environmental regulators often have to *act on the frontiers of knowledge and in the absence of full scientific certainty*.

2. Precaution 'principle'

- That is in *doubt* whether a given activity may cause environmental damage or not *must be interpreted in a manner the prevent causing of environmental problem*.

□ The notions underlying precaution principle are:

1. **scientific uncertainty should not be used** as a reason **not to take action** with respect to a particular environmental concern;
2. **action should affirmatively be taken** with respect to a particular **environmental concern**;
3. those **engaging in a potentially damaging activity** should have the burden of establishing the **absence of environmental harm**; and
4. **a State may restrict imports based on a standard** involving **less than full scientific certainty** of environmental harm.

- *What is legal status of the principle?*
- *Is there have been decisions in which the principle is applied?*

3. Polluter Pays principle (PPP)

- the principle has two gist's:
 - a. to restrain public authorities* from subsidizing the pollution control **costs** of private firms and
 - Instead**, command gov't to cause **env't polluting firms to internalize the env'tal externalities** by bearing the costs of controlling their pollution to the extent required by law.
- *What is legal status of PPP?*
- *Is there have been decisions in which the PPP?*

4. Principle of Env'tal Justice and Equity

CONCEPT OF Environmental Justice?

- **Fair allocation** of environmental resources
- **Proper regulation** of all activities
- Where **some cause** environmental problems for gain while **others affected** by the problems created without any gain.
- Against **disproportionate distribution** of burden

CONCEPT OF public Trust

- The idea that the **present generation** holds the natural resources of the earth in trust for **future generations**.
- *What is legal status of prevention principle?*
- *Is there have been decisions in which the prevention principle is applied?*

5. The principle of Integration

- **integrated environmental considerations into their decision-making processes like** env'tal impact assessment, population planning, resources management.
- The fact that environmental concerns have **economic, cultural, and social** wings and a need to use environmental resources in a sustainable way...

6. The Public-Participation Principle

- **integrate the views of the public** – right to information, right to due processes, ... of affected community
- **Environmental decision making - opportunity** to influence the decision
- **To challenge government decisions** affecting the environment

6. The Public-Participation Principle

- What this right involves of?
 - Right to environmental information
 - Right to heard – reflect voices – express interest ...

- *What is legal status of prevention principle?*

- *Is there have been decisions in which the prevention principle is applied?*

7. The Obligation of States Not to Cause Damage to the Environment beyond Their Jurisdiction

- **This is substantive obligation. How?**

- A state duty to *prevent, reduce and control trans-frontier environmental harm ...*

- *Obligation not to cause significant harm?*

- **Controversial issues:** what is 'substantial' or 'significant' harm? (serious consequences)
) How to quantify?

1982 UN Convention on the Law of the Sea:

States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

- *What is legal status of principle?*
- *Is there have been decisions in which the principle is applied?*

8. States' Obligations to Cooperate, to Inform and to Consult With Other States

For trans-boundary environmental problem - The principle sources from principles of good neighborliness, and diligence.

 **Cooperate:** to work together for mutual interests

 **Inform:** about potential harm of damaging activity

 **Consult:** make necessary negotiations when necessary

 **The obligation I procedural obligation. How?**

- *What is legal status of prevention principle?*
- *Is there have been decisions in which the prevention principle is applied?*

9. Shared ..., Common ...

👉 **Shared Natural Resources:** mgt of resources shared between several states.

👉 **But what resources should be treated as shared?? Lakes? Rivers? Forests?, mountain chains?, the atmosphere or biodiversity?**

👉 **What is the extent of utilization? ‘equitable utilization’? How ? In what sense? By what parameters?**

👉 **Common Property:** living resources outside national jurisdiction, such as fish stocks and other living resources on the high seas ...

👉 **... resources free for legitimate and reasonable use by all states ... subject to equitable exploitation.**

👉 **... obligation to take necessary conservation measures to sustain their use ...**

.... **Consideration:** historic use rights, preferential rights to coastal states

Shared, Common

👉 **Common Heritage of Mankind: 2 understandings:**

1. **Broader:** global env’tal resources such as the Earth’s biodiversity, tropical forests or the atmosphere.
2. **Narrower:** refers to two specific nonliving resources outside national jurisdiction: the sea bed mineral resources and the moon.

... obligation to manage for the benefit of mankind as a whole

- *What is legal status of prevention principle?*
- *Is there have been decisions in which the prevention principle is applied?*

10. The Principle of Sustainable Development

- limits on economic activity in the interests of preserving or protecting the environment
- approach to dev't w/h emphasizes the fundamental importance of equity within the economic system.
- Equity: intra- & inter- generational

9. The Principle of Sustainable Development

1. intra-generational: within the present generation - seeks to redress the imbalance in wealth and economic development between the developed and developing worlds by giving priority to the needs of the poor ...
2. inter-generational: in seeking a fair allocation of costs and benefits across succeeding generations.

Point: *dev't will only be sustainable' if it benefits the disadvantaged, without disadvantaging the needs of the future....*

❏ what **Sustainable Development** consists of?

👉 **substantive and procedural elements ...**

👉 **Substantive:**

- 👉 **sustainable utilization** of natural resources;
- 👉 **integration** of env'tal issues to economic dev't;
- 👉 **right to development (?)**;
- 👉 **equitable allocation of resources** and
- 👉 **internalization of environmental costs**

procedural elements

- 👉 public participation in decision- making and
- 👉 environmental impact assessment

- *What is legal status of prevention principle?*
- *Is there have been decisions in which the prevention principle is applied?*

.... Principles

👉 Are the se above discussed the only principles?

👉 What interrelationship the principles have?

👉 Are not some overlap?

👉 Are not some contradict each other?

👉 What else?

..... What else?

Mandatorily mandatory readings

1. **Mandatory reading II – Mellese Damtew: page 53 – 77 (Overview of International Environmental Law Principles and Concepts).** This is most important reading including case studies.
2. **Mandatory reading III – Mulugeta Getu: from page 49-54 (International Environmental Policies and Principles).**
3. **Mandatory Reading V: Llui ´s Paradell-Trius - Principles of International Environmental Law: an Overview (Most important regarding philosophy & legal status as well effect of principles)**

Grasps from Mandatory reading:

1. **Mandatory reading II – Mellese Damtew: page 53 – 77** Key principles he identifies:
2. State Sovereign Rights over Natural Resources
3. Common but Differentiated Responsibilities (CBD)
4. Principle of Preventive Action
5. Precautionary Principle: **case USA and Canada by WTO/1989 – import of beef**
6. Transparency, Public Participation and Access to Information and Remedies.

6. Sustainable Development

Sub principles

- 6.1 sustainable use of natural resources
 - 6.2 **inter-generational equity**
 - 6.3 intra-generational equity
 - 6.4 The principle of integration
- ## 7. Polluter Pays Principle.

Mandatory reading III – Mulugeta Getu (p49-54)

1. State Sovereignty
2. Right to Development
3. Common Heritage of Humankind
4. Common Concern of Humankind
5. Principle of Equity
6. Common but Differentiated Responsibilities
7. State Responsibility
8. Obligation Not to Cause Environmental Harm
9. The Principle of Pollution Prevention
10. The Precautionary Principle

Mandatory reading III – Mulugeta Getu (p49-54)

11. The Polluter (or User) Pays Principle
12. The Principle of Subsidiarity
13. Good Neighborliness and the Duty to Cooperate
14. Duties to Provide Prior Notification and to Consult in Good Faith
15. Principle of Prior Informed Consent
16. Duty to Assess Environmental Impacts
17. Public Awareness and Participation

Mandatory Reading V: Lluís Paradell-Trius - Principles of IEL: an Overview

➤ Key points

☞ **Political sensitivity of env'tal issues:** particularly concepts like: sustainable development, Common but differentiate responsibility ...

➤ **Increased interest in env'tal principles: but why?** In order to clarify the principles of sustainable development (SD). How do you appreciate SD?

➤ **Controversies & contentions surrounding env't and environmental principles:** What is the North-south interpretation of SD and CDR?

➤ **How precisely IEL principles are defined?**

... Defined differently under various laws (treaties, conventions), national laws ... differing nature and normative authority ...

☞ *'Some are established rules of customary international law, while others are **emerging rules**.*

☞ *Yet other principles have a **lesser normative status**.*

☞ *They may be **guiding interpretative standards or merely aspirational norms**.'*

➤ **How precisely IEL principles are defined?**

➤ **Briefly discusses:**

☞ the **'social' reasons for the profusion IEL ppls**

☞ their **uncertain legal status**;

☞ **Their functions**; and

☞ **the creation and**

☞ **identification of principles.**

ENV'TAL RIGHTS (ER)

□ ENVIRONMENTAL RIGHTS

- Can environmental interests qualify as right?
- If, positive, **whose** rights they are?
- ✓ For the **environment it-self**?
- ✓ For **human beings**? – individual or collective?
- What is the **specific components of the rights**?
- Who is/are the **duty bearers** of ER?
- **Where ER falls:**
- **1st, 2nd or 3rd** generation of catalogues of rights?
- Are ER substantive or procedural rights?
- What are typical ER?
- The Right to Information?
- Right to Public Participation?
- Right to Access to Justice?
- Right to Quality environment?
- ???
- ???
- ???

1. Right to Environmental Information (REI)

- What is environmental information (EI)?
- What is importance of EI?
- Who can seek EI as of right?
- Against whom REI can be claimed?
- Is REI procedural or substantive right?
- **What are the purposes of ER (its access):**

☞ EI: availability and re-trievability.

☞ key to make environmental decision: e.g. to support or decline a proposed project which have impact on the environment

☞ Key for meaningful public participation: Case of environmental impact assessment report.

- **Legal base of the REI:**

- 1. **National: part of -**

- 👉 right to information in general: how?

- 👉 freedom of expression: how?

- 👉 right to participation: how?

- 👉 Right to due process of law: how?

- **Legal base of the REI:**

- 👉 **Constitution**

- 👉 **Environmental Policy:** Env'tal acts

- 👉 **Key Int'nal env'tal regimes** form integral part of national legal regime:

- **Conventions**

- **Treaties**

- 👉 **Other legislations** (Ethiopia): proclamation, Regulation and Directives

2. International:

- **Associated with** freedom of information

- UDHR(Art. 19)
- ICCPR (Art. 19(2))
- **Inter-American** Declaration of the Rights and Duties of Man (Art. 10),
- **American Convention** on Human Rights (Art. 13), and
- **African Charter** on the Rights and Duties of Peoples (Art. 9).

Environmental **treaties**. E.g.

- **Rotterdam Convention: Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade**
- Convention on Persistent Organic Pollutants
- **Arab Declaration on Env't and Dev't** and Future Perspectives of September 1991

?Who will participate with respect to what?

👉 Any interested person? Or only those whose rights are affected?

👉 **Public:- incorporates all stakeholders**

👉 **When to participate?**

E.g. stages in implementation of project which have environmental impact?

👉 **How to participate and what is the nature of the participation?** By Receiving or giving information? Or in making decision?

👉 **What is the significance of participation? (formal and superfluous?)**

👉 **Substantive or procedural?**

Legal basis of right to participation

1. International?

- UDHR: Article 21
- American Declaration of the Rights and Duties of Man: (Art. 20)
- African Charter: (Art. 13)
- ICCPR: Article 25 o
- 1992 Rio Declaration on Env't and Dev't: principle 10
- **UN FCCC: Article 41**
- The **Desertification Convention**
- The **Biodiversity Convention.**

2. National?

- The constitution
- Environmental policy/act
- CORE legislations
- Regulations
- Directives
- Other relevant laws regarding

Basic issues:

👉 Are ER enforceable?

👉 In court of law or

👉 Via administrative mechanisms?

👉 Who can be parties to env'tal litigation?

👉 Who shoulder the burden of proof in case of alleged environmental damage?

👉 What will be remedies/reliefs that can be ordered in case of environmental litigation?

Legal basis:

1. International

- **ICCPR:** remedy whenever rights protected are violated.
- **European Convention on Human Rights** (Art. 13): remedy for violations of right to information.
- **Regional human rights systems:** similar guarantee.
- **Rio Declaration (principle 10):** —effective access to judicial and administrative proceedings, including redress and remedy.

Legal basis:

2. national:

.... Constitutions – Ethiopia – article 13/26/37/43/

- Policy
- Core legislations ...
- Relevant laws

3. Right to environmental quality

- **What is environmental quality?**
- How it can be measured?
- National laws
- International law?

Mandatory reading: Reference and Ethiopian environmental regime

✉ Mandatory reading 6.1): Alan Boyle - Human Rights or Environmental Rights? A Reassessment

✉ Mandatory reading 6.2: Ethiopian envi'tal regime

1. FDRE Const.
2. 1997 Env'tal Policy of Ethiopia
3. Procl. No. 295/2002: EPOE
4. Procl. No. 299/2002: EIA Assessment Proc.
5. Proc. No. 300/2002: EPC Procl.

Human Rights or Environmental Rights? A Reassessment ...

Alan Boyle

- **Environmental rights do not fit neatly into** any single "generation" of human rights. how? Have:-
 - ✍ civil and political rights aspects: case of access to EI, judicial remedies and political processes?
 - ✍ empowerment aspects: facilitating participation in env'tal decision-making and compelling gov'ts to meet minimum standards of protection for life, private life and property from env'tal harm.
- **Environmental rights do not fit neatly into...**
 - ✍ Entitlement to decent, healthy or sound env't: economic or socio-cultural rights- subject to progressive attainment. .. enforceable only through relatively weak int'nal supervisory mechanisms.
 - ✍ Env'tal quality as a collective or solidarity right: giving rights oriented towards **communities of peoples** than individuals: e.g. a right to determine how env't and natural resources in a given area should be exploited.

In context of stages of evolution of EL and interests protected anthropocentric, integrationist, eco-centric?

Grand question

After all, ... should we continue to think about *human rights and the environment within the existing framework of human rights law in which the protection of humans is the central focus* – essentially **a greening of the rights to life, private life, and property?** or

... time come to talk directly about env'tal rights ... a right to have the environment itself protected? Should we transcend the anthropocentric in favor of the eco-centric?

- The question is not a new one.
- Among human rights treaties only **the 1981 African Charter on Human and Peoples' Rights** proclaims env'tal rights in broadly qualitative terms - **best attainable standard of health**.
- **Ogoniland (also see Endorois and Ogiek cases)** is a **remarkable decision** that goes further than any other in the **substantive environmental obligations it places on states**. It is unique in applying **for the first time the right of peoples to dispose freely of their own natural resources**.
- **Inter-American Commission and Court of Human Rights** have interpreted the rights to life, health and property afford protection from environmental destruction and unsustainable development and they go some way **towards achieving the same outcome of the African Charter**.
- Most human rights treaties either make no explicit reference to the environment at all (.g. European Convention on Human Rights) – or they do so **only in relatively narrow terms focused on [env't) for human health**.

- the **1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ...** (international convention)

... is strictly procedural in content, limited to public participation in env'tal decision-making, access to justice and information.

1. Stockholm Declaration Principle 1:

- ...“adequate protection of the env't is **essential to human wellbeing** and the **enjoyment of basic human rights**, including ... life.”
- ... “every person has the **right to live in an env't adequate to his or her health and well-being**, and the **duty**, both individually and in association with others, **to protect and improve the env't for the benefit of present and future generations.**”
- **Additional points ...**
- **Discussions on constitutional stipulation of environmental rights ... country experiences...**
- **An Assessment of the Case Law ...**
- ☞ **Regulation and control of environmental problems and law enforcement ... duty-and-right bearers...**
- ☞ **Access to and Provision of EI protection as a legitimate aim**

- ☞ **1. Env'tal protection can be extracted from existing human rights law without creating specifically ER.**
- ☞ **2. ER are already entrenched in European human rights law, African Charter and Inter-American convention: case law convergence?**
- ☞ **3. ER incline to be procedural rights but the emerging case-law jurisprudence shifts this to be substantive - in a constructive-cross cutting interpretation – from the stipulation of** decent or satisfactory environment.

Common legal mechanisms of env'tal protection:

? *How to protect the environment and enforce environmental rights?* Key concerns ...

? What The role of the courts and rule of law: ... in relation to env'tal concerns – env'tal protection and enforcement of right ..

?Common regulatory mechanism ...

👉 Common regulatory mechanism:

1. Env'tal Impact Assessment:

- establishing individualized pollution controls and
- mitigation measures ...

2. permit or licensing regime: requires adherence to pre-established norms (ike quotas, bans).

1. Env'tal Impact Assessment Procedures,

- licensing requirement (?) and
- monitoring protocols?
- Environmental auditing?
- product labeling (Eco-label)?
- use of best available techniques and
- practices and prior informed consent

Prohibiting and Restricting:

- 👉 polluting Activities and Substances

- 👉 Use of Biological Resources

- 👉 **Setting Standards**

- 👉 Process Standards

- 👉 Product Standards

- 👉 Emission Standards

- 👉 Ambient Quality Standard

- 👉 Prior Licensing and Permits

- 👉 **Prior Informed Consent**

- 👉 **EIA and Monitoring**

- 👉 **Land Use Regulation**

CH.5: LEGAL FRAMEWORK OF ENVI'TAL PROCEEDING

☞ key concerns and preliminary questions ...

☐ Environmental PROCEEDING – litigation:

✓ Qn: are environmental rights enforceable rights?

☐ What is legal status of Legal Personality and Standing in Environmental Proceeding:

✓ who is party with vested interest in environmental litigations?

✓ Do the environment itself has legal personality (be represented) in environmental litigations?

1. Legal personality and standing

☞ Legal Personality and Standing: who have? Discourse in the context of emergence of env'tal regime along change in focus of interests under consideration ...

☞ Anthropocentrism approach? legal personality can be bestowed only to human being.

☞ Integrationist approach? transitions?

☞ Eco-centrism approach: confers legal personality to each distinct part of the environment to exercise.

☞ Legal Personality and Standing Ethiopian case?

☞ Argument from bill of rights perspective - Art.44

☞ environmental policy of Ethiopia: .. species and their variants have the right to continue existing .. and are, or may be, useful now and/or for generations to come ...

☞ Biological Diversity Conv. of 1992 (which ratified by Ethiopia: intrinsic value of the env't, including ecosystem and species or its components ...

- Legal Personality and Standing vis-à-vis the Future Generations: Equity and sustainable development, Environmental equity and intergenerational equity
- Liberalization of Standing in Environmental Proceeding that Led to Public interest Litigation...
- Citizen Standing in Cases of Env'tal Authorities' Inaction or Abuse: Judicial Review ...
- Citizen Standing to Challenge the Constitutionality of Env'tal Laws ..
- Citizen Standing Before International Courts and Tribunals ...

- **Public Interest Litigation Case:**

ACTION PROFESSIONALS' ASSOCIATION FOR THE PEOPLE [APAP] VS. ENVIRONMENTAL PROTECTION AUTHORITY ... ART. 11 OF ENVIRONMENTAL POLLUTION CONTROL PROCLAMATION

- **Judicial Activism, and Environmental Rights Protection**

Mandatory Reading 7: Yenehun Birlie: Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features

Mandatory Reading 8: Dejene Girma Janka: Remedies for Environmental Wrong-doings in Ethiopia.

Mandatory Reading 9: Salient Features of Environmental Laws in The Federal Democratic Republic Of Ethiopia

- **REMEDIES IN ENV'TAL PROCEEDING**

PRELIMINARY QUESTIONS:

- What is environmental proceeding?
- What are remedies in general?
- What ... precondition for invoking remedies?
- What ... environmental remedies?
- What ... typical remedies?
- **Judicial remedies or**
- **Administrative remedies?**
- Can EL principles be invoked in env'tal litigations?

The 'legal basis' of invoking remedies:

- **EL Principles:** Lack substantive definition?
- **Domestic Constitution:** foundation for cornet claim compared to principles. Still general.
- **Domestic Environmental policies:** is an inspiration ... expressed in general terms.
- **International environmental instruments?**
- **Specific national environmental legislations**
- **subject-specific standards – health, product ...**

🕒 (1) Constitutional Law Remedies

.....???

🕒 (2) Civil law remedies ...

.....??? What and how?

🕒 (3) Criminal remedies ...

....???

WHAT ETHIOPIAN CONTEXT?

What remedies are provided under the:

- *constitution,*
- *environmental policy,*
- *core legislations and*
- *specific environmental right?*

Constitutional Law Remedies

- Cumulative reading of articles 9, 13, 37, 40, 44, 89, 91

... all Federal and State organs shall have the responsibility and duty to respect and enforce the Bill of Right, including to live in a clean and healthy environment

- *How one can argue for and against justifiability and enforceability of environmental rights from the provisions???*

🕒 Administrative Remedies

- Duties related to environmental (resources) **development and management, protection, regulations and monitoring** Ethiopia
- *Env'tal Protection Authority establishment*
- *Environmental pollution control*
- *Environmental impact assessment*

??? What civil and criminal remedies these core legislations avail?

Civil Liability: Torts Law? (requirements)

❑ Compensation for the loss: when there is:

1. Commission of wrongful act;
2. That wrongful act has give rise to actual damage; and
3. The wrongful act must be of such a nature as to give rise to a legal remedy in the form of an action for damages ... **infringement of a legal private right or a breach or violation of a legal duty.**

🕒 Typical civil liabilities

Injunctions – typical relief against threat of harm is imminent or a harmful activity is on-going. Injunctions can be:

❑ *preliminary (immediate),*

❑ *temporary, or*

❑ **Permanent** ... according to an evaluation of several factors: irreparable harm, the absence of other remedies, practicability of compliance, threats to public health, financial effect on the defendant.

What is injunctive relief?

☞ to halt further harmful activity;

☞ to compensate for damage/harm suffered;

☞ to restitute/restore risked environmental;

☞ as a sanctions to punish the wrong-doer and to deter future violations ... including awards of costs and fees

Sufficiency of remedies:

- **Determination of appropriateness: sufficiency & effectiveness?**

☐ materialized effects?

☐ Materializing-ongoing- effects?

☐ Future effects? Future ... extension

How to assess?

- **Seriousness of the offence?**

☐ **Ability to pay?** (fair for fault based liability?)

☐ **Economic gain made or loss suffered?**

☐ Abatement costs ...?

 **Criminal Liability:** to serve objectives of criminal law in environmental case

- ... usually against seriousness of environmental wrongdoing
- Ethiopia: criminal law, core environmental legislations, health laws
- This measure maybe in addition to civil remedies ...
- What the core environmental law says

How environmental remedies can be enforce?