MEKELLE UNIVERSITY

SCHOOL OF LAW

PUBLIC INTEREST LITIGATION UNDER THE ETHIOPIAN ENVIRONMENTAL LAW RÉGIME, PROSPECTS AND CHALLENGES

A THESIS SUBMITTED TO THE

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IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR (BACHELOR DEGREE OF LAWS) SCHOOL OF LAW, MEKELLE UNIVERSITY.

By

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ACRONYM

FDRE- the federal democratic republic of Ethiopia constitution

PIL- public interest litigation

FEPA-federal environmental protection authority

ABSTRACT

In order to protect the Environment the government has been taking various measures one of which is enacting environmental laws, These laws are tray to introduce the essential preconditions of public interest litigation such as locus standing, access to justice, broad interpretation of law and flexible remedy. the presumption is to participate individual citizens actively in the protection of environment and create a suitable condition to implement and exercise effective public interest litigation on behalf of the Environment. However despite of the above prospects and trends the public interest litigation under the Ethiopia Environmental law regime is not effective as well because of lack of enforcement, absence of creation of awareness of the law by the public at large, absence of judiciary activism, the burden of the cost bears on individuals and the strict procedure of traditional court adjudication method are among the challenges of PIL. However, these can effectively facilitate the protection of the environment only if they are adequate, their application can be sought by everyone, and they are applied to everyone who fails to discharge its duties under environmental laws. In Ethiopia, however, the existing environmental laws suffer from various defects which affect their ability to promote environmental protection. This, in turn, necessitates making some changes to the existing environmental laws of Ethiopia.

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CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

A comprehensive and universally applicable definition of public interest litigation is hard to come up with as it varies in emphasis and strategy according to the various contexts it is used in. As Sarat and Scheingold caution, "providing a single, cross-culturally valid definition of the concept is impossible"[1]. According to black's law dictionary Public interest litigation is a legal action in court of law for the enforcement of public interest or general interest in which the public or the class of the community have a pecuniary interest of or some interest by which their legal rights or liabilities are affected[2]

In order to protect the environment it has been proposed to grant individuals a personal or subjective right to a clean and healthy environment. Under the traditional tort law, individual citizens have a right to sue only if their own personal interest is infringed[3]. For this very reason, no one has in principle, standing to sue for and claim damages if harm done to the environment per se is considered only as infringement of collective interest. Hence, to enable alert citizens and public interest groups to initiate legal action when damage is done to the environment per se, it is important to award them a personal right to a clean and healthy environment. If the law orients in this approach, an infringement of this right would entitle any individual to file a legal claim against the

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[1] Sarat & Scheingold, Cause Lawyering and the Reproduction of Professional Authority: An Introduction in Cause Lawyering: Political Commitments and Professional Responsibilities (1998). Citing H. Shershkoff 'Public Interest Litigation: Selected issues and examples' an article available at <http//: www1.worldbank.org/publicsector/legal/PublicInterestLitigation.doc> (accessed on 13 August 2005)

[2] Black's Law Dictionary (7th edition) 1229

[3]Federal teaching material prepared by Tsegai Berhane and Merhatbeb Teklemedhn Mekelle University Faculty of Law(2008),P.110

responsible party in order to protect his interest to live in a clean and healthy environment and may be even to seek monetary compensation for the damage done, without having to show the specific personal damage that such an individual has sustained.

Many national constitutions acknowledge the right to live in a clean and healthy environment. The FDRE constitution, for instance, stipulates that the government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment[4]. Furthermore, it does provide individuals with a personal right to a clean and healthy environment[5]. It also brings the government and ciatizens together as having the duty to protect the environment[6].

1.2. Statement of the problem

Unlike the traditional tort law of Ethiopia the environmental law introduced liberalized right of standing for PIL. The recognition of this standing right is leads to effective PIL and full realization of the system. Under the FDRE constitution and other same subsidiary legislations are tray to adopt a new standing right. However the recognition of this standing is not clear under the legal instrument. The constitution is salient to define PIL, not only the constitution but also the subsidiary laws fails to define it. For that reason issue of constitutionality and justifiability of PIL is raised. Unlike The environmental law which promotes the broad locus standing right, the traditional tort law of Ethiopia requires that very narrow restrictive personal right to institute court action before the regular court. This is completely or extremely far from the broad standing right of PIL.

[4] The Constitution of Federal Democratic Republic Of Ethiopia, Federal Negarit Gazata1st Year No.1 (1995), Article 92 (1).
[5] Id, Article, 44 (1).
[6] Id, Article, 92(4) Cum 91(2)

1.3. Objective of the study

1.3.1. General objective

- To examine the status of PIL and its justifiability under the Ethiopian environmental law.

1.3.2. Specific objective

- To examine the necessary preconditions of PIL.
- To identify the challenges of PIL.

1.4. Research question

- Is the PIL justiciable under Ethiopian environmental law?
- Are the necessary preconditions of PIL incorporated under the Environmental law of Ethiopia?
- Is there any challenge of PIL under the Environmental law of Ethiopia?

1.5. Significance of the study

This research has academic importance. It can be contributed to the ongoing demand of public interest litigation in environmental law because of its relevance to protect the Environmental damage from any pollution, and ensure the quality to live in clean and healthy environment by allowing the participation of all concerned groups and individuals, to prevent environmental danger and to maintain the clean and healthy environment.

1.6. Scope of the study

This thesis is mainly focus on PIL under the Ethiopian environmental law. Due emphasis is given to PIL such as status, justifiability, preconditions and challenges of PIL.I will also Explore the Experience of public interest litigation in Environmental case in other states in India, south Africa and the United states of America as good lesson for Ethiopia.

1.7. Limitation of the study

The constraints during the conduct of this thesis are: Time constraint, absence of available sources and the absence of clear historical background and definition of PIL.

1.8. Methodology of the study

This thesis will employ doctrinal types of research In that authorities are established from primary and secondary sources of law such as constitution legislation and as well as journal articles books.

1.9 organization of the study

In brief, this study will explore and explain the legal basis of environmental law principles under the Ethiopian environmental law regime.

In so doing, the writer will organize the study in to four chapters. Chapter one, which is generally captioned as introduction, comprises of background of the study, statement of the problem, objective of the study research question, significance of the study, scope of the study, limitation of the study methodology and organization of the study. Chapter, two deals with the literature review. Chapter three: Deals with PIL in Ethiopian situation. Chapter four: deals with conclusion and recommendation.

CHAPTER TWO

Related Literature Review On Public Interest Litigation In Environmental Case

2.1 Introduction

Public interest litigation differs from conventional litigation where the parties seek to resolve a dispute that is peculiar to them and there is no impact on the general public except in so far as it clarifies the law on that point.[7] Public interest litigation, on the contrary, generally involves

[7] Judicial Handbook on Environmental Law (UNEP Publication, 2005),p.45

disputes over the rights of the public or a segment of it and the grievance is often against the state in respect of administrative or executive action. Redress may be limited to a declaration of the law on the point or an injunction, because compensation is not usually the main objective. Public interest litigation is initiated usually by public interest groups and individuals. Some laws support public interest litigation by broadly allowing actions to abate any "imminent or substantial endangerment to health or environment." These laws most often apply to issues involving hazardous wastes. Where a constitution includes a right to a clean and healthy environment, courts have often allowed public interest litigation.[8]

2.2 Definitions Of Public Interest Litigation

Public Interest Litigation has been defined in the Black's Law Dictionary (6th Edition) as:

> *Public Interest Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question.*

Advanced Law Lexicon has defined `Public Interest Litigation' as:

> *The expression `PIL' means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.*

The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows: Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services

[8] Id

to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.[9]

Writing about public interest litigation in the American context, which is also referred to as public law litigation, abrahm Chayes says the following[10]:

> *Public law litigation refers to the practice of lawyers […] seeking to precipitate social change through court ordered decisions that reform legal rules, enforce existing laws, and articulate public norms*.

This definition highlights the most important aspects of public interest litigation. It touches upon the purposive endeavor to bring about social change and enforcement of laws with a view to articulating public norms through the use of the law.

2.3 Historical Development Or Origin Of Public Interest Litigation:

In 1976, Professor Abram Chayes of the Harvard Law School coined the phrase "public law litigation" to refer to the practice of lawyers in the United States seeking to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms. Sometimes taking the class action form, public law cases often involved the restructuring of important government institutions, including public schools, mental hospitals, welfare agencies, and prisons, and affected many thousands of individuals. Although Professor Chayes limited his discussion to the United States, variegated forms of "cause lawyering" or "social activist" litigation also exist in the courts of many other countries, presenting localized strategies that draw on separate traditions and function within specific contexts.[11] In the courts of India and South Africa, of Israel and Nigeria, in international tribunals and before regional commissions, law and litigation are important mechanisms for enforcing human rights, extending public participation, improving economic conditions, encouraging grassroots empowerment, reforming laws and legal

[9] http://www.legalblog.in/
[10] Id
[11] Chayes, The Role of the Judge in Public Law Litigation, 89 HARV. L. REV. 1281 (1976)

systems, and fostering government accountability -- aspects of what some commentators loosely refer to as "rule of law" values. This note examines the rise around the world of public interest litigation and similar kinds of court actions that aggregate the claims of individuals or resolve contested questions in ways that affect broad numbers of individuals. Presenting at a conference in London in 1984, Dr. Rajeev Dhavan, now ex-officio trustee of the New Delhi-based Public Interest Legal Support and Research Centre, characterized public interest litigation as "a culture-specific phenomenon which was developed in America and confidently exported to the rest of the world. Almost two decades later, the social technology of public interest litigation seems to have developed in many different countries, drawing on common background issues, but within specific conditions, taking different shape and assuming indigenous forms.[12] The development of public interest litigation has been extremely significant development in the history of the Indian jurisprudence. The decisions of the Supreme Court in the 1970's loosened the strict locus standi requirements to permit filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions and/or bodies. The higher Courts exercised wide powers given to them under the Constitution. The sort of remedies sought from the courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. In suitable cases, the courts have also given guidelines and directions. The courts have monitored implementation of legislation and even formulated guidelines in absence of legislation. This can be termed as the first phase of the public interest litigation in India.

the public interest litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. The Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country. The Courts' directions have

[12] H. Shershkoff 'Public Interest Litigation: Selected issues and examples' an article available at <http//: www.worldbank.org/publicsector/legal/PublicInterestLitigation.doc> (accessed on 13 August 2005)

immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc.The
court's directions to some extent have helped in maintaining probity and transparency in the public life.[13]This court while exercising its jurisdiction of judicial review realized that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial and in fact they have no access to justice. Predominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, this court has initiated, encouraged and propelled the public interest litigation. The litigation is upshot and product of this court's deep and intense urge to fulfill its bounded duty and constitutional obligation.[14] The high courts expanded the meaning of right to life and liberty guaranteed under article 21 of the Constitution. The rule of locus standi was diluted and the traditional meaning of `aggrieved person' was broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system. this was the first phase or the golden era of the public interest litigation[15]Given the uniqueness of environmental disputes, the anachronism of the common law must give way to modern nuanced approaches to public interest environmental litigation. In addition, the advent of environmental law and environmental constitutionalism also call for a change in the ideology and approach to public interest litigation.[16]More importantly however, the nature of public interest environmental litigation is such that it also depends on a number of other legal guarantees to succeed. For instance, environmental litigation presupposes accessibility of environmental information, mostly through public participation processes, guaranteed access to justice and access to

[13] Id
[14] Id
[15] Id
[16] Tumai Murombo *Law Environment and Development Journal(2008),p.167*

the courts, as well as guarantees that one is not going to be visited with the archaic rules of legal costs or an unimaginable strategic law suits against public participation (SLAPP) suit. In this regard it is submitted that broadening locus standi per se may be insufficient to promote the objectives of environmental regulation.[17]this implies that the collective requirement of all the necessary pre conditions.

2.4 Public Interest Litigation in Different Legal Systems

The public interests litigation in different states (courts and legislatures) is moving from the traditional exclusionary standing rules to the more liberal environmental rights. The activism of the Indian supreme court , the progressive constitution of south African and the USA constitution have all effectively adopted a new liberal standing right in environmental cases involving the public interest litigation .this approach is in line with the supremacy clause of respective constitutions. These states are well known, experienced and developed public interest litigation that could be lessens and became model for other states including Ethiopia. The India constitution provides the fundamental and basic human rights in general and environmental right in particular. The constitution authorizes the supreme and high courts to be involved actively in the protection of the environment by interpreting the constitutional right of every one to live in clean and healthy Environment, so PIL is developed through much effort of judiciary activism. In south Africa the the development of public interest litigation is through the progressive development of both the constitution and piecelegislations.in USA development of the PIL is by the law and courts .these states are commonly known in the world in exercising of effective public interest litigation. Environmental laws are well developed, justiciable, includes all necessary pre-conditions

Especially in India and South Africa .these could be a good lessens and model to Ethiopia as well, for that reason I prefer the experience of public interest litigations of these states.

[17] Id

2.4.1 Evolution of the Public Interest Litigation in India

The origin and evolution of Public Interest Litigation in India emanated from realization of constitutional obligation by the Judiciary towards the vast sections of the society - the poor and the marginalized sections of the society.[18]The Constitution of India provides the legal basis for the development of public interest litigation. The Supreme Court of India is given an original jurisdiction over all cases concerning fundamental freedoms enshrined in the Constitution.

The Constitution also guarantees specific fundamental rights and non-justiciable directive principles of state policy and governance.[19] Being aware of the limitations of legal realism, the judiciary in India has struggled to bring law into the service of the poor .[20] Therefore, as far as the Indian context is concerned, public interest litigation has a strong of constitutional basis also in procedural matters.

Most constitutionally-based public interest litigation in India is aimed not at challenging the validity of legislative measures, but rather at enforcing existing laws and forcing public agencies to take steps to enhance the welfare of citizens.[21] Thus the Indian experience, particularly the extent the judiciary went to accommodate public interest litigants could provide a valuable lesson in seeking to facilitate meaningful implementation of laws to turn formal guarantees of rights to substantive realization. The most important aspect of radicalism promoted by the Indian judiciary in relation to public interest litigation, however, is demonstrated by the way the courts addressed the issue of locus standi.[22]The development of public interest litigation has been extremely significant development in the history of the Indian jurisprudence. The decisions of the Supreme Court in the 1970's loosened the strict locus standi requirements to permit filing of petitions on

[18] Supra note 9
[19] Id Part IV, Arts. 36-51
[20] J. Cassels, 'Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?' (1989) Am. J. Comp. L., 497
[21] Id p.503
[22] Id, p. 498

behalf of marginalized and deprived sections of the society by public spirited individuals, institutions and/or bodies. The sort of remedies sought from the courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. the courts have also given guidelines and directions, monitored implementation of legislation and even formulated guidelines in absence of legislation. This can be termed as the first phase of the public interest litigation in India.[23] The second phase of public interest litigation started sometime in the 1980's and it related to the courts' innovation and creativity, where directions were given to protect the ecology.[24] Environmental PIL has emerged because of the court's interpretation of Article 21 of the Constitution; the court observed that every citizen has fundamental right to have the enjoyment of quality of life and living as contemplated by Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to take recourse to the Constitution. The court in this case gave emphasis that the directions of the court should meet the requirements of public interest, environmental protection, elimination of pollution and sustainable development. While ensuring sustainable development, it must be kept in view that there is no danger to the environment or to the ecology.[25] This makes the Indian court very active in the protection of the Environment.

2.4.1.1 When Can A Pil Be Filled:

Public interest litigation can be filed only in that case where any “public interest” is affecting at large. These are some of the possible areas where a PUBLIC INTEREST LITIGATION can be filed. Where a factory / industrial unit is causing air pollution, and people nearly are getting effected, Where some "Banquet Hall" plays a loud music, in night causing noise pollution. Where, some construction company is cutting down trees, causing environmental pollution. So these are the various areas in which any public

[23] Id
[24] Id
[25] Id

spirited person can file any PIL for the interest of public.[26] In this case the public interest is required.

2.4.1.2 Where A PIl Can Be Filed:

Now a chief question comes in the mind that where should a public spirited person file this petition to take remedy by this. So the answer of this chief question is this that all PIL are used to filed in high court or Supreme Court. For e.g. if there is a sewage problem in a locality effecting 50 families, the PUBLIC INTEREST LITIGATION can be filed in High court. If a large section of people is affected whether by State Government or Central Government, PUBLIC INTEREST LITIGATION can be filed in Supreme Court for e.g. Prohibition industrial unit from causing pollution. So we can say that both of the courts have power to entertain the public interest litigation.[27] Any petition in in Environmental case is apply to either to supreme court or higher court.

2.4.1.3 Who Can File A PIl? :

As we already said that any public spirited person even a foreigner can file a PIL on behalf of others but this is necessary that only the person who is filing a PIL should not get benefit. Meaning there by any PIL whoever is filing should be only in for to the benefit of peoples. If only one person is getting affected by any act then that is not a ground of filing PIL. So these are the essential point for that person who can file any public interest litigation. He is a member of the public acting bona fide and having sufficient interest in instituting an action for redresses of public wrong or public injury.[28] This excludes the private interest from the subject of the PIL.

[26] http://www.lawteacher.net/freelance-writing-jobs.php
[27] Id
[28] Id

2.4.1.4 Against Whom Public Interest Litigation Can Be Filed?

any public spirited person can file PIL against the state , against the individuals and private campany. For example- If there is a Private factory which is causing pollution, then people living nearly or any other person can file a PUBLIC INTEREST LITIGATION against: Government , State Pollution Control Board, and Also against the private factory.[29] PIL is made against any person whether it is legal or juridical.

Unlike the south Africa, public interest litigation in India is through the effort of the supreme court and the higher court up on the authorization of the constitution, it is the most developed in exercising of the PIL and became a model for other states.

2.4.2 South Africa

In South Africa, the issue of standing is covered by its Constitution. In the Bill of Rights Chapter, the South African Constitution recognizes, everyone's right to have an environment which is not harmful to health or wellbeing and the right to have the environment protected and, under Section 38, the locus standi of every person to approach a court claiming violation of the rights included in the Bill of Rights Chapter. Therefore, if the action or inaction of any person including government organ is believed to violate or threaten the right to have an environment which is not harmful to health or wellbeing and the right to have the environment protected, then suit can be brought by anyone against such person.[30] The legal framework is conducive for public interest litigants. The South African Constitution has adopted a very liberal locus standi for those who seek to litigate in the public interest the rights enshrined in the Bill of Rights of the Constitution. With regard to access to justice, section 34 of the Constitution provides that everyone has the right to have any dispute that can be

[29] Id
[30] Mekelle University Law Journal Vol.2 No. 1 (2013), p.22

resolved by the application of law decided in a fair public hearing in a court or, where appropriate, another independent and impartial forum. This explicit guarantee of the right of access to justice coupled with the relaxed approach to standing in rights litigation has the aim of making the courts accessible to the ordinary citizen either by self-representation or through public interest groups and individuals.[31]In South Africa the liberalisation of the rules of standing is a result of their explicit recognition in the Constitution rather than a creation of a progressively activist judiciary. The 1996 (final) Constitution has innovatively expanded the list of individuals and entities that may access the courts, including the Constitutional Court, for appropriate relief if they believe that their rights have been infringed or threatened. Of particular importance to this study is section 38(d) which grants standing to 'anyone acting in the public interest'. This has provided an opportunity to burgeoning human rights litigation by members of civil society, particularly human rights NGOs.[32] The South African Constitution has adopted with a commitment to "transform the society into one in which there will be human dignity, freedom and equality. Improving access to justice falls squarely within the mandate of this Constitution. In furtherance of this objective, the South African legal framework takes a favorable stance towards PIL by prescribing broad rules of standing and relaxing pleading requirements. (A) Broad Rules of Standing

Section 38 of the Constitution broadly grants standing to approach a competent court for allegations of infringement of a right in the bill of rights to:"(a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name;(c) anyone acting as a member of, or in the interest of, a group or class of persons;(d) anyone acting in the public interest;(e) an association acting in the interest of its members.

[31] South African constitution Section 38
[32] African human right law journal Volume 10 No. 2 (2010)

In expressly permitting class actions and third-party actions, this prescribes broad rules of standing for constitutional claims (B) Relaxing Formal Requirements of Pleadings: The Constitutional Court has been prompt to relax formal pleading requirements in appropriate cases In South Africa, the approach to standing was further relaxed in the National Environmental Management Act 107 of 1998 ('the NEMA') in not only matters that concern human rights (environmental rights), but also the implementation and enforcement of any environmental management statute. To this extent it has been argued that the NEMA in fact is an attempt to broaden the common law doctrine of standing in environmental law.[33] Generally PIL in south Africa is through the legal development and take the experience from the Indian and united states of America. Both the constitution of south Africa and the piece legislation contributes to the protection of the Environmental case.

2.4.3. United States

It has been widely held that the emergence of public interest litigation in the U.S. dates back to the celebrated campaign that resulted in the decision in Brown v. Board of Education. Brown provided inspiration to a generation of lawyers who saw law as a source of liberation as well as transformation for marginalized groups. Courts, mostly federal but state as well, became involved in a broad range of social issues.[34] The U.S. Supreme Court declared unconstitutional a state's segregation of public school students by race. The Brown case included many procedural features that have since been associated with public interest litigation. In Brown, the defendant was a public institution, the claimants comprised a self-constituted group with membership that changed over time, relief was prospective i.e. seeking to reform future action by government agents and the judge played a leadership role, complemented by the parties' efforts at negotiation. in relation to public interest litigation after Brown is often generally

[33] Supra note 16
[34] Supra note 12, p.5

perceived as part of a broader effort to use the tools and principles of legal liberalism as a way to change existing patterns of power and privilege.[35]In the period between 1965 and 1975, a multitude of developments altered the nature of much federal civil litigation and the understanding of what entities seeking to institute or intervene in these lawsuits needed to show. Public interest litigants increased their participation in federal cases and public law litigation grew. Judges created novel substantive rights and expanded those previously recognized, while they were more receptive to citizen involvement in administrative proceedings and court room litigation. Congress enacted 'social' legislation that fostered such participation by the statutes' intended beneficiaries. Public interest litigants capitalized on certain aspects of the equity-based Federal Rules of Civil Procedure that facilitated their involvement in lawsuits, and courts applied the Rules in ways that were solicitous of the needs of the public interest groups and private individuals. Therefore public interest litigation in the American context demonstrates a concerted engagement both by the legislature and the judiciary that made the activities of the public interest groups successful.[36]Article III, Sect. 3 of the Constitution of the USA requires a prospective litigant to show that, such injury is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; Public interests environmental organizations in the USA must show that the action or threat of action or omission complained of possess an 'actual or imminent' injury to their members; otherwise they will have no standing to bring the suits. But knowing the difficulty of amending the USA Constitution, for instance, given the role played so far by the federal judiciary in constraining standing rules, the better approach is for the US courts to deploy a liberal approach to interpreting Article 3 of the USA Constitution.[37] In the USA, the Clean Air Act recognizes public interest

[35] Id
[36] YOSEPH MULUGETA BADWAZA 'Public interest litigation as practised by South African NGOs: Any lessons for Ethiopia?' unpublished LLM thesis, University of Pretoria(2005),p.14
[37] Supra note 16

litigation and the possibility to sue not only private parties but also the US Environmental Protection Authority for failure to discharge its duties under environmental laws. There is, therefore, reason to believe that the remedies that the Act recognizes can contribute to environmental protection if use. The development of the PIL in the united states of America is though the effort of the courts specially the supreme court ,the constitutional amendment and piece of legislation.

2.5 Essential Preconditions for Public Interest Litigation

2.5.1. Access to justice

The concept of access to justice is one of the fundamental considerations in any discussion of public interest litigation. Access to justice is a very broad concept. The right of access to justice generally guarantees that every person has access to an independent and impartial court and the opportunity to receive a fair and just trial when that individual's liberty or property is at stake. Moreover, access to justice involves the availability of appropriate means of redress or remedies to aggrieved individuals or groups. It also implies that appropriate means of ensuring governmental accountability are put in place.[38] Access to justice is also linked to judicial independence and legal education. This is related to the notion of an effective remedy. This notion goes beyond just providing judicial remedies in the case of private disputes.[39] Procedural flexibility involves a flexible application of rules of procedure in public interest cases with a view to broadening access to justice. Thus a petition may be filed just by letter addressed to a court instead of going through the complex and expensive requirements of preparing a regular petition. This has the rationale of serving the interests of the poor. It is said that fairness requires that a person acting pro bono public should not have to incur personal expenses

[38] The Committee on Economic, Social and Cultural Rights, 'The Domestic Application of the Covenant' General Comment Number 9 (Ninth Session) UN doc. E/C. 12/1998/24, Paragraph 2.
[39] P.N. Bhagwati, *Judicial Activism and Public Interest Litigation*, (1985) 23 Columbia Journal of Transnational Law

for the preparation of a regular petition that seeks to guarantee the rights of the poor. For example, in India, judges have been known to encourage and even invite public interest action.[40] So in india the cost is beard by the state itself not by individuals.

2.5.2. Standing (locus standi)

A very broad definition of the term locus standi denotes the existence of a right on an individual or group of individuals to have a court enter upon the adjudication of an issue brought before that court by proceedings instigated by the individual or group.[41] Standing can also be defined as a party's right to make a legal claim or seek judicial enforcement of a duty or right. The notion of standing is closely associated with access to justice. As a basic threshold in the initiation of legal proceedings, locus standi is an important factor in any discourse on the right of access to justice.[42] the Relaxed rules of standing imply Thus, individuals and groups who would want to bring cases to a court of law on matters affecting the public interest are allowed standing even though they do not have a real and personal interest in the matter.[43] In other hand Environmental case creates second standing right.

2.5.3. Broader interpretation of rules,

When resolving public interest suits, judges assume different roles than in private litigation. Most importantly, they give substantive content to public norms in constitutional or statutory provisions that underlie the cases and attempt to prevent or correct inappropriate governmental behavior. Activism should also be demonstrated by those who are engaged in public interest intervention by way of creatively exploiting gaps and loopholes in those provisions in a manner that could motivate the courts to interpret them in favor of a wider protection and promotion of the rights and

[40] Supra note36
[41] L. Stein (ed.) *Locus standi*,(1979), p. 2
[42] Black's Law Dictionary (7th edition) 1999
[43] Supra note 20

freedoms.[44] And it is expanded the standing right in Environmental case is for all citizens.

2.5.4. Remedial flexibility

The need for remedial flexibility arises from the understanding of the inadequacy of existing remedies intended to deal with situations where private rights are pursued. As far as remedies are concerned, in most cases of law suits between private parties the enforcement of the applicable legal right is achieved through the attainment and execution of monetary judgment quantifying the established harm. A flexible remedy may involve the courts' ongoing follow up and supervision of the enforcement and sustainability of the relief it gave in a public interest litigation action.[45] Unlike the traditional tort law which requires only compensation, in Environmental case remedy is flexible and dynamic.

[44] C. Tobias, '*Standing to Intervene*' (1991) Wisconsin Law Review 420
[45] Supra note36

CHAPTER THREE

Public Interest Litigation Under The Ethiopian Environmental Law Regime, Prospects And Challenges

3.1 Introduction

The Ethiopian Constitution recognised the right to a clean and healthy environment. The first aspect that determines the enforcement of constitutionally-entrenched environmental rights through courts and other judicial bodies is the locus standing (standing) of the applicant. Standing determines whether an individual or group of individuals or an entity has the right to claim redress on a justiciable matter before a tribunal authorised to grant the redress sought. Standing is a preliminary issue, the lack of which precludes any form of determination over the merits of the case. Access to justice is indeed the conscience of any environmental right instrument. Nevertheless, access to justice will be greatly impeded if the applicable standing rules insulate potential applicants from approaching the relevant judicial bodies. Obviously, the issue of standing is significantly determines the reach of constitutional justice. Hence, while liberal standing rules may enhance an active enforcement of environmental right, prohibitively strict rules, on the other hand, stultify the opportunity of review for constitutionality, and hence condone much unconstitutional behaviour. Strict rules of standing as the major legal constraint to the protection of environmental right in Ethiopia under the civil procedure code. Bring an action depending on the nature and scope of the interest at stake as well as the circumstances of the case and the alleged victims.

With this in mind, the thesis considers the new trend regarding standing rules to enforce constitutional rights. It looks at traditional, more restrictive standing rules as well as the newly-developing procedure of public interest litigation. The this further considers the separate standing law right to a clean and healthy environment having to say this I will to proceed with the

major points that are need to be going to addresses in this chapters are the first one is the place of PIL under the Ethiopian constitution ,the necessary preconditions for effective PIL, such as access to justice, locus standing, broad interpretation of law ,flexible remedy ,standing in the proclamation, standing in the civil procedure code advantage and disadvantage of PIL finally the APAP case in Ethiopia.

3.2 Prospects Of Public Interest Litigation In The Ethiopian Environmental Law

3.2.1 The Constitutional Framework

In South Africa the issue of standing is covered by its constitution, the standing right of every person to approach a court claiming in violation of the rights included in the bill of rights chapter. Suit can be brought by any one against such person who violate or threaten the environmental right. The same like to south Africa the India constitution provides the legal bases for the development of public interest litigation , the supreme court of Indian given an original jurisdiction over all cases concerning the fundamental freedoms enshrined in the constitution in general and in environmental right in particular. This shows that both the Indian and south African constitution clearly provides and addressed the issue of locus standing and the definition of public interest litigation with in their respective constitutions.

Unlike the South Africa and Indian constitution, the FDRE constitution does not provides or contain very clear provision on the issue of standing right and the definition of public interest litigation. Despite of the constitutional silent in regarding to the locus standi the recognition of environmental right in the constitution opens door for public interest litigation. although the assertion is not without sense it may too much to tray to drive standing right or locus standi right from environmental law recognized in the constitutional provision. It is important to search and to read some constitutional provisions which provide that all persons have the right to

live in a clean and healthy environment.[46] The government shall endeavor to ensure that all Ethiopians to live in clean and healthy environment, the government and citizens shall have the duty to protect the environment.[47] All the above constitutional provisions are tray to address the question to which an interested party standing for. When we read the above legal constitutional provisions in conjunction, they imply that everyone has the right to live in clean and healthy environment, and the duty to protect the environment. So everyone is presumed to have vested interest when damage is done to the environment due to unconstitutional act of administrative organs or any person. From this we can infer, the fact that everyone could claim that he has interest in case when damage is done to the environment. Any person has the right to bring his case before the appropriate body or regular court without the need to show any personal injury that he had been specially and differently aggrieved by the injuries to the environment. The constitution clearly provides that the duty to protect the environment is imposed on both the government and the individual citizens. So both have duty to protect the environment from any damage, to crate conductive environment and to bring about the legal penetration of the above responsibilities on the government and the citizens we should have to use the constructive constitutional interpretation to came up with environmental standing right or locus standi that enables any one to bring environmental case and filed before the appropriate environmental agency or the regular court. This leads us to art.37 sub 2 b of the FDRE constitution which is subject to wide open door to the constitutional interpretation, the constitution has bill of rights under chapter three which incorporates readily justiciable rights including civil and political rights. The rights of access to justice is part of the fundamental rights provides in the bill of rights.

[46] *The Constitution of the FDRE OF 1995, Neg. Gaz., 1st Year, No.1 article 44(1)*
[47] Id article 92

The constitution entitles ‘everyone’ with a justiciable claim to approach judicial bodies and get remedy.[48] It is necessary to note that the constitution deals with the issue of locus standi justiciable and broad interpretation of law. by constructive interpretation we can argue that even though the constitution is seems to be referring to individuals or private interest when it says ‘everyone’, it could be subject to broad and narrow interpretation it can be applied to all persons either natural or legal person, who want to litigate on behalf of others in court of law. it is not expressly required that there must be an interest specific to the person approaching the court, this provision could be used by NGOs and private persons to take public interest cases to courts on behalf of the environment or marginalized groups who cannot protect their own rights for any reason. The constitution provides that, the right of access to justices widely or broadly for all individual and group rights this indicates that everyone or any group member can bring or file environmental case before the environmental agency, from this we can say that PIl is justiciable under the Ethiopian environmental law according to FDRE constitution. still know the constitution seems to stand with individual and group rights in accesses to justices in relation to the environment. this constitutional constructive interpretation shows that, the constitution recognise the justifiability of PIL before the appropriate body, which is similar more or less with the south Africa and India which clearly provides that everyone has the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing in court or appropriate, independent and impartial forum, the courts sought to rebalance the distribution of legal resources, increase access to justices and the formal legal guarantee respectively.

The constitution provides that the decision or judgment referred to the above provision may also be sought by; any association representing either the collective or individual interest of its members or any group or person

[48] Id article 37(1)

who is a member represents a group with similar interests.[49] Where any federal or state law is contested as being unconstitutional when any dispute is submitted to it by any court or any interested party the council consider the matter for final decision.[50] When we read the above two constitutional provisions they seems to relaxed and wider the standing right in relation to the environmental right, contrast to this the Ethiopian civil procedure code needs the requirement of consent for class action is mandatory strictly applied in private matter.[51] However the consent of class action requirement in this constitutional provision seems to not apply. This class action provision of the Constitution seems to be intended to open door in favor of broad interpretation and relaxed it to escape from the strict requirement of the Civil Procedure Code of Ethiopia, which requires the consent of all interested persons for a representative to institute a class action. The Constitutional provision allows standing to 'any group or person' who is a member of a group. We can argue that the stringent requirement of consent under the civil procedure code is limited the constitutional provision from its wider and relaxed applicability of the law. Therefore for class actions to be an effective means of constitutional litigation, the requirement of the consent of class members should be dropped in favor of the more relaxed approach provided under the above Article. The FDRE Constitution indicate that the argument in favor of broader locus standi special in cases concerning the constitutional validity of laws or any constitutional disputes. the powers and functions of the Council of Constitutional Inquiry provides that, Where any federal or state law is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the Council shall consider and submit it to the House of the federation for a final decision.

[49] Id article 37(2(a &b))
[50] Id article 84(2)
[51] Civil procedure code decree, 1965 article 38

The term ‘interested party’ can be interpreted in both in its narrow and broad sense. In the narrow sense it could be limited to individual interest who is actually a party to litigation. This could be the case where an issue of constitutional dispute arises during litigation in court. The broad understanding show that any person or legal entity who seeks to challenge the constitutional validity of a law on behalf of others or on behalf of the environmental damage representing the public interest at large. The Constitution added the word ‘body’ to the Constitution’s ‘interested party’. Thus any ‘interested party or body’ can challenge the constitutional validity of laws before the Council and the House of Federation an ‘interested party in environmental case any person who is not directly affected by the legislation can be brought by, an interested group, NGO, an association, a federal or regional agency etc.

The constitution seems to tray to adopted broad locus standing for PIL in environmental case. under the Ethiopian environmental laws. It is for these groups and public spirited individuals to engage courts and other organs with judicial competence by taking up cases of significance to the development of environmental rights, the constitution reflects, the locus standi, broad interpretation of environmental rights and the right to access to justices but this is only by implications and derivative interpretations of some constitutional provisions, the constitution does not provides clearly those necessary preconditions of PIL.

The FDRE constitution also provides a civil remedy in case of Environmental damage; all persons who have been displaced or adversely affected as result of the state programs have the right to commensurate monetary or alternative means of compensation in cluding relocation with adequate assistance, the piece legislative Environmental law of Ethiopia also provides a liability for a tort arises when a wrongful act complained of amount either to an infringement of a legal private right or violation of the legal duty shall be made good, in terms of monetary compensation or injunctions .in case of

administrative remedy, Any person who causes any pollution shall be required to clean up or pay cost of cleaning up the polluted environment in such a manner and within such period as shall be determined by the Authority or by the relevant regional environmental agency.

When any activity poses a risk to human health or to the environment, the Authority or the relevant regional environmental agency shall take any necessary measure up to the closure or relocation of any enterprise in order to prevent harm.

The administrative and legal measures could entail among other things installation of sound technology, recycling of waste, cleaning up or payment of the cost of cleaning up the polluted environment, and any measure up to the closure or relocation of any enterprise in order to prevent harm, the seriousness of the Environmental wrong doing has a consequence of criminal liability Either imprisonment or fine, this covers in both criminal code of Ethiopia and the Environmental piece legislations. this implies that the Environmental law tray to adopt a flexible remedy for any Environmental damage.

3.2.2 Standing under the Environmental Pollution Control Proclamation no.300/2002

To give effect to this environmental right, several laws have been enacted. The main such law establishing the general framework for environmental standards is the Environmental Pollution Control Proclamation.[52] The Proclamation establishes several environmental standards to ensure that socio-economic development activities may not become counter-productive by inflicting irreversible and disproportionate harm on the environment. It further enjoins everyone to refrain from polluting the environment by passing the relevant environmental standards.

[52] *Environmental Pollution Control Proclamation, Procl. No. 300/2002, Neg. Gaz., 9th Year, No.2.*

The Environmental Pollution Control Proclamation contains the following stipulations. This is the only most notable standing right under the Ethiopian environmental law regime.

Any person shall have, without the need to show any vested interest, the right to lodge a complaint at the Authority [FEPA] or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment.[53]

When the Authority or the relevant regional environmental agency fails to give a decision within thirty days or when the person who has lodged the compliant is dissatisfied with the decision, he or she may institute a court case within sixty days from the date the decision was given or the deadline for the decision has elapsed.[54] As one can see from this article, standing is granted to everyone to seek both judicial and administrative remedies. This means, a suit can be brought against any person who is allegedly causing actual or potential damage to the environment. Thus, compared to other environmental laws that do not contain stipulations on standing at all, the Environmental Pollution Control Proclamation is an important piece of environmental legislation on the issue of standing. This piece of environmental legislation is allows the first liberalizing right in protection of the environment in Ethiopia from this we can safely say that the environment is more protected under the proclamation than the constitution.

However The existing proclamation is not without problem it provides that, any person shall have the right to loge a compliant at the authority against any person allegedly causing actual or potential damage to the environment the main defect of this legal provision is it denies the right to lodge a complaint against the Environmental protection organs or institutions in case where they fail to discharges their duty. in short

[53] Id article 11(1)
[54] Id article 11(2)

according to this article bring an action against any person is allowed however the expression against any person refers to the persons who the actual cause or potential damage to the environment this implies that the environmental protection organs do not cause damage to the environment although fails to discharge their duty from this one can say that PIL is not recognized against the environmental protection organ. this doesn't create suitable and conductive environment for effective use of PIL but in order to make the provision more effective it is possible to use broadly interpreted the word any person to apply for both legal and natural persons so by this broad interpretation of the law any environmental protection authority can be sued for failure to discharge their duty.

When the authority fails to give decision within thirty day or if the compliant is dissatisfied with the decision of the authority the law allowed to the compliant to institute a court action with in sixty day from the date of final decision being given this also has a defect with period of limitation from this we can say that if the compliant is fails to claim with in sixty day he or she cannot claim again for the same cause of action up on the lapse of period, this implies that the law by itself allowed the environment to be damaged this also show us that the proclamation does not protect the environment well. However, when we see the very purpose of the article it seems to appreciate to the complaint to apply his or her case with in short period of time.

3.3. Challenges of Public Interest Litigation In The Ethiopian Environmental Law

3.3.1 Standing under the Civil Procedure Code

The standing law in Ethiopia generally requires a vested or personal interest in the case. Civil Procedure needs a 'vested interest' to stand as plaintiff. It puts a prerequisite of a personal loss in the outcome of the case. This may be logical since the law is primarily meant to govern cases arising out of private relations. In any case, courts accept suit in which the applicant may prove a vested interest.[55] from this one can be understand

[55] Supra note 51, article 32(2)

the traditional tort law does not protect the public interest litigation at all, but only protect the personal damage or injury , this implies that the individuals cannot be bring any suit to the court representing the public interest at large or on behalf of the Environmental damage. The law is gives very strict standing right to individuals to gate remedy or redress by bring the case to the regular court.

3.3.2 Lack Of Enforcement By The Environmental Protection Organs (Authority)

There are Environmental institutions that Established at federal and regional level to adopt policy, strategy and standards to implement and enforce the existing environmental laws. the main objective of these institutions are to protect the environment from any pollution and to ensure the right to live in clean and healthy environment of the citizens. From this we can say that the authority or the environmental organs are given wide power to make law which is necessary to facilitate the duty belong to them.[56] but practically the organs are fails to do for any reason, for lack of staff, financial strength or money and man power these agencies fail to implement the existing laws and to enact laws which have not yet been enacted under which they operate and environmental pollutions continues due to lack of capacity and other reasons this makes PIL ineffective implemented in Ethiopia. But in order to make them financially strength the government should be funds, subsides to the agencies. It also gives a capacity building, educating, training and motivating to the individual who are want to participate in the environmental activity and to these who want to be came environmentalists.[57]

3.3.3 Legal Problems

The success of PIL depends on the use of the legal and institutional arrangements the legal system must be flexible to allow individuals to litigate in case of public nature in general and in environmental right in particular the procedural rules must also eliminate hurdles. PIL is expressly

[56] Supra note 3
[57] Id

allowed in Ethiopia in very limited cases such as in case of environmental rights even in these cases the procedures for implementations are not clearly set. There is also no consensus on the interpretation of access to justice the terms vested interest, interested person and person with interest are also defined neither by law nor by practice. the general legal basis of PIL in environmental law is also not made clear in our legal system, this creates issue of standing which is also a major obstacle to exercising PIL we have only one article that deal with the standing right under the Environmental pollution control proclamation this implies that other piece of environmental legislations are not recognized this liberalized standing.[58] The lack of clarity regarding to the power of the courts to interpret the constitutional provision and the presence of financial, operational and awareness constraint on the part of the judiciary the public, the claimants make the exercise of PIL is very difficult. In respect to the formant the PIL form of pleading is based on the civil procedure code this show as that how much the law is restrictive for public interest ligation, so we have no comprehensive clear legal system on PIL.

It must comprehensive both substantive and procedural requirements the legal rules should relaxed to the extent possible to eliminate hurdles. The procedures for implementations should clearly set out; there must be a consensus in the interpretation of law in PIL. The active involvement of courts, Environmental authority and other actors can plays great role on the development of public interest litigation in environmental case. The legal development of public interest litigation cannot be realized only by the act of legislation, we can take this from the Indian experience of judiciary activism in the Environmental protection.

In India the law is very clear both in substantive and procedural aspects.

[58] Supra note no. 52 article 11

3.3.4 Absence Of Creations Of Awareness Towards Pil

The adoption of new standing right or PIL is a recently developed that aims to protect the Environment from any pollution or damages .this newly emerged right gives for individuals, group members and the peoples at large, however a major segment of society remains unaware and they ignore to exercise their rights under the constitution and other piece of environmental legislations most of the society doesn't know about PIL rather they are familiar with the only traditional court adjudication system. Hence no one can Enforces this environmental right for lack of creations of awareness or know how for that reason PIL is not effectively apply in Ethiopia is one problem.

The people should have aware of about the public interest litigation through various ways, either informally or formally mechanisms. The government has to create awareness creation to the public at large in order to make the people actively participate in the protections of the environment by filing and presenting environmental case before the appropriate body or before the regular court. By informally means it could be through masmidia, simply by informing the people at any time at and place. Formally, by teaching and giving Environmental course law.

3.3.5 Courts Are Passive On Environmental Protection In Ethiopia

In Ethiopia the courts are not allowed to interpret the human right in general and environmental right in particular because of the idea that the principle of legality prevents our judges from environmental activist which is completely contrary against the very purpose of public interest litigation the courts are not in a position to see constitutionality test. This implies that how much The inherent power of the court is restricted to be active in the protection of the environment by interpret the law and apply it. But in India the courts are very activist in the protection of the Environmental pollution by interptating the constitution and putting the justice in to the poor and marginalized society so the in Indian courts are very activist and play grate

role to the protection of the Environment and serving justice to the marginalized segment of the community so PIL in India is effectively implemented by judiciary activism.

But in case of Ethiopia the courts have a little chance to be activist in the protection of the Environmental pollution or Environmental damage as Indian courts do, however despite of the above assertion there are some provisions which empowers the courts to be active in the protection of the Environment according to the Environmental pollution control proclamation which clearly stated that everyone has the right to compliant against any person who cause actual or potential damage to the Environment. Therefore judges or courts can be actively participated in the public interest litigation in regarding to the Environmental case. Farther more the introduction of proclamation has potential to bring judiciary activism, it provides that any interpretation of law made by the federal supreme court in its cassation jurisdiction shall be made binding on federal as well as well as state courts this clearly show that the supreme court come up with very proactive approach to human right in general and Environmental right in particularly.[59]

3.3.6 Court Fee In Environmental Proceeding

In civil litigation the cost of proceeding is bear on the plaintiff who claims for a certain damages.

Because the court cannot proceed with the case without court fee the case is rejected if the plaintiff fails to pay the required amount of money. this court payment also apply in the Existing Environmental case, at present the individuals are pay the Environmental litigation cost out of their pocket this can be discouraged the individuals, group members and other interested persons who want actively participate in the protection of the Environment it is a counterproductive to the Environment for that case any group member, individual must not be pay the court fee .if group members are

[59] Federal court proclamation, re amendment proclamation no. 454/2005 article 2 (4)

pays the cost out of individual or private in came they will not happy to motivate and to Protect the Environment.so in order to motivate and encourage the government must be pay the court fee or cost litigation in Environmental case ,the individuals should be free from any burden. As we have try to see in the above, now day the procedural law of the civil procedure code of Ethiopia is also apply to the public interest litigation which against the very purpose of PIL. This makes the public interest procedure is highly depend on the traditional tort laws.

3.4 Advantage And Disadvantages Of Pil

Public interest litigation in environmental case has many advantages ,it serve as putting the public problem or environmental pollution in the eyes of the law .it also plays a great role in the protection of environmental damage and ecological in balance.it serves the justice in to the poor or marginalized groups by allowing other persons (either natural or legal) ,to bring any environmental case before the appropriate body or regular court on behalf of others without the need to have vested interest. In this case the justice is access to all sections of the society, individual groups and any other persons. The citizens, individual members can be actively participate in the protections of their environmental rights at local and international level, citizens can be exercised their rights by challenges towered the government.

In environmental PIL all the stringent requirements in the traditional law are relaxed and broaden to create a conductive environment for effective applications of PIL under the environmental law regime. Peoples can be cooperate and collaborate to defined their common interest in general and environmental right in particular. Despite of the above advantages of PIL have also its own disadvantages. One of the main disadvantage is the party whose interest is affected by environmental wrong doing is not bring his case to the appropriate body or to the regular court, because other interested groups bring the case and filed before the court, but not by the

victim party this shows the real party cannot defend his case appropriately and may not have get enough or effective remedy. Other disadvantage of PIL is during the process of the litigation it can be abused for any reason, in PIL it is purely public matter that means private interest litigation is not allowed but there is possibility to abuse if not managed properly. Those persons who are not enable to protect their rights for any reason remains passive from actively participate and exercised their environmental rights.

3.5 Environmental case in Ethiopia

Action professionals association for the people (APAP) Vs. Environmental protection authority APAP is a non-profit making indigenous nongovernmental organization Established in -1993 with main objective of providing legal and professional services to the poor women and children in Ethiopia and accessing human right and legal information to these groups so as to enable them use the law and human right in bringing about an attitudinal change in the development of legal process. on the basis of its objective APAP has initiated the following PIL which is the first case ever in the history of Ethiopia to bring an end to the Environment and human suffering incurred due to the pollution of AKAKI and MAJJO rivers by both governmental and non –governmental industries and factories. Standing right based on article 11(1) of the Environmental pollution control proclamation no 300/2002. The compliant takes cognizance of the pollution on a kaki and mojo rivers is mainly caused by liquid and solid by the product of the governmental and non-governmental industries. On the bass of the studies conducted in these areas it has become vivid that the pollution of these rivers is adversely affecting the right of the society to live in a clean and healthy Environment. That is at the time the people tend to use these rivers for their daily life they are directly or in directly becoming susceptible to health problems which in turn may have the potential to jeopardize their very existence according to the studies conducted in these areas the health problems stated above do not only arise from the difficulty the people face to utilize these rivers for personal and commercial benefits

but it also emanates from the offensive odor in and around these rivers which makes life miserable.to avert the above stated problems APAP initiated compliant against the Environmental pollution control authority based on article 11(1) of the Environmental pollution control proclamation to take administrative or legal measures against any person who pollutes these rivers and informs it to decided with in time limit in the Environmental pollution control proclamation .since APAP was not satisfy by the decision of Environmental protection authority ,it brought the case before the federal-first-instance-court based on article-11(2) of the same proclamation. the federal first-instance -court accepted the preliminary objection of the defendant reasoning that the claimant could not bring his case against the government organ .the decision was brought to the federal –higher –court that have appellate jurisdiction the higher court also confirmed the decision of the federal-first –instance –court .finally APAP as a last resort brought the case through petition to the cassation division of the federal supreme court , it also found no fundamental error of law .the whole discussion of PIL would have been different had the decision on the preliminary objection been different or had APAP brought the case against the polluters of the AKAKI and MAJJO rivers .the law on pollution control allows PIL expressly it doesn't however set the procedure for its implementation, as who can bring PIL ,what must an applicant show to represent the public and what level of competence should an applicant be required to fulfill ,all these shows that, the legal problems and poor legislative drafting.

CHAPTER FOUR

Conclusion and recommendation

4.1 conclusions

In Ethiopia currently the issue of standing is governed by the archaic rules despite of this, the Environmental law regime introduced a new modern concept of tort law to protect the Environment, and to ensure the right of citizens to live in clean and healthy Environment and to keep their quality of life, this show as the trends towards the liberalization of standing(rules) departing from the traditional standing right, particularly the Ethiopian Environmental law regime provides the justiciability of Environmental issues. it allows everyone to bring a case before the regular or competent body to gate redress or remedy on behalf of the public interest at large or on behalf of the Environment so it is justiciable. The law also tries to relaxed the standing right by, flexible and accessibility of the justice for all who are interested to be active in the protection of the Environment that leads to effective public interest litigation. the creation of secondary standing right in Environmental law is appreciated, despite of this progressive development of public interest litigation in Environment there are problems and challenges that hinders the full implementation of PIL in Ethiopia. Standing right is not clear under the constitution, the essential preconditions for effective public interest litigations are not enough under the Environmental rules, the law introduced public interest litigation without defined it. the Environmental pollution control proclamation is not effectively apply to Environmental protection organs and also prevents the plaintiff if action is not made with in sixty day from day of final decision is given. The Environmental agencies are not discharged their duty given under the law, there is no clear procedural rules that apply in Environmental case rather the law is refer to the civil procedure. The courts

are not activist to protect the Environment; the burdens of court fee bear by the individuals and lack of awareness creation the public at large. For these and other reasons the Ethiopian environmental law regime seems to have insufficient ground for effective public interest litigation despite the law has done much effort to develop effective PIL. Ethiopia should take lessons from Indian and south African experience of public interest litigation.

4.2 Recommendation

- ✓ The law should define the term public interest litigation and became clear with Environmental standing right.
- ✓ The necessary preconditions of public interest litigations must be satisfied under the law
- ✓ Article (11/1) of The Environmental pollution control proclamation should be amending in a way that applies to Environmental protection organs.
- ✓ Article (11/2) of the same proclamation should not be counterproductive to the Environment
- ✓ The government is required to give capacity building, training and motivating to these agencies that Enhance and facilitate to perform their duty belong to them.
- ✓ The Environmental, proclamations and regulations should come up with clear and relaxed substantive as well as procedures law.
- ✓ We should take the Indian experience of judiciary activism to protect and to guarantee the Environmental rights
- ✓ The government must bear the litigation cost on the Environment not on the individuals, the public should aware of the new developed PIL.

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