ENVIRONMENTAL AND NATURAL RESOURCE LAW

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CHAPTER ONE: INTRODUCTION

Definition

- The word *environment* is derived from an ancient French word "*environner*" meaning to encircle.
- It includes the aggregate of natural, social and cultural conditions
- Geographically, *environment* can refer to a limited area or encompass the entire planet,
- Defining the Environment is not an easy task because it is difficult both to identify and to restrict the scope of such an ambiguous term,
- **Caldwell remarks** 'it is a term that everyone understands and no one is able to define'.

What is International Environmental Law?

- Is a convenient way to encompass the entire corpus of international law, public and private, relevant to environmental issues or problems.
- It is not intended thereby to indicate the existence of some new discipline based exclusively on environmental perspectives and strategies.
- The traditional legal order of the environment is essentially a *laissez-faire* system and it has become necessary to develop a body of law more specifically aimed at the protection of the environment.

- Some argue that there is no distinct body of international environmental law with its own sources.
- What does exist is what originates from the application of general rules and principles of classical or general international law and its sources.
- *International environmental law is nothing more, or less, than the application of international law to environmental problems*
- International environmental law is merely part of international law as a whole in as long as it applies to solve environmental problems.

What is National Environmental Law?

- Art. 9 (4) of our constitution

Factors that Gave Rise to Environmental Law: National and International Perspective

1. The existence of an extensive range of environmental problems
    - atmospheric pollution
    - marine pollution
    - global warming and ozone depletion
    - the danger of nuclear and other extra-hazardous substances

Such problems have an international dimension in two obvious respects.

- Pollution generated from within a particular state often has a serious impact upon other countries.
- The fact that these environmental problems cannot be resolved by states acting individually. Accordingly, co-operation between the polluting and polluted state is necessitated.

- To determine from which country a particular form of environmental pollution has emanated is more complicated
- The correct balance between development and environmental protection is now one of the main challenges facing the international community

2. The question of the relationship between the protection of the environment and the need for economic development is another factor.

Historical Development of International Environment Law

- In about 80 AD the Senate of Rome passed legislation to protect the city's supply of clean water for drinking.
- In the 14th century England prohibited both the burning of coal in London and the disposal of waste into waterways.
- Prior to the 20th century, there were few multilateral or bilateral international environmental agreements.
- Beginning in the 1960s environmentalism has become an important political and intellectual movement in the West.

Historical Development of Environmental Law in Ethiopia

- The 1984 draught was believed that the draught was the result of agricultural degradation or environmental mismanagement.
- There were fragmented environmental management activities in Ethiopia including the establishment of Semen National Park, Awash National Park and other wildlife protections, soil preservation methods and others.
- Usually the practice was Top down Approach rather than bottom up approach.
- The other reason for environmental issues other than the draught was international pressure from the international community like the Rio Conference in 1992(since Ethiopia was one of the participants of the conference.

- **Look at Art.92 and** Art. 44 **of the FDRE constitution**
- Currently every region in Ethiopia has its own Conservation Strategy

Levels of Environmental Law

- The bulk of environmental law is statutory.
- Encompassed in the enactments of legislative bodies and regulatory enacted by subsidiary legislator.
- Much environmental law also is embodied in the decisions of international, national, and local courts.
- Some of it is manifested in arbitrated decisions

The Role of International and National Laws in the Protection of the Environment

- A law is society's system for weighing different interests, goals, and values.
- it provides mechanisms and procedures for negotiating the necessary rules and standards.
- settling disputes, and supervising implementation and compliance with treaties and customary rules.
- regulating environmental problems.
- setting common standards and objectives for prevention or mitigation of harm.

- providing a flexible rule-making process
- reinstatement of or compensation for environmental damage
- But it is limited because not all-environmental damage is necessarily capable of reinstatement or has an economically assessable value.
- it benefits or keeps accountable individuals
- for making decisions when conflicting interests cannot be reconciled in other ways
- The role of the law in protecting the environment is not fundamentally different in both international and

Does the Existing Environmental Law Adequately Protect the Environment*?*

- When effectiveness of the law in protecting the environment is concerned, much depends on the criteria used
- Effectiveness has multiple meanings:
  - It may mean solving the problem for which the regime was established,
  - achievement of goals set out in the constitutive instrument,
  - altering behavior pattern, or
  - enhancing national and international compliance with rules and international agreements.

- Effectiveness of different regulatory and enforcement techniques are also largely determined by the nature of the problem to be solved.
- What works in one case may not work in others.

Foundations of Environmental Law

- Law emerges from the cultural traditions and moral and religious values of each society.
- In the context of environmental protection, cultures, religions and legal systems throughout the world contain elements that respect and seek to conserve the natural bases of life.

Religious Traditions

- environmental protection can be found in religious traditions.
- The Jewish law provided for conservation of birds , protection of trees during wartime and regulated the disposal of human waste.
- in Islam, man has been granted inheritance to manage and utilize the earth for his benefit, and for the fulfillment of his interests.
- He therefore has to keep, maintain and preserve it honestly.
- Islamic principles thus envisage the protection and the conservation of basic natural elements.
- making protection, conservation and development of the environment and natural resources a mandatory religious duty of every Muslim.

Traditional Communities

- According to the indigenous view, land should not be torn open and exploited–this is a violation of the Earth.
- ILO Convention No.169 on Indigenous Peoples and Article 8 of the Convention on Biological Diversity contain provisions protecting the traditional lifestyles and knowledge of indigenous peoples.
- Enforcing traditional laws and norms that guarantee or protect the land and resource rights of such communities has been an important means of ensuring environmental protection in some jurisdictions.

The Sources and the Law Making Process of Environmental Law

The Sources of Environmental Law

- Governments protect the environment on the basis of their various constitutional and statutory powers.
- National authorities may accept additional duties to protect the environment by entering into bilateral and multilateral treaties containing specific obligations.
- Promulgation of regulations and permits by administrative authorities is another important source of environmental law.

- Some constitutions also contain reference to environmental rights or duties,
- constitutional provisions and their interpretation and application is another potentially important source of environmental law.
- Litigation enforces the laws and regulations by civil or criminal actions.
- statutory provisions may allow individuals to bring suit against an administrative body.

➢ All these may be considered as source of Environmental law.

Sources of National Law

- Constitutional Law
- Environmental Legislation
- Administrative Regulations
- Industry Standards and Codes of Conduct

Constitutional Law

- constitutions now contain provisions establishing environmental rights, or set forth governmental duties to protect the environment and the state’s natural resources.
- references to constitutional environmental rights raise difficult questions of justifiability, remedies, and the scope and content of such rights.
- The Supreme Court of India was one of the first courts to develop the concept of the right to a healthy environment as part of the right to life guaranteed by the constitution.

Environmental Legislation

- Legislative texts often establish general environmental policy.
- Broad frameworks of environmental statutes have been adopted in many different countries.
- Promulgation of standards for various pollutants is often a critical component of the legal framework for environmental protection.

Administrative Regulations

- In order to achieve environmental protection, many administrative agencies and officers have new powers to obtain information and a wide range of civil enforcement options from orders to injunctions.

Industry Standards and Codes of Conduct

- A growing number of guidelines or codes of conduct have been developed within industry, including the World Industry Council for the Environment,
- the FAO International Code of Conduct on the Distribution and Use of Pesticides.

International Law

- is considered the supreme body of law by international tribunals and in international relations among states.
- international law is the most complete expression of unified law.
- So a state may not invoke a provision of its national law to excuse its violation of international law.
- Within states, international law may be legally binding and applied by courts as a result of one or more means that are usually specified in the constitution.

- **Legal doctrine has developed two theories known as *monism* and *dualism***
- Monism posits for a unified body of rules, national laws automatically forms part of international body of rules and is hierarchically international law is superior to other law.
- Dualism sees national and international laws as separate legal orders and looks to each jurisdiction to determine the sources of law and their hierarchy.
- Most common law countries consider customary international law to be part of the common law and automatically binding as national law.
- Some constitutions specify that ratified treaties are automatically the law of the land and must be applied by judges.
- Some courts have adopted a rule of interpretation that avoids placing the state in breach of a treaty or rule of customary international law.

The Law Making Process: National and International Perspective

The Law Making Process of Environmental Law in Ethiopia

- A very important point for assessing environmental law is a clear understanding of the law making process from which it derives Proclamation No 454/2005 which stipulates:
- There is national parliament which is endowed by the constitution of the country with the power to legislate laws (Art. 51(5)) and Art. 52 of the same constitution that talks about the Powers and Functions of States.

The Law Making Process of International Environmental Law

- Concerning International Environmental Law there is no international legislature, comparable to the national parliament.
- However, there are generally accepted sources from which international law derives.
- Much of international environmental law is the product of legislative process involving the interplay of international organizations,
- conferences, diplomacy, codification and progressive development, and international courts and a relatively subtle interplay of treaties, non-binding declarations or resolutions.

Three features have helped to make this law making process both inclusive and relatively rapid

- **First,** international institutions, including the UN have played a leading role in setting law-making agendas.
- **Secondly**, following the model of the 3rd UN conference on the law of the sea, the use of consensus negotiating procedures and package deal diplomacy has created a real potential for securing universality and general acceptance of negotiated texts.
- The 1992 Rio Conference on Environment and Development illustrate particularly well the importance of a process which is capable of securing universal, or near universal, participation and support.
- the negotiation of the conventions on Climate Change and Ozone depletion has played a role.
- **Thirdly,** the use of frame work treaties, with regular meetings of the parties, has given the process, at least in its treaty form, a dynamic character, allowing successive protocols, annexes, and related agreements to be negotiated.

- These treaties, together with the institutions they create, have become in effect regulatory regimes.
- They provide a basis for further, progressive action to be taken as scientific knowledge.
- It is the political process referred to above which represent a real vehicle for law making,
- Even the Stockholm and Rio Declarations, the instruments adopted are not formally binding on states

Nature of Environmental Problems

- To understand this it is important to understand the natural cycle of the environment.
- we need to grasp that within the environment there exists dynamic cyclic interrelationship between the living form and physical environment
- This dynamic cyclic relationship properly operates in a balanced state in an unpolluted natural environment;
- so that, to maintain the balance it is important to suppress the unwanted behavior of man
- Within the environment there is dynamic interrelationship between the living form and physical environment.
- These relationships can be expressed as a natural cycle
- This cycle mainly operates in a balanced state in an undisturbed natural environment.

- Balanced operation of this natural cycle is a fundamental condition to the existence and development of life on earth.
- The environment, including the human competent, is complex and is not yet completely understood.
- We are part of that system: our actions affect the system and we are in turn affected by it.
- **The basis of the emphasis on human acts in environmental protection is, the fact that, we are part of the environment and simultaneously we human beings have a capacity and capability not only to improve but also to destroy and destruct**

- For this reason, if we fail to safeguard the environment from being affected by our activities, there is a fear *for human survival.*
- The cumulative effect of these environmental injuries would undoubtedly all living creatures on earth in jeopardy.
- To save humanity, therefore, everyone should notice that we human beings are at the heart of the search for sustainable development as our very survival depends on a very narrow range of environmental condition.

concept of sustainable development

- Underlies the need to develop a holistic understanding of the relationship between the environment and the development process.
- Sustainable development is a means to an end for the realization of friendly environment.
- Sustainable development implies not merely limits on economic activity in the interests of preserving or protecting the environment.
- However, an approach to development which emphasizes the fundamental importance of equity within the economic system.
- This equity is both intra-generational, in that it seeks to redress the imbalance in wealth and economic development between the developed and developing worlds.
- That is by giving priority to the needs of the poor, and inter-generational, in seeking a fair allocation of costs and benefits across succeeding generations.
- Development will only be ‘sustainable’ if it benefits the disadvantaged, without disadvantaging the needs of the future.

- The whole purpose of environmental protection boils down to mean suppressing the unwanted behavior and action of man, and fostering those that would contribute to the maintenance and enhancement of ecological balance to the benefit of the general public, and the continuity and profitability of development activities.
- To this effect, therefore, human beings are now being called upon to save the future as the future, it is presumed, lies entirely in their hands.
- Diffused right of human beings to live in a clean and healthy environment.

Pollution to Environment as International, Regional and National Concern

- *There is no single sense in which an environmental issue can be described as international, regional or national;*
- *Rather it could be global, regional, trans-boundary, domestic, or a combination of all or any of these.*
- *The law governing these rather different contexts is likely itself to differ.*

The Rationale for the Protection of the Environment

- **First,** industrial developments had not spawned/bring pollution and damage to the environment on a very large scale
- States still took a traditional approach to their international dealings:
- **Third,** public opinion was not yet sensitive to the potential dangers of industrial and military developments to a healthy environment.

The key environmental principles developed over the past several decades are

1) Prevention:

- prevention must be the Golden Rule for the environment, for both ecological and

economic reasons. In some instances, it can be impossible to remedy environmental injury once it has occurred: the extinction of a species of fauna or flora, erosion, and the dumping of persistent pollutants into the sea create intractable, even irreversible situations.

- Even when harm is remediable, the cost of rehabilitation is often very high.
- It includes; prior assessment of environmental harm, and licensing, Emission limits and other product or process standards, the use of best available techniques (BAT), and other similar techniques can all be seen as applications of prevention.

2**) Precaution**:

‘’*Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.’’*

- Precaution has variously been associated with the ideas that: 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.

3) **Polluter Pays**

- Historically, pollution control costs have been borne by the community at large, rather than by those who pollute. However as per Polluter Pays principle enterprises should internalize the environmental externalities by bearing the costs of controlling their pollution to the extent required by law.
- In most cases the enterprise will in fact incorporate the costs in the price of the products to some degree and pass them on to the consumer.
- Internalization requires that all the environmental costs be borne by the producer/consumer instead of the community as a whole. The principle can be applied most easily in a geographic region subject to uniform environmental law, such as a state or a regional economic integration organization.

- Generally, polluters should pay for the cost of pollution control measures, such as the construction and operation of anti-pollution installations, investment in anti-pollution equipment and new processes, so that a necessary environmental quality objective is achieved.
- Other means of ensuring the polluter pays principle are through taxes and charges.
- Application of the principle may be difficult in practice where identifying the polluter proves impracticable because the pollution arises from several simultaneous causes or from several consecutive causes, or where the polluter has become financially insolvent.

4) **Environmental Justice and Equity**

- Environmental Justice Generally; In general, environmental justice seeks to

  ensure that authorities fairly allocate and regulate scarce resources to ensure that the benefits of environmental resources, the costs associated with protecting them, and any degradation that occurs (i.e. all the benefits and burdens) are equitably shared by all members of society.
- Public Trust; The concept of public trust expresses the idea that the present generation holds the natural resources of the earth in trust for future generations.

5) **The Integration Principle**; integrated environmental considerations into decision-making processes

6) **The Public-Participation Principle**;

Generally, government decisions to set environmental standards for specific types of pollution, to permit significant environmentally damaging activities, or to preserve significant resources are made only after the impending decision has been formally and publicly announced and the public has been given the opportunity to influence the decision through written comments or hearings.

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

- A duty to prevent, reduce and control trans-frontier environmental harm. However, this obligation is neither absolute nor very precise.

8) States' Obligations to Cooperate, to Inform and to Consult With Other States (principles of cooperation and information);

- These principles are reflections of the principles of good neighborliness, and diligence.
- They have found their way into soft law as well as treaties. States also have a duty to inform and consult with other States, if activities within their territory may have effects across the borders. More recently, this duty of information has developed into rules on environmental impact assessment, in a trans-boundary context.

9) The Principle of Sustainable Development;

- Firstly; sustainable development is not to be confused with zero growth. Economists readily accept that in some cases even zero growth may be unsustainable; zero growth as an output will not save the ozone layer,
- sustainable development need not imply a policy of no growth. sustainable development implies not merely limits on economic activity in the interests of preserving or protecting the environment, but an approach to development which emphasizes the fundamental importance of equity within the economic system.
- Sustainable development is thus not exclusively concerned with narrow economic needs, but encompasses a broader environmental perspective.

- sustainable development is as much about processes as about outcomes, and for lawyers this may be the key point to grasp.
- Sustainable development offers us a unifying concept for the exploitation of natural resources and the integration of environment and development.

The Elements of Sustainable Development

- Sustainable development contains both **substantive** and **procedural** elements.
- **The substantive elements** include

  -the sustainable utilization of natural resources;

  -the integration of environmental protection and economic development;

  -the right to development; the pursuit of equitable allocation of resources both within the

  present generation and between present and future generations (intra-and inter-generational equity), and

  -the internalization of environmental costs through application of the ‘polluter pays’ principle.
- **The principal procedural elements** are dealing with public participation in decision- making and

  environmental impact assessment.

CHAPTER 3 ENVIRONMENTAL RIGHTS

The following environmental rights are recognized under both national & international laws

1. **The Right to Information**:

- Access to environmental information is a prerequisite to effective public participation in decision-making and to monitoring governmental and private sector activities.
- It also can assist enterprises in planning for and utilizing the best available techniques and technology.
- The right of individuals, groups, and organizations to obtain, publish and distribute information on environmental issues.
- The right of individuals and non-governmental organizations to be informed of environmental problems relevant to them, to have the necessary access to information, and to participate in the formulation and implementation of decisions likely to affect their environment.

2. Public Participation

- Public participation is emphasized throughout international and national environmental law. Public participation is based on the right of those who may be affected to have a say in the determination of their environmental future.
- Non-governmental organizations (NGOs) and groups such as trade unions or manufacturers’ associations are an organized means of public participation in environmental decision-making.
- Depending on the jurisdiction, this may include foreign citizens and residents. In the EIA context, the public typically incorporates all stakeholder.

3. Access to Justice

- The right to a remedy is not necessarily limited to nationals of a state.
- The right to an effective remedy, meaning access to justice and redress, can be found in both human rights law and in environmental law.
- ICCPR calls for states to provide a remedy whenever rights protected under national or international law have been violated.

4. Environmental Quality

- Almost every constitution adopted
- State practice is divided over the issue of the justiciability of the right to a safe and healthy environment. Some courts have allowed lawsuits to enforce the right, while others have not.
- International Law; At present, no global human rights treaty proclaims a right to environmental quality, although UDHR and other human rights instruments contain a right to an adequate quality of life and a right to health. African Charter on Human and Peoples Rights was the first international human rights instrument to contain an explicit guarantee of environmental quality. Subsequently, the Protocol on ESCR to the American Convention on Human Rights included the right of everyone to live in a healthy environment.