

A HUMAN RIGHTS APPROACH TO ENVIRONMENTAL PROTECTION: THE CASE OF ETHIOPIA

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Abstract

International and domestic environmental law has evolved quite rapidly in the last few decades. At the international level the Stockholm and Rio Declarations paved the way for a broad based consensus of the international community on environmental issues and principles. At the Domestic level also many states have incorporated environmental protection in their constitutions and even more states are doing the same at least in their domestic legislations. In this process of evolution environmental law has unleashed a number of novel principles such as; the participatory principle, the polluter pays principle, the precautionary principle, the inter-generational and intra-generational principles, the prevention principle, the sustainable development principle and so on. And Ethiopia has no been an exception in this regard.

The Ethiopian Constitution explicitly declares that "All persons have the right to a clean and healthy environment".¹ The constitution also announces that the Government has a duty to endeavor to ensure that all Ethiopians live in a 'clean and a healthy' environment.² Although the development and expansion of environmental law pre-dates the Ethiopian Constitution the constitution's approach towards the subject is quite unique in that it conceives of environmental protection as an individual human right. As we will see in the proceeding sections the human rights approach to environmental protection has been argued for in international environmental law although without much success. Whereas in Ethiopia, environmental concerns have been formulated almost exclusively in a human rights paradigm. The paper examines this approach both on a theoretical and a practical level.

The first section will set the context in which the "human right to a healthy environment" has evolved in international law and literature so as to have a clearer picture of the constitution's declaration of the same. The second section examines the possible theoretical explanations of constitution's declaration of the right to a safe and a healthy environment. In the third section we shall dwell upon how the right to a safe and a healthy environment imposes a duty upon the government and how the duties may be overcome. And in the fourth section we will consider the relationship of the right under consideration with other human rights contained in the constitution and in international human rights law.

Keywords: international environmental law, human rights, protection, Ethiopia

¹ FDRE Constitution Article 44(1)

² FDRE Constitution Article 92(1)

Section One

Human Rights to the Environment in International Law

The connection between human rights and environmental law has by now been excruciatingly argued for by some sections of international lawyers and publicists. Such an argument would normally claim that a human right to the environment has its basis in all the major sources of international law.³ Their argument normally proceeds in the following pattern. They hold that an international human right to the environment has already been established and recognized as early as 1972 by the Stockholm Declaration which states that: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an Environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."⁴

Another argument would make a case that the United Nations General Assembly, in its resolution 45/94 (1990) re-affirmed the Stockholm declaration by stating that "all individuals are entitled to live in an environment adequate for their health and well-being" and calls for enhanced efforts towards ensuring a "better and healthier environment". And so does the 1992 Rio Declaration which declares, in its first principle, that: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."⁵ Principle 4 of the same also declares "environmental protection shall constitute an integral part of the development process."⁶ We can further follow this line of argument and find, in article 24 of the 1989 Convention on the Rights of the Child, the obligation of state parties to take appropriate measures to implement children's right to health, "taking into consideration the dangers and risks of environmental pollution."⁷ The ILO Convention is also taken as another example of an indirect declaration of environmental rights.⁸

There are also numerous other international treaties which are concerned with the protection of the environment implicitly mentioning the need to protect the environment within the context of the dignity as well-being of man, health or the common interest of human beings. Among these are the 1989 Basel Convention on The Control of Trans-boundary movement of Hazardous Wastes and their disposal, the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere in Outer Space and

³See, Alexander Kiss, An Introductory Note on a human right to environment, *supra* note 3; Dinah Shelton, Human Rights and environment issues in Multilateral Treaties adopted between 1991 and 2001 Human rights and the environment, background paper No. 1, Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, 14-16 Jan 2002, Geneva. Laura Ziemer, Environmental harm as a human right violation available at <[http://www.tibet.com/Eco/Green 97/ violation.html](http://www.tibet.com/Eco/Green%2097/violation.html)>accessed on 7/26/2006

⁴Declaration of the United Nation Conference on the Human Environment (16 June 1972, Stockholm).

⁵Rio Declaration on Environment and Development (June 14,1992)

⁶*Ibid.*

⁷United Nations Convention on the Rights of the Child (1989)

⁸Dominic McGoldrick, Sustainable Development and Human Rights: An Integrated Conception, *The International and Comparative Law Quarterly*, Vol. 45, No. 4. (Oct., 1996) P.811.

Under Water and the 1977 Convention on the Prohibition of Military or Any Other Hostile use of Environmental Modification Techniques.⁹

The same argument is also made by extending the former contention to regional multilateral treaties. In the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) it is stated that everyone shall have the right to live in a healthy environment “ and that “states parties shall promote the protection, preservation and improvement of the environment.”¹⁰ And there is also the communo-centric African Charter on Human and Peoples’ Rights that proclaims that “all peoples...have the right to a general satisfactory environment favorable to their development.”¹¹

The import of the arguments that we considered so far is to claim that the human right to environment has its basis in international treaties. But since many of those documents cited are nonbinding sources an argument has been made that the non-binding instruments could never the less be considered as proof of a growing right to the environment in customary international law. The argument for right to the environment in customary international law has, in addition to what we have considered, been asserted by forwarding the following arguments.

The claim for a customary international recognition of the right to a safe environment is supported by arguing that states have recognized the right in their constitutions. It is claimed that there are today at least 50 national constitutions which prescribe a human right to the environment not counting state or regional constitutions in federal states.¹² Therefore it is argued a clear *opinio juris* is established by virtue of this uniform constitutional practice.

A claim is also made that the International Court of Justice has proclaimed the right to a safe environment in the *Gabcikovo-Nagy-Maros* case. In that case the court had reasoned that:

The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.

Although these arguments flamboyantly establish a right to a safe or healthy environment it should never the less be important to point out that the arguments have important shortcomings. First of all most the Declarations that they rely on to establish the right are not binding under international law.¹³ And the binding treaties on which they rely are usually remotely connected to the right and do not proclaim it explicitly. It is to be acknowledged of course that the Additional Protocol to the American

⁹Gunnar G. Schram, *Human Rights and the Environment*, Nordic Journal of International Law Acta Scandinavica Juris gentium Vol. 61/62, Martinus Nijhoff Publishers (1994) P. 143

¹⁰Additional Protocol to the American Convention on the Human Rights in the area of Economic, Social and Cultural Rights, “Protocol of San Salvador” 17 November 1988.

¹¹African Charter on Human and Peoples’ Rights

¹²Sionaidh Douglas- Scott, *Environmental Rights: Taking the environment seriously?* In Conor Gearty and Adam Tomkins (eds.) *Understanding Human Rights*, London and New York.

¹³They are what we can safely categorize under the “soft law” of international law.

Convention on Human Rights and the African Charter are the only binding treaties that explicitly provide for the protection of the environment as a human right. Never the less these treaties are of regional application and do not bind the rest of the international community.

Further more the argument for the existence of an international custom could also be put to doubt since the claim for a uniform constitutional practice might be exaggerated. Paula Pevato deconstructs this argument by showing that half of the constitutions that are claimed to refer to some sort of environmental protection only half of them see it as a policy aspiration and not as a human right.¹⁴ Pevato further deconstructs this argument by showing that most the remaining constitutions may very well protect the right to the environment as a legal right and not as a human right.¹⁵

Furthermore we can also see that the proclamation of the ICJ could not be a conclusive proof of the declaration of the right to a safe environment since the court was only referring to already accepted human rights as life and health, rights that may be violated by environmental pollution and not to an explicit right to the environment.¹⁶ Thus we can fairly conclude that, although the right to the environment is an evolving concept in international law it has not yet been conclusively established in international law. And may we also remember that the developed western states including big brother America are likely to effectively resist such a development in positive international law.¹⁷

Section Two

The Right to a Safe & a Healthy Environment in the FDRE Constitution

The FDRE Constitution recognizes environmental concerns as an issue of human rights and entrenches the same in its third chapter.¹⁸ Further along the chapters of the constitution it refers to them again albeit as "national policy principles and objectives" inculcated in the constitution. Rather than try to explain the provisions in paraphrases I have outlined them in a table so that the reader sees them firsthand before going on to the next part and of course for easy reference and convenience.

Table 1: Articles of the constitution dealing with environmental issues.

Article 44: Environmental Rights	Article 92 Environmental Objectives
1. All persons have the right to a clean and healthy environment.	1. Government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment.
2. All persons who have been displaced	2. The design and implementation of

¹⁴ Paula M Pevato, A Right to Environment in International Law: Current Status and Future Outlook, RECIEL A Right to Environment, Vol. 8 Issue. 3, Blackwell Publishers, Oxford (1999).

¹⁵Ibid.

¹⁶Ibid.

¹⁷See Malcolm N. Shaw, International Law (1997 4th ed.) Cambridge University Press, Cambridge, p.62. for an argument as to how the bigger and wealthier states make bigger footprints in international law.

¹⁸Fundamental Rights and Freedoms.

Article 44: Environmental Rights	Article 92 Environmental Objectives
or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.	programmes and projects of development shall not damage or destroy the environment. 3. People have the right to full consultation and to the expression of views-in the planning and implementation of environmental policies and projects that affect them directly. 4. Government and citizens shall have the duty to protect the environment.

It looks as though the constitution declares a 'human right' to a safe and a healthy environment most unequivocally. This is true not only because of the clear terms in which the right is declared but because the right is listed in the third chapter of the constitution. Nevertheless upon closer scrutiny one will notice that the constitution does offer enough ambiguity as to its adherence to the rights approach to environmental law. This may be achieved in the hermeneutic of article 92(4) which indicates that the Ethiopian government and Citizens have a duty to protect the environment. A contrary reading of the article will show that the environment also has a correlative right against the government and citizens. Generally stated we can call this right; the "right of the environment to be protected". In this light we can no more argue that the constitution is following an unadulterated human rights approach to the environment since by virtue of the later interpretation the constitution incorporates an eco-centric understanding of environmental protection. This leads us to the first issue in our consideration of the constitution's approach to environmental law; i.e. whether the constitution has an anthropocentric or eco-centric approach to environmental protection.

Anthropocentrism V. Ecocentrism

The justification Environmental law can be based upon or traced back to two distinct philosophical/ethical thoughts. The first of these known as anthropocentrism which tries to justify environmental protection based on the value of the environment to human existence. As per this view environmental degradation is seen as undesirable not because of the intrinsic worth of the environment, ecological balance etc but because of the eventual harm the degradation will cause to other human beings whether of the present or future generations. Thus it is in this context that we can envisage the human rights approach to environmental protection. This view attempts to justify environmental protection on the ground that human beings have a right to live in a safe and healthy environment.¹⁹

On the opposite side of the debate are the Ecocentrists who see the environment as having an intrinsic moral value without considering its usefulness to human beings.²⁰

¹⁹Encyclopedia Britannica online, environmentalism.

²⁰Followers of this line have often labeled anthropocentrism as; human Chauvinism, speciesism, human racism, and systematic prejudice against non-human species etc ...

Aldo Leopold an important figure in this ethical line of thought argues that it is an inevitable aspect of human evolution that we should start to consider ourselves as one amongst a community of nature.²¹ In his view:

- a land ethic changes the role of Homo sapiens from conqueror of the land community to plain member and citizen of it. It implies respect for his fellow members and respect for the community as such.

Stone and his like also argue that the best way to protect the environment is to confer rights on them. In his article 'Should Trees have Standing?' he argues that the idea of non-living things having rights is not as unthinkable as anthropocentrists suggest since not long ago it used to be thought that women, children, peoples and ethnic minorities did not have rights. Thus pointing to the 'evolving nature of rights' he suggests that the environment should be included into the club of right-holders since "until the right less thing receives its rights, we can not see it as anything but a thing for the use of us."²²

The following table succinctly summarizes the commonly invoked differences between the anthropocentric and ecocentric perspectives on environmental ethics.²³

Table 2. Differences in perspective between anthropocentrists and ecocentrists.

ISSUE	ANTHROPOCENTRISM	ECOCENTRISM
Placing of humans with respect to nature	Humans are uniquely different from, and superior to, the rest of the biological world.	Humans are but another member of the world biological community.
Limitations on the human-environment relationship	There are nearly unlimited possibilities to what humans can do with the environment.	There are important limits to what humans can do with the environment.
Sources of meaning	Progress, efficiency, independence.	Stability, conservation, interdependence.
Criteria for allocation of resources	Decisions should be made to maximize the value of total net benefits to humans.	Decisions should be made in context where all organisms - humans included - have equal standing.

Now coming back to the FDRE constitution it is not very clear if it is anthropocentric or ecocentric in its approach toward the environmental issue. As pointed out earlier it incorporates a great deal of anthropocentrism since it is premised on the rights approach to the issue. On the other hand it is also ecocentric since it declares the right of the natural environment to protection. But despite I will argue that the constitution is or should be read in anthropocentric terms.

²¹Mellese Damte, International Environmental Law Short notes,[Unpublished] P.14

²²See Sionadh Douglass-Scott, Environmental Rights: Taking the Environment seriously In Conor Gearty and Adam Tomkins (eds.) Understanding Human Rights, London and New York (1996) P. 442

²³Alejandro Flores and Tim W. Clark Finding Common Ground in Biological Conservation: Beyond the Anthropocentric vs. Biocentric Controversy

The main argument in favor of the adoption of the ecocentric approach seems to rest on its ability to give nature a better protection by allowing it to possess rights and a capacity to be represented in a court of law. This apparently seems to have the support of (or has been adopted by) the Environmental Pollution Control Proclamation.²⁴ This law prescribes: "Any person shall have, without the need to show any vested interest, the right to lodge a complaint at the Authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment," and that: "When the Authority or regional environmental agency fails to give a decision within thirty days or when the person who has lodged the complaint is dissatisfied with the decision, he may institute a court case with in sixty days from the date the decision was given or the deadline for decision has elapsed."²⁵ Although this provision cannot stand by itself as proof of an ecocentric orientation the same proclamation also declares, in its preamble, that the protection of the environment in general and the protection of the biota and the esthetic value of nature is the duty of everyone. Thus the influence of ecocentrism in the Ethiopian legal system cannot be denied.

Beyond this instance of ecocentrism the greater portion of Ethiopian law seems to lend support to the anthropocentric human rights approach to environmental regulation. First of all, the right of persons to a clean and a healthy environment is declared in the third chapter of the constitution which is the most important part of the constitution not least because the constitution itself declares so²⁶ but human rights also constitute one of the fundamental principles of the constitution.²⁷ And second of all, the environmental legislations also tend to favor the human rights and sustainable development approach to environmental protection. These laws primarily aim towards the "safeguarding human health and well being"²⁸, minimizing the "counter-productive" effects of "social and economic development",²⁹ help to "bring about intended development",³⁰ promote "sustainable development"³¹ "implementation of environmental rights",³² and the "maximization of socio economic benefits".³³

In conjunction to the prevalence of the anthropocentric human rights approach in the legal system³⁴ we may also consider some arguments that should support the

²⁴Proclamation No. 300/2002

²⁵*Ibid.*

²⁶FDRE Constitution article 13(1).

²⁷FDRE Constitution article 10.

²⁸Preamble of Proclamation No. 300/2002.

²⁹*Ibid.*

³⁰Preamble of Environmental Impact Assessment Proclamation No. 299/2002.

³¹*Ibid.*

³²*Ibid.*

³³*Ibid.*

³⁴Note also that the Environmental policies of the country, although not legally binding may give some strength to the argument that an anthropocentric view is being perused in Ethiopia. See for example Transitional Government of Ethiopia, Natural Resources Development and Environmental Protection Strategy and Major Programmes, National Conservation Strategy Secretariat Ministry of Natural Resources Development and Environmental Protection, P22 Addis Ababa October, 1994. The Key Guiding Principles of the Federal Policy on Natural Resources and the Environment is that every person has a right to live in a healthy environment. And also see Operational Arrangements, Environmental Protection Authority in collaboration with Ministry of Economic Development and Cooperation, P. 10; Addis Ababa,

predominance of this approach. The first of these argumentations is that the ecocentric approach will prove to be unpractical given that it will require the elimination of the concern for human interests in the political system inhabited by human agents.³⁵ That is, the approach is self-destructive since it will not be able to convince human beings (and pragmatic politicians) to give up human interests in favor of non-human beings. This is further strengthened by the fact that the majority of Ethiopia's population is religiously predestined to support an anthropocentric view as a matter of faith because the majority of the population is either Muslim or Christian.³⁶ The human rights approach is also desirable because of the distinct advantages inherent in human rights discourse. First of all the human rights approach allows environmentalists and victims of specific environmental issues a stronger claim in the face of political and legal forums. An applicant who is equipped with an argument based on a 'human right' will wield a stronger claim than one arguing in the language of an environmental policy because rights are perceived, borrowing Dworkin's terminology, as trumps which over-ride policy considerations.³⁷ This trumping effect of human rights is reaffirmed in article 13(1) of the constitution which declares that "All Federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter. Second, when looked at procedurally it is known that claimants of human rights are given much more flexibility when it comes to the rules of legal standing or a shifting the burden of proof, thus transferring the burden on those who inflict harm on the environment.³⁸ And third the human rights approach may have a chain or domino effect of provoking or stimulating political controversy and debate on environmental issues.³⁹ It at least has the potential to do so because the public will be more sensitive or responsive to a human rights issue than most other issues. And finally there is that flexibility of human rights that can be imported to environmental protection.⁴⁰ The history of human rights will show how they have managed to solve the timely problems of different generations thorough their interpretation and re-interpretation by the judiciary.

April 1997. Which declares that the guiding principles of the policy should in addition to "Be[ing] consistent with Article 44 of the Constitution and assure all people living in the country of their fundamental right to an environment adequate for their health and well-being" also uphold the right to public participation and sustainable development (rights that I have discussed in the proceeding part).

³⁵Andrew Light, *Contemporary Environmental Ethics From Metaethics to Public Philosophy*, Metaphilosophy, Vol. 33 No. 4 Metaphilosophy LLC and Blackwell Publishers Ltd. (July 2002).

³⁶Although I have to admit that these religions might have biocentric interpretations the mainstream view in both religions is anthropocentric. The Bible, for example, orders human beings to "fill the earth and subdue it, and have dominion over the fish and of the sea and over the birds of the air and over every living thing" (Genesis 1:26). And the Quran also states: "and the cattle he (God has created for you; from them you derive warmth, and numerous benefits... And horses mules and donkeys, for you to ride and as an adornment..." (An-nahl 5-8).

³⁷Ronald Dworkin, *Taking Rights Seriously* (1978) Harvard University Press, Cambridge, Massachusetts.

³⁸Supra note 2, P.426

³⁹Ibid.

⁴⁰Patricia W. Birnie and Alan B. Boyle, *The structure of International Environmental Law III: The Role of National Law and the Right to a decent Environment* ed. 1992 Clarendon Press Oxford P.189

Section Three

Duties of the Government Towards the right to a Safe and a Healthy Environment

The inclusion of the right to a clean and a healthy environment in the third chapter of the constitution of Federal Democratic Republic of Ethiopia assures us that the right is of at most prominence. This prominence is expressed by the constitution in explicit terms in that "any government policy, decision of an organ of state, customary practice or law" which is evidently contrary to necessary environmental interests or the right to a safe and a healthy environment will be null and void.⁴¹ Thus having established the prominence of the human rights approach in Ethiopian law we will now consider what kinds of correlative duties or obligations this right imposes on the government. For the sake of clarity we will divide these duties into two: negative obligations and positive obligations.

The negative or "hands-off" duty imposed on the state by the right to a safe and a healthy environment can be expressed in terms of the government's duty not to violate the right. To assert that the government has a duty not to directly violate the right to the environment means that the government has the government should not and cannot pollute the environment in which the human person inhabits. This duty can be read into article 92(2) which can be understood as declaring that "[t]he design and implementation of programmes and projects of development" undertaken by the government "shall not damage or destroy the environment." The article ofcourse does more than to declare a negative duty.

The assertion that the government has a negative obligation not to destroy the environment is particularly strong since the constitution declares the right as an individual human right. This can be inferred from the phraseology of article 44 of the constitution which reads "ALL PERSONS have a right to ..." And if the right is declared as such it will necessarily mean that the individual can sue the government whenever the later has polluted the environment in which the individual lives. This sort of a case can be envisaged where government corporations or agencies pollute the environment, in which case the government will be duty bound to cease the pollution, undo the completed harm and to indemnify the injured individual.

The rest of the obligations of the state are primarily understood in terms of the positive obligations of the state to take some action to preserve the human environment. The first of these is the government's duty to establish legal and judicial machinery that is intended to preserve a clean and a healthy environment. The government primarily has the obligation to make detailed laws which will make it possible for the population to exercise the right to a safe and a healthy environment.⁴² The duty to set up a sound judicial system being an obligation that is associated with other duties of the government the obligation, when seen in particular to environmental

⁴¹ FDRE Constitution Article 13(1).

⁴² See, Environmental Protection Authority Establishment Proclamation, Proclamation No. 9/1995, Environmental Protection Organs Establishment Proclamation, Proclamation No. 295/2002 Environmental Impact Assessment Proclamation, Proclamation No. 299/2002, Environmental Pollution Control Proclamation, Proclamation No. 300/2002.

rights, concerns the establishment of a sound administrative machinery and the right to appeal in a court of law on environmental law concerns.⁴³

And second the constitution prescribes on the government a positive duty to enable individuals and groups to participate in decision-making process which concern their immediate environment. This obligation emanates from the constitution and is also entrenched in the positive laws of the country. The core source of this right is article 92 of the constitution which declares that "People have the right to full consultation and to the expression of views-in the planning and implementation of environmental policies and projects that affect them directly." Additionally the constitution also contains a general provision in article 29 specifies that the freedom of the press shall specifically include Access to information of public interest. A combined reading of these articles explains to a great length why the laws on environmental law demand the government make environmental impact assessment studies accessible to the public and to incorporate the opinion of the public in the report.⁴⁴ The law also requires the Federal Environmental Protection Authority to prepare and publicize a periodic report on the state of the environment in the country and to provide environmental education programmes.⁴⁵

The government is also expected to assume more far reaching duties than those that we have discussed so far. The government is required to put an extra effort in protecting the right to a safe and a healthy environment in that it is ha a duty to "endeavor to ensure that all Ethiopians live in a clean and healthy environment."⁴⁶ Furthermore although the constitution provides that "citizens shall have the duty to protect the environment"⁴⁷ it is not clear as to how this duty is to be interpreted and put to practice.

Section Four

The Relationship of the Right to the Environment with Other Human Rights

It has been asserted that human rights are interdependent and inter-related and that the violation of one right usually entails the violation of another set of rights and it is usually the case that many rights cannot be respected unless some other rights are also respected. But again it is also true that the respect of one right can mean the violation of another. For example if the right to access to information were abolished one could hardly imagine how the right to religion, assembly or democracy could have any value. But at the same time the right to access to information could be legitimately limited for the protection of the right to privacy or the right to honor and reputation. The right to a safe and a healthy environment is no exception when it comes to the love-hate relationship between rights.

⁴³See article 11 of Proclamation No. 300/2002.

⁴⁴See article 15 of the Environmental Impact Assessment Proclamation, Proclamation No. 299/2002,

⁴⁵article 6(16) and (17) of the Environmental Impact Assessment Proclamation, Proclamation No. 295/2002,

⁴⁶FDRE Constitution Article 92 (1).

⁴⁷FDRE Constitution Article 92 (4).

Life

The right to a safe and a safe and a healthy environment has a very close affinity to the right to life. In fact many countries that do not protect the right to the environment in their constitution tend to use a wide interpretation of the right to life in order to give protection the former. A pertinent example is provided by the Supreme Court whose reasoning we will provide for its clear statement of the relationship. The Court has held:

"It would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Article 21..."⁴⁸

The criminal code of the FDRE also acknowledges this connection by proclaiming that any person who pollutes the environment will be punished and where the pollution has resulted in the death of any human being the punishment is increased two fold.⁴⁹ The code thus not only recognizes the connection between the right to life and the right to a safe and a healthy environment but puts the destruction of life at the climax of environmental harm.

Information and Participation

The right to access to information is one of the most important mechanisms created by the FDRE Constitution to ensure that Ethiopia smoothly reaches its democratic ambitions. When read in conjunction with article 92 of the constitution it becomes clear that the constitution aims towards extending its democratic principles to environmental regulation. It is in this light that the constitution declares rights to free thought, opinion, expression, assembly, demonstration, petition, association, election, self-determination⁵⁰ etc... so as to ensure that the democratic institutions it has created function properly both in the political arena in general and in environmental regulation in particular. The importance of public participation in environmental protection is also emphasized by international environmental instruments. For example the Rio Declaration principle 10 provides that environmental concerns are best dealt with through the involvement of all affected citizens.

Right to Justice

Article 37 of the constitution prescribes: "Everyone has a right to bring a justiciable matter to a court of law and obtain a judgment." This right is connected to environmental protection since we cannot enforce the right in the absence of this right in case the government fails to comply with the constitutional provisions that gave the

⁴⁸Quoted by : Shyam Divan (etal) Environmental Law and policy in India, Oxford University Press, UK (2nd ed. 2002) p.51

⁴⁹Article 519 of, The Criminal Code of the Federal Democratic Republic of Ethiopia proclamation No.414/2004 9th of May, 2005 Addis Ababa

⁵⁰ibid, articles 29, 30, 31, 38, and 39 respectively.

right in the first place. The connection of this right to environmental protection is made in Article 10 of both in the Rio Declaration and Agenda 21. The same connection is also established in article 11 of the Environmental Pollution Control Proclamation.⁵¹

Right to Development

So far we have been considering rights that complement rather than contradict the right to a safe and a healthy environment. One right that is recognized by the constitution never the less contradicts head on with the right to the environment. This right is the right to development. The constitution declares that the people of Ethiopia, each nationality and individuals have a right to development.⁵² This may in effect mean that in the process of developing the right holders could damage the environment!

The constitution after creating this problem never the less tries to solve the same by proposing a thesis of a sustainable development as a compromise solution. The Brundtland Report which defined Sustainable development for the first time sets forth a concept that implies development that meets the needs of the present generation without compromising the ability of future generations to meet theirs.⁵³ Thus by accepting the right of the peoples of Ethiopia to a sustainable development the constitution does not only try to solve the conflict between two rights but also a right of future generations to meet their needs of development and at the same time to live in a safe and a healthy environment.

The constitution also goes further to state that "[t]he basic aim of development activities shall be to enhance the capacity of citizens for development and to meet their basic needs."⁵⁴ This implies that the constitution follows a basic needs approach to the issue of development. The basic needs approach focuses on the need to ensure that everyone has access to enough basic goods and services to maintain a level of living above a basic minimum, as a prime objective of development endeavors.⁵⁵

Right to Property and Privacy

I have lumped these two rights because they share the character of being those rights that are the victims of the right to a safe and a healthy environment. That is the two rights are sacrificed for the sake of the protection of the right to the environment. A very good example is provided by the Environmental Pollution Control Proclamation.⁵⁶ The proclamation for instance provides that environmental inspectors can enter any land or premises at any time which seems appropriate to them without prior notice or court order; question any person alone or in the presence of witnesses; check, copy or extract any paper, file or any other document related to pollution; take, free of charge, samples of any material as required and carry out or cause to be carried out tests to determine whether or not it causes harm to the environment or to life; take

⁵¹Proclamation No. 300/2002.

⁵²FDRE Constitution article 43(1).

⁵³Duty to Future Generations, Environmental change and International Law: New Challenges and Dimensions: available at <http://www.unu.edu/unupress/unubooks/uu25eeoo.htm> accessed on 7/23/2006

⁵⁴FDRE Constitution article 43(4).

⁵⁵Frances Stewart, Basic Needs Strategies, Human Rights and the Right to Development, Human Rights Quarterly, Vol. 11 No. 3 (Aug 1989) P.348.

⁵⁶Proclamation No. 300/2002.

photographs, measure, draw, or examine any commodity, process or facility in order to ensure compliance with this Proclamation and with any other relevant law; seize any equipment or any other object which is believed to have been used in the commission of an offence under the proclamation etc...⁵⁷ All these rules show us that the protection of the right to a safe and a healthy environment has outweighed, at least in the opinion of the parliament, the individual rights of privacy and property.

Conclusion

Although the right to a clean and a healthy environment has not established itself as a binding rule of international law it has never the less been enshrined in the constitutions of many states. Even where the right has not been so clearly established in constitutional law many domestic courts in the world have succeeded in protection the right as an extension of the right to life. In Ethiopia the right to a clean and a healthy environment has been incorporated in the third chapter of the constitution. The FDRE Constitution assures that any government policy, decision of an organ of state, customary practice or law which is evidently contrary to necessary environmental interests will be null and void. We have seen that not only is there a negative duty on the government but there are positive duties expected of the government in the protection of the right to the environment. We have also seen that the right has been incorporated in various proclamations of the country. It is hoped that this paper has contributed to the understanding of the right to access to information as a human right and particularly in the context of its interaction with other rights.

⁵⁷ Ibid article 8(1).